

## Monterey County Planning Commission

<b>MEETING:</b> April 11, 2012	<b>Time:</b> 9:00 a.m.	<b>AGENDA NO.:</b> 3
<b>Project Description:</b> Receive a presentation on various affordable housing issues including roles and responsibilities of the Housing Advisory Committee, potential revisions to the County's Inclusionary Housing Administrative Manual, and General Plan policies and implementation actions.		
<b>Project Location:</b> County-Wide		
<b>Plan Area:</b> N.A.	<b>Flagged and Staked:</b> N.A.	
<b>Zoning Designation:</b> N.A.		
<b>CEQA Action:</b> N.A.		
<b>Department:</b> Economic Development Department		

**RECOMMENDATION:**

It is recommended that the Planning Commission receive a presentation on various affordable housing issues including roles and responsibilities of the Housing Advisory Committee, potential revisions to the County's Inclusionary Housing Administrative Manual, and General Plan policies and implementation actions

**OVERVIEW OF PROPOSED ACTION:**

During consideration of a recent development project some members of the Planning Commission requested clarifications related to the roles and responsibilities of the County's Housing Advisory Committee (HAC). The issues raised specifically related to recommendations on requests from development project applicants to modify the requirements for compliance with the County's Inclusionary Housing Ordinance. Staff from the County's Housing Office (now part of the Economic Development Department) will provide a presentation and also present revisions to the County's Inclusionary Housing Administrative Manual that are moving forward to the Board of Supervisors to clarify how requests for modifications for Inclusionary compliance are evaluated. Input from the Planning Commission will be appreciated.

**DISCUSSION:**

In conjunction with the Planning Commission consideration of certain development projects over the past year, some Commissioners have requested clarification related to the provisions in the County's Inclusionary Housing Program that allow for the approval of modifications to the required compliance due to unique characteristics of a project. In addition, some Commissioners have requested a presentation on the roles and responsibilities of the HAC, specifically related to the Inclusionary Program as well as an overview of the housing related activities and documents that the County is involved with.

*Housing Advisory Committee*

In 1985 the County Board of Supervisors created a Housing Advisory Committee (HAC). The current adopted By Laws were approved in 2002. The purpose of the HAC is to advise the Board of Supervisors and the Planning Commission on housing related issues, including the Housing Element, the Inclusionary Housing Ordinance, housing problems, and affordable housing

funding. The HAC also actively participates in preparing the County's Annual Housing Report which provides an overview of housing conditions, identifies issues, develops priorities for the next year and recommends on funding requests. Related to that effort, the HAC recommends on specific grant funding applications, such as Community Development Block Grant (CDBG), HOME and Neighborhood Stabilization Program (NSP). The 2012 Annual Housing Report was recently approved by the Board of Supervisors and has been sent to the Planning Commissioners separately.

### *Inclusionary Compliance*

The County's Inclusionary Housing Ordinance was originally adopted in 1980 and has been amended over the years. In 2003 the Ordinance was completely revised and adopted along with an Administrative Manual. The Ordinance and Manual were recently amended in 2011 to incorporate revisions primarily related to inheritance and compliance for large lot agricultural subdivisions. The amended Ordinance is included as Attachment 1. The Administrative Manual is incorporated in Attachment 2 as part of the December 14, 2011 HAC packet depicting recommended revisions that are discussed in more detail below.

Relative to the Inclusionary Housing Program, along with recommending on policy issues, the HAC is specifically tasked with evaluating requests from development applicants to modify the Inclusionary compliance required for their project. Usually these requests are to pay in-lieu fees instead of constructing units on the project site or modifying the required levels of affordability for Inclusionary Units. If a project is not proposing to modify the requirements and is proposing on-site units at the specified affordability levels the HAC does not generally review the project.

The HAC evaluation on a request to modify compliance usually consists of first determining the compliance based on the 20% requirement at the specified affordability levels to provide a baseline. Then the HAC reviews the project characteristics and the details of the request. As provided for in the Inclusionary Ordinance and Manual, the evaluation results in a recommendation related to what the best form of compliance should be to meet the goals of the Program, taking into account the unique circumstances.

In response to the recent issues raised by the Planning Commission, the HAC appointed a subcommittee to study potential enhancements and clarifications to the Inclusionary Program. The subcommittee provided its conclusions to the full HAC which ultimately approved a recommendation to the Board of Supervisors on revisions to the Inclusionary Housing Administrative Manual (Manual). Attachment 2 is the HAC staff report and attachments from December 14, 2011 where they considered and recommended revisions to the Inclusionary Manual. These recommendations, along with some general updates and cleanup language currently being prepared, will be taken to the Board of Supervisors within the next month or two.

In the past the HAC recommendations on requested modifications to the Inclusionary compliance requirements was transmitted to the Planning Department in the form of a staff memo with the HAC staff report and minutes to be used by the Planning Department in the overall project analysis. The HAC has recommended that this process be modified. Staff will now prepare a draft resolution for the HAC to consider when making their formal

recommendations on these issues which documents the evaluation and presents detailed findings. The resolution will then be transmitted to the Planning Department for inclusion in the Planning Commission and Board of Supervisors packets for consideration as part of the development project application.

### *General Plan Policies*

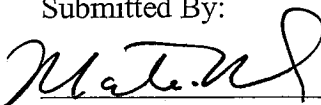
The County's Housing Element is part of the General Plan. However unlike most of the other Elements its preparation and certification is under the State's purview. On June 15, 2010 the County adopted the current Housing Element for the 2009-2014 planning period. On August 18, 2010 the State Department of Housing and Community Development (HCD) certified this Housing Element. When the County adopted the General Plan in late 2010 the certified Housing Element was incorporated by reference. Basically, the purpose of the Housing Element is to demonstrate to HCD that the County has enough available land, at appropriate densities, to accommodate the Regional Housing Needs Allocation (RHNA) for the planning period. It does not require that the housing be constructed or that housing that is constructed be restricted for affordability. The Housing Element also includes policies and programs directed at meeting specific needs of the local jurisdiction. The County's current Housing Element contains a number of policies and programs focused on developing new affordable housing, including providing adequate sites and addressing the housing needs of special populations. Each year the County is required to submit a progress report on the Housing Element to HCD. The 2012 Housing Element Implementation Report (Attachment 3) was received by the Board of Supervisors on March 27, 2012 as part of the Annual Housing Report and then transmitted to HCD as required.

On October 26, 2010 the County adopted a new General Plan. There are several policies contained in the General Plan that pertain to affordable housing. These include Policies LU-1.19, LU-2.11, LU-2.12 and LU-2.13. The Housing Office is in the process of coordinating with the Planning Department to define the implementation actions that will be required to address these policies.

#### **OTHER AGENCY INVOLVEMENT:**

The Monterey County Housing Advisory Committee (HAC) is instrumental in preparing the Annual Housing Report each year and was very involved in the preparation of the Housing Element. The HAC also reviews and comments on the Annual Housing Element Implementation Reports each year. In addition, on December 14, 2011 the HAC approved recommended revisions to the Inclusionary Housing Administrative Manual that will be considered by the Board of Supervisors within the next few months.

Submitted By:



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Date: 4/5/12

**ATTACHMENT 1**

**PLANNING COMMISSION – APRIL 11, 2012**

**MONTEREY COUNTY  
INCLUSIONARY HOUSING ORDINANCE**

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,  
AMENDING CHAPTER 18.40 OF THE MONTEREY COUNTY CODE RELATING TO  
THE PROVISION OF INCLUSIONARY HOUSING**

**County Counsel Summary**

*This ordinance revises the existing County Inclusionary Housing Ordinance which requires certain new residential development projects to contribute to the provision of housing for very low, low, and moderate income households. This ordinance provides specific procedures for agriculturally zoned lands being subdivided for financing purposes, authorizes service fees for processing sales, refinancing and rentals of inclusionary units, and changes the manner in which children or step-children may inherit inclusionary units. This ordinance also provides authority for the Director of Redevelopment and Housing to act to relieve certain hardship situations, based upon standards adopted by the Board of Supervisors.*

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. Section 18.40.020 of the Monterey County Code is amended as follows:

**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.

SECTION 2. Section 18.40.050 of the Monterey County Code is amended as follows:

**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 paragraphs B and C of this subsection, all residential developments shall contribute to the provision of housing for very low, low, and moderate income households in the County of Monterey 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 by construction or alteration of structures create three 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.04185, 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.

SECTION 3. Section 18.40.060 of the Monterey County Code is amended as follows:

**18.40.060**

**Inclusionary requirements.**

A. All residential development consisting of five (5) or more units or lots in Monterey 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 Monterey 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 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.

SECTION 4: Section 18.40.090 of the Monterey County Code is amended as follows:

**18.040.090**

**Fees.**

**A. In-Lieu Fees.**

1. **Projects of Three or Four 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 Section 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 Section 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 of the difference between the affordable sales price for a four-person household at 100% 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.

SECTION 5: Section 18.40.110 of the Monterey County Code is amended as follows:

**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 (8%) of the total units in the residential development shall be set aside for moderate income households, six percent (6%) of the total units in the development shall be set aside for low income households and an additional six percent (6%) 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 of this Chapter. 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 (8%) of the total units in the development shall be set aside for moderate income households, six percent (6%) of the total units in the development shall be set aside for low income households and an additional six percent (6%) 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 of this Chapter. The initial maximum sale price of the inclusionary unit to the first purchaser shall be determined by the Director, pursuant to a method set forth in the administrative manual. 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 percent (10%) of the initial sale price of the unit as an allowance for improvements made by the selling owners during their ownership. This allowance shall not be increased or decreased based on the value of improvements actually made to a particular home, provided that the allowance shall be reduced to the extent the unit has been adversely affected in value by 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 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 section 18.40.100.D. of this Chapter 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, 18.40.110. 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.

SECTION 6: Section 18.40.130 of the Monterey County Code is amended as follows:

**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 (5) 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 18.40.130. 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 \$25,000 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 \$25,000, 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 \$25,000, 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 10 days after notice of the decision is given. For requests in excess of \$25,000, 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 Monterey County and those employed in Monterey County.

SECTION 7: This ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED this 26<sup>th</sup> day of <sup>April</sup> ~~January~~, 2011, by the following vote:

AYES: Supervisors Armenta, Calcagno, Salinas, Potter

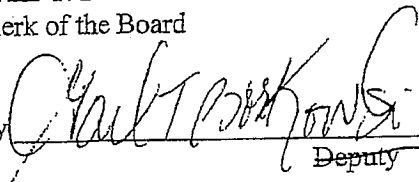
NOES: Supervisor Parker

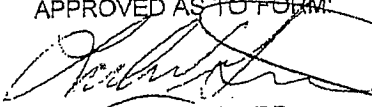
ABSENT: None

  
\_\_\_\_\_  
Chair, Monterey County Board of Supervisors

ATTEST:

GAIL T. BORKOWSKI  
Clerk of the Board

By   
\_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
LESLIE J. GIRARD  
Assistant County Counsel

**ORDINANCE NO. 04185**

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,  
AMENDING CHAPTER 18.40 OF THE MONTEREY COUNTY CODE RELATING TO  
THE PROVISION OF INCLUSIONARY HOUSING**

County Counsel Summary

*This ordinance revises the existing County Inclusionary Housing Ordinance which requires certain new residential development projects to contribute to the provision of housing for very low, low, and moderate income households. This ordinance changes the inclusionary requirement from 15 percent to 20 percent of certain residential development projects, changes the compliance procedures and affordability period, establishes specific procedures for selection of inclusionary housing occupants, and adds procedures to facilitate better monitoring of the program. This ordinance also provides for the Board of Supervisors to adopt an administrative manual which establishes guidelines for interpreting and implementing the Inclusionary Housing Ordinance. This ordinance also includes provisions for the establishment of the Housing Advisory Committee and for the use of in-lieu fees collected under the Inclusionary Housing Ordinance.*

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. Section 18.40.020 of the Monterey County Code is amended as follows:

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; 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.

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.



SECTION 2. Section 18.40.030 of the Monterey County Code is amended as follows:

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.

SECTION 3. Section 18.40.040 of the Monterey County Code is amended as follows:

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 18.40.050(G)(7).

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 30% 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 30% of 60% 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 30% of 110% 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 30% 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 30% of 70% 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 35% of 110% 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 Planning and Building Inspection 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 80% 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 120% 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 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 # 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 50% of

median income, adjusted for household size.

SECTION 4. Section 18.40.050 of the Monterey County Code is amended as follows:

#### 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 paragraphs B and C of this subsection, all residential developments shall contribute to the provision of housing for very low, low, and moderate income households in the County of Monterey as provided in this Chapter. "Residential Development," as that term is defined by this Chapter, 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.

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.04185, 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.

SECTION 5. Section 18.40.060 is added to the Monterey County Code as follows:

18.40.060 INCLUSIONARY REQUIREMENTS

All residential development consisting of five (5) or more units or lots in Monterey 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 Monterey 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.

SECTION 6: Section 18.40.070 is added to the Monterey County Code as follows:

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 percent (20%) 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.

SECTION 7: Section 18.40.080 is added to the Monterey County Code as follows:

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 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.

SECTION 8: Section 18.40.090 is added to the Monterey County Code as follows:

18.040.090 IN-LIEU FEES

A. Projects of Three or Four 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.

B. 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.

C. 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.

D. 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 of the difference between the affordable sales price for a four-person household at 100% 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.

E. 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.

SECTION 9: Section 18.40.100 is added to the Monterey County Code as follows:

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.



SECTION 10: Section 18.40.110 is added to the Monterey County Code as follows:

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 (8%) of the total units in the residential development shall be set aside for moderate income households, six percent (6%) of the total units in the development shall be set aside for low income households and an additional six percent (6%) 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 of this Chapter. 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 (8%) of the total units in the development shall be set aside for moderate income households, six percent (6%) of the total units in the development shall be set aside for low income households and an additional six percent (6%) 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 of this Chapter. The initial maximum sale price of the inclusionary unit to the first purchaser shall be determined by the Director, pursuant to a method set forth in the administrative manual. 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 percent (10%) of the initial sale price of the unit as an allowance for improvements made by the selling owners during their ownership. This allowance shall not be increased or decreased based on the value of improvements actually made to a particular home, provided that the allowance shall be reduced to the extent the unit has been adversely affected in value by 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. Transfer of a for-sale inclusionary unit to a child or step-child upon the death of one or more of the prior owners shall be permitted without payment of any amount otherwise due to the County based on the sales price or appreciation of the unit, and without regard to any otherwise applicable preferences or waiting list priority for successor owners, if, but only if, the household of the child or step-child would be eligible based on income to purchase the unit and will occupy the unit. A child or step-child, whether or not his or her household is income eligible or will occupy the unit and regardless of any otherwise applicable preferences or waiting list priority, shall be entitled to own and/or occupy a for-sale inclusionary unit after the death of the prior parent owner, for a period not to exceed one year, without regard to otherwise applicable resale requirements of this Chapter, but subject to any applicable provisions of the administrative manual or county documents regulating the project. Not later than the expiration of said one-year period, the unit shall be transferred to the child or step-child (if the household is eligible and wishes to keep the unit) or shall be offered for sale in conformance with this Chapter, with appropriate documents recorded against the unit under this Chapter for the County's benefit.

4. 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.

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

6. Resale restriction documents may prohibit or limit leasing of inclusionary units.

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 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 section 18.40.100.D. of this Chapter 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, 18.40.110. 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.

SECTION 11: Section 18.40.120 is added to the Monterey County Code as follows:

18.40.120 HOUSING ADVISORY COMMITTEE

A. Purpose, Powers, and Duties

A Housing Advisory Committee was created pursuant to Ordinance Number 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 disbursement 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 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.

SECTION 12: Section 18.40.130 is added to the Monterey County Code as follows:

18.40.130 COLLECTION AND USE OF IN-LIEU FEES

A. Use of Fees:

Any monies received by the County 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 pursuant to this Chapter, and the interest accrued thereon, shall be committed within five (5) 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 18.40.130. Any monies generated 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 \$25,000 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 \$25,000, 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 \$25,000, 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 10 days after notice of the decision is given. For requests in excess of \$25,000, 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 Monterey County and those employed in Monterey County.

SECTION 13: Section 18.40.140 is added to the Monterey County Code as follows:

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:

SECTION 14: Section 18.40.150 is added to the Monterey County Code as follows:

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.

SECTION 15: Section 18.40.160 is added to the Monterey County Code as follows:

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.

SECTION 16: This ordinance shall become effective on the thirty-first day following its adoption.

**PASSED AND ADOPTED** this 22<sup>nd</sup> day of April, 2003, by the following vote:

**AYES:** Supervisors Armenta, Calcagno, Lindley, Johnsen and Potter.

**NOES:** None.

**ABSENT:** None.

/S/ Fernando  
Chair, Monterey County Board of Supervisors

ATTEST:

/S/ Nancy Lukenbill  
Nancy Lukenbill, Clerk to the Board



Before the Board of Supervisors in and for the  
County of Monterey, State of California

- a. Consider adoption of an Ordinance that revises )  
Chapter 10.40, the County's Inclusionary )  
Ordinance, to clarify certain regulations and )  
procedures to improve the Program and establish )  
fees for services; )
- b. Approve a resolution to adopt Inclusionary )  
Housing Service Fees related to processing sales, )  
refinances, and tenant qualifying of Inclusionary )  
Housing Units; and )
- c. Direct the Redevelopment and Housing Office to )  
make the necessary revisions to the adopted )  
Inclusionary Housing Administrative Manual, )  
consistent with the recommended Ordinance )  
revisions..... )

Upon motion of Supervisor Calcagno, seconded by Supervisor Salinas, and carried by those members present, the Board of Supervisors hereby:

- a. Adopted Ordinance 5175 that revises Chapter 10.40, the County's Inclusionary Ordinance, to clarify certain regulations and procedures to improve the Program and establish fees for services;
- b. Approved Resolution No. 11-117 to adopt Inclusionary Housing Service Fees related to processing sales, refinances, and tenant qualifying of Inclusionary Housing Units; and
- c. Directed the Redevelopment and Housing Office to make the necessary revisions to the adopted Inclusionary Housing Administrative Manual, consistent with the recommended Ordinance revisions.

PASSED AND ADOPTED this 26<sup>th</sup> day April 2011, by the following vote, to wit:

AYES: Supervisors Armenta, Calcagno, Salinas, and Potter  
 NOES: Supervisor Parker  
 ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 75 for the meeting on April 26, 2011.

Dated: April 28, 2011

Gail T. Borkowski, Clerk of the Board of Supervisors  
County of Monterey, State of California

By Denise Hancock  
 Deputy

**Before the Board of Supervisors in and for the  
County of Monterey, State of California**

**Resolution No. 11-117**

Resolution approving and adopting )  
Inclusionary Housing Service Fees, to offset )  
the costs of the Redevelopment and Housing )  
Office for the processing of services related to )  
the initial sale, re-sale, rental or refinancing of )  
Inclusionary Housing Units..... )

WHEREAS, the County of Monterey ("County") adopted an Ordinance relating to the provision of Inclusionary Housing for the County known as the "Inclusionary Housing Ordinance of the County of Monterey" and found in Chapter 18.40 of the Monterey County Code; and

WHEREAS, the Inclusionary Housing Ordinance was originally adopted in 1994 and has been amended from time to time, including by Ordinance No. 5175 adopted on April 26, 2011; and

WHEREAS, as part of Ordinance No. 5175, the County has authorized the assessment of a fee to cover a portion of the costs incurred by the County to qualify potential buyers, to qualify proposed tenants of inclusionary units permitted to be rented, and to qualify and process requests for re-financing made by existing owners of inclusionary units; and

WHEREAS, based on the information presented to the Board of Supervisors, it has been determined that the following processing charges are fair, appropriate and do not exceed the costs of such services:

- a. Initial sales: \$500.00
- b. Re-sales: \$500.00
- c. Re-financing: \$200.00
- d. Re-sale value: \$ 35.00
- e. Qualify tenants: \$200.00

**NOW, THEREFORE, BE IT RESOLVED THAT**, the Board of Supervisors does hereby Approve and adopt the following fees for the servicing of initial sales, re-sales and re-financing of Inclusionary Housing Units:

- a. Initial sales: \$500.00
- b. Re-sales: \$500.00
- c. Re-financing: \$200.00
- d. Re-sale value: \$ 35.00
- e. Qualify tenants: \$200.00

These fees shall become effective on the day Ordinance No. 5175 becomes effective.

**PASSED AND ADOPTED** on this 26th day of April, 2011, upon motion of Supervisor Calcagno, seconded by Supervisor Salinas, by the following vote, to-wit:

AYES: Supervisors Armenta, Calcagno, Salinas, and Potter  
NOES: Supervisor Parker  
ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 75 for the meeting on April 26, 2011.

Dated: April 28, 2011

Gail T. Borkowski, Clerk of the Board of Supervisors  
County of Monterey, State of California

By Denise Throck  
Deputy

**ATTACHMENT 2**

**PLANNING COMMISSION – APRIL 11, 2012**

**HOUSING ADVISORY COMMITTEE**

**December 14, 2011**

**Inclusionary Item**

## MONTEREY COUNTY HOUSING ADVISORY COMMITTEE

<b>MEETING:</b> December 14, 2011	<b>AGENDA NO.:</b> 5a
<b>SUBJECT:</b> Consider potential revisions to the adopted Inclusionary Housing Administrative Manual pertaining to clarifying alternative forms of compliance for the Inclusionary Housing Program and make recommendations for consideration by the Planning Commission and Board of Supervisors	
<b>DEPARTMENT:</b> Economic Development - Redevelopment & Housing	

### RECOMMENDATION:

Consider potential revisions to the adopted Inclusionary Housing Administrative Manual pertaining to clarifying alternative forms of compliance for the Inclusionary Housing Program and make recommendations for consideration by the Planning Commission and Board of Supervisors.

### DISCUSSION:

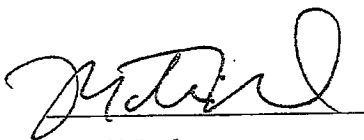
On September 14, 2011, the HAC appointed a Subcommittee to study issues related to alternative forms of compliance allowed by the County's Inclusionary Housing Ordinance. The Subcommittee met on October 7, 2011. The Subcommittee was tasked with "framing the issues" not with reaching specific conclusions or recommendations. Information and a summary of the primary issues were presented and discussed at the HAC meeting held on October 19, 2011. The full HAC discussed the issues and identified a number of findings/conclusions which are summarized below:

- Flexibility in applying alternative forms of compliance, as specified in the existing Ordinance, should be maintained to allow specific characteristics of projects and locations to be addressed.
- Detailed resolutions should be prepared and adopted by the HAC to better document the thought process and basis for recommending alternative forms of compliance for consideration by the Planning Commission and Board of Supervisors.
- Compliance should better reflect the housing needs of the project area and the County as a whole and not necessarily what the developer desires due to their own project objectives.
- The HAC's role is to recommend the most appropriate form of compliance with the Inclusionary Ordinance requirements for the project, as it is proposed, and not recommend on project land use issues such as consistency with the County General Plan, zoning issues, or environmental impacts.
- A broader range of approaches for compliance should be considered for projects, including combinations of forms such as on and off site units, inclusion of a rental component in a for-sale project (subject to recent case law), a fee in addition to units to make up for not providing units at the very low and/or low income levels, units and/or other forms of compliance that specifically address the needs of employees of the developer, compliance that takes advantage of opportunities to promote partnerships between the developer of non-profits to result in more affordable housing and/or housing for special needs populations.
- The goal of compliance should continue to be the provision of units at the specified income levels on the project site and integrated into the project design.
- The approval of an In-Lieu Fee for the entire compliance obligation should be allowed only for very unique and specific circumstances of the project related to location and characteristics and not based on the financial feasibility of the project for the developer.

After discussing the issues in detail the HAC provided specific direction to staff to prepare potential revisions to the adopted Inclusionary Housing Administration Manual (Manual), that clarify the purpose of allowing alternative forms of compliance, criteria for evaluating proposals and including a potential appendix that presents examples of possible creative approaches to compliance. Several HAC members also asked staff to research how other jurisdictions address these issues. Attached is 1) a "tracked change" version of the pertinent sections of the adopted Manual with recommended revisions that includes a proposed Appendix B with example alternative compliance scenarios; and 2) results of the research of other jurisdictions' Inclusionary Programs.

It is recommended that the HAC consider staff's recommended Manual revisions and provide specific direction for final revisions to be brought back to the next HAC meeting or direct staff to proceed with taking the recommendations to the Planning Commission and Board of Supervisors.

Prepared by:

A handwritten signature in black ink, appearing to read "Marti Noel", written over a horizontal line.

Marti Noel,  
Assistant Director

**ATTACHMENT 1 to AGENDA ITEM 5a.  
Tracked changes Manual Inclusionary Housing Program**

# ADMINISTRATIVE MANUAL

## COUNTY OF MONTEREY INCLUSIONARY HOUSING PROGRAM

**ADOPTED JULY 12, 2011**

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*APPENDIX MATERIALS UPDATED JUNE 2011*

**Proposed Revisions dated December 5, 2011**

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**County of Monterey**

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**Redevelopment and Housing Office**





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## EXECUTIVE SUMMARY

This Administrative Manual describes the day-to-day procedures for the implementation of the County of Monterey's Inclusionary Housing Ordinance (Chapter 18.40). The Ordinance was originally adopted in 1980 and amended from time to time. In 2003, Chapter 18.40 was comprehensively amended with a revised Ordinance (#04185) which included provisions for an Administrative Manual. This Manual was then adopted in 2003. On April 26, 2011, the Board of Supervisors approved an amendment to the Inclusionary Housing Ordinance and directed staff to prepare revisions to this Manual consistent with that amendment. In the event of a discrepancy between the Administrative Manual and the Inclusionary Housing Ordinance, the language of the Ordinance will take precedence.

As identified in the Ordinance, the goals and objectives for the Inclusionary Housing Program include:

- Achieving a balanced community with housing available for persons of all economic levels;
- Encouraging a housing supply that provides housing opportunities throughout the County for a mix of households, including very low, low and moderate income households;
- Providing a priority for occupancy of inclusionary units for households with a household member(s) who live or work in Monterey County;
- Ensuring long-term affordability of the inclusionary units by requiring affordability restrictions and resale controls; and,
- Encouraging the participation of the private and non-profit development communities to provide inclusionary units.

The Inclusionary Housing Program provides an opportunity for very low, low and moderate income households to purchase and/or rent affordable housing units throughout unincorporated areas of Monterey County. Policies and procedures in this Manual provide for the following:

- New residential developments in the County shall include at least 20% of the units to be affordable to very low, low and/or moderate-income households.
- The inclusionary units provided shall be sold or rented at affordable costs and the units, generally, shall remain permanently affordable.

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- Inclusionary units are considered an important and valuable resource for all County residents and, as such, shall be monitored regularly to ensure that they remain decent, safe and affordable housing units.
- Creative implementation of the inclusionary requirements shall be encouraged, including the development of mixed-use housing and employee housing.

## **I. Options To Comply with Inclusionary Ordinance**

The County of Monterey has adopted an Inclusionary Housing Ordinance (Monterey County Code, Chapter 18.40). This Ordinance requires that 20% of the units/lots in new residential developments be affordable to very low, low and moderate-income households. The Ordinance is applicable to developments of three or more residential units/lots (farm worker housing and mobile home parks are exempt from the inclusionary requirements).

Developments of 3 or 4 units/lots are expected to meet their inclusionary obligations through the payment of In-Lieu Fees, although the developer/owner can choose to build an inclusionary housing unit instead of payment of In-Lieu Fees if they so desire. Developments of 5 or more units/lots are expected to meet their inclusionary obligation through the development of inclusionary housing units, except as described in Section I.3.A.

Developments of 5 or more units/lots are expected to comply with the Ordinance by providing Inclusionary Units on-site at the specified affordability levels, however alternative forms of compliance may be considered based on unique circumstances including specific characteristics of the project and/or location. Alternative forms of compliance must be specifically requested by the developer with a statement of justification and supporting documentation. The alternative form of compliance must be approved as part of the project approval with supporting findings and evidence. Generally, the County's Housing Advisory Committee reviews the developer's request and formulates a recommendation with supporting findings in the form of a resolution that is forwarded onto the Appropriate Authorities for consideration.

Alternative forms of compliance must be found to result in a more appropriate approach to meeting the purpose of the Inclusionary Program and the overall housing needs of the County, then the required on site form of

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compliance. The requested approach may include a modification to the required affordability levels of the required Inclusionary Units, provision of off site units instead of, or in combination with, on-site units, or the payment of an In-Lieu Fee for a part or all of the Inclusionary obligation. More information and criteria are included below. In addition, Appendix B, Developer Procedures, include detailed information and requirements for requesting an alternative form of compliance as well as several example compliance approaches.

## 1. ON-SITE OPTION

### A. INCLUSIONARY % REQUIREMENT

For developments of 5 or more residential units/lots, at least 20% of the units must be set aside for inclusionary housing. The inclusionary units must be developed on the same site as the market rate units, but can be a different product type if determined to be more appropriate to meet the housing needs of the project area and/or the County.

*Exceptions:* In certain unusual and infrequent situations, an exception to the mandatory on-site requirement is available. These exceptions would result in the provision of units off-site and/or payment of In-Lieu Fees as described in Section I.2 and Section I.3. The exception must be supported by sufficient findings and evidence that specifically document what the unusual or unique circumstances are and why an alternative form of compliance is more appropriate to meeting the County's affordable housing goals and the specific housing needs of the project area. The types of unique circumstances that may be considered include, but are not limited to, the proximity of the project to residential services, the size of the Inclusionary lots resulting in excessive maintenance costs to the homeowner, or excessively high homeowner association or assessment fees. Financial feasibility for the developer is not considered a qualifying factor.

The approval of an alternative form of Inclusionary compliance shall be part of the project approval, considered at a noticed public hearing. Generally the County's Housing Advisory Committee provides a recommendation and a resolution with specific findings and evidence to the Appropriate Authorities for consideration.

### B. LEVELS OF AFFORDABILITY

The intent of the Inclusionary Housing Ordinance is to provide a range of inclusionary units affordable to different household income levels. Inclusionary units shall be affordable to very low, low and moderate-income households. For

**Deleted:** Requirements of the Ordinance can be met through one of three options, or a combination of the options:  
[<#>On-site Option]  
[<#>Off-site Option]  
[<#>Payment of In-Lieu Fees]  
Developments of 3 or 4 units/lots are expected to meet their inclusionary obligations through the payment of In-Lieu Fees, although the developer/owner can choose to build an inclusionary housing unit instead of payment of In-Lieu Fees if they so desire.  
Developments of 5 or more units/lots are expected to meet their inclusionary obligation through the development of inclusionary housing units, except as described in Section I.3.A.]

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developments of 5 or more units, at least 20% of the units must be set aside for inclusionary housing. The 20% requirement is broken down further by a requirement that 8% of all units be affordable to moderate income households, 6% to low income households, and 6% to very low income households

*Exceptions:* In certain situations a deviation from the percentage requirements for income levels may be approved by the Appropriate Authority. The approval of the deviation must be supported by specific findings that document why the exception should be granted and how the objectives of the Inclusionary Program and the affordable housing goals of the County can still be met. The approval must also support that the requested deviation is more appropriate due to the specific characteristics of the project and/or location. These factors may include, but not be limited to, homeowners association or assessments costs, property maintenance costs, and/or location relative to residential services. The financial feasibility for the developer is not considered a qualifying factor. The approval of the deviation shall be part of the project approval, considered at a noticed public hearing. Generally the County's Housing Advisory Committee provides a recommendation and a resolution with specific findings and evidence to the Appropriate Authorities for consideration.

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**Inclusionary Household Affordability Requirements**

SIZE OF DEVELOPMENT	INCLUSIONARY REQUIREMENT	20% REQUIREMENT DISTRIBUTED BY HOUSEHOLD INCOME LEVEL		
		<i>Moderate Income</i>	<i>Low Income</i>	<i>Very Low Income</i>
1-2 Units/Lots	<i>No Inclusionary Requirement</i>			
3 - 4 Units/Lots	Payment of In-Lieu Fee	N.A.	N.A.	N.A.
5 Units/Lots	Provide 20% inclusionary units	1 unit		
6 - 7 Units/Lots	Provide 20% inclusionary units	1 unit + payment of In-Lieu Fee for any fractional difference		
8 Units/Lots	Provide 20% inclusionary units	1 unit + payment of In-Lieu Fee for any fractional difference		
9 Units/Lots	Provide 20% inclusionary units		1 unit + payment of In-Lieu Fee for any fractional difference	
10 - 14 Units/Lots	Provide 20% Inclusionary units	1 unit + payment of In-Lieu Fee for any fractional difference	1 unit	
15 - 16 Units/Lots	Provide 20% Inclusionary Units	2 units + payment of In-Lieu Fee for any fractional difference	1 unit	
17 or More Units/Lots	Provide 20% Inclusionary Units	8% of all units (1 unit minimum) + payment of In-Lieu Fee for any fractional	6% of all units (1 unit minimum)	6% of all units (1 unit minimum)

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		difference		
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The table above outlines the inclusionary obligation according to the method of "rounding up" the fractional requirement. According to the size of the proposed development, the 8%/6%/6% inclusionary requirements are applied. The rounding up process for a five unit development would be as follows: the 8% moderate-income requirement is 0.40, the 6% low income requirement is 0.30 and the 6% very low income requirement is 0.30. Beginning with the very low-income figure and rounding up, the 0.30 very low-income figure is not a whole number and so the 0.30 amount would be added to the next highest income category, low income. The 0.30 would be added to the 0.30 low income and the resultant figure of 0.60 is still not a whole number. The 0.60 is added to the 0.40 moderate-income figure and a resultant whole number of 1 unit is generated. Therefore, the inclusionary requirement would be 1 moderate income unit. The same type of rounding up process would be applied to each proposed development. If a fractional amount still remains after rounding up, then the developer has the option of paying an-in lieu fee based on the fractional requirement or providing an additional inclusionary unit.

C. DESIGN, SIZE AND LOCATION OF UNITS

The exterior appearance of the inclusionary units must be compatible with the market rate units. Compatibility includes the architectural style and detailing, but not necessarily the quality of materials or size of structures. The inclusionary units should be similar in number of bedrooms as the market rate units (up to four bedrooms). To the extent feasible, and if appropriate for the development, the inclusionary units shall be scattered throughout any development that also includes market rate units. However, inclusionary units may be clustered if it is found that such an arrangement better meets the objectives of the Inclusionary Program and the affordable housing goals of the County.

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**D. TIMING OF INCLUSIONARY UNITS**

The inclusionary units must be developed either prior to or concurrent with the development of the market rate units. The phasing plan for the release of building permits for both the inclusionary and the market rate units shall be described in the Master Inclusionary Developer Agreement.

**2. OFF-SITE OPTION**

**A. INCLUSIONARY % REQUIREMENT**

For certain residential developments of 5 or more units/lots, the inclusionary units may be developed on a site different (off-site) than the market rate units. To qualify for this option, the developer must demonstrate to the satisfaction of the Appropriate Authorities that the off-site units will provide a "greater contribution" to the Inclusionary Program and affordable housing goals of the County than units provided on-site. This option can be requested to be used in combination with other options, such as on-site units and/or an In-Lieu Fee. This option must be specifically approved as part of the project as described below.

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"Greater contribution" means, at a minimum:

- More inclusionary units are created off-site than would normally be required by the 20% Inclusionary Housing mandate; and
- if homeowner units, all of the inclusionary units would be affordable to low income households; or
- if rental units, all of the inclusionary units would be affordable to very low-income households and/or special needs households/individuals.

Units developed under the off-site option must be newly constructed units. Existing units cannot be substituted in the off-site option. Further, the off-site units must be located within the same Planning Area as the market rate units.

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**B. DESIGN, SIZE AND LOCATION OF UNITS**

The exterior quality and appearance of the inclusionary units must be compatible with development in the vicinity of the off-site location and be found to result in a positive benefit to the area. The inclusionary units shall be similar in number of bedrooms as the market rate units (up to four bedrooms), but the square footage size of the inclusionary units may be less than the market rate units. To the extent feasible and as appropriate for the development, the inclusionary units shall be scattered throughout any development that also includes market rate units. However, inclusionary units may be clustered if it is found that such an arrangement better meets the objectives of the program.

**C. TIMING OF INCLUSIONARY UNITS**

The inclusionary units must be developed either prior to or concurrent with the development of the market rate units. The phasing plan for the release of building permits for both the inclusionary and the market rate units shall be described in the Master Inclusionary Developer Agreement.

**D. APPROVAL PROCESS**

The provision of inclusionary units off-site will only be approved in developments that can demonstrate that they meet the "greater contribution" test specified above. The intent of the Inclusionary Housing Ordinance is to create developments that include a mix of household income ranges and housing options, which is more possible with on-site development. Therefore, off-site inclusionary housing will only be approved for developments that provide more benefit to the community in terms of number of inclusionary units and affordability levels as specified above. The "greater contribution" test must meet be met to the satisfaction of the Approving Body/Appropriate Authorities and supported by specific findings and evidence. Generally the County's Housing Advisory Committee provides a recommendation and a resolution with specific findings and evidence to the Appropriate Authorities for consideration.

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**3. PAYMENT OF IN-LIEU FEES**

**A. PROJECTS ELIGIBLE FOR PAYMENT OF IN-LIEU FEES**

**Projects of 3-4 Units/Lots**

All projects of 3-4 units/lots are eligible to pay In-Lieu Fees to meet their Inclusionary Housing requirement. However, developers also have the option of building an inclusionary unit instead of paying the In-Lieu Fees.

***a. Owner-Occupied Exemptions and Applicability of Inclusionary Requirement:***

For developments of 3-4 units/lots, one unit may be owner-occupied and exempt from the Inclusionary Housing Requirements, subject to a recorded agreement. Therefore, a 3 unit development with one of the units being owner-occupied would be completely exempt from the requirements of the Inclusionary Housing Ordinance because the net effect would be a 2 unit development. For a 4-unit development with one owner-occupied unit, the Inclusionary Requirement would only apply as if it were a 3-unit development.

To qualify as an owner-occupied unit as specified in the paragraph above, the owner must agree to occupy the unit for at least one year following completion. One owner-occupied exemption is allowed per development and further; each developer/owner is allowed only one owner-occupied exemption every 10 years.

For owner-occupied units that trigger an exemption, the owner must record an Inclusionary Housing Owner-Occupied Exemption Agreement (Agreement), a Promissory Note (for the amount of the In-Lieu Fee) secured by a Deed of Trust on the lot/unit being exempted requiring that the owner reside in the new unit for a minimum of one year from the date of the Notice of Completion. "Owner" must be an owner of record at the time the final map is recorded or use permit approved. All owners of record must sign the Agreement. After the one-year period, the owner may submit a request to the Redevelopment and Housing Office to remove the deed restriction. Proof of residency for the one-year period must be provided at that time.

**Projects of 5 or More Units/Lots**

***a. Payment of In-Lieu Fee for Fractional Obligations:***

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For inclusionary obligations that result in a fractional inclusionary requirement (e.g., a 6 unit development would have an inclusionary obligation of 1.2), the developer/owner can either pay an In-Lieu Fee for the fractional difference of the inclusionary obligation or they may provide an inclusionary unit instead of paying the fee.

***b. Payment of In-Lieu Fee for Partial or Total Inclusionary Obligation:***

Projects of 5 or more units are expected to produce inclusionary units on-site. However, in very rare and limited circumstances, a project of 5 or more units may meet all or part of its inclusionary obligation by paying In-Lieu Fees. To qualify, the developer must conclusively demonstrate that provision of inclusionary units is infeasible because of specific characteristics of the development site, such as excessive property maintenance costs and/or very limited access to services (e.g. transit, stores, etc.) that would meet the needs of very low and low income residents. In addition In-Lieu Fees may be required for projects requesting a deviation from the required affordability levels. For example if a project requests to only supply units at the moderate and low income levels the project could be required to also pay a fee to compensate for not providing units at the very low income level. The amount of such a fee would be determined as part of the project approval process.

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***Qualified Agricultural Subdivisions***

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Subdivisions of eligible agriculturally zoned land, as described below, may pay an In-Lieu Fee as compliance with the Inclusionary Ordinance instead of supplying units either on site or off site. In addition, the payment of the In-Lieu Fee may be deferred until such time, if ever, a building permit for a residential unit is applied for and issued by the County. The purpose of this provision is to allow subdivisions of agriculturally zoned property that are for the purpose of financing and/or agricultural operations to defer payment of the required In-Lieu Fee until a residential unit is constructed on the property. An Inclusionary Housing Agreement must be executed by the property owner and recorded over the entire development prior to the recordation of the Final Map, to set forth the terms of the fee deferral. The Agreement will require the payment of the entire In-Lieu Fee at the time that a residential building permit is issued for any lot located within the subdivision/development.

To qualify for the In-Lieu fee deferral, agricultural subdivisions must meet the following criteria:

1. Be currently zoned "Farmlands" by the Monterey County Code at the time of application; and
2. Result in subdivided parcels of not less than 40 acres in size. Further subdivisions of the resulting parcels will not be eligible for the fee deferral provisions and will require compliance with the remaining provisions of the Inclusionary Ordinance, and
3. The applicant/property owner must submit a request in writing as part of the subdivision application that states the purpose of the subdivision is for financing and/or agricultural operations and not for residential.  
Documentation supporting the request may be required as deemed necessary by the Redevelopment and Housing Director.

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#### **B. IN-LIEU FEE CALCULATION**

The In-Lieu Fee applicable to a project shall be consistent with the adopted In-Lieu Fee Schedule in effect at the time that a development application is deemed complete by the County. Based upon the 20% requirement; the **current In-Lieu Fees are based on a 5-unit development.** A copy of the current In-Lieu Fee Schedule is contained in Appendix G of this Manual.

#### **Developments Requiring a Fractional Amount of In-Lieu Fee:**

Developments of 3-4 units will pay a fractional amount of an In-Lieu Fee.

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As described above, an In-Lieu Fee can be part of an alternative form of compliance. The amount of the fee would be determined as part of the project approval and can be in-lieu of units or as compensation for deviating from the required levels of affordability. Specific findings and evidence must be part of the project approval documenting why an In-Lieu Fee is appropriate based on the project characteristics.

**In-Lieu Fee Calculation:**

The Redevelopment and Housing Office shall calculate the In-Lieu Fees on an annual basis, based on a calculation approved by the Board of Supervisors. The Board of Supervisors shall then adopt the fees annually. If new In-Lieu Fees are not adopted annually, the existing fees shall remain in place until such time that updated fees are adopted.

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**C. CALCULATION AND PAYMENT OF IN-LIEU FEE (TIMING)**

Payment of In-Lieu Fees shall be made in full or secured to the satisfaction of the Redevelopment and Housing Director or designee prior to the recordation of parcel or final maps, or where the development is not subject to subdivision approval, prior to issuance of the first building permit for the development. The In-Lieu Fee shall be calculated based on the In-Lieu Fee Schedule in effect at the time the application is deemed complete for a subdivision, land division or land use permit or at the time of the first building permit issuance, if there is no subdivision. A description of the process is included in Appendix G.

**D. USE OF IN-LIEU FEES**

The In-Lieu Fees shall be used in accordance with the adopted Monterey County Housing Policy and Allocation Procedures Manual which identify funding sources, funding standards, selection criteria and the funding process. A Notice of Funding Availability (NOFA) is issued annually identifying the applicable program guidelines and priorities for the year. According to the adopted Housing Policy and Allocation Procedures Manual, Inclusionary In-Lieu Fees shall be dedicated to the development of affordable housing projects and support of the housing programs within the County. These include, but are not limited to, assisting in the production and/or retention of affordable and special needs projects in conjunction with grants.

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## **II. Marketing and Selection Procedures**

The Redevelopment and Housing Office shall have overall responsibility for the marketing of inclusionary units and the selection of households to occupy those units. However, there may be instances where it is appropriate to delegate some of those responsibilities to the development and/or real estate community. This section of the Manual discusses the overall marketing and selection procedures.

### **1. MARKETING RESPONSIBILITIES**

#### **A. HOUSING AND REDEVELOPMENT OFFICE**

Staff at the Redevelopment and Housing Office shall be responsible for the general marketing of the Inclusionary Housing Program. This would include providing the following types of information:

- Developer fact sheets
- Homeowner fact sheets
- Tenant fact sheets
- Public Notices in newspaper, social service agencies, libraries, etc. regarding eligibility for occupancy and waiting list procedures
- Presentations at community events or organizations
- Other marketing materials as appropriate

Marketing materials should be available in both English and Spanish, as well as in formats accessible to the visually handicapped (e.g. large print format or Braille).

#### **B. PROPERTY OWNER/DEVELOPER**

As part of the Master Inclusionary Developer Agreement, the owner/developer may be required to submit a Management and Marketing plan for the County's approval. The Management and Marketing Plan shall contain at least the following elements:

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**For rental developments**

- Marketing and Tenant Selection Plan, including marketing procedures, efforts to market to special needs groups, selection process and bi-lingual procedures.
- Description of property management team
- Copies of rental agreements/leases
- Procedures for complying with fair housing laws
- Selection Procedures for Tenants (including priority for households who live/work within Monterey County)
- Initial rents and utility allowances (provided by staff)
- Agreement to maintain adequate property insurance
- Preferences may be given to employees in employer sponsored developments

**For homeowner developments**

Description of how the developer will coordinate occupancy of units with inclusionary homeowner selection procedures. (See Section 2 for description of these procedures.)

**2. SELECTION OF INCLUSIONARY OCCUPANTS**

**A. RENTAL UNITS**

The owner/developer shall be responsible for selecting tenants upon initial occupancy and subsequent vacancies. The selection procedure shall follow the marketing and selection plan submitted by the developer and approved by the Redevelopment and Housing Director or designee if determined to be required for the project (including any revisions required by the County as a condition of project approval), and updated as needed. The owner/developer shall be subject to the payment of applicable service fees for qualifying tenants as described in Section VI.4.

**B. HOMEOWNER UNITS**

The owner/developer shall follow the procedures as listed below.

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**a. Countywide Eligibility List (Inclusionary Homeowners)**

The Redevelopment and Housing Office shall be responsible for establishing and maintaining a countywide waiting list for occupancy of homeowner inclusionary units. To create the list, the Housing and Redevelopment Office shall publish notices in newspapers circulated in the Monterey County area (in both English and Spanish), provide public notices at community gathering areas (e.g. social service agencies, libraries, etc.), and distribute information to the real estate community. Information should include:

1. Homeowner Fact Sheet (See Example in Appendix A)
2. Priorities for Eligible Applicants,
3. Income Requirements,
4. When the Application Period Opens/Closes (if applicable),
  - Application Packet, and
  - Telephone/Contact for Questions

From the applications submitted, the Redevelopment and Housing Office shall create a list of potential applicants. The applicants shall then be ranked by priority on the waiting list. Priority shall be given to households with members who are either:

- Residents of the County of Monterey for a period of at least one year prior to application submittal; or
- Persons who have worked within the County of Monterey for at least 6 months prior to application submittal.

**b. Initial Establishment of List**

In order to initially establish an Eligibility Waiting List, the County shall first identify all those applicants who meet the live/work priority noted above. Through a random selection or lottery procedure, those applicants will be ranked on the waiting list. After all of the priority applicants have been ranked, the non-priority applicants shall then be ranked on the waiting list, again through a lottery procedure. The Eligibility Waiting List will thereafter contain two sets of applicants: those who meet the priority qualification and those who do not.

Following the initial establishment of the list, new applicants shall be added to the bottom of each portion of the list (either priority or non-priority) as their applications are received and according to whether they meet the

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priority qualifications. All applicants must ultimately be income-qualified to be eligible for an inclusionary unit.

**c. Selection from Eligibility Waiting List**

Each time inclusionary homeowner units become available for occupancy, the owner/developer and the Redevelopment and Housing Office staff shall follow these procedures:

1. At least 60 days prior to issuance of a Certificate of Occupancy for newly developed units, the owner/developer shall notify the County of the number and type of units available (i.e. bedroom size).
2. Within 10 business days of notice by the owner/developer, the Redevelopment and Housing Office shall cause to be pre-qualified the top five applicants on the list. Pre-qualify means that the information submitted by the applicant regarding income, residency, place of employment and any other relevant information has been verified and found to meet current requirements. Verification shall be conducted by either the Redevelopment and Housing Office staff or a designee agency (i.e. Housing Authority of Monterey County).
3. The Redevelopment and Housing Office shall provide the developer/owner with a Referral List of at least five pre-qualified applicants.
4. Owner/developer shall directly contact and work with the persons on the Referral List provided in the order provided.
5. Owner/developer shall conduct all additional screening and selection of applicants from the Referral List. All applicable Fair Housing Laws must be observed.
6. Selected applicants will be responsible for securing their own financing for the proposed inclusionary unit. Within 6 weeks of being selected, applicants will be required to submit documentation that they have qualified for their permanent mortgage financing. If they have not obtained financing commitments within that time frame, the developer/owner has the option of rejecting them and working with the next applicant(s) from the Referral List until all persons on the Referral List have been provided with an opportunity to buy a unit. Owners who are not able to fill vacant units from the Referral List may request additional names from the Eligibility Waiting List.

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7. If candidates on the Referral List do not become occupants of the inclusionary units, they will be returned to the Eligibility Waiting List with the same ranking as before (except as provided below in Section II.2.B.e., Removal from Eligibility Waiting List).

**d. Procedures for Resale of Existing Homeowner Inclusionary Units**

In the event that an existing inclusionary homeowner decides to sell a home during the affordability period, the owner will give the County written notice of such intent pursuant to the procedures as described in the owner's original Buyer's Occupancy and Resale Restriction Agreement. Upon receipt of the applicable service fee for obtaining a Re-Sale Value as set forth in Section VI. 4, the Redevelopment and Housing Office shall provide the homeowner with the maximum sale price figure for the unit (see Section III for a further description of the calculation process for maximum sale prices). The homeowner shall also submit payment of the applicable service fee for processing a re-sale as described in Section VI. 4 of this Manual.

Should the County not exercise its option to purchase the property, the County will announce the sale to all households on the County's Inclusionary Lottery List. The announcement shall include the following:

1. Address of the unit for sale;
2. Sale price and income level (Moderate, low, very low);
3. Description of the unit (i.e., 2-bedroom/2-bath, single story);
4. Directions to the unit;
5. Seller's contact information;
6. Procedures for prospective buyers to follow:
  - i. Drive by unit to determine interest. Do not disturb the occupants;
  - ii. If interested, obtain a loan pre-qualification letter from a lender;
  - iii. Make an appointment with owner to see the unit;
  - iv. If interested in purchasing the unit,
    - i. Present pre-qualification letter to seller
    - ii. Contact the Redevelopment and Housing Office to receive a copy of the list of financial information/documentation required for qualification for the Inclusionary Program

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iii. Request a draft of the current Inclusionary housing agreement for review.

v. If not interested, let the owners know as soon as possible.

In the case of several interested buyers, one buyer and one back-up buyer will be selected in order of rank based on assigned Lottery numbers.

If there are no interested buyers from the Inclusionary Lottery List, announcement letters shall be mailed to households listed on secondary lists (those households that missed the lottery process; recent Inclusionary applicants, etc.).

The homeowners/sellers shall track all responses received (yes, no and/or phone inquiries) and forward this information to the Redevelopment and Housing Office. It is the homeowner/seller's responsibility to schedule an adequate number of showings or open houses to enable buyers to view the premises and to follow-up with interested buyers to determine their interest in the unit.

**e. Removal from Eligibility Waiting List**

Applicants will be removed from the Eligibility Waiting List for any of the following reasons:

1. Fraudulent statements on Application or verification documents;
2. Purchase of a home or other property; or
3. Inability to qualify for financing to purchase a unit after two referrals to an Owner/Developer.

**f. Appeal Process**

The decisions by the Redevelopment and Housing Office in establishing the Eligibility Waiting List and/or maintaining the list may be appealed. All appeals must be in writing and must be received within 10 days after the Redevelopment and Housing Office has notified applicants of their standing on the List. An informal hearing on the appeal shall be conducted by the Housing Advisory Committee (HAC) with the Redevelopment and Housing Director (or designee) responsible for the final decision, based on the HAC's recommendation. The results of the appeal decision shall be communicated to the appellant in writing within 10 days of the hearing.

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**g. Purging of Eligibility List**

The Eligibility Waiting List shall be purged approximately every two years or as needed. A new list shall be developed based on the procedures described above.

**h. Options to Marketing/Selection Plan Submitted by Owner/Developer**

There may be situations where a developer has a specific target population for occupancy of the inclusionary housing units. For example, a developer of employee housing may request that potential occupants be employees of the employer/developer. The Redevelopment and Housing Office will review such alternate marketing/selection plans and, if appropriate, will approve such plans in lieu of some or all of the procedures described above.

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### III. Homeowner Inclusionary Unit Requirements

#### 1. ELIGIBILITY CRITERIA

##### A. INCOME

Households eligible for purchase of inclusionary units shall be of very low, low and moderate income. Household income limits are determined annually by HCD/HUD and are based on household size. See Appendix E of this Manual for the current income limits for very low, low and moderate-income households. The definition of income is listed in Appendix D of this Manual.

##### B. ASSETS

There is a maximum asset test for purchasers of inclusionary units. See Appendix D of this document for a description of maximum assets and definitions of assets.

##### C. LIVE/WORK IN MONTEREY COUNTY

Household members who live or work in Monterey County shall have priority in the purchase of inclusionary units. See Section II.2 above (Selection of inclusionary Occupants) of this Manual for further information about the priority process.

#### 2. ESTABLISHMENT OF INITIAL SALE AND RESALE PRICES

##### A. INITIAL SALE PRICE

The Redevelopment and Housing Office staff shall provide the developer/owner with the initial sale price for an inclusionary unit. The developer/owner shall be subject to the applicable service fees for "Initial Sale" for each unit described in Section VI.4. The sale price shall be developed using the following criteria:

**For Inclusionary units to be Occupied by a Very Low Income Household:**

1. Determine appropriate household size  
(number of bedrooms in unit + one person = appropriate household size)
2. Identify very low median income (usually 50% of median) for the appropriate household size (use current income limits as specified in Appendix E)
3. Determine monthly household allowance for housing payment:

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- i. Multiply 30% of very low median income for appropriate household size
    - ii. Divide amount by 12 for monthly allowance
  4. Determine the maximum sale price that the monthly household allowance for housing payment can support using the following parameters:
    - i. 7.5% fixed interest rate mortgage
    - ii. 30 year mortgage term
    - iii. 10% downpayment
    - iv. estimates of property taxes, assessments, loan insurance and financing fees, allowance for property maintenance and repairs, homeowners insurance, homeowner association dues, allowance for utilities and land rent (if home is on rented land).

**For Inclusionary units to be Occupied by a Low Income Household:**

1. Determine appropriate household size  
(number of bedrooms in unit + one person = appropriate household size)
2. Identify 70% of median income for the appropriate household size (use current income limits as specified in Appendix E)
3. Determine monthly household allowance for housing payment:
  - i. Multiply 30% of 70% of median income for appropriate household size
  - ii. Divide amount by 12 for monthly allowance
7. Determine the maximum sale price that the monthly household allowance for housing payment can support using the following parameters:
  - i. 7.5% fixed interest rate mortgage
  - ii. 30 year mortgage term
  - iii. 10% down payment
  - iv. estimates of property taxes, assessments, loan insurance and financing fees, allowance for property maintenance and repairs, homeowners insurance, homeowner association

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dues, allowance for utilities and land rent (if home is on rented land).

**For Inclusionary units to be Occupied by a Moderate Income Household:**

1. Determine appropriate household size  
(number of bedrooms in unit + one person = appropriate household size)
2. Identify 110% of median income for the appropriate household size (use current income limits as specified in Appendix E)
3. Determine monthly household allowance for housing payment:
  - i. Multiply 35% of 110% of median income for appropriate household size
  - ii. Divide amount by 12 for monthly allowance
4. Determine the maximum sale price that the monthly household allowance for housing payment can support using the following parameters:
  - i. 7.5% fixed interest rate mortgage
  - ii. 30 year mortgage term
  - iii. 10% down payment
  - iv. estimates of property taxes, assessments, loan insurance and financing fees, allowance for property maintenance and repairs, homeowners insurance, homeowner association dues, allowance for utilities and land rent (if home is on rented land)

**B. MAXIMUM RESTRICTED RESALE VALUE/ PRICE FOR INCLUSIONARY UNITS (FOR UNITS WITH AGREEMENTS DATED ON OR AFTER MAY 23, 2003)**

Inclusionary homeowners may refinance, obtain a second mortgage or decide to sell their unit, under terms and conditions consistent with this Manual, as set forth below and in the Inclusionary Housing Agreement recorded on the property. The Inclusionary homeowner must make their request in writing and will be subject to applicable service fees as described in Section VI.4. The Redevelopment and Housing Office staff shall determine the appropriate resale or refinance value/price by using the following formula:

**Resale Value/Price Without a Bedroom Addition:**

Staff calculates new resale value/price allowed by:

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1. Use original sale price as base figure,
2. Calculate percentage change in median income from original sale date to current date or most recent household income figures,
3. Apply the percentage change figure for median income to original sale price, which is the tentative maximum resale value/price.
4. The tentative maximum resale value/price may be modified as follows:
  - If unit is in decent condition based upon acceptable documentation, apply a home improvement credit in the amount of 10% to original sale price,
  - If unit is not in decent condition based upon acceptable documentation, the 10% credit shall be reduced in an amount sufficient to correct deficiencies,
5. Add the additional home improvement credit amount (from step 4) to the tentative maximum resale value derived in step 3.
6. Check new resale value/price to ensure that loan to value (LTV) does not exceed 100% of new resale value/price. Also check if the new resale value/price derived from steps 3-5 exceeds maximum affordability standard. If so, reduce the resale value/price to a value/price that does not exceed the maximum affordability standard.

**Resale Value/Price With a Bedroom Addition:**

Staff calculates new resale value/price allowed by:

1. Use original sale price as base figure,
2. Calculate percentage change in median income from original sale date to current date or most recent household income figures,
3. Apply the percentage change figure for median income to original sale price, which is the tentative maximum resale value/price with the following modifications.
4. The tentative maximum resale value/price may be modified as follows:
  - If unit is in decent condition based upon acceptable documentation and/or a unit inspection by Redevelopment and

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Housing Staff, apply a home improvement credit in the amount of 10% to original Sale price,

- If unit is not in decent condition based upon acceptable documentation and/or unit inspection by Redevelopment and Housing Staff, the 10% credit shall be reduced in an amount sufficient to correct deficiencies,
5. Calculate value of bedroom addition by calculating the change in household size estimate. For example, a bedroom addition to an existing 3-bedroom structure (4 person household size estimate) would result in a 4-bedroom unit and a 5-person household size estimate. The value of the bedroom addition depends on the dollar difference between the median income for a 5-person household as compared to the median income for a 4-person household. Using this dollar amount, estimate the amount of new loan that can be financed with this dollar amount using a 30% for low/very low income and 35% for moderate income housing cost to income ratio. An example of this calculation is included in Appendix F. The value of the bedroom is not determined by the actual costs of the addition/improvement.
  5. Add the additional home improvement credit amount (from step 4) and the bedroom credit (step 5) to the adjusted resale value derived in step 3.
  6. Check the new resale value/price to ensure that the proposed loan to value (LTV) does not exceed 100% of new resale value/price. Also check if new resale value/price derived from steps 4-7 exceeds maximum affordability standard. If so, the resale value/price will be reduced to a price that does not exceed the maximum affordability standard.

**C. DETERMINATION OF MAXIMUM AFFORDABILITY STANDARDS**

**(Applicable to resale of existing units with agreements dated on or after May 23, 2003)**

**For Inclusionary For Sale Units to be Occupied by a Very Low Income Household:**

1. Determine appropriate household size  
(number of bedrooms in unit + one person = appropriate household size)

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2. Identify very low-income limit (usually 50% of median income) for the appropriate household size (use current income limits as specified in Appendix E).
3. Determine monthly household allowance for housing payment:
  - A. Multiply 30% of 50% of median income for appropriate household size
  - B. Divide amount by 12 for monthly allowance
4. Determine the maximum sale price that the monthly household allowance for housing payment can support using the following parameters:
  - i. 7.5% fixed interest rate mortgage
  - ii. 30 year mortgage term
  - iii. 10% down payment
  - iv. Estimates of property taxes, assessments, loan insurance and financing fees, allowance for property maintenance and repairs, homeowners insurance, homeowner association dues, allowance for utilities and land rent (if home is on rented land).

**For Inclusionary For Sale Units to be Occupied by a Low Income Household:**

1. Determine appropriate household size  
(number of bedrooms in unit + one person = appropriate household size)
2. Identify lower income limit (usually 80% of median income) for the appropriate household size (use current income limits as specified in Appendix E)
3. Determine monthly household allowance for housing payment:
4. Multiply 30% of 80% of median income for appropriate household size
5. Divide amount by 12 for monthly allowance
6. Determine the maximum sale price that the monthly household allowance for housing payment can support using the following parameters:
  - i. 7.5% fixed interest rate mortgage

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- ii. 30 year mortgage term
- iii. 10% downpayment
- iv. estimates of property taxes, assessments, loan insurance and financing fees, allowance for property maintenance and repairs, homeowners insurance, homeowner association dues, allowance for utilities and land rent (if home is on rented land).

**For Inclusionary For Sale Units to be Occupied by a Moderate Income Household:**

1. Determine appropriate household size  
(number of bedrooms in unit + one person = appropriate household size)
2. Identify moderate income limit (usually 120% of median income) for the appropriate household size (use current income limits as specified in Appendix E)
3. Determine monthly household allowance for housing payment:
  - Multiply 35% of 120% of median income for appropriate household size.
  - Divide amount by 12 for monthly allowance
4. Determine the maximum sale price that the monthly household allowance for housing payment can support using the following parameters:
  - i. 7.5% fixed interest rate mortgage
  - ii. 30 year mortgage term
  - iii. 10% downpayment
  - iv. estimates of property taxes, assessments, loan insurance and financing fees, allowance for property maintenance and repairs, homeowners insurance, homeowner association dues, allowance for utilities and land rent (if home is on rented land).

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### **3. HOMEOWNER INCLUSIONARY UNIT REQUIREMENTS**

#### **A. OCCUPANCY REQUIREMENTS**

The inclusionary unit shall be the owner's principal place of residence. To be considered as a principal place of residency, the owner shall live in the unit for at least 10 months out of each calendar year. In emergency or hardship situations, the inclusionary owner can seek approval to rent or lease the inclusionary unit for a short period of time (generally a maximum of one year). All rentals or leases must be pre-approved by the County. The owner must submit a letter to the ~~Housing and~~ Redevelopment and Housing Office requesting permission to rent their unit, the reason for the request with appropriate documentation and length of time requested. The Redevelopment and Housing Director is authorized to review the request, receive a recommendation from the Housing Advisory Committee, and approve or deny the request based on the following:

- There are unique circumstances that justify allowing the owner to be relieved of their obligations to reside in the unit on a temporary basis, such as a necessary temporary move out of the area, the need to provide physical care for a relative, or significant financial hardship where the owner can not pay the mortgage due to a temporary job loss, divorce, etc.
- The owner agrees that the rental will be on a short term basis and that, if the circumstances continue beyond the agreed upon time frame, the owner will sell the unit to another qualified household pursuant to the Inclusionary Agreement recorded on their property.

The unit shall be rented to a qualified tenant household at the same affordability level as specified in the owner's Inclusionary Housing Agreement and at an "affordable rental cost". The inclusionary owner may select an income-qualified tenant. An "affordable rental cost" is defined as rent plus a utility allowance. Affordable rental costs shall not exceed 30% of 50% of the Area Median Income (AMI), adjusted by number of bedrooms in the actual unit for very low-income households; 30% of 60% of the AMI, adjusted by the number of bedrooms for low-income households; and 30% of 110% of the AMI for moderate-income households, adjusted by the number of bedrooms. The tenant shall also be income qualified as either a very low-, low-, or moderate-income household. Incomes must not exceed 50% AMI for very low income; 80% for low income; and 120% for moderate income, all adjusted for the actual household size of the qualifying tenant.

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If the request is approved, the owner will be required to execute an Inclusionary Housing Rental Agreement with the County that sets forth the terms of the short term rental, including paying applicable service fees for income qualifying the selected tenant, as described in Section VI.4.

**B. AFFORDABILITY PERIODS**

According to the Inclusionary Housing Agreement with the County, the inclusionary owner agrees that the resale value of the home is restricted for a period of time. For agreements signed prior to May 23, 2003, the period is typically 30 years from the original purchase date. For agreements signed on or after May 23, 2003, the period is in perpetuity or for the life of the structure if the structure is demolished or abandoned after 55 years.

**C. MAINTENANCE AND INSURANCE**

The inclusionary unit owner must maintain the home, including landscaping, in decent condition. At the time of resale/refinancing, the owner can receive up to a 10% addition to the original sale price if the unit has been maintained in decent condition. The owner shall maintain a standard all risk property insurance policy equal to the replacement value of the home, naming the County as additional insured.

**D. REFINANCING OF FIRST MORTGAGE/SECURING A NEW SECOND MORTGAGE**

The inclusionary owner may refinance a first mortgage or secure a second mortgage on the property. The County's lien position shall never be less than 3<sup>rd</sup> position on the property. The owner must contact the ~~Housing and~~ Redevelopment and Housing Office staff prior to refinancing or securing new debt in order to determine a current property value (resale value). The staff procedures for responding to refinancing/resale request are specified in Appendix F of this document, including paying the applicable service fee as described in Section VI.4.

**E. TITLE CHANGES AND PROPERTY INHERITANCE**

In certain instances, the inclusionary owner may modify the title on the property. One example is adding or deleting a spouse from title due to marriage, divorce or death. However, in all cases, the owner must contact the ~~Redevelopment and Housing Office prior to the transfer. If the owner dies~~ and there is no surviving owner and a child or stepchild of the owner inherits the property, the child/step-child shall notify the Redevelopment and Housing Office. The child/step-child is allowed to inherit the unit and to reside in it regardless of income, but will be subject to the existing Inclusionary Housing

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Agreement recorded on the property, including term of affordability, occupancy and monitoring, and resale provisions. If the inheriting child/step-child intends to sell the unit, he/she is subject to the County's resale process and the provisions contained in the recorded Inclusionary Housing Agreement, including payment of applicable service fees as described in Section VI.4.

An inclusionary owner may place his/her unit in a trust, but only if the trust is a revocable living trust where the owner is the trustor. The disposition of the inclusionary unit through such a trust is subject to the same terms and conditions as stated above, including restrictions on the resale of the inclusionary unit.

A Notice may be recorded indicating change of title to inheriting child/step-child, pursuant to these provisions.

**F. DEFAULT AND FORECLOSURE**

If an owner violates the terms of the original "Buyers Occupancy and Resale Restriction" agreement, the owner can be found to be in default of the agreement.

**IV. Rental Inclusionary Unit Requirements**

**1. ELIGIBILITY CRITERIA**

**A. INCOME**

Households eligible for rental of inclusionary units shall be of very low, low or moderate income. Household income limits are determined annually by HCD/HUD and are based on household size. See Appendix E of this document for the current income limits for very low, low and moderate-income households. The definition of income is listed in Appendix D of this document. The Redevelopment and Housing Office or its designee will initially verify the household income of tenants of inclusionary rental units. Subsequent annual certifications of income of renters shall be submitted by the owner/manager of the rental units to and verified by the County as part of the Annual Monitoring Process.

**B. ASSETS**

There is a maximum asset test for initial renter eligibility of inclusionary units. The County or its designee will verify the assets. See Appendix D of this document for a description of maximum assets and definitions of assets.

**Deleted:** provide the Housing and Redevelopment Office with information regarding income. If verified as income and asset eligible, he or she shall succeed to the Owner's interest and obligations under the original agreement. If the child or stepchild inheriting the property is not income eligible or has assets that exceed the maximum allowed or decides to sell the property, it must be sold to another eligible inclusionary applicant for the appropriate restricted resale price. However, the inheriting owner may own and occupy the unit until 12 months after the owner's death before offering the unit for sale and providing an Owner's Notice of Intent to Sell.

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**C. LIVE/WORK IN MONTEREY COUNTY**

Households who live or work in Monterey County shall have priority in the rental of inclusionary units. In selection of tenants, property owners and/or managers shall give reasonable preference to households who live or work in Monterey County.

**2. RENT SCHEDULES**

**A. INITIAL RENTS**

The ~~Housing and~~ Redevelopment and Housing Office or its designee shall determine maximum initial rents. The owner/developer shall be subject to payment of applicable service fees for qualifying tenants as described in Section VI.4. The inclusionary units shall be rented at affordable housing costs as specified in the Inclusionary Housing Agreement recorded on the project. An affordable rental housing cost is defined as rent plus a utility allowance as developed by the Housing Authority of the County of Monterey. Affordable housing costs shall not exceed 30% of very low-income limits (usually 50% of median income, adjusted by bedroom size) for very low-income households, 30% of 60% of median income (adjusted by bedroom size) for low-income households and 30% of 110% of median income for moderate-income households (adjusted by bedroom size).

**B. ANNUAL RENT CHANGES**

The ~~Housing and~~ Redevelopment and Housing Office shall notify property owners and/or property management companies of changes in the affordable rental housing cost annually upon receipt of revised income limits from HCD/HUD. At no time shall the new affordable rental housing cost be adjusted to less than the initial rent at the time the Master Inclusionary Developer Agreement was executed.

**3. RENTAL INCLUSIONARY UNIT REQUIREMENTS**

**A. HOUSEHOLD SIZE AND OCCUPANCY**

Upon initial occupancy, eligible households must have a household size appropriate for the rental unit. An appropriate household size is defined as a maximum of two persons per bedroom plus one person per unit and a minimum of one person per bedroom.

**B. LEASE REQUIREMENTS**

Except as may be provided in an agreement that allows the rental of a For Sale unit under hardship conditions, as described in Section III.3.A. above,

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all tenants must be provided with a lease that has a minimum period of 12 months. The lease must comply with all applicable federal and state laws. The lease shall include provisions that specify the maximum household size allowed in the unit and requirements that the unit be maintained in a decent and safe condition. Further, the lease must include requirements that prohibit subleasing, require the tenant to report any changes in household size or income during their tenancy, and further specify that the tenant must comply with all monitoring requests of the Redevelopment and Housing Office or its designee.

**C. CHANGES IN HOUSEHOLD SIZE OR INCOME DURING TENANCY**

If the tenant's household income increases above the maximum allowed for very low, low or moderate-income households, the tenant may choose to remain in the inclusionary unit. However, the tenant would have a revised affordable rental housing cost based on their new income category. For example, a very low-income tenant whose income increases and is now a low-income tenant would have a new maximum affordable rental cost based on affordable rents for a low-income unit. A low-income tenant whose income increases such that the household is now a moderate-income tenant would have a new maximum rental cost based on a moderate-income unit. A previous very low, low or moderate income tenant whose income increases above the maximum moderate income limit would have a rental cost that would be the lesser of: a) thirty percent (30%) of the actual household income of the tenant; or b) market rate rent. The property owners/managers must, to the extent possible, maintain the number of units at each income level required by the Inclusionary Housing Agreement recorded on the project.

These provisions shall be enforced through Inclusionary Rental Housing Agreements recorded on each project.

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## **V. Monitoring and Compliance Procedures**

### **1. PROJECT MONITORING AND COMPLIANCE**

#### **A. MONITORING PROCEDURES: RENTAL PROPERTIES**

##### **General Policies:**

Rental projects developed under the Inclusionary Program are monitored every two years to determine compliance with the terms of the Regulatory Agreement recorded against the property. The areas to be included in the monitoring process include tenant incomes and rents, payment of property taxes and hazard insurance and review of the terms of the leases.

An annual certification of ownership is required. The rent schedule for the Inclusionary Program will be provided to the owner with the certification request.

##### **Procedures:**

1. A Monitoring Review Form is initiated for each project. The terms of the Inclusionary Agreement are verified and the rent and occupancy limits are noted on the form.
2. Initial letters are mailed to property owners requesting completion of certifications regarding non-discrimination policies, names and incomes of tenants and the household size, rents charged, and ownership status. Copies of Income Guidelines and Rent Schedules appropriate for the development will be included in the mailing. The owner is instructed to give the tenants a form entitled Tenant Income Verification for completion. These forms are to be returned along with documentation of hazard insurance and copies of current leases.
3. Second Notices are sent by certified mail if the property owner does not respond within fourteen business days.
4. Correspondence will be sent by the sheriff's office, process server, delivery service or hand delivered to the address by a staff member if the property owner fails to respond in a timely manner to the second notice or if mail has been refused or returned as undeliverable. Owners who fail to respond within seven business days will be referred to County Counsel for further action.
5. Assessors Office records will be reviewed to verify current ownership and mailing addresses where appropriate.

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6. Failure to cooperate with the monitoring review process will be considered a breach of the Inclusionary Agreement and the Regulatory Agreement. County Counsel will be notified of any such breach in order that legal remedies may be initiated.
7. The income guidelines of the Section 8 Program are utilized by Redevelopment and Housing Office staff for the monitoring review.
8. Staff will review information provided by the owner and tenants to determine compliance with the Inclusionary Agreement and Regulatory Agreement as it pertains to allowable rents, number of restricted units, current income of tenants and any further restrictions on occupancy specified in the Agreement.
9. The review of rent affordability will include the standards set forth in the Inclusionary Agreement for each individual project.
10. Leases are reviewed to determine if non-discrimination policies and prohibitions against subletting are included.
11. If there are discrepancies between the statements of the owner and tenant, additional documentation will be requested.
12. Payment of hazard insurance in an amount sufficient to replace the structures shall be verified.
13. A letter will be issued to the property owner addressing any compliance issues. The letter will specify a corrective action deadline. In general, a 30-day period will be adequate.
14. When a property has changed ownership without notice to the County and this information becomes known at the time of the monitoring review, staff will schedule an appointment with the new owner to discuss the provisions of the Inclusionary Agreement. Current Rent Schedules and Income Guidelines will be provided.
15. The Monitoring Review Form will be completed. The Inclusionary Housing database will be updated to reflect compliance or non-compliance.
16. Other County offices may be alerted when the monitoring review reveals code violation or dangerous situations.
17. Every effort will be made to provide owners and tenants with the appropriate information to ensure a successful monitoring resulting in full compliance with the Inclusionary Housing Program.

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However, referrals will be made to County Counsel because of failure to cooperate or non-compliance.

**B. MONITORING PROCEDURES: FOR SALE UNITS**

**General Policies:**

It is the policy of the County of Monterey to annually monitor compliance with the terms and conditions of the Inclusionary Housing Agreement recorded against for-sale units developed under the Inclusionary Housing Program.

Annual Monitoring will include the owner occupancy requirement and prohibitions against rental of the dwelling. The review will provide owners with an opportunity to become familiar with the guidelines of the Inclusionary Housing Program and any changes in adopted policies and procedures.

**Monitoring Procedures:**

1. Initial letters are mailed to property owners requesting completion of a certification of owner-occupancy and documentation in the form of a utility bill with the name and address shown.
2. Second notices are sent by certified mail if the property owner does not respond within fourteen business days.
3. Correspondence may be sent by the sheriff's office, process server, delivery service or hand delivered by staff when the owner fails to respond to the second notice.
4. Assessors Office records will be reviewed to verify current homeowner's exemption, possible change in ownership and mailing addresses where appropriate.
5. If a property has changed ownership without notice to the County and this information becomes known at the time of the monitoring review, staff will schedule an appointment with the new owner to discuss the provisions of the Inclusionary Housing Agreement. Areas of concern will include review of the buyers' ability to meet standard program eligibility requirements, purchase price and continued participation in the program. County Counsel will be notified of any non-compliance issues in order that appropriate legal remedies can be implemented.

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6. Where the review raises compliance concerns, the owner will receive written notice of the compliance issue. In general, a 30-day corrective action period will be given.
7. Other County offices may be alerted when the monitoring review reveals code violations or dangerous situations.
8. Every effort will be made to provide owners with the information needed to complete the monitoring review and maintain compliance with the Inclusionary Housing Agreement. However, referrals will be made to County Counsel when appropriate because of non-compliance. Legal remedies specified in the Agreement or otherwise allowed under County Code or State and Federal law will be implemented

## **2. PROGRAM MONITORING**

### **A. ANNUAL HOUSING REPORT**

As part of the Annual Housing Report prepared each year by the Redevelopment and Housing Office, there will be a brief summary of the accomplishments and challenges of the Inclusionary Housing Program for the previous year.

### **B. FIVE YEAR REPORT**

At least every five years, the Redevelopment and Housing Office will prepare a complete evaluation of the Inclusionary Housing Program. This evaluation will include a summary of housing units produced, households assisted, In-Lieu Fees collected and the use of those fees, recommendations for policy or Ordinance revisions, etc. The public will be asked to comment on the report either prior to or during its preparation and the final report will be presented to all appropriate review bodies:

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## **VI. Other**

### **1. EXEMPTIONS TO ORDINANCE**

There are exemptions from the Ordinance for developments such as farmworker housing, mobile home park developments and other specific development situations (Section 18.40.050).

In addition, in situations 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, 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. (Section 18.40.100 D).

### **2. POLICIES FOR AMENDMENTS TO AGREEMENTS**

**(For Agreements executed prior to the Adoption of the 2003 Inclusionary Housing Ordinance Amendments)**

An Inclusionary Buyers Agreement executed prior to the adoption of the 2003 Ordinance Amendments may be amended to include new provisions of the 2003 Ordinance. Amendments may include allowing the existing inclusionary homeowner to refinance their unit to obtain cash and provide for bedroom additions with the total amount of encumbrances not to exceed 100% of value. However, the terms of their original agreement will prevail in all other areas including resale value calculations and affordability periods (except as noted below).

### **3. AFFORDABILITY PERIOD REQUIREMENTS FOR EXISTING INCLUSIONARY UNITS**

#### **Sale of an Existing inclusionary unit During Affordability Period**

If an inclusionary homeowner decides to sell their unit during the affordability period in effect according to the terms of their Buyers Agreement, the unit shall be sold to another qualified inclusionary buyer according to the procedures outlined in this manual, including the payment of applicable service fees. However, the new Buyers Agreement shall specify a new affordability period as defined in the Inclusionary Housing Ordinance in effect at the time the unit is sold.

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**4. SERVICE FEES**

On April 26, 2011, the Monterey County Board of Supervisors approved Resolution #11-117 that authorized the collection of Service Fees for certain functions required for the Inclusionary Housing Program. The services associated with the adopted fees include processing Sale and re-Sale of units; processing requests for refinances; providing initial and subsequent sale and re-sale values for ownership units; and qualifying tenants for: initial occupancy for Inclusionary Rental Units in multi-family projects, initial occupancy and turnover for Inclusionary Rental Units in projects less than 4 units and ownership units that are being rented; and as otherwise provided for in the Inclusionary Housing Agreement. The adopted fees are assessed per transaction as follows:

Initial Sale:	\$500.00
Re-Sale:	\$500.00
Re-Finance:	\$200.00
Re-Sale Value:	\$ 35.00
Qualifying a Tenant:	\$200.00

These fees are to be collected from the project developer, inclusionary owner, or inclusionary rental owner depending on what is being requested. The requested service must be in writing accompanied by payment in a form of payment acceptable to the Redevelopment and Housing Office as determined by the Director.

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## VII. APPENDICES

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**APPENDIX A. HOMEOWNER FACT SHEET**

On the following page is a sample fact sheet that explains the Inclusionary Housing Program for a prospective homeowner. This fact sheet should be provided to potential applicants when they inquire about the program. This fact sheet should be available in both English and Spanish.

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**INCLUSIONARY HOUSING PROGRAM  
INFORMATION FOR POTENTIAL INCLUSIONARY HOMEOWNERS**

**1. What is the Inclusionary Housing Program?**

The County of Monterey requires that 20% of all newly constructed units must be affordable to very low, low and moderate-income households. Developers must agree to sell 20% of their units at an affordable price to a very low, low or moderate-income household.

**2. What is an Affordable Price?**

The County of Monterey calculates affordable sale prices annually. The calculation is based on median household incomes for Monterey County and the assumption that no more than 30-35% of an average household's income should be spent for housing costs.

**3. How Can I Buy an Inclusionary Housing Unit?**

The County maintains an eligibility list for prospective inclusionary homeowners. Generally, a household can qualify if it has a household income that is below the maximum limits for low or moderate-income. Priorities are given to households who have members that live or work in Monterey County. Contact the phone number listed on the bottom of this sheet for more information about household income limits or being placed on the eligibility list.

**4. What are my Responsibilities if I Buy an Inclusionary Housing Unit?**

In return for the opportunity to purchase a home at an affordable price, the County requires the following while you own the home:

- Maintain property insurance on the home;
- Keep your home (including landscaping) in decent condition;
- Live in the home as your primary residence (in an emergency situation, you can rent your home to another low/moderate income household BUT you must obtain the County's permission prior to renting it);
- When you sell your home, you must sell it for the price determined by the County. You also must sell it to another eligible inclusionary homeowner. The RESALE PRICE is restricted and determined by the County – **it is likely that the resale price will be less than other similar properties that are not inclusionary housing units; and**
- You must co-operate with any monitoring requests during the time you live in the home (such as verification that you are using the home as your primary residence or verification that you are maintaining your property insurance).

**FOR FURTHER INFORMATION:  
County of Monterey  
Redevelopment and Housing Office  
(831) 755-5390**

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**APPENDIX B. DEVELOPER FACT SHEET**

On the following page is a sample fact sheet that explains the Inclusionary Housing Program for a prospective developer of inclusionary housing units.

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**INCLUSIONARY HOUSING PROGRAM  
INFORMATION FOR POTENTIAL DEVELOPERS OF INCLUSIONARY UNITS**

**1. What is the Inclusionary Housing Program?**

The County of Monterey requires that 20% of all developments of 3 or more units must be affordable to very low, low and moderate-income households. Developments of 3-4 units can pay an In-Lieu Fee instead of constructing a unit. Developments of 5 or more units are expected to construct Inclusionary housing units.

**2. How Many inclusionary Units Will I Have to Provide?**

The 20% Inclusionary Requirement includes the following:

- 6% affordable to very low-income households,*
- 6% affordable to low-income households, and*
- 8% affordable to moderate-income-households.*

Depending on the size of the development you are proposing, you will be required to provide inclusionary units that are affordable to different household income levels.

**3. How do I Request an Alternative Form of Compliance?**

Under certain circumstances as specified in Section of this Manual, alternative forms of compliance may be considered, including providing units off site, deviating from the required affordability levels, and/or paying an In-Lieu Fee for part or all of the required obligation. The alternative must be approved as part of the project approval and must meet certain criteria that demonstrate that the request would better meet the Inclusionary Program goals and the affordable housing needs of the County. Financial feasibility for the developer is not an acceptable justification. The developer must submit a detailed request in writing with appropriate documentation and justification. The request is evaluated by staff then generally taken to the Housing Advisory Committee (HAC) for consideration. The HAC provides a recommendation to the Approving Bodies in the form of a resolution with specific findings. (Attachment 1 to this Appendix includes several example scenarios of alternative forms of compliance).

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**4. Who Determines the Sale Price (or Rent) for the Inclusionary units?**

Staff at the County of Monterey, Office of Housing and Redevelopment, will be able to provide you with affordable the sale price or rent for the inclusionary units. The sale price/rent is based on a formula using median household incomes for Monterey County.

**5. Who Can Buy or Rent an Inclusionary Unit from Me?**

Homeowner Units: The County maintains a list of prospective inclusionary homebuyers. When your inclusionary unit is ready to be sold, the County will provide you with the names of several prospective homebuyers. You must sell the unit to an eligible inclusionary household at the affordable sale price provided by the County.

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Rental Units: You must rent the inclusionary rental unit to a household that is qualified by the County (or its designee) as being very low, lower or moderate income. You can select the tenant assuming you follow all fair housing laws and marketing/selection requirements specified by the County.

**6. What Are My Responsibilities Once I Sell/Rent the Inclusionary Unit?**

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Homeowner Units: Once your unit is sold to an eligible inclusionary homeowner, you have no further responsibilities.

Rental Units: Rental units must continue to remain affordable and occupied by eligible households in perpetuity. Property owners must agree to these restrictions and must agree to cooperate with all monitoring requests by the County.

**FOR FURTHER INFORMATION:  
County of Monterey  
Office of Housing and Redevelopment  
(831) 786-1350**

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**ATTACHMENT 1**  
**Example Scenarios for Alternative**  
**Forms of Compliance**

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**EXAMPLE A**

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Project Description:

A 25 single family lot subdivision. The proposed lots are 1 acre each approximately seven miles from residential services, schools, etc. and there are Homeowner's Association Dues for roads and other amenities.

Inclusionary Housing Compliance:

The project is required to set aside 5 of the lots/units for Inclusionary Housing with 1 at the very low income level, 2 at low income and 2 at moderate income.

Alternative Form of Compliance:

Provide 2 moderate on site units and construct 4 rental units for very low income in an established community or city within the same Planning Area as the project.

**EXAMPLE B**

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Project Description:

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A 40 unit ownership townhouse project with many amenities. There are very high Homeowner's Association Dues.

Inclusionary Housing Compliance:

The project is required to set aside 8 of the units for Inclusionary Housing with 2 at the very low income level, 2 at the low income level and 4 at the moderate income level.

Alternative Form of Compliance:

Provide 8 moderate income on site units and pay an In Lieu Fee equal to 4 units to compensate for not providing very low and low income units.

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**APPENDIX C. DEVELOPER PROCEDURES**

**INCLUSIONARY HOUSING PROGRAM DEVELOPMENT REVIEW  
PROCESS**

1. Planning receives an application for development of a residential project (i.e., subdivision or use permit).
2. If the project will result in new units, Planning sends a referral package to the Redevelopment and Housing Office (RHO).
3. The RHO reviews the application to determine the Inclusionary Housing requirements or if the project is exempt. If the developer is requesting approval of an alternative form of compliance they must submit a written request with supporting documentation. The RHO reviews and evaluates the request and schedules it for consideration by the Housing Advisory Committee as appropriate.
4. The RHO notifies the assigned planner of the requirements and requests additional information as necessary. If the project involves on-site compliance the applicant will likely be asked to submit additional information about the proposed inclusionary units (design and location) to ensure that the CEQA review includes enough detail.
5. The RHO prepares a draft memo to the Planner that provides an analysis of the Inclusionary requirements, recommendation pertaining to compliance, and draft findings and a condition of approval for inclusion in the project packet for consideration by the Approving Body.
6. The draft staff report prepared by the project planner for the project is reviewed by the RHO prior to the hearing to ensure that the conditions and draft findings of approval pertaining to Inclusionary Housing are acceptable.
7. The Approving Body is not required to approve but may consider a draft Inclusionary Housing Agreement as part of its approval of the project and can require that the approved Inclusionary Housing Agreement be recorded prior to the recordation of the Final Map or issuance of building permits.
8. The Inclusionary Housing Agreement and supporting documents are executed by the applicant and the RHO and recorded and/or Inclusionary In-Lieu Fees are paid or secured.
9. The RHO "clears" the Inclusionary Housing conditions of approval by sending a memo to the project planner along with supporting documents.

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**APPENDIX D. INCOME AND ASSET DEFINITIONS**

The following definitions shall be used in determining applicant eligibility for the County's Inclusionary Housing Program. To be eligible for the program, applicants must meet both the income and the asset limitations.

**1. INCOME**

**Maximum Income Limitation**

Households occupying inclusionary units shall have incomes that are very low, low and moderate-income, as specified by the contractual agreement for the residential development in which they are located. The definition of very low, low (lower) and moderate-income shall be the same as provided by HCD/HUD and the State of California annually for the Monterey County area. See Appendix E of this document for the current income limits.

**2. DEFINITION OF INCOME**

The definition of income shall be the same as the federal definition found in 24 CFR Part 5 (commonly known as the "Section 8" definition). As specified in 24 CFR Part 5, the income derived from any assets shall be included in the income calculation. *The only exception to this is when a homeowner applicant is using any of their assets to pay for down payment or closing costs to purchase the inclusionary unit. In that case, the potential "income" from those assets shall not be calculated.* The value of the asset itself, however, is still counted under the asset limitation test below.

**3. ASSETS**

**Maximum Asset Limitation**

***Homeowners:***

The maximum asset limitation is the total of the following for homeowner households:

1. 30% of the purchase price
2. 25% of current median income
3. 6 months of living expenses based on household size

***Renters:***

Upon initial occupancy, households who are applying for a rental inclusionary unit cannot have assets that exceed \$30,000 for non-elderly households and \$75,000 for elderly households.

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**Definition of Assets**

Assets used to determine the maximum asset limitation allowed are defined in the following table. Any assets disposed of within 12 months prior to applying for an inclusionary unit shall also be included in the calculation of maximum assets. However, exceptions to this may be made in circumstances where assets were disposed of in order to pay medical, legal or other necessary expenses. The Housing and Redevelopment Manager shall approve all such exceptions.

Assets to be <b>Included</b> in Maximum Asset Limitation	Assets to be <b>Excluded</b> in Maximum Asset Limitation
<ol style="list-style-type: none"> <li>1. Cash held in savings accounts, checking accounts, safe deposit boxes, homes, etc. For savings accounts, use the current balance. For checking accounts, use the average 12 month balance</li> <li>2. Cash value of trusts available to the applicant.</li> <li>3. Equity in real estate or other capital investments. Equity is the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and all reasonable costs that would be incurred in selling the unit.</li> <li>4. Cash value of stocks, bonds, Treasury bills, certificates of deposit and money market accounts.</li> <li>5. Lump sum or one-time receipts, such as inheritances, lottery winnings, insurance settlements, etc.</li> <li>6. Personal property held as an investment such as gems, jewelry, coin collections, etc.</li> <li>7. Mortgages or deeds of trusts held by the applicant.</li> </ol>	<ol style="list-style-type: none"> <li>1. Necessary personal property except as noted in #6 of the "included" assets. Necessary personal property includes household goods and reasonable transportation.</li> <li>2. The current value of individual retirement and Keogh accounts. (Any income currently being received from such accounts however shall be considered as "income" in the income calculations.)</li> <li>3. Cash value of life insurance policies available to the individual before death.</li> <li>4. Assets that are part of an active business. "Business" does not include rental property that is held as an investment and not a main occupation.</li> <li>5. In the case of an inheritance of an inclusionary property, the equity in the inclusionary property shall not be counted as an asset in determining whether the party who inherits the property is income/asset eligible.</li> </ol>

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**APPENDIX E. INCOME LIMITS (UPDATE ANNUALLY)**

The following income limits shall be updated annually, based on information provided by the U.S. Department of Housing and Urban Development (HUD) or the State of California, Department of Housing and Community (HCD) Development.

**2010 Household Maximum Income Limits,  
County of Monterey (Updated Annually)**

INCOME CATEGORY	1 PERSON	2 PERSONS	3 PERSONS	4 PERSONS	5 PERSONS	6 PERSONS
Very Low (0-50% of median income)	\$23,150	\$26,450	\$29,750	\$33,050	\$35,700	\$38,350
Low/Lower (51-80% of median income)	\$37,050	\$42,350	\$47,650	\$52,900	\$57,150	\$61,400
Moderate (81-120% of median income)	\$55,500	\$63,450	\$71,350	\$79,300	\$85,650	\$92,000

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**APPENDIX F. INITIAL SALE PRICE, REFINANCING AND RESALE STAFF PROCEDURES**

**1. CRITERIA FOR DETERMINING INITIAL SALE PRICE**

**Very Low Income Units:**

- *Housing Cost to Income Ratio:* 30% of 50% of Area Median Income (AMI) or the maximum income for a very low income household, adjusted for bedroom and household size
- *Interest Rate and Term:* 7.5% Interest, 30 Year Term
- *Down Payment:* 10% of Sale Price
- *Estimates of:* property taxes, assessments, loan insurance and financing fees, allowance for property maintenance and repairs, homeowners insurance, homeowner association dues, allowance for utilities and land rent (if home is on rented land)

**Low/Lower Income Units**

- *Housing Cost to Income Ratio:* 30% of 70% of AMI, adjusted for bedroom and household size
- *Interest Rate and Term:* 7.5% Interest, 30 Year Term
- *Down Payment:* 10% of Sale Price
- *Estimates of:* property taxes, assessments, loan insurance and financing fees, allowance for property maintenance and repairs, homeowners insurance, homeowner association dues, allowance for utilities and land rent (if home is on rented land).

**Moderate income Units:**

- *Housing Cost to Income Ratio:* 35% of 110% of AMI, adjusted for bedroom and household size
- *Interest Rate and Term:* 7.5% Interest, 30 Year Term
- *Down Payment:* 10% of Sale Price
- *Estimates of:* property taxes, assessments, loan insurance and financing fees, allowance for property maintenance and repairs, homeowners insurance, homeowner association dues, allowance for utilities and land rent (if home is on rented land).

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INITIAL SALE PRICES FOR INCLUSIONARY UNITS CHART (Updated Annually)

**2010 Initial Sale Prices for Inclusionary Units, County of Monterey**

HOUSEHOLD INCOME LEVEL	SALE PRICE OF A 1 BEDROOM UNIT	SALE PRICE OF A 2 BEDROOM UNIT	SALE PRICE OF A 3 BEDROOM UNIT	SALE PRICE OF A 4 BEDROOM UNIT	SALE PRICE OF A 5 BEDROOM UNIT
Very Low Income (50%)	\$90,670	\$101,983	\$113,294	\$122,379	\$131,463
Low/Lower Income (70%)	\$127,027	\$142,925	\$158,673	\$171,419	\$184,169
Moderate Income (110%)	\$232,660	\$261,656	\$290,750	\$314,046	\$337,342

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**2. CRITERIA FOR DETERMINING RESALE/REFINANCING VALUES**

These procedures are used when an inclusionary housing owner decides to sell their property, refinance an existing mortgage or add a second deed of trust, during the period of affordability.

**A. Calculating Resale/Refinancing Value Without a Bedroom Addition**

1. Property Owner notifies County that they wish to sell, refinance or add a second deed of trust to their property.
2. Staff calculates new resale/refinancing value by:
  - a. Use original sale price as base figure,
  - b. Calculate percentage change in median income from original sale date to current date or most recent household income figures,
  - c. Apply the percentage change figure for median income to original sale price, which is the maximum resale value/price with the following modifications,
  - d. If unit is in decent condition based upon acceptable documentation, apply home improvement credit in the amount of 10% to original sale price,
  - e. If unit is not in decent condition based upon acceptable documentation, the 10% credit shall be reduced in an amount sufficient to correct deficiencies,
  - f. Add the additional home improvement credit amount (from steps "d" or "e") to the maximum resale value derived in step c. This is the new resale value/price as modified by home improvement credits.
3. Check new resale value/price to ensure that loan to value (including existing and proposed new loans) does not exceed 100% of resale value/price. Also check if new resale value/price derived from steps a-f above exceeds maximum affordability standard. If so, reduce the resale value/price to a value/price that does not exceed the maximum affordability standard.
4. Staff notifies property owner and lender (if appropriate) of new resale/refinancing value and, if applicable, amount of new encumbrance allowed (for refinancing/second deeds of trust).
5. If needed, Housing and Redevelopment Program Manager or designee shall execute agreement to subordinate County's interest

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to the first or second loan holder. The agreement shall include provisions for notice of default and cure rights for the County.

6. If owner takes cash out from the refinancing, staff prepares amendment to existing Resale Restriction Agreement, which will allow property owner to refinance or add additional second deed of trust. Staff sends amendment to property owner for their signature. Staff will verify whether cash is taken out from Estimated Closing Statement from Lender/Title Company. If no cash is taken out, no amendment is required.
7. Upon receiving signed amendment from property owner, staff arranges to have appropriate County representative sign amendment and then records amendment.
8. Staff files recorded agreement in property owner's file and ensures that the file reflects new refinancing/second deed of trust information. Staff obtains final closing statement at close of escrow. Staff also records request for notice of default.

**B. Calculating Refinancing Value With a Bedroom Addition**

1. Property Owner notifies County that they wish to refinance or add a second deed of trust to their property and are planning on a bedroom addition.
2. Staff calculates new resale value and amount of new encumbrance allowed by:
  - a. Use original sale price as base figure,
  - b. Calculate percentage change in median income from original sale date to current date or most recent household income figures,
  - c. Apply the percentage change figure for median income to original sale price, which is the maximum resale value/price with the following modifications,
  - d. If unit is in decent condition based upon acceptable documentation, apply home improvement credit in the amount of 10% to original sale price,
  - e. If unit is not in decent condition based upon acceptable documentation, the 10% credit shall be reduced in an amount sufficient to correct deficiencies,
  - f. Add the additional home improvement credit amount (from steps "d" or "e") to the maximum resale value derived in step c. This is the new resale value/price as modified by home improvement credits.

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3. Calculate value of bedroom addition by calculating the change in household size estimate. For example, a bedroom addition to an existing 3-bedroom structure (4 person household size estimate) would result in a 4-bedroom unit and a 5-person household size estimate. The value of the bedroom addition depends on the dollar difference between the median income for a 5-person household as compared to the median income for a 4-person household. Using this dollar amount, estimate the amount of new loan that can be financed with this dollar amount using a 30% for low/very low income and 35% for moderate income housing cost to income ratio and the inclusionary underwriting standards.
4. Add the value of the bedroom credit (step 3) to the maximum resale value derived in step 2 (f).
5. Check new resale value/price from step 4 to ensure that loan to value (including existing and proposed new loans) does not exceed 100% of new resale value/price as derived in step 4. Also check if new resale value/price derived from step 4 exceeds maximum affordability standard. If so, reduce the resale value/price to a price that does not exceed the maximum affordability standard.
6. Staff notifies property owner and lender (if appropriate) of new resale value and amount of new encumbrance allowed (including bedroom addition allowance as calculated in step 2 (e) above).
7. If needed, Housing and Redevelopment Program Manager or designee shall execute agreement to subordinate County's interest to the first or second loan holder. The agreement shall include provisions for notice of default and cure rights for the County.
8. If owner wants to take cash out from the refinancing, staff prepares amendment to existing Resale Restriction Agreement, which will allow property owner to refinance existing debt or add additional second deed of trust. Staff sends amendment to property owner for their signature. Staff will verify whether cash is taken out from Estimated Closing Statement from Lender/Title Company. If no cash out, no amendment is required.
9. Upon receiving signed amendment from property owner, staff arranges to have appropriate County representative sign amendment and then records amendment.
10. Staff files recorded agreement in property owner's file and ensures that the file reflects new refinancing/second deed of trust information.
11. Staff verifies that property owner has the appropriate building permit for the new bedroom addition.
12. Staff instructs lender or other appropriate body to open escrow account for bedroom addition amount with joint signatures for releasing funds required of both property owner and County. If bedroom addition is not

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completed within a reasonable time frame, staff will instruct that the funds in escrow be paid back to the lender.

13. Upon notice from property owner, staff inspects property and approves release of funds for bedroom addition as appropriate during the construction process. Staff obtains final closing statement at close of escrow. Staff records request for notice of default.

**Bedroom Addition Calculation**

Calculate the value of bedroom addition by calculating the change in household size estimate. For example, a bedroom addition to an original 3-bedroom structure (4 person household size estimate) would result in a 4-bedroom unit and a 5-person household size estimate. The value of the bedroom addition depends on the dollar difference between the Area Median Income (AMI) for a 5-person household as compared to the AMI for a 4-person household. Using this dollar amount, estimate the amount of new loan that can be financed with this dollar amount using a 30% for low/very low income and 35% for moderate income housing cost to income ratio and the County's typical underwriting standards.

**2010 Bedroom Addition Values,  
County of Monterey (Updated Annually)**

HOUSEHOLD INCOME LEVEL	ORIGINAL 1 BEDROOM UNIT	ORIGINAL 2 BEDROOM UNIT	ORIGINAL 3 BEDROOM UNIT	ORIGINAL 4 BEDROOM UNIT
Very Low income	\$10,900	\$10,900	\$8,760	\$8,760
Low Income (70%)	\$15,190	\$15,190	\$12,150	\$12,150
Moderate Income (110%)	\$27,950	\$27,950	\$22,320	\$22,320

**Example of Calculating Resale/Refinancing Value of Bedroom Addition**

**1. CALCULATE RESALE/REFINANCING VALUE**

***Assumptions:***

- Originally, unit was a 3 bedroom, 2 bath single family unit (moderate income)
- Initial Sale Price was \$150,000 in 1995
- In 2003, the owners wanted to add a 4<sup>th</sup> bedroom

***Calculation:***

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\$150,000	Initial Sale Price
+ 34,110	22.74% change in median income, 1995-2003
<hr/>	
\$184,110	<b>Maximum resale/refinancing value with following modifications:</b>
+ 15,000	10% of Initial Sale Price "credit" for improvements and/or maintenance
+ 18,768	bedroom addition value (from chart)
<hr/>	
\$217,878	<b>Modified Resale/Refinancing Value</b>

**2. CHECK MODIFIED MAXIMUM RESALE/REFINANCING VALUE  
AGAINST MAXIMUM AFFORDABILITY STANDARD**

*2003 Maximum Affordability Standard (see next section for more information  
on Maximum Affordability Standards)*

4 Bedroom, Moderate Income                      \$295,107

*2003 Resale/Refinancing Value of Unit*                      \$217,878

Resale/Refinancing Value is less than Maximum Affordability Standard and  
can therefore be used as the inclusionary unit's Resale/Refinancing Value.

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### 3. CRITERIA FOR DETERMINING MAXIMUM AFFORDABILITY STANDARD

When inclusionary units are sold, refinanced or request a bedroom addition, staff needs to ensure that the resale price/value of the unit does not exceed the maximum affordability standard. This standard is the maximum allowable price or value for the inclusionary unit. The critical difference between the maximum affordability standard and the criteria used for sale price and bedroom addition determination is that: low/lower income limits are set at 80% of median instead of 70% and moderate income limits are set at 120% instead of 110%. Very Low Income limits remain the same at approximately 50% of median income. The higher income limits for low/lower and moderate-income allow for some flexibility for inclusionary units that may have been priced incorrectly in the beginning years of the program and would experience substantial negative equity if 70%/110% income standards were imposed. Therefore, the 80%/120% limits provide slightly more flexibility in maximum sale prices while still retaining the affordability of the units to the next purchaser.

#### CRITERIA TO BE USED IN DETERMINING MAXIMUM AFFORDABILITY STANDARDS:

##### Very Low Income Units:

- *Housing Cost to Income Ratio:* 30% of very low income limit (usually 50% of AMI), adjusted for bedroom and household size
- *Interest Rate and Term:* 7.5% Interest, 30 Year Term
- *Down Payment:* 10% of Sale Price
- *Estimates of:* property taxes, assessments, loan insurance and financing fees, allowance for property maintenance and repairs, homeowners insurance, homeowner association dues, allowance for utilities and land rent (if home is on rented land).

##### Low/Lower Income Units:

- *Housing Cost to Income Ratio:* 30% of lower income limit (usually 80% of AMI), adjusted for bedroom and household size
- *Interest Rate and Term:* 7.5% Interest, 30 Year Term
- *Down Payment:* 10% of Sale Price
- *Estimates of:* property taxes, assessments, loan insurance and financing fees, allowance for property maintenance and repairs, homeowners insurance, homeowner association dues, allowance for utilities and land rent (if home is on rented land).

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- **City of Solana Beach (Chapter 17.70 of the Municipal Code)**  
The provision of on-site inclusionary units applies to all for sale projects unless an alternative is approved. Rental projects pay a fee unless the units are used as compliance for a for sale project. Section 17.70.030 provides for alternatives to the requirement for on site inclusionary units. These include rental units within a for-sale project as compliance; off site units subject to affordability requirements (low and very low) which may be part of a larger development project; and the conversion of existing market rate housing to affordable housing subject to requirements for location and affordability.
- **County of Santa Cruz (Chapter 17.10 of the County Code)**  
The provision of on-site inclusionary units is required unless an alternative form of compliance is specifically approved with the project. Alternatives include payment of an in-lieu fee, conversion of existing market rate units, or financial contribution to a non profit for construction of off site units. The off site option requires the approval of findings that primarily relate to site control and financing. Use of the in-lieu fee option requires approval as part of the project but the regulations do not appear to require any specific findings or criteria.
- **County of San Luis Obispo (Chapter 22.12 of the County Code)**  
The provision of on-site inclusionary units applies to all residential development. The applicant may propose an alternative method of compliance including off-site, an in-lieu fee or land donation subject to certain requirements however, not specific findings or criteria are required.

**Moderate Income Units:**

- *Housing Cost to Income Ratio:* 35% of moderate income limit (usually 120% of AMI), adjusted for bedroom and household size
- *Interest Rate and Term:* 7.5% Interest, 30 Year Term
- *Down Payment:* 10% of Sale Price
- *Estimates of:* property taxes, assessments, loan insurance and financing fees, allowance for property maintenance and repairs, homeowners insurance, homeowner association dues, allowance for utilities and land rent (if home is on rented land).

**2010 Maximum Affordability Standard for Inclusionary Units, County of Monterey (Updated Annually)**

HOUSEHOLD INCOME LEVEL	MAXIMUM AFFORDABILITY STANDARD OF A 1 BEDROOM UNIT	MAXIMUM AFFORDABILITY STANDARD OF A 2 BEDROOM UNIT	MAXIMUM AFFORDABILITY STANDARD OF A 3 BEDROOM UNIT	MAXIMUM AFFORDABILITY STANDARD OF A 4 BEDROOM UNIT
Very Low Income (50%)	\$83,300	\$93,754	\$104,211	\$112,609
Low Income (80%)	\$122,757	\$142,223	\$161,491	\$176,984
Moderate Income (120%)	\$233,336	\$262,545	\$291,750	\$315,146

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**APPENDIX G. IN LIEU FEE AND IN-LIEU FEE PAYMENT PROCESS**

**2000 IN-LIEU FEE SCHEDULE**

(Current Schedule as of June, 2011)

**MONTEREY COUNTY**

**INCLUSIONARY HOUSING PROGRAM**

Adopted by the Board of Supervisors on November 7, 2000

Effective Date: December 8, 2000

<b>Planning Area</b>	<b>In-lieu fee for one on-site unit</b>
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

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**ATTACHMENT 2 to AGENDA ITEM 5a**  
**INCLUSIONARY HOUSING COMPLIANCE OPTIONS**  
**Summary of Provisions from Other Jurisdictions**

**Introduction**

Redevelopment and Housing Staff conducted research to identify other jurisdictions that allow variation in the form of compliance related to their Inclusionary Housing Programs. Following is a summary of the research.

- **City of Santa Monica (Article 9, Chapter 9.56 of the Municipal Code)**  
Multi family developments of four or more units in multi family zoning district must contribute to the City's affordable housing program by either supplying on or off site units. For projects with 4-15 units, 20% of the units must be affordable. For projects with 16 or more units, 25% of the units must be affordable. The amount of affordable housing required increases as level of affordability increases (i.e., must supply more units if only moderate income units are supplied). In addition, if a developer chooses to develop off site units he/she must own the land and the site must be within ¼ mile of the project site. Fractional obligations of less than .75 can be paid as a fee. Fees are also allowed for projects that are on land that is not zoned for multifamily residential development. The applicant may request an adjustment or waiver from the requirements only based on that applying the requirements would constitute an unconstitutional "taking" of property.
- **City of Santa Cruz (Chapter 24.16 of the Municipal Code)**  
Developments of five or more dwelling units must supply inclusionary units on site. However, Section 26.16.030 provides for "Alternative Methods to Comply with Inclusionary Housing Requirements". The alternative method must be part of the first approval for the project and the City Counsel must make specific findings including that there is a public benefit not otherwise obtainable if on-site such as more units at lower affordability levels. Fees are allowed if they are needed as matching funds for state or federal grants or if it can be found that the fees will provide substantially more affordable housing than the on site method. Off site unit may be requested for all or a portion of the obligation subject to the findings. The conversion of existing market rate units can also be considered for compliance under certain circumstances and subject to the findings.
- **City of Fremont (Title VIII, Chapter 2 of the Municipal Code)**  
On site inclusionary units apply to all for sale projects. Fees are applied for fractions of the obligation as well as to rental projects under certain circumstances. Section 8-22177 provides for alternatives which may be considered. These include providing rental units instead of for sale units, off site units subject to location, financing and timing conditions, property dedication under certain circumstances, converting existing market rate housing to affordable housing, preservation of existing affordable units that are at risk, and the payment of an in-lieu fee. There does not appear to be specific findings or criteria required for the City to approve alternatives.

- **City of Solana Beach (Chapter 17.70 of the Municipal Code)**  
The provision of on-site inclusionary units applies to all for sale projects unless an alternative is approved. Rental projects pay a fee unless the units are used as compliance for a for sale project. Section 17.70.030 provides for alternatives to the requirement for on site inclusionary units. These include rental units within a for-sale project as compliance; off site units subject to affordability requirements (low and very low) which may be part of a larger development project; and the conversion of existing market rate housing to affordable housing subject to requirements for location and affordability.
- **County of Santa Cruz (Chapter 17.10 of the County Code)**  
The provision of on-site inclusionary units is required unless an alternative form of compliance is specifically approved with the project. Alternatives include payment of an in-lieu fee, conversion of existing market rate units, or financial contribution to a non profit for construction of off site units. The off site option requires the approval of findings that primarily relate to site control and financing. Use of the in-lieu fee option requires approval as part of the project but the regulations do not appear to require any specific findings or criteria.
- **County of San Luis Obispo (Chapter 22.12 of the County Code)**  
The provision of on-site inclusionary units applies to all residential development. The applicant may propose an alternative method of compliance including off-site, an in-lieu fee or land donation subject to certain requirements however, not specific findings or criteria are required.

**ATTACHMENT 3**

**PLANNING COMMISSION – APRIL 11, 2012**

**2011 Housing Element  
Implementation (Progress) Report**



# ANNUAL ELEMENT PROGRESS REPORT Housing Element Implementation (CCR Title 25 §6202.)

Jurisdiction: Monterey County  
Reporting Period: 1/1/2011 - 12/31/2011

**Table A2**  
**Annual Building Activity Report Summary - Units Rehabilitated, Preserved and Acquired pursuant to GC Section 65583.1(c)(1)**

Please note: Units may only be credited to the table below when a jurisdiction has included a program in its housing element to rehabilitate, preserve or acquire units to accommodate a portion of its RHNA which meet the specific criteria as outlined in GC Section 65583.1(c)(1)

Activity Type	Affordability by Household Incomes				(4) The Description should adequately document how each unit complies with subsection (c)(7) of Government Code Section 65583.1
	Extremely Low Income	Very Low Income	Low Income	TOTAL UNITS	
(1) Rehabilitation Activity				0	
(2) Preservation of Units At-Risk				0	
(3) Acquisition of Units				0	
(5) Total Units by Income	0	0	0	0	

\* Note: This field is voluntary

**Table A3**  
**Annual building Activity Report Summary for Above Moderate-Income Units (not including those units reported on Table A)**

	1. Single Family	2. 2 - 4 Units	3. 5+ Units	4. Second Unit	5. Mobile Homes	6. Total	7. Number of infill units*
No. of Units Permitted for Moderate						0	
No. of Units Permitted for Above Moderate	59			6	3	68	

\* Note: This field is voluntary

**ANNUAL ELEMENT PROGRESS REPORT**  
**Housing Element Implementation**  
(CCR Title 25 §6202 )

Jurisdiction: Monterey County  
Reporting Period: 1/1/2011 - 12/31/2011

**Table B**  
**Regional Housing Needs Allocation Progress**  
Permitted Units Issued by Affordability

Enter Calendar Year starting with the first year of the RHNA allocation period. See Example.	2007 - 2009		2010		2011		Year 5	Year 6	Year 7	Year 8	Year 9	Total Units to Date (all years)	Total Remaining RHNA by Income Level
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6							
Very Low	Deed Restricted	140	27									167	115
	Non-deed restricted	65										65	
Low	Deed Restricted	174	31									205	-19
	Non-deed restricted	75										75	
Moderate	Deed Restricted	28										28	20
	Non-deed restricted	247										247	
Above Moderate		2,652	88	39								2,759	-2,108
Total RHNA by COG. Enter allocation number:		3,381	126	39								3,546	-1,992
Total Units													
Remaining Need for RHNA Period													

Note: units serving extremely low-income households are included in the very low-income permitted units totals.

**ANNUAL ELEMENT PROGRESS REPORT**  
**Housing Element Implementation**  
(CCR Title 25 §6202 )

Jurisdiction: Monterey County  
Reporting Period: 1/1/2011 - 12/31/2011

**Table C**  
**Program Implementation Status**

Program Description (By Housing Element Program Names)	Name of Program	Objective	Timeframe in H.E.	Status of Program Implementation
Describe progress of all programs including local efforts to remove governmental constraints to the maintenance, improvement, and development of housing as identified in the housing element.	Housing Programs Progress Report - Government Code Section 65883.			
Rehabilitate an average of five owner-occupied lower-income units and 20 renter-occupied lower income units annually. Work to achieve 10% of the rental units to extremely low income households. Include information on County's website and develop written material to advertise the program within one year of adoption of the Housing Element.	Housing Rehabilitation Program (H-1.a)		Annually	During 2011 the County continued to implement the NSP-1 Program. A total of 3 foreclosed homes have been purchased and rehabilitated. Of those, 7 were sold to low and moderate income families during 2011. In addition, the County is assisting a non-profit with the rehabilitation of the Camphora Farm Labor Camp that currently houses 44 very low income farmworkers families (29 of which are extremely low) totaling 174 people. The County initiated processing of the land use entitlements and assisted in preparing a funding program. In 2011, the County was awarded \$1,284,794 in NSP-3 funding for the rehabilitation of up to five foreclosed units to be sold to non-profits for use as special needs housing and assistance to the 21 unit Rockrose supportive housing project in Marina.
Preserve 3169 existing mobile homes. Maintain contact with property owners and monitor status of mobile home parks. When feasible, work with tenants to preserve mobile parks by providing technical assistance and assisting in funding applications. Conduct survey of existing mobile home park residents and owners and determine the feasibility of establishing a mobile home rent stabilization program in 2010-2011.	Mobile Home Park Preservation (H-1.b)		on going and 2011	In 2010 the County prepared an analysis on a potential mobile home rent stabilization program. It was concluded that this program would not be feasible to implement. The County continues to work with park residents and owners to address significant rent increases and condition issues.
Preserve 11 at-risk very low income affordable housing units.	Preservation of Existing Affordable Units (H-1.c)		on going	See H-1a above pertaining to the Camphora Farm Labor Camp.
Adopt the program in 2009. Refer 100 households for assistance annually (including 10 extremely low income households.) Expand inventory of relocation housing units to 50 by 2014.	Tenant Relocation and Homeless Assistance (TRHA) Program (aka "Soft Landing") (H-1.d)		2009 and annually	In 2009, the County was awarded an HPRP grant of \$1.6 million which is aimed at preventing homelessness. Part of the funding is reserved for housing tenants that are displaced due to County code enforcement actions. The County Redevelopment Agency (RDA) reserved nine units at the Kenis Court Swing Housing Facility in Pajaro to provide temporary housing. To date, two families have been assisted.
Provide foreclosure prevention and credit counseling services to 150 homeowners annually. Assist 29 lower and moderate income households to purchase homes through the NSP program.	Foreclosure and Credit Counseling (H-1.e)		annually and on-going	In 2008, the County was awarded a CDBG grant to provide foreclosure counseling. This program continued during 2011. To date 91 households have been assisted. In addition, 13 low and moderate income households have been assisted through the NSP Program.
Reduce energy consumption and carbon emissions throughout the planning period.	Energy Conservation (H-1.f)		on going	The County is undertaking a number of energy conservation related initiatives. In 2009, the County received funding in the form of an Energy Efficiency and Conservation Block Grant (EECBG) primarily to conduct energy audits and to retrofit County buildings with energy efficiency upgrades. In addition, funding was awarded to prepare green ordinances and energy efficiency policies, a Greenhouse Gas inventory and Tracking System and a public energy efficiency education program. The County Planning Department is in the process of preparing materials for the public related to energy upgrades and reduction of carbon. These materials should be available in 2012.

**ANNUAL ELEMENT PROGRESS REPORT**  
**Housing Element Implementation**  
(CCR Title 25 §6202.)

Jurisdiction **Monterey County**

Reporting Period **1/1/2011 - 12/31/2011**

Green Building Initiative (H-1.g)	Provide educational materials to prospective developers and develop recommendations for incorporating "green" practices by end of 2011.	on going	Educational materials are being prepared pursuant to the EECBG grant received, see H-1.f above.
Affordable Housing Project Assistance (H-2.a)	Assist 50 lower and moderate income rental housing units annually.	Annually	During 2011, the Redevelopment and Housing Office assisted in facilitating the completion of the Cynara Court Project in Castroville which includes 57 affordable apartments. In total, the RDA provided \$2,700,000 in funding. The County has also provided \$2,300,000 in RDA funding and processing assistance to the Sea Gardens Apartment Project (formerly Axtell) which consists of 56 affordable apartments. Construction is scheduled to commence in March 2012. Funding in the amount of \$300,000 has also been provided to a non-profit to acquire and rehabilitate 44 rental units at the Camphora Farm Labor Camp, and the County is assisting with the land use entitlement process. The County RDA, in partnership with Mid Pen Housing, was awarded a \$10 million NSP 1-3 grant for a 66 unit affordable rental project on Fort Ord (Manzanita Court). Construction is scheduled to commence in April 2012.
Farmworkers and Agricultural Employees Housing (H-2.b)	Assist employers to provide 10 lower income farmworker housing units annually.	Annually	During 2011, the County provided land use entitlement assistance to the Camphora Farm Labor Camp Project consisting of 44 units of rental housing for farmworkers. In addition, the Cynara Court Project in Castroville which was completed and occupied in 2011, including 15 units reserved for farmworkers.
Extremely Low Income and Special Needs Individuals and Households (H-2.c)	Assist 10 extremely low income individuals and households in new or expanded residential care facilities, emergency shelters, transitional housing, supportive housing, or SRO facilities annually.	Annually	In 2010, the County assisted the Sunflower Gardens Supportive Housing Project which serves 23 very low income adults with mental disabilities and the 200 unit Pacific Meadows Senior Housing project. During 2011, the County received \$1,284,794 of funding through the NSP-3 program to assist Interim's Rockrose Garden Project which will provide 21 units of supportive housing for very low and
Housing Resource Center (H-2.d)	Provide financial and as-needed technical assistance to the HRC related to implementing the County's affordable housing programs and promote the center's services.	On going	Since 2004, the County has provided support to the HRC and in 2011, the County provided specific funding to conduct foreclosure prevention counseling, homebuyer education, and homebuyer qualifying for the NSP-1 and Inclusionary Housing Programs.
Down payment Assistance Program (H-2.e)	Assist 29 households through the NSP program in 2010/2011. Assist three to five first-time homebuyers annually with RDA funding or new grants. Ongoing implementation throughout the planning period.	2011 and on going	In 2011, the County provided downpayment assistance (DPA) to seven households through the NSP-1 Program. It is anticipated that nine additional households will be assisted in 2012. In addition, the County applied for and was awarded an \$800,000 HOME Grant for DPA. This grant is currently being implemented. It is anticipated that a total of 12-14 households will be assisted.
Section 8 Housing Choice Vouchers (H-2.f)	Support Housing Authority of Monterey County efforts to provide vouchers to very low income individuals and families annually.	On going	County continues to support the Section 8 Program by referring inquiries to the Housing Authority.
Inclusionary Housing (H-2.g)	Facilitate the development of 10 affordable and workforce housing units annually.	Annually	The County continues to implement the Inclusionary Housing Program and analyzes new development applications to ensure that they are conditioned to supply affordable units as appropriate. Due to current economic conditions, there was very little development activity, and there were no new Inclusionary Agreements executed in 2011.
Disaster Rental Assistance Grants (H-2.h)	Provide rental assistance to lower income households impacted by disasters.	On going	In 2008, the County was awarded a CDBG Freeze Grant to respond to a disaster with rental assistance in partnership with HRC. Although this grant is closed, the program could be reinitiated in the event of another disaster.
Housing Policy and Allocation Procedures Manual (H-2.i)	Update the Manual by early 2010.	2010	On October 22, 2009 the County adopted a new Housing Policy and Allocation Manual.



## ANNUAL ELEMENT PROGRESS REPORT Housing Element Implementation (CCR Title 25 §6202 )

Jurisdiction: Monterey County  
Reporting Period: 1/1/2011 - 12/31/2011

Infrastructure Coordination and Development (H-3.a)	on going	In 2011, the RDA continued to implement the Boronda Storm Drain Master Plan to address existing deficiencies and support new development. Phase 3 is currently nearing completion. Due to the elimination of the RDA on February 1, 2012, Phase 4 is on hold pending identification of an alternative funding source. In 2011, the County also completed the San Jerardo Water System Replacement Project which provided safe drinking water to the existing residents who are primarily low income farmworkers. The County continued to assist the community of San Lucas to replace their existing water well to preserve safe drinking water for the existing community and allow a 33 unit affordable housing project to move forward. In 2011, the County applied for several state grants aimed at safe drinking water to fund the replacement well project.
Community and Specific Plans (H-3.b)	2011 and on going	The Castroville Community Plan, as applied in the non-coastal area, was adopted in 2007. The Coastal Zone portions of the Plan require approval by the California Coastal Commission (CCC). A Coastal Program Amendment was prepared and submitted to the CCC. It was subsequently withdrawn due to lack of support from the CCC staff. The County is not pursuing another application at this time. During 2011, a revised draft Boronda Community Plan and an administrative draft EIR were completed. Processing has been delayed due to the elimination of the RDA on February 1, 2012. The County has continued to work with the new owners/developers of the East Garrison Project to implement the project. The County has prepared an administrative draft of the Moss Landing Community Plan as part of the General Plan implementation program. Processing of that community plan is expected to proceed during 2012, subject to available funding.
Adequate Sites for RHNA (H-3.c)	on going and 2012	The County has a remaining RHNA of 174 units. In 2011, the County continued to provide assistance in the form of loans totalling \$2,300,000 to the Sea Gardens Apartment Project (formerly called Axtell) in Castroville that will provide 58 affordable units. Construction will commence in the spring of 2012. The 57 affordable unit Cynara Court Project was completed and is fully occupied. In addition, in partnership with Mid Pen Housing, the RDA was awarded a \$10 million NSP1-3 grant to construct a 66 unit affordable rental project on Fort Ord (Manzanilla Court). Project construction will commence in the spring of 2012.
Zoning Ordinances and Permit Processing (H-4.a)	2011	The ordinances were adopted by the Board of Supervisors in May of 2011.
Fair Housing (H-5.a)	2011	The website update was completed in 2011.
Non-Profit Housing Assistance Programs (H-5.b)	On going	Website update in process and scheduled for completion in 2012.

General Comments: