

ORDINANCE NO. 2009-18

AN ORDINANCE AMENDING TITLE 24 OF THE SANTA CRUZ MUNICIPAL CODE (ZONING ORDINANCE) INCLUDING SECTIONS 24.16.015; 24.16.020; AND 24.16.030 TO ALLOW FOR ADJUSTMENTS IN DECLINING HOUSING MARKETS.

The City Council of the City of Santa Cruz ordains as follows:

SECTION 1. Sections 24.16.015; 24.16.020; and 24.16.030 of Chapter 24.16 Part 1, Inclusionary Housing Requirements of the Municipal Code of the City of Santa Cruz are hereby amended to read as follows:

24.16.015 DEFINITIONS.

For purposes of this Part 1 of Chapter 24.16, the following definitions shall apply. Unless specifically defined below, words or phrases shall be interpreted as to give this Part 1 its most reasonable interpretation.

1. “Affordable ownership costs” means average monthly housing costs, during the first calendar year of a household’s occupancy, including mortgage payments, property taxes, homeowners insurance, and homeowners association dues, if any, which do not exceed the following:

a. For moderate income households: one hundred ten percent of area median, adjusted for assumed household size based on unit size, multiplied by thirty-five percent, and divided by twelve.

b. For lower income households: eighty percent of area median, adjusted for assumed household size based on unit size, multiplied by thirty percent and divided by twelve. (Also used as inclusionary sale price for median income households.)

c. For very low income households: fifty percent of area median, adjusted for assumed household size based on unit size, multiplied by thirty percent and divided by twelve.

2. “Affordable rent” means monthly rent, including utilities and all fees for housing services, which does not exceed the following:

a. For lower income households: eighty percent of area median income, adjusted for assumed household size based on unit size, multiplied by forty percent and divided by twelve.

b. For very low income households: fifty percent of area median income, adjusted for assumed household size based on unit size, multiplied by thirty percent, and divided by twelve.

c. For extremely low income households: thirty percent of area median, adjusted for assumed household size based on unit size, multiplied by thirty percent and divided by twelve.

3. “Affordable units” are dwelling units which are affordable to very low, lower, median, or moderate income households as defined by this Part 1 or by any federal or state housing program and are subject to rental, sale, or resale provisions to maintain affordability.

4. “Area median income” is area median income for Santa Cruz County as published and periodically updated by the state of California pursuant to California Code of Regulations, Title 25, Section 6932, or successor provision.

5. “Assisted living unit” is any dwelling unit in a facility licensed under Chapter 3.2 of the California Health and Safety Code as a residential care facility for the elderly, or an assisted living unit as defined in Section 1771(a)(6) of the California Health and Safety Code.

6. “Assumed household size based on unit size” is a household of one person in a studio apartment, two persons in a one bedroom unit, three persons in a two bedroom unit, and one additional person for each additional bedroom thereafter.

7. “Congregate living unit” is any dwelling unit in a senior housing development or senior citizen housing, as defined in Section 51.3 of the California Civil Code, that provides private living quarters with centralized dining services and shared living spaces and may include access to social and recreational activities.

8. “Declining and Emerging Housing Markets”: For purposes of this Chapter 24.16 Part I the City Council may adopt a resolution declaring the existence of a “declining housing market” or an “emerging housing market” in the City of Santa Cruz. A declining housing market declaration shall be supported by a finding that the overall median housing prices in the City have declined during five of six prior months. An emerging housing market declaration may be supported by a finding that the median housing prices in the City have increased during five of the previous six months. A declining housing market declaration, unless terminated by the City Council, shall remain in effect until the City Council thereafter adopts an emerging housing market declaration. In ascertaining median home prices for purposes of declining and emerging housing market declarations, the declarations shall be made with reference to the average median prices for single family and townhome/condominium dwellings in the City or County of Santa Cruz for the six month period of time under consideration.

9. “Density bonus” is a density increase over the otherwise allowable maximum residential density on a site, granted pursuant to Part 3 of Chapter 24.16.

10. “First approval” is the first of the following approvals to occur with respect to a residential development: Specific Plan, Development Agreement, Planned Development Permit, Tentative Map, Minor Land Division, Use Permit, Design Permit, Building Permit, or any other permit listed in Section 24.04.030.

11. “Household income” is the combined adjusted gross household income for all adult persons living in a living unit as calculated for the purpose of the Section 8 program under the United States Housing Act of 1937, as amended, or its successor provision.

12. “Household, low or lower income” is a household whose income does not exceed the lower income limits applicable to Santa Cruz County, as published and periodically updated by the California Department of Housing and Community Development pursuant to Section 50079.5 of the California Health and Safety Code.

13. “Household, median income” is a household whose income does not exceed area median income.

14. “Household, moderate income” is a household whose income does not exceed the moderate income limits applicable to Santa Cruz County, as published and periodically updated by the California Department of Housing and Community Development pursuant to Section 50079.5 of the California Health and Safety Code.

15. “Household, very low income” is a household whose income does not exceed the very low income limits applicable to Santa Cruz County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Section 50105 of the California Health and Safety Code.

16. “Inclusionary unit” is an ownership or rental dwelling unit or single-room occupancy unit within a residential development which is required under this Part 1 of Chapter 24.16 to be rented at affordable rents or sold at an affordable ownership cost to specified households.

17. “Live/work unit” is a dwelling unit, part of which is used as a business establishment and the dwelling unit is the principal residence of the business operator or an employee of the business establishment who works in the unit.

18. “Market rate unit” is a dwelling unit that is not an affordable unit or an inclusionary unit.

19. “Maximum residential density” is the maximum number of dwelling units permitted by the zoning ordinance on the date an application for a residential development is deemed complete. This definition is used to calculate a density bonus pursuant to Part 3 of Chapter 24.16.

20. “Residential development” is any project requiring any discretionary permit from the city, or a building permit, for which an application has been submitted to the city, and which would create two or more new or additional dwelling units or single-room occupancy units by construction or alteration of structures.

21. “Small ownership unit (SOU)” is a dwelling unit containing no more than one bedroom and floor area ranging from four hundred to six hundred fifty square feet, located on a separate subdivided parcel and included in a residential development where all dwelling units are SOU units and are offered for sale to the general public.

(Ord. 2007-19 § 1 (part), 2007: Ord. 2006-16 § 2 (part), 2006).

#### 24.16.020 BASIC ON-SITE INCLUSIONARY HOUSING REQUIREMENTS.

1. Exemptions. The inclusionary housing requirements are applicable to all residential developments that create two or more new or additional dwelling units or single-room occupancy units at one location by construction or alteration of structures, except for the following:

a. Residential developments developed pursuant to the terms of a development agreement executed prior to the effective date of the ordinance codified in this chapter; provided, that such residential developments comply with any affordable housing requirements included in the development agreement or any predecessor inclusionary housing requirements in effect on the date the development agreement was executed.

b. Residential developments for which a complete application was filed with the city prior to the effective date of the ordinance codified in this chapter; provided, that such residential developments comply with any predecessor inclusionary housing requirements in effect on the date the application for the residential development was deemed complete.

c. Residential developments if exempted by Government Code Section 66474.2 or 66498.1; provided, that such residential developments comply with any predecessor inclusionary housing requirements in effect on the date the application for the residential development was deemed complete.

d. Residential developments replacing dwelling units that have been destroyed by fire, flood, earthquake, or other acts of nature, so long as no additional dwelling units are created by the residential development; and provided, that such residential developments comply with any inclusionary housing requirements previously applied to the dwelling units being replaced.

e. A single-family residential unit with an accessory dwelling unit.

2. Residential Developments with Two to Four Dwelling Units. For residential developments that would create two but no more than four additional dwelling units at one location, the applicant shall either: (a) make available for rent or sale one inclusionary unit at an ownership or rental cost affordable to lower income households; or (b) pay an in-lieu fee calculated pursuant to Section 24.16.030(6).

3. Residential Developments with Five or More Dwelling Units. Residential developments that would create five or more new or additional ownership, rental, single-room occupancy, congregate living, live/work or assisted living units at one location shall provide inclusionary units as follows:

a. Ownership Units (Not SOU Units). In a residential or live/work development, except a small ownership unit (SOU) development, where any dwelling units are offered for sale, fifteen percent of the dwelling units shall be made available for sale to lower and median income households at an ownership cost affordable to lower income households. However, if the

developer agrees to sell all of the units in the residential development at a price no more than fifteen percent higher than the ownership cost affordable to lower income households, then all units in the residential development may be sold at that price. If fifteen percent of the dwelling units results in a fractional requirement of 0.7 or less, then the applicant may elect to either provide the affordable unit or pay an in-lieu fee calculated pursuant to Section 24.16.030(6) for the fractional unit. An additional inclusionary unit shall be provided for all fractional requirements greater than 0.7.

b. **Small Ownership Units.** In a residential development comprised of small ownership units, fifteen to thirty percent of the small ownership units shall be made available for sale to lower and median income households at an ownership cost affordable to lower income households. The percentage rate shall be established by resolution and henceforth referred to as the SOU inclusionary percentage. If the SOU inclusionary percentage of the dwelling units results in a fractional requirement of 0.7 or less, then the applicant may elect to either provide the affordable unit or pay an in-lieu fee calculated pursuant to Section 24.16.030(6) for the fractional unit. An additional inclusionary unit shall be provided for all fractional requirements greater than 0.7.

c. **Rental Units Without a Subdivision Map.** In a residential or live/work development where all dwelling units are offered for rent, and no subdivision map has been recorded to create parcels containing single dwelling units, fifteen percent of the dwelling units shall be made available for rent to lower income households at a rent affordable to lower income households. However, individual rents shall not be regulated or the qualifications of individual tenant households monitored by the city if the rental cost affordable to lower income households as defined by resolution is at least ninety percent of the average rent for all dwelling units within the same residential development with the same number of bedrooms. (The ninety percent threshold can be calculated by dividing the affordable rent as determined by resolution for each unit size, as determined by bedroom count, by the average rent for the same size unit in the residential development.) If fifteen percent of the dwelling units results in a fractional requirement greater than 0.7, then an additional inclusionary unit shall be provided. No in-lieu fee is required for fractional requirements of 0.7 or less.

d. **Rental Units with a Subdivision Map.** In a residential or live/work development where all dwelling units are offered for rent, but where a subdivision map has been recorded to create parcels containing single dwelling units, as soon as any dwelling unit in the residential development is offered for sale, fifteen percent of non-SOU dwelling units or the SOU inclusionary percentage times the number of SOU dwelling units shall be offered for sale to lower and median income households at an ownership cost affordable to lower income households. If the required percent of the dwelling units results in a fractional requirement of 0.7 or less, then the applicant may elect to either provide the affordable unit or pay an in-lieu fee calculated pursuant to Section 24.16.030(6) for the fractional unit. An additional inclusionary unit shall be provided for all fractional requirements greater than 0.7.

e. **Rental Units with a Subdivision Map during declining housing markets.** In periods of declining housing markets, as defined in Section 24.16.015.8, dwelling units in a residential development may be offered for sale without requiring compliance with section 24.16.020(3)(d) above, for a period specified by the City Council in its declining housing market declaration, not to exceed one year following the end of the declining housing market. However, no inclusionary units may be sold as market-rate units. In addition, after an emerging housing market is declared Section 24.16.020(3)(d) shall be in effect regarding new rental tenancies and units must be offered for sale when vacated by existing tenants.

f. Single-Room Occupancy Units. In a residential development comprised of single-room occupancy units, fifteen percent of the single-room occupancy units shall be made available for rent to lower income households at a rental cost affordable to very low income households. If fifteen percent of the single-room occupancy units results in a fractional requirement greater than 0.7, then an additional inclusionary unit shall be provided. No in-lieu fee is required for fractional requirements of 0.7 or less.

g. Congregate Living and Assisted Living Units. In a residential development comprised of congregate living or assisted living units, fifteen percent of the congregate living or assisted living units shall be made available for rent to lower income households at a rental cost affordable to very low income households. If fifteen percent of the units results in a fractional requirement greater than 0.7, then an additional inclusionary unit shall be provided. No in-lieu fee is required for fractional requirements of 0.7 or less. Charges for congregate living or assisted living services in addition to the affordable rent may not exceed thirty-five percent of fifty percent of area median income for a single person, divided by twelve, or forty-five percent of fifty percent of area median income for two persons, divided by twelve.

4. The requirements of subsection (3) are minimum requirements and shall not preclude a residential development from providing additional affordable units or affordable units with lower rents or sales prices than required.

5. At the applicant's option, for developments with multiple market rate unit types containing differing numbers of bedrooms, the inclusionary housing requirements may be satisfied based on the number of bedrooms rather than the number of units in the residential development, in which event the inclusionary units shall contain at least fifteen percent of the total number of bedrooms in the residential development.

6. For purposes of calculating the number of inclusionary units required by this section, an accessory dwelling unit or units shall not be counted either as part of the residential development or as an affordable unit fulfilling the inclusionary requirements for the residential development.

7. For purposes of calculating the number of inclusionary units required by this section, any dwelling units authorized as a density bonus pursuant to Part 3 of this chapter shall not be counted as part of the residential development. However, if a developer receives a city rental housing bonus as authorized by Section 24.16.220(1), then all of the dwelling units in the project, including the dwelling units authorized as a density bonus, shall be counted as part of the residential development for purposes of calculating the inclusionary units required by this section.

8. If a residential development receives a density bonus pursuant to Part 3 of this chapter, any affordable units and any dedication of property that were used to qualify the residential development for the density bonus may not also be used to meet the inclusionary housing requirements included in this Part 1.

(Ord. 2008-14 § 5, 2008: Ord. 2007-19 § 1 (part), 2007: Ord. 2006-16 § 2 (part), 2006).

#### 24.16.030 ALTERNATIVE METHODS TO COMPLY WITH INCLUSIONARY HOUSING REQUIREMENTS.

1. Application Submittal. Any application to use an alternative method to meet inclusionary housing requirements shall be submitted as part of the first approval for any residential development subject to the inclusionary housing requirements.

2. Findings. For all alternative methods of compliance with the inclusionary housing requirements, the city council must make the following findings:

a. The proposal for the alternative method of compliance is consistent with the Santa Cruz General Plan and all of its elements.

b. The proposal conforms to the standards established for inclusionary units in Section 24.16.025, unless the alternative method does not require compliance with that section.

c. The alternative method of compliance will provide a public benefit not otherwise obtainable if on-site inclusionary units are provided as required by Section 24.16.020. For the purpose of this subsection, “a public benefit not otherwise obtainable” is defined as:

(1) The same or superior quality of design and construction and, with the exception of live/work units, the provision of more inclusionary units than would otherwise be required if the inclusionary units were constructed on site; or

(2) Except for live/work units, the provision of at least two dwelling units affordable to lower income households, one and one-half dwelling units affordable to very low income households, or one dwelling unit affordable to extremely low income households for each inclusionary unit that would otherwise be required to be constructed on site; and, except for live/work units, if conversion of existing units is proposed, all units in the existing residential development will be rehabilitated in addition to the inclusionary units, and the existing residential development requires significant rehabilitation (costs estimated at twenty-five percent of after-construction value); or

(3) Except for live/work units, if in-lieu fees are proposed, the fees are needed by the city as matching funds for state or federal grants for current or future affordable housing projects, or the in-lieu fees will provide substantially more affordable housing than would be provided by on-site provision of inclusionary units, equivalent to subsection (2)(c)(1) at a minimum.

(4) For live/work units, additional alternative inclusionary units above the fifteen percent (15%) requirement shall not be required; and if an existing unit is used, at the discretion of the Planning Director, rehabilitation of all other units in the complex may not be required however requirements to be determined by the Planning Director to rehabilitate the alternative inclusionary unit shall apply; and in-lieu fees may be allowed solely at the discretion of the City Council.

3. Off-Site Construction of Inclusionary Units. An applicant may propose to construct all or a portion of the required inclusionary units off site. Off-site inclusionary units may include any combination of new dwelling units, or new dwelling units created in existing structures; provided, that off-site inclusionary units may not exceed forty percent of the total units on any one site. For the purposes of determining compliance with the city’s inclusionary housing requirements, all properties included in the proposal shall be treated as one residential development.

a. An application for off-site inclusionary units shall be accompanied by the following information:

(1) Identification of all of the entities responsible for development of the market rate units and the inclusionary units.

(2) The location of the sites where the market rate and inclusionary units will be constructed.

(3) For each site, the same level of detail for the off-site inclusionary units as for the market rate residential development including: the number, unit type, number of bedrooms and baths, approximate location, size, and design, construction and completion schedule of all inclusionary units including the phasing of inclusionary units in relation to market rate units.

(4) If the inclusionary units will not be constructed concurrently with the market rate units, the applicant shall specify the security to be provided to the city to ensure that the inclusionary units will be constructed.

(5) Evidence of ownership or control of all sites proposed for market rate and inclusionary units.

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b. The city council may approve a proposal for off-site inclusionary units if it makes all of the findings required by subsection (2) of this section and both of the following findings:

(1) The developer has provided clear and convincing evidence that financing has been secured for the off-site inclusionary units; and

(2) Each entity responsible for development of the inclusionary and market rate units has adequate site control and the capacity to construct the units as proposed.

c. Prior to final or parcel map approval and prior to issuance of any building permit for the residential development, the owner and the developer of the site where the off-site inclusionary units will be located and the developer of the residential development shall all enter into the developer affordable housing agreement required by Section 24.16.040.

d. Prior to issuance of any certificate of occupancy or final inspection for any market rate units, the owner and the developer of the site where the off-site inclusionary units will be located shall enter into a regulatory agreement to ensure that the off-site inclusionary units will remain affordable in perpetuity.

e. Once an applicant has received approval for off-site construction of inclusionary units on a specific site, no substitution of sites may be made unless approved by the director of the planning and community development department.

f. If the off-site construction of inclusionary units is not substantially completed within eighteen months of completion of on-site construction, then the city council may require the applicant to pay double the amount of in-lieu fees as provided for in subsection (6) of this section.

4. Conversion of Existing Market Rate Housing to Inclusionary Units. An applicant may propose to convert existing residential units into inclusionary units in lieu of constructing new inclusionary units on site.

a. No inclusionary units may be created by converting existing rental dwelling units into condominiums.

b. The conversion of existing market rate housing to inclusionary units need not comply strictly with Sections 24.16.025(2) and (3) but the types of units and numbers of bedrooms provided in the converted units shall be reasonably similar to those that would have been required for on-site inclusionary units, subject to the approval of the director of planning and community development.

c. For residential developments located within the HD-O High-Density Overlay District, existing dwelling units proposed for conversion into inclusionary units must be located within the downtown planning area as defined by the Downtown Area Plan.

d. Any existing tenants in units proposed to be converted who are relocated shall be eligible for relocation benefits pursuant to Section 24.08.1350.

e. Any application to convert existing residential units into inclusionary units shall be accompanied by the following information regarding the existing dwelling units proposed to be converted:

(1) Identification of all of the entities responsible for development of the market rate units and the inclusionary units.

(2) The location of the site where the existing units will be converted to inclusionary units and evidence of ownership or control of all sites proposed for conversion of existing units to inclusionary units.

(3) If the inclusionary units will not be constructed concurrently with the market rate units, the applicant shall describe the proposed phasing and specify the security to be provided to the city to ensure that the inclusionary units will be constructed.

(4) The same level of detail for the converted inclusionary units as for the market rate residential development for the following:

(i) Floor plans showing size and number of bedrooms of the units to be converted; number of bedrooms and square footage of market rate units in the proposed residential development.

(ii) Site plans and building elevations showing landscaping, lot lines, property dimensions, easements, location of all structures, and parking for the units to be converted.

(5) Existing rent or appraised value of each unit on the property to be converted, proposed rents or sales prices after rehabilitation and/or conversion, and any existing rent limits, resale price restrictions, or other affordability restrictions imposed by any public agency, nonprofit agency, land trust, or other body.

(6) Size of household occupying each unit on the property to be converted, vacancy rates for each month during the past two years, and existing tenant incomes.

(7) A property inspection report prepared by a certified housing inspector and a termite report, both prepared no more than sixty days before the filing of the application. The property inspection report shall include an examination of all common and private areas within the existing dwelling units for compliance with the Uniform Housing Code, the structural condition of the property, identification of all code violations or unsafe elements, any potentially hazardous soil or geologic conditions, and condition of paved areas and drainage.

(8) Plans and a written description of rehabilitation to be completed, including correction of all code violations and completion of all termite repairs described in the property inspection report and termite report; cost of rehabilitation; and the value of the property, including land, buildings, and all other improvements, after rehabilitation.

(9) Description of benefits to be offered to existing tenants, including but not limited to right of first refusal to remain in the unit, and any expected need for relocation of existing tenants.

f. The city council may approve a proposal for conversion of existing dwelling units to inclusionary units if it makes all of the findings required by subsection (2) of this section and all of the following findings:

(1) The developer has provided clear and convincing evidence that financing has been secured for the off-site inclusionary units; and

(2) Each entity responsible for development of the inclusionary and market rate units has adequate site control and the capacity to construct the units as proposed.

(3) The rehabilitation plans include all construction required to meet all current requirements of the Uniform Housing Code, as determined by the chief building official of the city.

(4) The cost of rehabilitation is greater than twenty-five percent of the value of the property, including land, buildings, and all other improvements after rehabilitation.

(5) The dwelling units to be converted are not subject to any rent limits, resale price restrictions, or other affordability restrictions imposed by any public agency, nonprofit agency, land trust, or other body, unless the affordability restrictions are at risk of expiring within five years, or the conversion will make the units affordable to households with lower incomes than the existing affordability restrictions.

(6) The dwelling units to be converted will be affordable to households with lower incomes than required for new inclusionary units, as specified by city council resolution.

(7) The converted units are not less than eighty percent of the average size of the market rate units and have the same proportion of bedroom types as the market rate units, unless

the city council finds that a modification of this requirement will provide a great number of inclusionary units or a deeper level of affordability, or that it is infeasible to provide affordable units of this size.

g. If more than forty percent of the units on one site will be converted to inclusionary units, the city council must additionally find that the rehabilitated inclusionary units will remove blight and enhance physical and social conditions in the surrounding area.

h. If the conversion of existing units and substantial rehabilitation of the development is not substantially completed within eighteen months of completion of the new residential development, then the city council may require the applicant to pay double the amount of in-lieu fees as provided for in subsection (6).

5. Transfer of Credit. An applicant may propose to receive credit for lower income dwelling units constructed prior to or concurrently with the market rate project.

a. When a residential development is proposed that includes more inclusionary units than required by this Part 1, the applicant may propose that the excess inclusionary units be made available to satisfy inclusionary requirements on other sites. The credits may be made available to other residential developments for a maximum period of five years from issuance of the last certificate of occupancy for the residential development that includes the excess inclusionary units.

b. The residential development that includes the excess inclusionary units may not receive any local, state, or federal affordable housing financial assistance.

c. An application for a residential development that includes excess inclusionary units proposed to be made available for credit shall be accompanied by the following:

(1) Identification of excess inclusionary units to be made available for credit to other residential developments, including in particular the number of bedrooms, tenure, size, and location.

(2) Total number of inclusionary units proposed, not to exceed forty percent of the total number of dwelling units in the residential development.

(3) Person or entity authorized to transfer credit to other residential developments.

d. An application for a residential development that proposes to receive credit for inclusionary units previously approved for the transfer of credit shall be accompanied by the following:

(1) A written agreement with the holder of the rights to the excess inclusionary units consenting to the transfer of credit.

(2) Evidence that the transferred units satisfy all or a portion of the residential development's inclusionary requirements, including but not limited to appropriate size, number of bedrooms, and tenure.

e. The city council may approve a proposal to make inclusionary units available to meet inclusionary requirements on other sites if it makes all of the findings required by subsection (2) and all of the following findings:

(1) The residential development has not received any local, state, or federal affordable housing financial assistance.

(2) No more than forty percent of the dwelling units in the residential development are inclusionary units.

f. The city council may approve a proposal to receive credit for inclusionary units previously approved for the transfer of credit if it makes all of the findings required by subsection (2) of this section and the following finding:

The inclusionary units to be credited to the residential development will be constructed prior to or concurrently with the market rate units in the residential development.

6. In-Lieu Housing Fees.

a. Applicants may pay in-lieu fees to the city rather than construct inclusionary units on-site under the following circumstances:

(1) For all residential developments or residential subdivisions that would create two but no more than four additional dwelling units or parcels at one location, except small unit ownership (SOU) projects, the applicant may elect to pay an in-lieu fee for the fraction of an inclusionary unit equal to 0.15 times the number of units or parcels in the residential development or subdivision. For SOU projects that would create two but no more than four additional dwelling units at one location, the applicant may elect to pay an in-lieu fee for a fraction of an inclusionary unit equal to the SOU inclusionary percentage times the number of units in the residential development.

(2) For residential developments where any dwelling units are offered for sale, or where all dwelling units are offered for rent, but where a subdivision map has been recorded to create parcels containing single dwelling units, the applicant may elect to pay an in-lieu fee for any fraction of an inclusionary unit equal to 0.7 or less.

(3) For all other residential developments creating five or more units, in-lieu fees may be paid for all or a portion of the required inclusionary units at the discretion of the city council and only if the city council makes the findings required by subsection (2), except that conformance with Section 24.16.025 is not required.

b. In-lieu fees per unit shall be calculated as the difference between (1) the affordable sales price of an inclusionary unit, and (2) the value of a market rate unit. The value of a market rate unit shall be determined using one of two methods, which shall be designated by the developer at the time the Affordable Housing Agreement is signed. Accessory Dwelling Units or their square footage shall not be included in the market rate value calculations. The two methods are as follows:

(1) Value of the market rate unit shall be equal to the average appraised value of all units in the proposed development. The appraisal shall be conducted by a licensed residential appraiser within three months prior to entering into an Affordable Housing Agreement. The licensed residential appraiser shall be selected by the city and paid by the developer.

(2). Value of the market rate unit shall be calculated by multiplying the average square footage per unit by the actual market rate price per square foot obtained when the units are sold. The market price per square foot shall be based upon the average sale price per square foot of fifty percent (50%) of the market rate units in the development. If this method is selected, estimated in-lieu fees may be paid when fees are due per subsection (6)(e) below and adjustments (additional payment made to the city or refunds made from the city) shall be made following sale of fifty percent (50%) of the market rate units.

c. In-lieu fees for residential developments creating two but no more than four additional dwelling units shall be reduced by fifty percent. In-lieu fees for fractions of units, as defined in subsection (6)(a)(1), shall be further reduced by twenty percent. In-lieu fees for fractions of units, as defined in subsection (6)(a)(1), may be further reduced in a declining or emerging housing market, as defined in Section 24.16.015(8), by a resolution of the City Council.

d. In-lieu fees per parcel for subdivisions shall be calculated to be fifty percent (50%) of the average appraised value of the parcels in the subdivision where the average appraised value equals the appraised value of all parcels in the subdivision divided by the number of parcels in the subdivision. The appraisal shall be conducted by a licensed residential appraiser to

be selected by the city and paid for by the developer. For subdivisions that consist of two to four parcels, this amount shall be further reduced by fifty percent.

e. In-lieu fees shall be paid prior to or at the time the building permit is finalized (final inspection) by the city Planning and Community Development Building Division or as determined in an Affordable Housing Development Agreement, with additional terms approved by the City Council. For projects constructed in phases, in-lieu fees shall be paid in the proportion that the phase bears to the overall project.

f. In-lieu fees for subdivisions shall be paid prior to or concurrently with final subdivision map approval.

g. All in-lieu fees shall be deposited into a separate account entitled the affordable housing trust fund. The monies in the affordable housing trust fund and all earnings from investment of the monies in the affordable housing trust fund shall be used within a reasonable amount of time to assist in the construction of new lower income housing units with long-term affordability restrictions, including required administrative support.

7. Land Dedication. For residential developments with an inclusionary requirement of seven or more inclusionary units, an applicant may propose to donate a minimum of fifteen percent of the net developable land area of the residential development to the city for the construction of a one hundred percent lower income project.

a. An application for land dedication shall be accompanied by the following information:

(1) Area to be dedicated to the city.

(2) Demonstration that the density approved for the site is suitable for affordable housing development, evidence of adequate infrastructure, and a site plan demonstrating that the site can accommodate the required number of inclusionary units.

(3) Identification of the entity that will construct the inclusionary units.

(4) Pro forma demonstrating that development of the inclusionary units on the site is financially feasible.

(5) If the inclusionary units will not be constructed concurrently with the market rate units, the applicant shall describe the proposed phasing and specify the security to be provided to the city to ensure that the inclusionary units will be constructed.

b. The city council may approve a proposal for land dedication if it makes all of the findings required by subsection (2) and the following additional finding:

A residential development that includes one hundred percent lower income units is feasible on the property to be dedicated.

c. The property shall be dedicated to the city at the earliest of: (1) recordation of any final or parcel map, or (2) issuance of any building permit for the residential development.

d. The city shall make the site available without cost to a lower income housing developer with proven experience and the ability to finance and construct an affordable housing project in the most expeditious manner. To the extent feasible, the applicant shall process the lower income residential development on the dedicated site concurrently with the processing of the market rate development.

(Ord. 2008-14 § 6, 2008: Ord. 2007-19 § 1 (part), 2007: Ord. 2006-16 § 2 (part), 2006).

#### 24.16.045 CONTINUED AFFORDABILITY AND INITIAL OCCUPANCY.

1. The city council, by resolution, shall establish guidelines for determining household income, asset limits, occupancy standards, affordable ownership cost, affordable rent, provisions for continued monitoring of tenant eligibility, resale price, and other implementation criteria. The

city shall use standard documents as approved by the city attorney to ensure the continued affordability of the inclusionary units in all residential developments. The documents may include, but are not limited to, inclusionary housing agreements, rent regulatory agreements, promissory notes, deeds of trust, options to purchase, and resale restrictions.

2. Rent regulatory agreements consistent with the requirements of Part 1 of this chapter shall be recorded against residential developments containing rental inclusionary units. If the inclusionary units are designated for owner-occupancy, resale restrictions, deeds of trust, options to purchase, and/or other documents consistent with the requirements of Part 1 of this chapter shall be recorded against the owner-occupied inclusionary units.

3. Any household that occupies an inclusionary unit must occupy that unit as its principal residence, except in circumstances that may require the temporary vacation of the unit. For rented inclusionary units, the documents required by subsection (1) shall provide for continued occupancy for limited periods by households occupying the units, whose incomes increase during their occupancy so that they exceed the maximum otherwise permitted for the unit.

4. The maximum sales price shall be calculated using the methodology defined in the resolution and/or guidelines identified in and applied under the inclusionary agreement for that property. The resale restrictions shall allow the city a right of first refusal or option to purchase any owner-occupied inclusionary unit at the maximum resale price permitted under this section at any time the owner proposes sale.

5. No household shall be permitted to begin occupancy of an inclusionary unit designated for owner-occupancy unless the city or its designee has approved the household's eligibility. No household shall be permitted to begin occupancy of an inclusionary rental unit unless the city or its designee has approved the household's eligibility, except that tenants are not required to be income-eligible if the rental cost affordable to lower income households is at least ninety percent of the average rent for market rate dwelling units with the same number of bedrooms.

6. As consistent with state and federal law, preferences for rental inclusionary units shall be given in the following priority order:

- a. Residents of the city of Santa Cruz for at least one year.
- b. Those employed in the city of Santa Cruz.
- c. Residents of the county of Santa Cruz for at least one year.
- d. Those employed in the county of Santa Cruz.

7. As consistent with state and federal law, preferences for ownership inclusionary units shall be given in the following priority order:

- a. Those who live or work in the city of Santa Cruz.
- b. Those who live or work in the county of Santa Cruz.

8. The city council by resolution may establish fees for the on-going administration and monitoring of the inclusionary units, which fees may be updated periodically, as required. (Ord. 2006-16 § 2 (part), 2006).

#### 24.16.050 APPEALS.

1. An applicant or any other person whose interests are adversely affected by any determination of the planning and community development division staff or of an agency retained by the city with regard to this Part 1 may appeal the determination to the director of planning and community development.

2. An applicant or any other person whose interests are adversely affected by the determination of the director of the planning and community development with regard to this Part 1 may appeal the determination to the city council.

3. The procedure for appeals shall be consistent with the procedures prescribed in Sections 24.04.180 – 24.04.185 of the Santa Cruz Municipal Code. (Ord. 2006-16 § 2 (part), 2006).

#### 24.16.055 WAIVERS OF INCLUSIONARY HOUSING REQUIREMENT.

1. Notwithstanding any other provision of this chapter, the inclusionary housing requirements may be waived, adjusted, or reduced if an applicant shows, based on substantial evidence, that there is no reasonable relationship between the impact of a proposed development and the requirements of this Part 1, or that applying the requirements of this chapter would take property in violation of the United States or California Constitutions.

2. Any request for a waiver, adjustment, or reduction under this section shall be submitted as a part of the first approval. The request for a waiver, reduction, or adjustment shall set forth in detail the factual and legal basis for the claim.

3. The request for a waiver, adjustment, or reduction shall be reviewed and considered as a part of the first approval. In making a determination on an application for waiver, adjustment, or reduction, the applicant shall bear the burden of presenting substantial evidence to support the claim. The city may assume each of the following when applicable:

a. That the applicant will provide the most economical inclusionary units to meet the requirements of this chapter.

b. That the applicant is likely to obtain housing subsidies when such funds are reasonably available.

c. The extent to which the applicant will benefit from density bonuses or other incentives;

The waiver, adjustment, or reduction may be approved by the decision-making body only to the extent necessary to avoid an unconstitutional result, after adoption of written findings, based on substantial evidence, supporting the determinations required by this section.

(Ord. 2006-16 § 2 (part), 2006).

#### 24.16.060 IMPLEMENTATION AND ENFORCEMENT.

1. The city council may adopt guidelines, by resolution, to assist in the implementation of all aspects of this Part 1.

2. In addition to any other powers or duties prescribed by law, the director of planning and community development shall have the following powers and duties in relation to this Part 1:

a. To monitor compliance with the provisions of this part and to refer to the city attorney for appropriate action any person violating the provisions of this part; and

b. To administer this Part 1.

3. The city attorney shall be authorized to enforce the provisions of this Part 1, all agreements entered into pursuant to this Part 1, and all other requirements of this Part 1, by civil action and any other proceeding or method permitted by law. The city may, at its discretion, take such enforcement action as is authorized under any provision of the Santa Cruz Municipal Code and/or any other action authorized by law or by any agreement executed pursuant to this Part 1.

4. Failure of any official or agency to enforce the requirements of this chapter shall not constitute a waiver or excuse any applicant or owner from the requirements of this Part 1. No permit, license, map, or other approval or entitlement for a residential development shall be

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issued, including without limitation a final inspection or certificate of occupancy, until all applicable requirements of this Part 1 have been satisfied.

5. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the city from any other remedy or relief to which it otherwise would be entitled under law or equity.  
(Ord. 2006-16 § 2 (part), 2006).

SECTION 2. Effective Date.

This ordinance shall be in force and take effect thirty days after final adoption.

PASSED FOR PUBLICATION this 14<sup>th</sup> day of July, 2009, by the following vote:

AYES: Councilmembers Robinson, Lane, Madrigal, Beiers, Vice Mayor Rotkin,.

NOES: None.

ABSENT: Councilmember Coonerty; Mayor Mathews.

DISQUALIFIED: None.

APPROVED: ss/Michael Rotkin  
Vice Mayor

ATTEST: ss/Lorrie Brewer  
City Clerk

This Ordinance is scheduled for further consideration at the Council meeting of July 28, 2009.