ORDINANCE NO. 2018-18


BE IT ORDAINED By the City of Santa Cruz as follows:

Section 1. Section 24.16 Part 1 of the Santa Cruz Municipal Code is hereby amended to read as follows:

Chapter 24.16
AFFORDABLE HOUSING PROVISIONS

Part 1: INCLUSIONARY HOUSING REQUIREMENTS

24.16.010 PURPOSE.

The purpose of the inclusionary housing requirements is to enhance the public welfare by adopting policies to utilize remaining developable land in the city in a manner consistent with state and local housing policies and needs, meet the city’s share of regional housing needs, implement the housing element’s goals and objectives, improve the feasibility of rental housing development, assure compatibility between market rate units and inclusionary units, and make housing available for households of all income levels.

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 cost” means average monthly housing costs, during the first calendar year of a household’s occupancy, including mortgage payments, property taxes, homeowner’s insurance, and homeowner’s association dues, if any, the sum of which does not exceed eighty percent of area median income, adjusted for assumed household size based on unit size, multiplied by thirty percent and divided by twelve.

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

   a. For low income households: eighty percent of area median income, adjusted for assumed household size based on unit size, multiplied by thirty-five 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 income, 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 extremely low, very low, low, 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. “Approval body” means the body with the authority to approve the proposed residential development.

5. “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.

6. “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.

7. “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.

8. “Co-housing development” is an intentional community of private dwelling units clustered around shared space. Each attached or single family home has traditional amenities, including a private kitchen. Shared spaces typically feature a common house, which may include a large kitchen and dining area, laundry, and recreational spaces. Households collaboratively plan and manage shared spaces. The legal structure is typically an HOA, Condo Association, or Housing Cooperative.

9. “Congregate living unit” is any dwelling unit in a senior housing development or senior citizen housing development, 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.

10. “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.
11. “Downtown Development Area” is defined as the area bounded by Water Street to the north, the San Lorenzo River to the east, Laurel Street to the south, and Cedar Street to the west.

12. “First approval” is the first of the following approvals to occur with respect to a residential development: 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.

13. “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 Housing Choice Voucher/Section 8 program under the United States Housing Act of 1937, as amended, or its successor provision.

14. “Household, low income” is a household whose income does not exceed the low 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, median income” is a household whose income does not exceed area median income.

16. “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 50093 of the California Health and Safety Code.

17. “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.

18. “Inclusionary unit” is an ownership or rental dwelling unit or SRO unit within a residential development which is required under this Part 1 of Chapter 24.16 to be rented at an affordable rent or sold at an affordable ownership cost to specified households.

19. “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.

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

21. “Ownership residential development” means any residential project that includes the creation of two or more new or additional dwelling units or live/work units that may be sold individually, including co-housing developments.
22. “Rental residential development” means any residential development that creates one or more additional dwelling units that cannot be lawfully sold individually in conformance with the California Subdivision Map Act.

23. “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 SRO units by construction or alteration of structures.

24. “Residential Rental Percentage Rate” means the inclusionary rate required for rental development outside of the Downtown Development Area. The initial Residential Rental Percentage Rate shall be ten percent, and the Residential Rental Percentage Rate may be modified by time-to-time by resolution of the city council. The planning and community development director and/or the economic development director shall provide a report regarding the Rate to the city council at least every five years following adoption of a resolution establishing a new Residential Rental Percentage Rate.

25. “SRO” means a single room occupancy residential unit that provides sleeping and living facilities in a single room but where sanitary or cooking facilities may be provided within the unit and/or shared within the housing project, or a rooming unit or efficiency unit located in a residential hotel, as that term is defined in accordance with California Health and Safety Code Section 50519 that is offered for occupancy by tenants for at least thirty consecutive days.

24.16.020 BASIC ON-SITE INCLUSIONARY HOUSING REQUIREMENTS.

1. Applicability.

   a. The inclusionary housing requirements defined in this Chapter 24.16 are applicable to all residential developments that create two or more new and/or additional dwelling units or SRO units at one location by construction or alteration of structures, except for exempt residential developments under Section 24.16.020 subsection (2).

   b. Additional rent above and beyond affordable rent or affordable ownership cost may be permitted for the commercial/work space in a live/work unit at a rent that is determined to be affordable to qualifying households and is proportionate to the amount of commercial space provided. The amount of rent for the commercial portion of the live/work unit shall be agreed upon by the developer, the economic development director, and the planning and community development director. If no agreement can be reached, the city will retain an outside financial consultant to evaluate and determine the allowable affordable rent and establish a methodology for determining future commercial rent levels. The methodology for determining future commercial rent levels shall be defined in every affordable housing development agreement for residential developments that include at least one live/work unit.
2. The following residential developments are exempt from the requirements of this Chapter 24.16:

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 California 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. Accessory dwelling units.

f. Rental residential developments with two to four dwelling units.

3. Ownership Residential Developments with Two to Four Dwelling Units. For ownership residential developments that would create at least two but not more than four new or additional dwelling units and/or live/work units at one location, the applicant shall either: (a) make one inclusionary unit available for sale at an affordable ownership cost; (b) make one inclusionary unit available at an affordable rent for low income households; or (c) pay an in-lieu fee calculated pursuant to Section 24.16.030(6).

4. Ownership Residential Developments with Five or More Dwelling Units. For ownership residential developments that would create five or more new or additional dwelling units and/or live/work units at one location shall provide inclusionary units as follows:

a. Affordable Housing Requirement for Ownership Residential Developments. In an ownership residential or live/work development, fifteen percent of the dwelling units shall be made available for sale to low and moderate income households at an affordable ownership cost.
b. Fractional Affordable Housing Requirement for Ownership Residential Developments --- 0.7 Units or Less. If the number of dwelling units required under Section 24.16.020(4)(a) results in a fractional requirement of 0.7 or less, then the applicant shall either: (i) make one inclusionary unit available for sale at an affordable ownership cost; (ii) make one inclusionary unit available at an affordable rent for low income households; or (iii) pay an in-lieu fee calculated pursuant to Section 24.16.030(6). This Section 24.16.020(4)(b) applies to the fractional unit only, and whole units shall be provided as required by Section 24.16.020(4)(a).

c. Fractional Affordable Housing Requirement for Ownership Residential Developments --- More than 0.7 Units. If the number of dwelling units required under Section 24.16.020(4)(a) results in a fractional requirement of greater than 0.7, then the applicant shall either: (i) make one inclusionary unit available for sale at an affordable ownership cost; or (ii) make one inclusionary unit available at an affordable rent for low income households. This Section 24.16.020(4)(c) applies to the fractional unit only, and whole units shall be provided as required by Section 24.16.020(4)(a).

d. Rental Units in an Ownership Residential Development.

i. In an ownership residential development where all dwelling units are initially offered for rent, an applicant may satisfy the inclusionary requirements by providing rental units as provided in Section 24.16.020(5).

ii. The rent regulatory agreement required by Section 24.16.045 shall include provisions for sale of the inclusionary units at an affordable ownership cost to eligible households within ninety days from the issuance of the public report by the California Department of Real Estate permitting sale of the units or at termination of the tenant’s lease whichever is later and otherwise in compliance with state law; provided however that the sale of the entire ownership residential development from one entity to another shall not trigger the obligation to sell individual inclusionary units. To the extent relocation payments are required by law the applicant shall be wholly responsible for the cost of preparing a relocation plan and making required payments. Any tenant of an inclusionary unit at the time units are offered for sale that qualifies to purchase an inclusionary unit at an affordable ownership cost shall be offered a right of first refusal to purchase the inclusionary unit. At sale appropriate documents shall be recorded to ensure the continued affordability of the inclusionary units at an affordable ownership cost as required by Section 24.16.045.

5. Rental Residential Developments with Five or More Dwelling Units. For rental residential developments that would create five or more new or additional dwelling units and/or live/work units at one location shall provide inclusionary units as follows:

a. Rental residential developments within the Downtown Development Area that would create five or more new or additional dwelling units or live/work units at one location
shall provide fifteen percent of the dwelling units as inclusionary units, which shall be made available for rent to low income households at an affordable rent.

b. Rental residential developments outside of the Downtown Development Area that would create five or more new or additional dwelling units or live/work units at one location shall provide inclusionary units equal to the number of units that result from multiplying the total number of residential units by the most recent Residential Rental Percentage Rate. These inclusionary units shall be made available for rent to low income households at an affordable rent. For rental residential developments with between five and ten dwelling units outside of the Downtown Development Area, if the number of dwelling units required results in a fractional requirement of 0.7 or less, then the applicant shall either: (i) make one inclusionary unit available at an affordable rent for low income households; or (ii) pay an in-lieu fee calculated pursuant to Section 24.16.030(6).

c. SRO Developments. In a rental residential development comprised of SRO units, fifteen percent of the single-room occupancy units shall be made available for rent to very low income households at an affordable rent.

d. Fractional Affordable Housing Requirement for Rental Residential Developments with More than Ten Dwelling Units. If the number of dwelling units required results in a fractional requirement of 0.7 or less, then there will be no inclusionary requirement for the fractional unit. If the number of dwelling units required results in a fractional requirement of greater than 0.7, then the applicant shall make one inclusionary unit available at an affordable rent. This Section 24.16.020(5)(d) applies to the fractional unit only, and whole units shall be provided as required by Section 24.16.020(4)(a)-(b).

6. The requirements of subsections (3) through (5) 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.

a. By mutual agreement by the developer, the planning and community development director, and the economic development director, the percentage of inclusionary units may be increased in exchange for reduced parking and/or other development requirements.

c. If the developer agrees to make at least forty percent of the residential project available for rent to low income households at a rental cost affordable to low income households, in addition to reduction of development requirements, by mutual agreement by the developer, the planning and community development director, and the economic development director, the city may also provide financial incentives to increase the number of inclusionary units in a project.

7. 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 unless an alternative is approved under Section 24.16.030.

8. 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 24.16.035(4), 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.

24.16.025 STANDARDS FOR INCLUSIONARY UNITS.

1. All inclusionary units shall remain affordable in perpetuity.

2. Inclusionary units shall be dispersed throughout the residential development to prevent the creation of a concentration of affordable units within the residential development.

3. Inclusionary units shall be compatible with the design of market rate units in terms of exterior appearance, materials, and finished quality. Interior finishes, features, and amenities may differ from those provided in the market rate units, so as long as the finishes, features, and amenities are durable, of good quality, compatible with the market rate units, and consistent with contemporary standards for new housing.

4. The applicant may reduce square footage of inclusionary units as compared to the market rate units, provided all units conform to all requirements of Titles 18 and 19 of the Santa Cruz Municipal Code and meet the minimum square footage requirement that affordable units are at least seventy-five percent of the average size of all market rate units in the development with the same bedroom count. For the purpose of this paragraph, the "average size" of a unit with a certain bedroom count equals the total square footage of all market rate units with that bedroom count in the development divided by the total number of market rate units with the same bedroom count in the development.

5. For developments with multiple market rate unit types containing differing numbers of bedrooms, inclusionary units shall be representative of the market rate unit mix.

6. All building permits for inclusionary units in a phase of a residential development shall be issued concurrently with, or prior to, issuance of building permits for the market rate units, and the inclusionary units shall be constructed concurrently with, or prior to, construction of the market rate units. Occupancy permits and final inspections for inclusionary units in a phase of a residential development shall be approved concurrently with, or prior to, approval of occupancy permits and final inspections for the market rate units. When alternative methods of compliance are proposed pursuant to Section 24.16.030, the planning and community development director and the economic development director may jointly approve alternative phasing of market rate and inclusionary units if it finds that the proposal provides adequate security to ensure
construction of the inclusionary units. Phases of construction shall be defined as a part of the first approval.

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 approval body must make findings (a) and (b) in this subsection. Approval body determinations regarding alternative methods of compliance may be appealed as provided in Section 24.16.050.

   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.

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. 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. This requirement may be waived at the sole discretion of the planning and community development director with sufficient evidence that ownership or control will be secured within a reasonable amount of time after the application is submitted.

b. At the joint discretion of the planning and community development director and the economic development director, off-site units may be excluded from existing low income areas as defined by U.S. Department of Housing and Urban Development and/or where there is a concentration of low income households.

c. The approval body may approve a proposal for off-site inclusionary units if it makes all of the findings required by section 24.16.030(2) and each of the following findings:

1. The off-site development will provide the greater of one affordable unit or thirty percent more inclusionary units than would otherwise be required if the inclusionary units were constructed on-site;

2. The off-site location is suitable for the proposed affordable housing and will not tend to cause residential segregation;

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

4. 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.

d. 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.

e. 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.

f. 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 planning and community development director.
g. If the off-site construction of inclusionary units is not substantially completed within eighteen months of completion of on-site construction then the approval body 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 or Upper Floors of Commercial/Office Buildings to Inclusionary Units. An applicant may propose to convert existing residential units or upper floors of commercial/office buildings into inclusionary units in lieu of constructing new inclusionary units on-site.

a. Any application to convert existing residential units or existing commercial/office space 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) For conversion of market rate housing units, 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) For conversion of market rate housing units, 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) For conversion of commercial space, a property inspection report prepared by a certified 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, the structural condition of the property, identification of all code violations or unsafe elements, any potentially hazardous soil or geological conditions, and condition of paved areas and drainage.

(9) 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.

(10) Description of benefits to be offered to existing tenants, which for conversion of market rate housing units would include but not be limited to right of first refusal to remain in the unit, and any expected need for relocation of existing tenants.

b. At the joint discretion of the planning and community development director and the economic development director, off-site units may be excluded from existing low income areas as defined by U.S. Department of Housing and Urban Development and/or where there is a concentration of low income households if such exclusion will not tend to cause residential segregation.

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

d. The conversion of existing market rate housing or conversion of existing commercial/office space to inclusionary units are not required to comply strictly with Section 24.16.025, with deviations subject to the joint approval of the planning and community development director and the economic development director. Unless otherwise determined by agreement of both the planning and community development director and the economic development director, if conversion of existing units is proposed and the existing residential development requires significant rehabilitation (costs estimated at about twenty-five percent of after-construction value), all units in the existing residential development shall be rehabilitated in addition to the inclusionary units.
e. The approval body may approve a proposal for conversion of existing dwelling units to inclusionary units if it makes all of the findings required by section 24.16.030(2) and all of the following findings:

1. The off-site development will provide the greater of one affordable unit or thirty percent more inclusionary units than would otherwise be required if the inclusionary units were constructed on-site;

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

3. Each entity responsible for development of the inclusionary and market rate units or commercial space has adequate site control and the capacity to construct the units as proposed;

4. 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;

5. For conversion of market rate housing units 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 unless otherwise determined by agreement of both the planning and community development director and the economic development director that conditions of the property does not require substantial rehabilitation; and

6. The dwelling units or commercial space 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 and the existing agreement with affordability restrictions cannot be renewed, or the conversion will make the units affordable to households with lower incomes than the existing affordability restrictions.

f. For conversion of market rate housing units, if more than forty percent of the units on one site will be converted to inclusionary units, the approval body must additionally find that the rehabilitated inclusionary units will remove blight and enhance physical and social conditions in the surrounding area.

g. The conversion of existing market rate housing or conversion of existing commercial/office space may be based on the number of bedrooms in the residential development to encourage the development of smaller units when feasible. The converted units shall not be larger in terms of the number of bedrooms than the required inclusionary unit that the converted unit is replacing, unless approved by the planning and community development director, and in no event shall the maximum number of bedrooms in a unit satisfying inclusionary requirements using bedroom
counts exceed the smaller of either: (1) the market rate unit in the development with the greatest number of bedrooms; or (2) three bedrooms.

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

i. 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 approval body 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 affordable 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 or have received 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 as part of the first approval for the residential development:

(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) 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 inclusionary units of an appropriate size with at least the same number of bedrooms and tenure as would otherwise be required.
(3) Sufficient evidence provided that demonstrates to the satisfaction of the planning and community development director that the inclusionary units to be credited to the residential development have been constructed or will be constructed prior to or concurrently with the market rate units in the residential development.

e. The city council may approve a proposal to use excess inclusionary units on another site to meet the development’s inclusionary requirements if it makes all of the findings required by Section 24.16.030(2) and the following findings:

(1) The off-site residential development with excess inclusionary units will provide the greater of one affordable unit or thirty percent more inclusionary units than would otherwise be required if the inclusionary units were constructed on-site.

(2) The excess inclusionary units are of an appropriate size with at least the same number of bedrooms and tenure as would otherwise be required, and have already been constructed or will be constructed prior to or concurrently with the market rate units in the residential development.

6. In-Lieu Housing Fees.

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

(1) For all ownership residential developments or residential subdivisions that would create two but no more than four additional dwelling units or parcels at one location, 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 reduced by sixty percent.

(2) For ownership 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 rental residential developments that would create five but no more than ten additional dwelling units at one location, the applicant may elect to pay an in-lieu fee for any inclusionary unit or fraction of an inclusionary unit as required by Section 24.16.020(5).

(4) For residential developments that the approval body determines are assisted living units, co-housing developments, congregate living units, or live/work units the applicant may elect to pay an in-lieu fee for the entire inclusionary unit requirement.
Except as provided in Section 24.16.030(6)(c), 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 approval body if the approval body makes the findings required by section 24.16.030(6), accompanied by a staff report with a recommendation from the planning and community development director and the economic development directors, except that conformance with Section 24.16.025 is not required. The approval body must also find that either the in-lieu fees will provide for the greater of one affordable unit or at least thirty percent more inclusionary units or affordable housing than would be provided by the on-site provision of inclusionary units by providing matching funds for state or federal grants or otherwise. It is the city council’s intent that except as provided in Section 24.16.030(6)(a)(1)-(4) in-lieu fees be infrequently approved.

b. In-lieu fees may be established from time-to-time by resolution of the city council or may be determined for a specific residential development by calculating 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 by an appraisal provided by the developer from a qualified appraiser that was completed within three months prior to entering into an affordable housing agreement.

(1) The market rate value to calculate in lieu fees for live/work units may be calculated using a square footage multiplier times 100% of the designated residential areas and 50% of the designated work areas. The source of the square footage multiplier may be the most recent data from internet real estate data resources such as Zillow, Trulia, or other available sources that reflect actual market values or from a square footage appraisal provided by the developer from a qualified appraiser that was completed within three months prior to entering into an affordable housing agreement.

(2) The market rate value to calculate in lieu fees for co-housing developments may be calculated using a square footage multiplier times 100% of the square footage of an average size unit plus a proportionate amount of shared space, as jointly determined to be reasonable by the planning and community development director and the economic development director. The source of the square footage multiplier may be the most recent data from internet real estate data resources such as Zillow, Trulia, or other available sources that reflect actual market values or from a square footage appraisal provided by the developer from a qualified appraiser that was completed within three months prior to entering into an affordable housing agreement.

c. In-lieu fees per parcel for subdivisions shall be calculated to be fifty percent 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 provided by the
developer from a qualified licensed residential appraiser. For subdivisions that consist of two to four parcels, this amount shall be further reduced by sixty percent.

d. For residential developments, in-lieu fees shall be paid prior to or at the time of 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 approval body. For projects constructed in phases, in-lieu fees shall be paid in the proportion that the phase bears to the overall project.

e. Notwithstanding Section 24.16.030(6)(c), in-lieu fees for subdivisions shall be paid prior to or concurrently with final subdivision map approval.

f. 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 low income housing units with long-term affordability restrictions or preservation of existing low income housing units, 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 project with at least twenty five percent of its total units restricted to low income households or below, or a lesser amount of land if the parcel is adjacent to a city owned land and is determined by the economic development director that the parcel is critical component of a larger city supported affordable housing project.

a. An application for land dedication shall be accompanied by the following information. These requirements may be modified or waived at the sole discretion and joint determination of the planning and community development director and the economic development director if the dedicated land is adjacent to city owned land and/or can be incorporated into a city supported affordable housing development project.

  (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 approval body may approve a proposal for land dedication if it makes all of the findings required by section 24.16.030(2) and the following additional finding: a residential development that includes twenty five percent low 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 may make the site available without cost to a low 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 low income residential development on the dedicated site concurrently with the processing of the market rate development.

8. Congregate Living Units or Assisted Living Units. An applicant may propose to satisfy the inclusionary housing requirements of this Chapter 24.16 by providing congregate living units or assisted living units. If the approval body determines that a proposed residential development includes congregate living units or assisted living units, the following alternative requirements shall apply:

a. Fifteen percent of the congregate living or assisted living units shall be made available for rent to low income households at an affordable rent. Monthly 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.

b. The proportion of studio or one bedroom units that are designated to be shared by non-family members shall not exceed the proportion of the number of market rate units designated to be shared by non-family members to the total number of market rate units. Furthermore, no more than two persons may occupy a studio or one bedroom unit. For purposes of affordable rent calculations, for any unit shared by non-family members the portion of the unit occupied by each individual shall be treated like a studio apartment and the rent for one person shall be equivalent to the affordable rent for a studio apartment. This section should not be interpreted to create a bias for undesired double occupancy.

9. Other alternative compliance methods. An applicant may propose an alternative compliance method to provide affordable units through other means. The approval body may approve or conditionally approve such an alternative only if the approval body
determines, based on substantial evidence, that such alternative compliance will provide as many or more affordable units at the same or lower income levels and will otherwise provide greater public benefit than would provision of the affordable units on-site.

24.16.035 INCENTIVES FOR COMPLIANCE WITH INCLUSIONARY HOUSING REQUIREMENTS.

The following incentives may be available for the provision of inclusionary units:

1. Fee waivers may be granted pursuant to Part 4 of this Chapter 24.16.

2. A residential development may satisfy its inclusionary housing requirements through any of the alternative compliance methods available in Section 24.16.030 in lieu of providing inclusionary units on-site.

3. The interior amenities and square footage of the inclusionary units may be reduced below those required for the market rate units, as provided in Section 24.16.025 (4).

4. Residential developments in which all dwelling units are offered for rent, inclusionary units are provided within the development, no subdivision map has been recorded, and no density bonus under Part 3 of Chapter 24.16 of the Santa Cruz Municipal Code has been requested are eligible for the following additional incentive:

   a. A 27.5 percent "city rental housing bonus".

Section 2: This ordinance shall take effect and be in force thirty (30) days after final adoption.

PASSED FOR PUBLICATION this 13th day of November, 2018, by the following vote:

AYES: Councilmembers Mathews, Chase; Vice Mayor Watkins; Mayor Terrazas.

NOES: Councilmembers Krohn, Brown.

ABSENT: Councilmember Noroyan.

DISQUALIFIED:

APPROVED: __________________________
        David Terrazas, Mayor

ATTEST: _____________________________
        Bonnie Bush. City Clerk Administrator
ORDINANCE NO. 2018-18

PASSED FOR FINAL ADOPTION this ____day of ____, 2018, by the following vote:

AYES: 
NOES: 
ABSENT: 
DISQUALIFIED: 

APPROVED: __________________________

David Terrazas, Mayor

ATTEST: __________________________

Bonnie Bush, City Clerk Administrator

This is to certify that the above and foregoing document is the original of Ordinance No. 2018-18 and that it has been published or posted in accordance with the Charter of the City of Santa Cruz.

________________________________
Bonnie Bush, City Clerk Administrator