

**MONTEREY COUNTY
HOUSING ADVISORY COMMITTEE
AGENDA**

Wednesday, July 8, 2015

Monterey County Government Center, Monterey Room, 2nd Floor

168 West Alisal Street, Salinas, CA

5:00 p.m. – 6:30 p.m.

- 1) **Call to Order**
- 2) **Public Comment:**
The Housing Advisory Committee will receive public comment on items not listed on the agenda within the purview of the Housing Advisory Committee. The Chair may limit the length of individual presentations.
- 3) **Approval of the May 27, 2015 Meeting Minutes** p. 1
- 4) **Old Business:**
None
- 5) **New Business:**
 - a. Receive the draft Housing Element and provide input in regard to housing needs, constraints, and opportunities. p. 4
 - b. Receive an update on the Inclusionary Housing Program p. 6
- 6) **Updates**
Moro Cojo
- 7) **Committee Member Reports**
Committee members will report on matters, events and activities as related to HAC goals and advocating for housing.
- 8) **Additions to Future Agendas**
Committee members may give direction regarding future agenda items.
- 9) **Schedule Of Upcoming Meetings**
 - October 14, 2015: Regular quarterly meeting
- 10) **Adjournment**
The Chair will adjourn the meeting.

If you have any disability that would require assistance to access the meeting room, please call (831) 755-5390.

HOUSING ADVISORY COMMITTEE MINUTES

Monterey County Administration Building
Monterey Room
168 W. Alisal Street, Salinas, CA

Wednesday, May 27, 2015, 5:00 PM

Members Present: Karen Araujo, Ignacio “Mog” Cabatu, Sabino Lopez, Wayne Ross, Mark Trabing, and La’Quana Williams

Members Absent: Margaret Robbins

Staff Present: Jane Barr, Luke Connolly, John Ford, Anita Nachor, Luis Osorio, Wendy Strimling

Guests Present: Alfred Diaz-Infante, President-CEO CHISPA
Juan Uranga, CCA

1. Call to Order:

Mr. Cabatu called the meeting to order at 5:13 p.m. and noted that a quorum was established.

2. Mr. Cabatu asked for public comment on items not on agenda but there was none.

3. Approval of the April 8, 2015 Meeting Minutes:

Motion: Mr. Ross moved to approve the April 8, 2015 minutes. Ms. Araujo seconded the motion.

VOTES:

AYES: Araujo, Cabatu, Ross, Trabing, and Williams

NAYS: None

ABSTAINED: Sabino Lopez

4. Old Business:

a. (continued from April 8, 2015)

Make a recommendation to the Board of Supervisors on a request from CHISPA on behalf of 161 owners of single family homes in the Moro Cojo subdivision to reduce the duration of the affordability restriction on their homes from “permanent” to fifteen years.

Sabino Lopez recused himself and left the room due to a conflict of interest in regard to his employment with CCA.

Ms. Barr introduced staff: Mr. Connolly, Mr. Ford, and Mr. Osorio with the Planning Department; Ms. Strimling with County Counsel; and Ms. Nachor, new Senior Secretary with the Economic Development Department.

HOUSING ADVISORY COMMITTEE MINUTES

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Wednesday, May 27, 2015, 5:00 PM

Public Comments:

Alfred Diaz-Infante and Juan Uranga both spoke in their capacity as representatives of the applicants. Five Moro Cojo homeowners in favor of the reduction and one member of the public spoke against it. Discussion was held by the HAC members.

Motion: The deed restriction be modified from “permanent” to none on condition that CHISPA obtain entitlement, undertake new construction, and receive certificates of occupancy of at least 161 qualified replacement housing units located within the unincorporated area of the County within ten years from the date of approval of the modification. Qualifying units are defined as 80% of project units (100% less 20% required affordable units per the Inclusionary Ordinance) or 49% of project units if the County funds any portion of a project. Replacement units will be deed restricted for a minimum of 45 years for single family housing and 55 years for multifamily housing. The responsibility rests with CHISPA and its successors in interest to produce the replacement units. If the condition is met prior to ten years, the removal of the permanent restriction shall occur at the time of certification of occupancy of the 161st unit.

Motion: Mr. Ross made the motion and Mr. Trabing seconded it.

VOTES:

AYES: Cabatu, Ross, Trabing, and Williams

NAYS: Araujo

ABSTAINED: None

5) New Business:

None.

6) Updates:

Ms. Barr thanked members for completing Form 700 Interest Form. One person still needs to complete it.

7) Committee Members Reports:

There were none

8) Additions to Future Agendas:

a. Request code enforcement to review previous sales in regard to whether the affordability restrictions have been met and report back to HAC on this.

b. Request administration to confirm CHISPA’s role in administering the affordability of the Moro Cojo units and report on how South County Housing administers it.

HOUSING ADVISORY COMMITTEE MINUTES

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Wednesday, May 27, 2015, 5:00 PM

c. Request more information from Alfred Diaz-Infante in regard to the affordability issues and the Administrative Handbook referred to by him.

9) Schedule of Upcoming Meetings

- June 10, 2014: Special meeting (**Cancelled**)
- July 8, 2015: Regular quarterly meeting
- October 14, 2015: Regular quarterly meeting

10) Adjournment:

Mr. Cabatu moved to adjourn the meeting and the motion was seconded by Ms. Araujo. The meeting was adjourned at 6:39 PM.

MONTEREY COUNTY HOUSING ADVISORY COMMITTEE

MEETING:	July 8, 2015	AGENDA NO.:	5a
SUBJECT:	a. Receive the draft Housing Element and provide input in regard to housing needs, constraints, and opportunities.		
DEPARTMENT:	Economic Development Department		

RECOMMENDATION:

It is recommended that the Housing Advisory Committee (HAC):

- a. Receive the draft Housing Element and provide input in regard to housing needs, constraints, and opportunities.

DISCUSSION:

The 2015-2023 Housing Element is the fifth cycle of updating the Housing Element of the General Plan for the County of Monterey. The timeframe of updating the Housing Element is established in the California Government Code (Section 65583). For the fifth cycle update, the Housing Element for jurisdictions in the Association of Monterey Bay Area Governments (AMBAG) region is due on December 31, 2015.

The Housing Element is comprised of several major components:

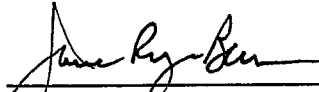
1. Needs Assessment - To assess the housing needs of current and future residents, especially the housing needs of lower and moderate income households and those with special needs. Special needs groups are defined in State law as the elderly, disabled (including those with developmental disabilities), the homeless, female-headed households, large households (with five or more members), and farmworkers.
2. Constraints Analysis - To assess the market, governmental, environmental, and infrastructure constraints to the provision of a variety of housing options in the community. The County is required under State law to mitigate governmental constraints to the development, preservation, and improvement of housing.
3. Resources Analysis - To assess the availability of financial and administrative resources available for the provision of housing, and most importantly, the land resources (development potential) to accommodate the County's share of the region's housing needs, i.e., Regional Housing Needs Allocation.
4. Review of Accomplishments - To assess the County's achievements during the current Housing Element planning period (fourth cycle) and determine if modifications to policies and programs are warranted.
5. Housing Plan - To develop an eight-year action plan to address the housing needs identified within the context of the constraints and resources available.

In developing the Housing Element, the County has outreached to community groups, service providers, and housing professionals to solicit input on needs, constraints, and opportunities.

Veronica Tam & Associates was hired by the County to undertake the Housing Element. The Consultant sent out letters to 238 non-profits, jurisdictions, school districts, developers, and real estate housing professionals. Ms. Tam will provide an overview of the draft Housing Element.

Comments received and made by the HAC will be forwarded to the Planning Commission and incorporated into the Housing Element during the process of finalizing it. It is expected that it will be placed on the July 29, 2015 Planning Commission agenda. The draft Housing Element will then be forwarded to the state in late summer for review and comments. The final Housing Element will be presented for adoption to the Board of Supervisors in December 2015.

Prepared By:

A handwritten signature in black ink, appearing to read "Jane Royer Barr", is written over a horizontal line.

Jane Royer Barr
Housing Program Manager

MONTEREY COUNTY HOUSING ADVISORY COMMITTEE

MEETING: July 8, 2015	AGENDA NO.: 5b
SUBJECT: Receive an update on the Inclusionary Housing Program	
DEPARTMENT: Economic Development Department	

RECOMMENDATION:

It is recommended that the Housing Advisory Committee (HAC) receive an update on the Inclusionary Housing Program.

DISCUSSION:

Background:

The County's Inclusionary Housing Ordinance was approved on October 28, 1980. It has been amended nine times since then, the last being on April 26, 2011. The most significant amendment, made in April of 2003, changed the term of affordability from thirty years to in perpetuity and the required affordability from 15% to 20% of the total units in a development. Findings in support of the original ordinance and amendments are as follows:

1. A decent home and suitable living environment for all is a priority of the highest order and this priority conforms with State and Federal policies. The goal of the County is to achieve a balanced community with housing available for persons of all economic levels, with priority given to those persons currently residing or working within the County.
2. There is an inadequate supply of housing in Monterey County which is affordable to very low, low and moderate income households. Federal and State housing finance and subsidy programs are not sufficient in themselves to meet that need.
3. The cost of housing in new developments has increased and will continue to perpetuate this housing shortage. Further, land for residential development in the County is limited, and the amount of land which can be used for development of housing for very low, low, and moderate income households is being depleted by development of high cost housing.
4. The provision of housing affordable to very low, low, and moderate income households is a countywide responsibility, and the provision of such housing is a goal of the Housing Element of the County General Plan.
5. The housing shortage for persons of very low, low, and moderate income is detrimental to the public health, safety and welfare, and particularly finds that provision of very low, low, and moderate income housing is fundamental to the maintenance of an adequate, growing workforce and market place for the local economy, as well as to provide housing for additional employees whose jobs serve the increasing population living in new market-rate housing.
6. If very low, low, and moderate income workers cannot find housing in the County, then employers will have difficulty in securing a labor force, and employees will be forced to commute. Employee commutes use limited gasoline resources and increase air pollution.
7. A Countywide Inclusionary Housing Program will benefit the County as a whole. Each property which contributes to inclusionary housing augments the housing mix, increases the supply of

housing for all economic segments of the community, and thereby provides for a balanced community which is deemed to be in the public interest.

8. The effect of an Inclusionary Housing Program is severely diminished if it benefits only the first occupants of very low, low, and moderate income housing, and inclusionary units are resold at market prices. Therefore, the Board of Supervisors recognizes that resale control, to ensure the continuing availability of inclusionary units to very low, low, and moderate income households, is a necessary consideration in order to prevent undermining of the credibility of the whole program, particularly because of the loss of the unit itself as an affordable unit.
9. Public housing programs and housing subsidy programs can meet only a small portion of the need for very low, low, and moderate income housing. The vast majority of housing units has been and will continue to be produced by the private housing industry. This industry has the knowledge and ability to produce housing affordable to very low, low, and moderate income households given supportive government policies, including incentives and public investment as appropriate. Therefore, the Board of Supervisors finds it is a public purpose of the County to seek assistance and cooperation from the private sector and non-profit agencies in making available an adequate supply of housing for persons of all economic segments of the community.

Other objectives cited in the Ordinance are:

1. To meet the housing needs of all types of very low, low, and moderate income groups in a manner that is economically feasible and consistent with their needs.
2. To provide housing opportunities in all planning areas of the County for very low, low, and moderate income households.
3. To provide housing opportunities for very low, low, and moderate income household members currently residing or working in Monterey County, on a priority basis.

Further, in support of the collection of fees, findings were that the fees required or permitted were appropriate and permissible and they were fair and effective because:

1. The fee amount will be based on the amount necessary to make possible construction of an affordable unit or affordable units as called for by this Chapter, so that when a developer elects to pay an in-lieu fee, funds will be available to reach the County's overall affordability target, without excessive payments and without setting varying fee standards on a case-by-case basis;
2. The fee amount necessary to construct units at the affordability levels specified by this Chapter will be based on land, construction and other costs of units in the County;
3. Payment of in-lieu fees will be within a specific period of time, thereby allowing a predictable and stable flow of in-lieu fees; and
4. The fees collected will be used in a specific time frame for the provision of very low, low, and/or moderate income housing.

Status of Program:

The Inclusionary Housing Program required by the Ordinance is administered by the Economic Development Department. To date, there are 220 single family units after having lost 14 to foreclosure.

In regard to rental units, there are 446, with an increase of 123 units over the last three years due to the addition of the Cynara Court and Sea Garden projects in Castroville and Manzanita Place project in East Garrison.

The In Lieu fees currently in effect were set in 2000. At the time of the last amendment, updating of the In-lieu fee was discussed at length by the full HAC, a HAC Subcommittee, the Planning Commission and the Board of Supervisors. No consensus could be reached; therefore the issue was tabled. Therefor, the amendment still cites the following fees:

**MONTEREY COUNTY
INCLUSIONARY HOUSING PROGRAM**

Effective Date: December 8, 2000

ADOPTED IN-LIEU FEES (11/7/00)	
Planning Area	In-lieu fee for one on-site unit
Greater Monterey Peninsula	\$275,392
Coast	\$729,320
North County	\$67,813
Toro	\$160,610
Cachagua	\$25,729
Greater Salinas	\$47,021
Central Salinas Valley	\$29,173
South County	\$22,950
Redevelopment Area	\$23,402

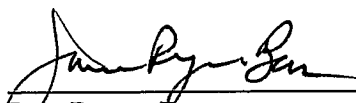
Note: The "Coast" Planning Area contains the Big Sur Coast Local Coastal Plan (LCP).

The "Greater Monterey Peninsula" Planning Area contains the Carmel and Del Monte Forest LCP.

The "North County" Planning Area contains the North County LCP.

Given a very recent legal decision in regard to Inclusionary Housing, it is recommended that a workshop be agendized for the October quarterly meeting. Based upon information received at that meeting, the HAC will then have a framework with which to review the Ordinance and Administrative Manual. At that time, the HAC may then provide direction in regard to reviewing the Inclusionary Housing Program and specific areas of interest. Additionally, the HAC can also indicate the approach for review such as at quarterly meetings or through a subcommittee.

Prepared By:



Jane Royer Barr

Housing Program Manager

Chapter 18.40 - INCLUSIONARY HOUSING

Sections:

18.40.010 - Name.

This Chapter shall be known as the "Inclusionary Housing Ordinance of the County of Monterey."
(Ord. 3768, 1994)

18.40.020 - Findings.

A. Monterey County Goals and General Plan. The Board of Supervisors finds that a decent home and suitable living environment for all is a priority of the highest order; this priority conforms with State and Federal policies. The goal of the County is to achieve a balanced community with housing available for persons of all economic levels, with priority given to those persons currently residing or working within the County.

The Board of Supervisors finds there is an inadequate supply of housing in Monterey County which is affordable to very low, low and moderate income households. Federal and State housing finance and subsidy programs are not sufficient in themselves to meet that need.

The Board of Supervisors finds that the cost of housing in new developments has increased and will continue to perpetuate this housing shortage. Further, land for residential development in the County is limited, and the amount of land which can be used for development of housing for very low, low, and moderate income households is being depleted by development of high cost housing.

The Board of Supervisors finds that the provision of housing affordable to very low, low, and moderate income households is a Countywide responsibility, and the provision of such housing is a goal of the Housing Element of the County General Plan.

B. Provide for Workforce. The Board of Supervisors finds that the housing shortage for persons of very low, low, and moderate income is detrimental to the public health, safety and welfare, and particularly finds that provision of very low, low, and moderate income housing is fundamental to the maintenance of an adequate, growing workforce and market place for the local economy, as well as to provide housing for additional employees whose jobs serve the increasing population living in new market-rate housing.

The Board of Supervisors acknowledges that if very low, low, and moderate income workers cannot find housing in the County, then employers will have difficulty in securing a labor force, and employees will be forced to commute. Employee commutes use limited gasoline resources and increase air pollution.

C. Benefit to the County. The Board of Supervisors finds that a Countywide Inclusionary Housing Program will benefit the County as a whole. Each property which contributes to inclusionary housing augments the housing mix, increases the supply of housing for all economic segments of the community, and thereby provides for a balanced community which is deemed to be in the public interest.

D. Resale Restrictions. The Board of Supervisors finds that the effect of an Inclusionary Housing Program is severely diminished if it benefits only the first occupants of very low, low, and moderate income

housing, and inclusionary units are resold at market prices. Therefore, the Board of Supervisors recognizes that resale control, to ensure the continuing availability of inclusionary units to very low, low, and moderate income households, is a necessary consideration in order to prevent undermining of the credibility of the whole program, particularly because of the loss of the unit itself as an affordable unit.

E. Public Purpose. The Board of Supervisors finds that public housing programs and housing subsidy programs can meet only a small portion of the need for very low, low, and moderate income housing. The vast majority of housing units has been and will continue to be produced by the private housing industry. This industry has the knowledge and ability to produce housing affordable to very low, low, and moderate income households given supportive government policies, including incentives and public investment as appropriate. Therefore, the Board of Supervisors finds it is a public purpose of the County to seek assistance and cooperation from the private sector and non-profit agencies in making available an adequate supply of housing for persons of all economic segments of the community.

F. Benefits of the Application of This Chapter. Application of this Chapter may benefit the public through increased housing opportunities in all areas of the County, an increased supply of very low, low, and moderate income housing, and an increased availability of funds for very low, low, and moderate income housing projects.

G. Collection of Fees. The Board of Supervisors finds that the fees required or permitted by this Chapter are appropriate and permissible. The fees permitted by this Chapter will be fair and effective because:

1. The fee amount will be based on the amount necessary to make possible construction of an affordable unit or affordable units as called for by this Chapter, so that when a developer elects to pay an in-lieu fee, funds will be available to reach the County's overall affordability target, without excessive payments and without setting varying fee standards on a case-by-case basis;

2. The fee amount necessary to construct units at the affordability levels specified by this Chapter will be based on land, construction and other costs of units in the County;

3. Payment of in-lieu fees will be within a specific period of time, thereby allowing a predictable and stable flow of in-lieu fees;

4. The fees collected will be used in a specific time frame for the provision of very low, low, and/or moderate income housing; and

5. Fees imposed for services related to the initial sale, re-sale, rental or refinancing of inclusionary units recover only a portion of the costs of such services.

H. Other Objectives. The Board of Supervisors finds that an objective of this Chapter is to meet the housing needs of all types of very low, low, and moderate income groups in a manner that is economically feasible and consistent with their needs.

The Board of Supervisors further finds that an objective of this Chapter is to provide housing opportunities in all planning areas of the County for very low, low, and moderate income households.

The Board of Supervisors further finds that an objective of this Chapter is to provide housing opportunities for very low, low, and moderate income household members currently residing or working in Monterey County, on a priority basis.

This Chapter, as amended, continues a successful program which the County began in 1980. (Ord. No. 5175, § 1, 4-26-2011; Ord. 4185 § 1, 2003; Ord. 3768, 1994; Ord. 2694, 1981)

18.40.030 - Purpose.

The purposes of this Chapter are to enhance the public welfare, benefit the property being developed, assure compatibility between future housing development and the housing units affordable to persons of very low, low, and moderate income, and ensure that remaining developable land in the County is utilized in a manner consistent with State and local housing policies and needs.

(Ord. 4185 § 2, 2003; Ord. 3768, 1994; Ord. 2694, 1981)

18.40.040 - Definitions.

For the purposes of this Chapter the following definitions shall apply:

A. "Administrative manual" shall mean the manual prepared pursuant to Subsection 18.40.050G7.

B. "Affordable" means: in the case of rent, a monthly amount which, together with utility allowance, does not exceed: (i) for very low income inclusionary units, one-twelfth of thirty (30) percent of the maximum income for a very low income household, adjusted by household size based on the number of bedrooms in the unit; (ii) for low income inclusionary units, one-twelfth of thirty (30) percent of sixty (60) percent of median income, adjusted for household size based on the number of bedrooms in the unit; and (iii) for moderate income inclusionary units, one-twelfth of thirty (30) percent of one hundred ten (110) percent of median income, adjusted for household size based on the number of bedrooms in the unit.

In the case of a sales price, average monthly housing payments, including mortgage loan principal and interest, any associated loan insurance fees, property taxes and assessments, an allowance for property maintenance and repairs established by the County based on the initial cost and size of the home, homeowners insurance, a reasonable allowance for utilities, land rent (if the home is on rented land) and homeowners association dues, if any, which during the first calendar year of a household's occupancy, do not exceed: (i) for very low income inclusionary units, one-twelfth of thirty (30) percent of the maximum income for a very low income household, adjusted by household size based on the number of bedrooms in the unit; (ii) for low income inclusionary units, one-twelfth of thirty (30) percent of seventy (70) percent of median income, adjusted for household size based on the number of bedrooms in the unit; and (iii) for moderate income inclusionary units, one-twelfth of thirty-five (35) percent of one hundred ten (110) percent of median income, adjusted for household size based on the number of bedrooms in the unit.

Adjustments for household size based on the number of bedrooms in the unit and amounts utilized for utility allowances and other monthly housing cost factors, including assumed mortgage interest rates, loan insurance fees, maintenance and repair allowances, homeowners insurance, property tax and assessment costs, and homeowners association dues, shall be as provided by the County in the administrative manual.

C. "Inclusionary housing agreement" shall mean an agreement between the County and an applicant, governing how the applicant shall comply with this Chapter.

D. "Applicant" means a person or entity who applies for a residential development and, if the applicant does not own the property on which development is proposed, also means the owner or owners of the property.

E. "Appropriate Authority" means that person, official, or body designated by County regulations to hear, grant, deny, modify, condition, revoke or otherwise act on permits required by the County's regulations.

F. "Approval" means any approval by the Appropriate Authority of a discretionary permit for residential development, including but not limited to planned unit development or planned community development approval, subdivision approval, use permit, building permit or combined development permit, and if no discretionary approval is required, also means a building permit for residential development.

G. "Building permit" means a permit issued by the Monterey County Department of Building Services authorizing the construction of new dwellings.

H. "Director" means the Assistant County Administrative Officer for Environmental Resource Policy (or a county officer with similar responsibilities designated by the County Administrative Officer should that office no longer exist), or his or her designee.

I. "Dwelling" or "Unit" means any structure or portion thereof designed or used as the residence or sleeping quarters of a household, including a live/work unit.

J. "First approval" means the first approval, as the term "approval" is defined in this Chapter, to occur with respect to a residential project.

K. "For sale inclusionary unit" means an inclusionary unit which is designated in an inclusionary housing agreement to be sold to a household eligible under this Chapter.

L. "Household" means one or more individuals who occupy one dwelling unit as a single housekeeping unit, whether or not related by blood or marriage.

M. "Housing Authority" means the Housing Authority of the County of Monterey.

N. "HUD" means the United States Department of Housing and Urban Development.

O. "Inclusionary unit" means a housing unit which is required by an approval to meet affordability and occupancy limits under this Chapter.

P. "Low income inclusionary unit" means an inclusionary unit reserved for occupancy by low income households at an affordable rent or sales price.

Q. "Low income household" or "Lower income household" means a household, including a very low income household, with an annual income which does not exceed HUD's annual determination for low income households with incomes of eighty (80) percent of the median income, adjusted for household size.

R. "Median income" means the median household income as determined periodically by HUD for the Salinas Metropolitan Statistical Area and updated on an annual basis.

S. "Moderate income inclusionary unit" means an inclusionary unit reserved for occupancy by moderate income households at an affordable rent or sales price.

T. "Moderate income household" means a household, including a low income household and a very low income household, with an annual income which does not exceed one hundred twenty (120) percent of the median income, adjusted for household size.

U. "Owner occupied development" means a residential development in which the same person or persons are sole or majority owner(s) of the property at the time of first approval of the development and at the time the development receives its building permit, and those persons make and record a legally binding agreement, acceptable to the Director and approved as to form by County Counsel, to reside in the residential development for not less than one year from the recordation of the notice of completion, and where the proposed owner-occupant has not previously been an owner-occupant under this Chapter during a period of ten (10) years prior to application for a first approval.

V. "Pending development " means a residential development for which an application for a first approval was deemed complete by the County on or before the effective date of Ordinance No. 04185 amending this Chapter, so long as the number of dwellings does not increase after the first approval.

W. "Planning Area" means one of eight geographic sub-areas of Monterey County established for the General Plan. They are the Toro, North County, Greater Monterey Peninsula, Central Salinas Valley, South County, Greater Salinas, Coast, and Cachagua Planning Areas.

X. "Rental inclusionary unit" means an inclusionary unit which is designated in an inclusionary housing agreement to be rented to a household eligible under this Chapter.

Y. "Residential development" means any project requiring any subdivision of land, use permit, discretionary permit or building permit, or combination thereof, for which an application or applications are submitted to the County and which would by construction or alteration of structures create three or more new or additional dwelling units and/or lots.

Z. "Subdivision" means a "subdivision" as that term is defined by the California Subdivision Map Act.

AA. "Very low income inclusionary unit" means an inclusionary unit reserved for occupancy by very low income households at an affordable rent or housing cost.

BB. "Very low income household" means a household with an annual income which does not exceed HUD's annual determination for very low income households earning fifty (50) percent of median income, adjusted for household size.

(Ord. No. 5135, § 30, 7-7-2009; Ord. 4185 § 3, 2003; Ord. 3768, 1994; Ord. 3768, 1994; Ord. 2830, 1982; Ord. 2694, 1981)

18.40.050 - Development requiring inclusionary contribution.

A. The requirements of this Chapter are minimum requirements and shall not preclude a residential development from providing additional affordable units and/or affordable units with lower rents or sales prices. Except as expressly provided in Subsections B and C of this section, all residential developments shall contribute to the provision of housing for very low, low, and moderate income households in the County as provided in this Chapter. "Residential development," as that term is defined by this Chapter, means any project requiring any subdivision of land, including subdivisions of agriculturally zoned land, use permit, discretionary permit or building permit, or combination thereof, for which an application or applications are submitted to the County and which would be construction or alteration of structures create three (3) or more new or additional dwelling units and/or lots.

B. Residential developments which meet one of the following criteria shall not be required to comply with this Chapter:

1. Residential developments which form part of a larger residential development as to which the requirements of this Chapter have previously been fully satisfied and as to which there is no default in continuing obligations under this Chapter, where the new residential development results in no increase in the number of previously approved lots or units.

2. Development as to which the applicant demonstrates during consideration of a first approval that there is no reasonable relationship between the development and the requirements imposed by this Chapter, that the requirements of this Chapter would take property in violation of the Federal or California Constitution, or that as a result of unusual or unforeseen circumstances, it would not be appropriate to apply, or would be appropriate to modify, the requirements of this Chapter, provided that the Appropriate Authority who makes the determination to approve or disapprove an exemption or modification makes written findings, based on substantial evidence, supporting that determination.

3. Development for farm workers;

4. Mobile home park development.

C. Pending developments, as that term is defined by this Chapter, shall not be required to meet the requirements of this Chapter as amended by Ordinance No. 4185, but shall be subject to the requirements of the Inclusionary Housing Ordinance in effect when the application for the development's first approval was deemed complete, unless the developer elects in writing to be subject to this Chapter as amended.

(Ord. No. 5175, § 2, 4-26-2011; Ord. 4185 § 4, 2003; Ord. 4066, 2000; Ord. 3930, 1997; Ord. 3768, 1994)

18.40.060 - Inclusionary requirements.

A. All residential development consisting of five (5) or more units or lots in the County shall provide inclusionary units on-site or off-site, except that a fee may be paid in-lieu of providing fractional units and in other circumstances specified in Section 18.40.090. All new residential development consisting of three (3) or four (4) additional units or lots in the County shall provide inclusionary units on-site or off-site, or pay a fee in-lieu pursuant to Section 18.40.090. The size, design, and location of inclusionary units shall be consistent with the County General Plan, Local Coastal Plan as applicable, Zoning Ordinances, and other County ordinances and building standards. Compliance may be accomplished by the developer alone or in combination with others, including without limitation the Housing Authority or a non-profit housing corporation. The owner-occupied unit in an owner-occupied development of four units or less shall not be counted in applying the requirements of this Chapter.

B. Subdivisions of eligible agriculturally zoned land as described below are subject to this subsection. These eligible agricultural subdivisions may comply with the inclusionary requirements by paying a fee in-lieu of supplying units pursuant to Section 18.40.090. The entire in-lieu fee may be secured on the entire subdivision to the satisfaction of the Redevelopment and Housing Director until such time that a residential building permit is issued for any lot within the subdivision, at which time the entire in-lieu fee is due and payable. In order to be eligible under this subsection, agricultural subdivisions must meet all of the following:

1. Be zoned "Farmlands" under the Monterey County Code;
2. Result in subdivided parcels of not less than forty (40) acres in size. Further subdivision of the parcels will not be eligible under this subsection and will require compliance with the remaining provisions of the Inclusionary Housing Ordinance, as applicable; and
3. Applicant must submit a request in writing stating that the purpose of the subdivision is for financing and/or agricultural operation purposes, not for residential development and must provide documentation establishing that purpose, to the satisfaction of the Redevelopment and Housing Director.

(Ord. No. 5175, § 3, 4-26-2011; Ord. 4185 § 5, 2003)

18.40.070 - On-site units.

A. To satisfy its inclusionary requirement on-site, a residential development must construct inclusionary units in an amount equal to or greater than twenty (20) percent of the total number of units approved for the residential development (except to the extent a fraction of a unit would be required, for which the applicant may elect to substitute a fractional unit fee). Initial and subsequent affordability levels and eligible occupants of the inclusionary units shall conform to the requirements of Section 18.40.110, as applicable.

B. On-site units must:

1. Receive building permits and certificates of occupancy either prior to or concurrently with the remainder of the residential development, as set forth in and except as otherwise provided by the inclusionary housing agreement;

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

3. Contain similar numbers of bedrooms overall as other units in the residential development, with total square footages suitable for the number of bedrooms, all consistent with the inclusionary housing agreement.

(Ord. 4185 § 6, 2003)

18.40.080 - Off-site units.

A. Off-site inclusionary units, in place of or combined with on-site units, may be approved upon a showing by the applicant for the residential development, approved by the Appropriate Authority, that off-site units will provide a greater contribution to the County's affordable housing needs. Off-site units must be newly constructed. Off-site units will not be considered to provide a greater contribution unless the number of units exceeds the number which would have been required on-site, and the off-site inclusionary units, for the required term of affordability, are affordable to and occupied by: (i) for rental units, very low income households; (ii) for-sale units, low income households. In addition the applicant must assure that the number of bedrooms in the off-site units will reflect community need and on average will not be less than in the on-site market rate units.

B. Off-site units must be located within the same Planning Area as the market rate project.

C. Off-site units may be allowed only if their location is identified and is owned, or site control is demonstrated by the applicant, at the time of first approval.

D. As set forth, and except as otherwise provided, in the inclusionary housing agreement for the residential development, building permits for corresponding market-rate units will not be issued until building permits have been issued for off-site units, and final inspections for occupancy will not occur for corresponding market-rate units until final inspections for occupancy have occurred for off-site units.

(Ord. 4185 § 7, 2003)

18.40.090 - In-lieu fees.

A. In-Lieu Fees.

1. Projects of Three (3) or Four (4) Units. All developers of new residential development projects of three (3) or four (4) units or lots may elect to contribute to the provision of housing for low and moderate income households by payment of a fee calculated pursuant to this section, in lieu of constructing units on- or off-site.

2. Agricultural Subdivisions. Subdivisions eligible under Subsection 18.040.060.B may elect to contribute to the provision of housing for low and moderate income households by payment of a fee, calculated pursuant to this section, in lieu of constructing units on or off-site. An inclusionary housing agreement may be executed to provide for the deferment of the payment of the fee as provided for in Subsection 18.040.060.B.

3. Fractions of Units. Residential developments required to construct fractions of a unit under this Chapter may pay an in-lieu fee in an amount corresponding to the fractional unit, computed by multiplying the in-lieu fee amount determined under Subsection D below by the fraction.

4. Qualification for In-Lieu Fee. The developer of a residential development containing five (5) or more units may elect to pay a fee in-lieu of providing some or all of the required inclusionary units if the developer demonstrates, in connection with the first approval for the residential development, that specific characteristics of the development site, such as lack of access to services, zoning which requires large lot development, or potentially high site maintenance costs, make the site unsuitable for households at the required income levels.

5. Fee Amount. For residential developments which are permitted to satisfy the requirements of this Chapter in whole or part by payment of in-lieu fees, the fee amount shall be determined and approved by the Appropriate Authority as follows: for each market-rate unit in the residential development, the fee shall be one-fifth (1/5) of the difference between the affordable sales price for a four-person household at one hundred (100) percent of median income and the cost of developing an average market-rate three-bedroom home. The Director shall prepare an annual table which identifies in-lieu fee amounts based on criteria stated in the administrative manual. The annual in-lieu fee table shall be adopted by the Board of Supervisors. In the event that the Director does not prepare a revised annual table, or the Board of Supervisors does not approve one, the previous year's table shall remain in effect.

6. Time of Payment. Payment of in-lieu fees shall be made in full to the County prior to recordation of parcel or final maps or, where the residential development is not subject to subdivision approval, prior to issuance of the first building permit for the development, unless an inclusionary housing agreement otherwise provides.

B. Service Fees. A service fee, as established by County resolution, shall be charged for the costs associated with processing the initial sales, re-sales, rentals and refinancings of inclusionary units as provided for in the administrative manual and/or approved documents.

(Ord. No. 5175, § 4, 4-26-2011; Ord. 4185 § 8, 2003)

18.40.100 - Development project approval.

A. A residential development application will not be deemed complete until the applicant has submitted plans and proposals which demonstrate the manner in which the applicant proposes to meet the requirements of this Chapter, including any plans for the construction of on-site units, commitment of off-site units, and/or intent to pay in-lieu fees.

B. Conditions to carry out this Chapter shall be imposed on the first approval of a residential development. When granting the first approval, the appropriate authority shall determine and include as a condition of approval: (i) the method of compliance with this Chapter, including whether the residential development will comply with this Chapter through provision of on-site units or off-site units or payment of an in-lieu fee or combination thereof; (ii) if inclusionary units are to be provided, the number of units required and fractional amount of units for which an in-lieu fee may be paid; and (iii) such other matters as the appropriate authority deems proper. The condition of approval shall further

provide that prior to the recordation of the parcel map or final map in the case of subdivisions and or prior to the issuance of building permits in the case of all other land use permits to which this Chapter applies, the applicant shall enter into an inclusionary housing agreement acceptable to the Director that contains specific requirements implementing the condition of approval including, but not limited to, as applicable, the number of inclusionary units, the level(s) of affordability, location and type of inclusionary units, timing of construction of inclusionary units in relation to the construction of the market rate units contained in the development, preferences given in selecting occupants, and amount of the in-lieu fee, if any. The inclusionary housing agreement may be amended by the parties, provided the amendment is consistent with the condition of approval imposed as part of the first approval and the then existing County approvals. If said proposed amendment is minor or technical in nature, the Director shall have authority to approve or disapprove the amendment on behalf of the County. If said proposed amendment makes a substantive or material change to the inclusionary housing agreement, said amendment shall be effective only if, following notice and hearing and such other procedures as may be required by law, approved by the appropriate authority who gave the first approval on the project.

C. Where a residential development receives a subdivision approval, the final subdivision map or parcel map which is to be filed and recorded shall include a notation, in a form acceptable under the Subdivision Map Act, describing the condition of approval to comply with this Chapter.

D. Where the party subject to a fully executed inclusionary housing agreement, or other document regulating or limiting the operation, price or rent of an inclusionary unit, entered into under this Chapter or any previous version of this Chapter believes that the document requires modification as a result of unusual circumstances which could not have been foreseen at the time the document was entered into, the affected party may apply to the County Board of Supervisors for modification of the document.

E. Any determination made by the appropriate authority to implement this Chapter in connection with granting a first approval may be appealed pursuant to the appeal provisions of Monterey County Code, Titles 19, 20, or 21 or other applicable appeal provisions by which the first approval may be appealed. (Ord. 4185 § 9, 2003)

18.40.110 - Occupancy and continuing availability of units.

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

A. Rental Inclusionary Units. For rental inclusionary units, eight percent of the total units in the residential development shall be set aside for moderate income households, six percent of the total units in the development shall be set aside for low income households and an additional six percent of the total units in the development shall be set aside for very low income households. On-site rental inclusionary units shall be rented only to eligible households, and off-site inclusionary units only to very low income households, at affordable rents for the relevant income category, and pursuant to further requirements set forth in any applicable inclusionary housing agreement, regulatory agreement and/or

other documents in effect pursuant to this Chapter. Where the number of required very low income units is not a whole number, the fractional units required shall be added to the number of low income inclusionary units required. If the resultant number of low income units is not a whole number, the fractional units required shall be added to the number of moderate units required. Where (after any addition of fractional units under the preceding sentences) the number of moderate income inclusionary units required is not a whole number, the applicant shall include the next higher whole number of moderate inclusionary units, or may elect to pay a fractional unit in-lieu fee for the fractional unit in the amount provided in Section 18.040.090. All leases or rental agreements for rental inclusionary units shall require annual certification by the Director of tenant household income and shall contain a provision prohibiting subletting or assignment of the inclusionary unit to an unqualified tenant.

B. For Sale Inclusionary Units.

1. For for-sale inclusionary units, eight percent of the total units in the development shall be set aside for moderate income households, six percent of the total units in the development shall be set aside for low income households and an additional six percent of the total units in the development, shall be set aside for very low income households. On-site for-sale inclusionary units shall be sold only to eligible households and off-site inclusionary units only to low income households, at prices affordable to such households, and pursuant to further requirements of resale restrictions, a promissory note, second deed of trust naming the County of Monterey as beneficiary, deed restrictions, and/or other documents pursuant to this Chapter. Where the number of required very low income units is not a whole number, the fractional units required shall be added to the number of low income inclusionary units required. If the resultant number of low income units is not a whole number, the fractional units required shall be added to the number of moderate income inclusionary units required. Where (after any addition of fractional units under the preceding sentences) the number of moderate income inclusionary units required is not a whole number, the applicant shall include the next higher whole number of moderate income inclusionary units, or may elect to pay a fractional unit in-lieu fee in the amount provided in Section 18.040.090. The initial maximum sale price of the inclusionary unit to the first purchaser shall be determined by the Director, pursuant to a method set forth in the administrative manual. Similar restrictions shall be required of subsequent owners at the time they acquire the unit.

2. The maximum resale price shall be determined under the approved documents, consistent with the administrative manual and the following:

a. The maximum permitted resale price shall be the initial sale price of the inclusionary unit, increased at the same rate as the median income has increased, with the following modifications.

b. The otherwise allowable maximum resale price shall be increased by ten (10) percent of the initial sale price of the unit as an allowance for improvements made by the selling owners during their ownership. This allowance shall not be increased or decreased based on the value of improvements actually made to a particular home, provided that the allowance shall be reduced to the extent the unit has been adversely affected in value by deficient or deferred maintenance. To facilitate a determination by the Director concerning maintenance prior to sale, the seller shall comply with any applicable requirements in the administrative manual.

c. Where an owner has lawfully added a bedroom to a for-sale inclusionary unit, the maximum resale price of the unit shall be calculated based on an assumed household size corresponding to the total number of bedrooms, including the added bedroom.

d. The administrative manual and/or approved documents may provide for a ceiling which limits the resale price increases resulting from the modifications in Subsections b. and c.

3. As provided in Section 18.40.090, a service fee shall be charged by the County for the costs associated with processing the initial sales, re-sales, rentals and refinancings of inclusionary units as described in the administrative manual and/or approved documents.

4. In the event of the death of all owners of an inclusionary unit, the transfer of a for-sale inclusionary unit to a child or step-child upon the death of the remaining prior owner shall be permitted without payment of any amount otherwise due to the County based on the sales price or appreciation of the unit, and without regard to any otherwise applicable preferences or waiting list priority for eligible purchasers, regardless of the income eligibility of the child or step-child. All terms of the recorded inclusionary agreement, including the remaining term of affordability, shall remain in effect upon such transfer; however a new agreement with the new owners (the child or step-child inheriting the unit) shall be executed and recorded in order to effectuate a transfer under this provision. Otherwise, the unit shall be offered for sale in conformity with this Chapter.

5. All resale restrictions shall authorize the County or its designee to purchase any affordable for-sale inclusionary unit at the maximum resale price which could be charged to a purchaser household (less an allowance for the real estate commission avoided by the County's purchase), at any time the owner proposes sale, prior to any sale to another party.

6. For sale inclusionary units may be refinanced or used as security for additional financing, to the extent provided in the administrative manual.

7. Resale restriction documents may prohibit or limit leasing of inclusionary units. The Redevelopment and Housing Director shall have the authority to allow for the temporary rental of for sale units upon a determination of hardship, based on standards established by County resolution, and provided that the units remain affordable at the same income level.

C. Terms of Affordability; New and Existing Inclusionary Units. For both for sale and rental inclusionary units, affordability and occupancy restrictions shall remain in effect in perpetuity and shall apply to any replacement structure or structures constructed if a structure containing an inclusionary unit or units is demolished or destroyed, provided that if demolition or destruction of a structure containing inclusionary units occurs fifty-five (55) years or more after recording of the restrictions and said demolition or destruction was unintentional, restrictions on the units in the structure shall terminate on demolition or destruction. For-sale and rental inclusionary units approved before an amendment to this Chapter shall remain subject to the terms of this Chapter at the time the units were approved, and for-sale and rental inclusionary units in pending developments shall remain subject to the terms of this Chapter at the time the pending development application was deemed complete, subject in all cases to Subsection 18.40.100.D and further provided that, where a for-sale inclusionary unit is transferred and the new owner is required to enter into new regulatory documents under this Chapter, the new regulatory documents will provide for affordability in perpetuity.

D. Maintenance. Regulatory agreements and resale restriction documents shall include maintenance and insurance requirements for affordable units.

E. Approval and Recording of Documents. The Director, in consultation with County Counsel, shall establish the form and content of documents required or authorized under this section. Regulatory agreements and resale restriction documents may provide for specific affordability and/or occupancy requirements for particular affordable units, consistent with this Chapter and with the terms of the project's inclusionary housing agreement. These documents shall be executed by the record owners of affected property, approved as to form by County Counsel, and recorded in the official records of the County.

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

G. Marketing; Selection of Participants. The administrative manual shall set forth marketing and selection policies and/or procedures for inclusionary units and identify County staff responsible for supervising marketing. The manual shall contain policies favoring making inclusionary units available to households with members who live or work in Monterey County or those with household members who work near the units. The Housing Authority may be designated to review the income qualifications of potential applicants. If the County maintains a list or lists of eligible households, it may require that households newly occupying affordable units shall be selected first from one or more of those lists.

H. Administrative Manual. The Board of Supervisors shall adopt and may from time to time amend an administrative manual, approved as to form by County Counsel, to establish guidelines to interpret and implement this Chapter, including without limitation income and maximum asset guidelines for inclusionary units and units assisted by in-lieu fee proceeds. All mandatory provisions of such manual, when adopted, shall bind applicants and other private parties subject to this Chapter. Maximum permitted sales prices shall be governed by the administrative manual. The Board of Supervisors shall conduct a duly noticed public hearing prior to the adoption or any amendment of the administrative manual.

(Ord. No. 5175, § 5, 4-26-2011; Ord. 4185 § 10, 2003)

18.40.120 - Housing Advisory Committee.

A. Purpose, Powers, and Duties. A Housing Advisory Committee was created pursuant to Ordinance No. 3093 for the purpose of advising the Board of Supervisors and Planning Commission on matters relating to the Housing Element of the General Plan and the Inclusionary Housing Ordinance. The Housing Advisory Committee shall continue in existence, and its purpose shall continue to be to advise the Board of Supervisors and Planning Commission on matters related to the Housing Element of the General Plan, the Inclusionary Housing Ordinance, and such other matters as the Board of Supervisors, Planning Commission, or County staff shall direct. The Housing Advisory Committee shall also evaluate proposals for disbursal of in-lieu fees in accordance with the procedures set forth in this Chapter.

B. Appointment. The Housing Advisory Committee shall be appointed by the Board of Supervisors and shall consist of ten (10) members, comprised of two members from each Supervisorial district. Members shall reside or work within the supervisorial district from which they are appointed. Each member shall serve for a term of two years from the date of appointment and shall continue to serve thereafter until a successor is appointed.

C. Adoption of By-Laws. The Board of Supervisors shall adopt by-laws containing rules and procedures for the transaction of business of the Housing Advisory Committee. The Board of Supervisors may amend said by-laws from time to time.

(Ord. 4185 § 11, 2003)

18.40.130 - Collection and use of in-lieu fees.

A. Use of In-Lieu Fees. Any monies received by the County as in-lieu fees pursuant to this Chapter shall be used to provide very low, low and/or moderate income housing except to the extent allocated to monitoring, enforcement and administrative costs. Any monies collected as in-lieu fees pursuant to this Chapter, and the interest accrued thereon, shall be committed within five years after the payment of such fees or the approval of the residential development, whichever occurs later. All such monies on deposit with the County shall be separately accounted for and shall not be used for purposes not authorized by this section. Any monies generated as in-lieu fees as a result of this Chapter shall be used by the County for assistance in the development of affordable housing within the County.

B. Funding Proposals. At least once a year, the County shall advertise by notice in newspapers of local circulation, and other such written notice as deemed necessary by the Housing Advisory Committee, availability of funds for the provision of very low, low and/or moderate income housing in the County. Included in such notice shall be an invitation to submit proposals and requests for funds to provide such housing in the County. Proposals submitted for funding shall be in accordance with the Board of Supervisors' housing priorities set for the year. Availability and use of funds for projects in an amount of less than twenty-five thousand dollars (\$25,000.00) shall be in accordance with Over the Counter Grant and Loan Program Guidelines and Procedures approved by the Board of Supervisors. Proposals involving funding in excess of twenty-five thousand dollars (\$25,000.00) shall be reviewed by the Housing Advisory Committee to be submitted with its recommendations to the Board of Supervisors for final approval.

The requests may be for grants, low interest loans, and other funding mechanisms deemed appropriate to secure the purpose of this Chapter. The proposals may be for pre-development projects and services, projects to promote very low, low, or moderate income housing unit(s), rehabilitation, land acquisition, unit purchase, development of infrastructure, or other projects deemed appropriate to secure the purpose of this Chapter.

C. Director's Authority. All proposals and requests for funding shall be referred initially to the Director. For requests less than twenty-five thousand dollars (\$25,000.00), the Director shall review the proposals and submit them with a recommendation on funding to the Housing Advisory Committee, which shall have funding authority in accordance with the procedures in this section and the Over the Counter

Grant and Loan Program Guidelines and Procedures, subject to appeal to the Board of Supervisors. An appeal of the decision may be filed with the Clerk to the Board of Supervisors by any interested person within ten (10) days after notice of the decision is given. For requests in excess of twenty-five thousand dollars (\$25,000.00), the Director shall make recommendations for funding to the Housing Advisory Committee, who shall make a funding recommendation to the Board of Supervisors in accordance with the procedures in this section. For proposals which have received final approval in accordance with the procedures set forth in this section, the Director shall have the authority to execute all documents necessary to implement the approval on behalf of the County.

D. Grant Contract. Upon authorization for funding, the Director on behalf of the County and the grantee shall enter into a contract to assure to the greatest extent possible that the approved proposals and requests are satisfactorily completed. No warrant shall be issued until such contract is completed and signed by the appropriate parties.

E. Household Eligibility. The Director and the Housing Authority, or their authorized designees, shall establish standards for eligibility of very low, low and/or moderate income households in units assisted with the proceeds of in-lieu fees. Priority for occupancy shall be granted to residents of the County and those employed in the County.

(Ord. No. 5175, § 6, 4-26-2011; Ord. 4185 § 12, 2003)

18.40.140 - Enforcement.

A. No permit, license, subdivision approval or map, or other approval or entitlement for a residential development shall be issued, including without limitation a final inspection for occupancy or certificate of occupancy, until all applicable requirements of this Chapter have been satisfied.

B. In the event of a violation of any provision of this Chapter, or any requirement imposed pursuant to this Chapter, the County may in its discretion, in addition to all other remedies, take such enforcement action as is authorized under the Monterey County Code and/or any other action authorized by law or by any regulatory document, restriction or agreement executed under this Chapter.

(Ord. 4185 § 13, 2003)

18.40.150 - Monitoring.

A. Owners and occupants of property subject to restrictions pursuant to this Chapter shall permit County employees or others designated by the County to inspect the property upon two business days' advance written notice. Owners of property subject to restrictions pursuant to this Chapter shall retain all records related to compliance with obligations under this Chapter for a period not less than five years, and make such records available to County employees or others designated by the County for inspection and copying upon five business days' advance written notice. The County shall be further entitled to monitor compliance with this Chapter as provided in the administrative manual and documents executed with respect to any residential development and/or inclusionary unit.

B. Periodic Evaluation. Unless funding or staff are not available, the Director shall at five-year intervals, or more often at the Director's discretion, prepare and submit to the Board of Supervisors an evaluation of this Chapter and its effects.

(Ord. 4185 § 14, 2003)

18.40.160 - Severability.

The provisions of this Chapter are intended to be severable, and in the event any provision, requirement or priority provided for under this Chapter is determined to be invalid or unenforceable, the remainder of the Chapter shall remain in effect.