

ORDINANCE NO. _____

**ORDINANCE AMENDING CHAPTER 17.10
OF THE SANTA CRUZ COUNTY CODE
RELATING TO AFFORDABLE HOUSING**

The Board of Supervisors of the County of Santa Cruz ordains as follows:

SECTION I

Section 17.10.020 of the Santa Cruz County Code is hereby amended to read as follows:

17.10.020 Definitions.

For the purpose of this chapter, the following words and phrases shall be defined as set forth in this section.

(a) Administering Agency: The Redevelopment Agency of the County of Santa Cruz, the Santa Cruz County Planning Department or any other agency as determined by the Board of Supervisors, which is involved in the administration of the County's Affordable Housing Program.

(b) Affordable Housing: Housing which is affordable to average or below average income households, as required, regulated and allowed by this Chapter. Affordable housing units are the same as inclusionary units for the purposes of this Ordinance.

(c) Applicant: Any person, firm, partnership, association, joint venture, corporation, entity, or combination of entities seeking County permits and approval.

(d) Assisted Housing: Any project receiving all or a portion of its development funding from any local, State or Federal governmental or non-profit funding source which meets the criteria for affordable housing specified in the Affordable Housing Guidelines.

(e) At One Location: All adjacent land owned or controlled by the applicant, the property lines of which are contiguous at any point, or the property lines of which are separated only by a public or private street, road, or other public or private right-of-way, or separated only by other lands owned or controlled by the applicant.

(f) Average (Moderate) Income Households: Households with incomes between 80 and 120 percent of the median household income for the Santa Cruz Primary Metropolitan Statistical Area (PMSA), as determined periodically by the U.S. Department of Housing and Urban Development (HUD). The definition for average income households for the purposes of this ordinance corresponds to the definition of moderate income households for State and Federally assisted housing programs.

(g) Below Average (Lower) Income Households: Households with annual incomes less than 80 percent of median household income for the Santa Cruz PMSA. The definition for below average income households for the purposes of this ordinance corresponds to the definition of low income households used for State and Federally assisted housing programs.

- (h) **Congregate Senior Housing:** Senior housing with individual living units which provides residents with central management, a minimum of two meals per day in a central dining facility, and transportation services. Congregate housing also provides recreational and social activities and facilities. Maid and linen service, sundries, beautician, banking and other similar services may also be made available where they are appurtenant to the congregate use on the site. Another term used for congregate housing is Life Care Facility, which is a congregate development as described above in conjunction with a nursing and medical facility.
- (i) **Dwelling Unit:** A dwelling designed for occupancy by one family or household.
- (j) **Eligible Purchaser:** A household which is qualified by the administering agency, according to procedures established by the County, as meeting the requirements of this chapter for the purchase of affordable units; or a public body providing affordable housing; or an investor-owner as defined in Subsection (r) of this Section.
- (k) **Eligible Renter:** A household qualified by the administering agency, according to procedures established by the County, as meeting the requirements of this Chapter for the rental of affordable units.
- (l) **Final Inspection:** Inspection performed by the administering agency to verify completion of the housing project per approved plans and to allow occupancy of housing units.
- (m) **Housing Costs:** The monthly mortgage, principal and interest, property taxes, association fees, and required homeowner's insurance for ownership units, and the monthly rent for rental units.
- (n) **HUD:** The U.S. Department of Housing and Urban Development.
- (o) **Inclusionary Housing Units:** Housing units which are affordable to average or below average income households as required, regulated, and allowed by this Chapter. Inclusionary housing units are the same as affordable housing units for the purposes of this Chapter.
- (p) **Investor-Owner:** An individual, partnership or corporation which develops or purchases affordable housing units for rental to below average income households.
- (q) **Market Rate Unit:** A dwelling unit which is not subject to the rental, sale or resale regulations of this Chapter.
- (r) **Median Income:** The median income for the Santa Cruz PMSA, unless otherwise stipulated, as periodically determined by HUD. The current County median income figure is contained in the County's Income, Asset and Unit Price Guidelines.
- (s) **New Dwelling Unit:** A dwelling unit that is newly constructed on a site, including replacement dwellings.
- (t) **Owner-Builder:** An individual or household who proposes to build a unit, with or without the assistance of a contractor, for his/her primary place of residence.
- (u) **Project:** A residential development or land subdivision proposal for which County permits and approvals are sought.
- (v) **Resale Controls:** Legal restrictions by which the price of affordable units will be controlled by this chapter for a specified period of time.
- (w) **Section 8:** The major federal housing program in which eligible very low income and low income households receive financial assistance to rent housing units.
- (x) **Very Low Income Households:** Households with annual incomes less than 50 percent of median household income for the Santa Cruz PMSA. The definition of very low income households is used for State and Federally assisted programs and is included in the below average income household category for purposes of this ordinance. (Ord. 3002, 10/28/80; 3329, 11/23/82; 3502, 3/6/84; 3802, 12/16/86; 3881, 12/15/87; 4081, 10/16/90; 4425, 8/13/96)

SECTION II

0031

Section 17.10.030 of the Santa Cruz County Code is hereby amended to read as follows:

17.10.030 Inclusionary housing requirements for residential development projects.

(a) Projects Subject to Inclusionary Housing Requirements. The following residential development projects consisting of the construction of new dwelling units and/or the creation of new parcels intended for permanent residential occupancy shall be subject to the inclusionary housing requirements of this Chapter:

1. Residential Project At One Location. An application for a residential development at one location, whether to be constructed at one time or in phases, shall be subject to the requirements of this Chapter if it will result in the creation of
 - (i) five (5) or more new dwelling units; or
 - (ii) parcels providing building sites for a total of five (5) or more new dwelling units; or
 - (iii) a combination of new dwelling units and parcels together providing for a total of five (5) or more new dwelling units.

For purposes of this paragraph, “one location” shall include all adjacent parcels of land owned or controlled by the applicant, the property lines of which are contiguous at any point, or the property lines of which are separated only by a public or private street, road, or other public or private right-of-way, or separated only by the lands owned or controlled by the applicant.

2. Concurrent Adjacent Residential Projects. Applications for concurrent adjacent residential developments which together will result in the creation of five (5) or more new dwelling units, parcels providing building sites for a total of five (5) or more new dwelling units, or a combination of new dwelling units and parcels together providing for a total of five (5) or more new dwelling units, developed by applicants on adjacent properties either at one time or in phases shall be subject to the requirements of this Chapter. For purposes of this paragraph: “adjacent properties” shall include all adjacent parcels of land owned or controlled by the applicants, the property lines of which are contiguous at any point, or the property lines of which are separated only by a public or private street, road, or other public or private right-of-way, or separated only by the lands owned or controlled by the applicants; and “concurrent” applications shall include all applications which have been submitted and are concurrently being processed for action by the County. If the property ownership and application for one project contain no parties in whole or part, or their spouses, who are also a party to the property ownership and application of the concurrent adjacent development, the concurrent applications may be granted an exception to the affordable housing requirements imposed by this Chapter upon a showing satisfactory to the decision-making body that neither project receives direct financial benefit by virtue of the concurrent adjacent development.

3. Sequential Adjacent Residential Projects. Applications by the same owner or applicant for sequential adjacent residential developments which together will result in the creation of five (5) or more new dwelling units, parcels providing building sites for a total of five (5) or more new dwelling units, or a combination of new dwelling units and parcels together providing for a total of five (5) or more new dwelling units, developed on the same or adjacent properties either at one

time or in phases shall be subject to the requirements of this Chapter. For purposes of this paragraph: “same owner or applicant” shall include any person who participates in the development as a full or partial owner or applicant, or a spouse of such person; “adjacent properties” shall include all adjacent parcels of land owned or controlled by the owner and/or applicant, the property lines of which are contiguous at any point, or the property lines of which are separated only by a public or private street, road, or other public or private right-of-way, or separated only by the lands owned or controlled by the owner and/or applicant; and “sequential” projects shall include all projects for which applications have been submitted to the County within a period of ten (10) years.

(b) Inclusionary Housing Requirement. The affordable housing obligation for any project identified in Subsection (a) shall be calculated by multiplying the number of new dwelling units or new residential building sites by the affordable housing percentage for the type of project, as specified below. Projects which generate an affordable housing obligation of less than a whole unit or a fractional amount more than a whole unit(s) shall contribute funds equivalent to the fractional amount above or below a whole unit to the Measure J Trust Fund, as specified in Section 17.10.034(b). The project developer may elect to construct additional affordable unit(s) instead of paying the fractional fee. Those projects which generate an affordable housing obligation equivalent to a whole unit or units of affordable housing shall construct the affordable dwelling unit(s) within the project pursuant to the requirements of Section 17.10.032, or alternately, shall meet the affordable housing requirement through the options provided in Subsection (c) below:

1. Standard Development. Standard development projects shall include the construction of affordable dwelling units equivalent in number to a minimum of fifteen percent (15%) of the total number of new dwelling units and new undeveloped residential building sites in the project;

2. Bonus Density Development. Eligible development projects qualifying for bonus zoning density pursuant to Section 13.10.391 shall designate the affordable dwelling units specified in Section 13.10.391(b).

3. Priority Processing Development. Development projects qualifying for priority processing shall meet the requirements of County Code Section 17.10.040 (standard priority processing) by the construction of affordable dwelling units equivalent in number to a minimum of twenty-five percent (25%) of the total number of new dwelling units and new undeveloped residential building sites in the project; or County Code Section 13.10.393(b) (bonus density priority processing) shall include the construction of affordable dwelling units equivalent in number to a minimum of thirty-five percent (35%) of the total number of new dwelling units and new undeveloped residential building sites in the project before the density bonus is applied.

4. Congregate Senior Housing Development. Congregate Senior Housing development projects developed pursuant to County Code Section 13.10.324 shall designate affordable congregate care units equivalent in number to a minimum of thirty five percent (35%) of the total number of congregate care units in the project.

Where an applicant proposes to satisfy the affordable housing requirement through participation with a non-profit housing developer for the construction of affordable residential units on a different site, the affordable unit requirement shall be based on the total number of new dwelling units and new undeveloped residential building sites included at both sites.

(c) Alternative Options to Satisfy Inclusionary Housing Requirement. As an alternative to the construction of each affordable dwelling unit within a project as required pursuant to Subsection (b), the affordable housing requirements of this Chapter may be satisfied by one or a combination of the following options:

1. Payment of an in-lieu fee pursuant to Section 17.10.034 in place of constructing a required affordable dwelling unit; or
2. Participation in the Existing Unit Conversion Program pursuant to Section 17.10.037; or
3. Financial contribution to a non-profit sponsored affordable housing project pursuant to Section 17.10.036 in place of constructing a required affordable dwelling unit on-site.

Use of these alternative options requires approval by the Approving Body at the time of the development approval.

(d) Unit Affordability Requirements

1. Term of Restrictions. Affordable ownership and rental units shall be subject to the requirements of this Chapter for the life of the unit.
2. Sales Price. The maximum allowable sales price for all affordable housing units created pursuant to the requirements of this Section shall be limited to be affordable to moderate income households, unless otherwise required to be affordable to lower income or very low income households in order for the project to qualify for bonus zoning density pursuant to Section 13.10.391 and/or public funding programs. The County shall establish maximum allowable affordable unit sales prices pursuant to the pricing guidelines in the Affordable Housing Guidelines adopted by the Board of Supervisors.
3. Rental Price. The maximum allowable rental price for all affordable housing units created pursuant to the requirements of this Section shall be limited to be affordable to lower income households unless otherwise required to be affordable to very low income households in order for the project to qualify for bonus zoning density pursuant to Section 13.10.391 and/or public funding programs. The County shall establish maximum allowable affordable unit rental prices pursuant to the pricing guidelines in the Affordable Housing Guidelines adopted by the Board of Supervisors.
4. Unit Occupancy. The income and assets of owner-occupant households shall not exceed the limits for a moderate income household, and for tenant households shall not exceed the limits for a lower income household, unless more stringent limits are required in order for the project to qualify for bonus zoning density pursuant to Section 13.10.091 and/or public funding programs. The County shall establish maximum allowable household income and asset levels in the Affordable Housing Guidelines adopted by the Board of Supervisors. Sales and rental contracts for affordable units shall not be enforceable, and sale and occupancy of units shall not be allowed until the purchasing and/or occupying household is certified by the County as meeting the established income and asset limits.

(e) Development Permit and Tentative Map Procedures.

1. Development Application. All appropriate maps and other materials submitted with an application for approval of a Residential Development Permit and/or Tentative Map for a project subject to the affordable housing requirements of this chapter shall explicitly identify those residential units and/or residential parcels within the project sufficient to satisfy the project's affordable housing requirements, and shall also indicate the affordable housing options(s) pursuant to Subsections (b) and (c) that the developer will utilize to fulfill the requirements of this Chapter. The identification of affordable units and/or parcels within the project shall be provided to ensure compliance with the requirement of this Chapter regardless of which of the affordable housing options is approved by the Approving Body.

2. Development Conditions. The conditions of approval of a Residential Development Permit and/or Tentative Map shall indicate how the development will meet the inclusionary housing requirements of this Chapter. Those projects which will include construction of affordable units on site shall identify residential units and/or residential parcels within the project adequate to satisfy the project's affordable housing requirements. Such identification of affordable units shall be provided to ensure compliance with the requirement of this Chapter.

(f) Participation Agreement Procedures. Prior to the recording of the Final Subdivision Map or the issuance of any Building Permits for residential units within the project, whichever event occurs first, an Affordable Housing Program Participation Agreement shall be signed by the Planning Director, or his or her designee, on behalf of the County and by the owners of the property having authorization to encumber the property and by any existing holders of trust deeds on the property. The Participation Agreement shall be binding on the heirs, assigns and successors in interest of the property owner, and shall be recorded in the Official Records of Santa Cruz County. The Participation Agreement shall include, at the minimum, the following provisions:

1. Binding of the Project Site. The Participation Agreement shall contain the affordable housing requirements established for the project pursuant to this Chapter and shall encumber the entire property on which the project is to be developed with the obligation to fulfill such affordable housing requirements.

2. Lien on Designated Parcels. The Participation Agreement shall create an enforceable lien on each of the affordable parcels designated in the conditions of project approval, or alternately on every parcel in a project where the in-lieu fee option is chosen, to allow for collection of an in-lieu fee pursuant to Section 17.10.034 regardless of the option selected to satisfy the affordable housing requirement for the project. This lien is intended to allow for collection of such in-lieu fee(s) if needed to enforce compliance with the requirements of this Chapter and shall be released by the County upon fulfillment of the affordable housing obligations pursuant to this Chapter.

3. Selection of Affordable Housing Option. The Participation Agreement shall designate the option approved by the Approving Body for satisfying the affordable housing requirements of this Chapter. The project developer may subsequently change the designated option for satisfying the project's affordable housing obligations through an amendment approved by the

Approving Body upon a written finding that all applicable requirements for the option selected shall be met. In approving an amendment, the Approving Body may impose reasonable conditions upon the applicant to ensure compliance with the provisions of this Chapter. In the event of such an amendment, a new Participation Agreement shall be executed and recorded in accordance with the requirements of this section to reflect the new option selected.

4. Project Covenants, Conditions and Restrictions. The Participation Agreement shall include a provision prohibiting any amendments to a project's Covenants, Conditions and Restrictions that would increase the proportion of the homeowners association assessment payable by any affordable housing unit, and shall create a right of judicial enforcement of this requirement by the County and/or the owner of any affected affordable unit exclusively in favor of the owner of each affordable unit in the development.

5. Enforcement. The Participation Agreement shall include a provision providing for the payment by the owner to the County of a reasonable rental value of an affordable unit from the date of any unauthorized occupation, and for the recovery by the County of reasonable attorney fees and costs required to pursue legal action to enforce the Agreement. (Ord. 4509, 8/25/98)

SECTION III

Section 17.10.031 of the Santa Cruz County Code is hereby added:

17.10.031 Inclusionary housing in-lieu fee for small residential projects

This section is intended to provide a mechanism for small residential projects to contribute toward the development of affordable housing through payment of an in-lieu fee.

(a) Projects Subject to the Inclusionary Housing In-lieu Fee for Small Residential Projects. The following residential development projects consisting of the construction of new dwelling units and/or the creation of new parcels intended for permanent residential occupancy shall be subject to the inclusionary housing in-lieu fee for small projects as set forth in this Section:

1. Residential Project At One Location. An application for a residential development at one location, whether to be constructed at one time or in phases, shall be subject to Inclusionary Housing In-lieu Fee for Small Residential Projects imposed by this Section if it will result in the creation of:
 - (i) three (3) or four (4) new dwelling units; or
 - (ii) parcels providing building sites for a total of three(3) or four (4) new dwelling units; or
 - (iii) a combination of new dwelling units and parcels together providing for a total of three (3) or four (4) or more new dwelling units.

For purposes of this paragraph, "one location" shall include all adjacent parcels of land owned or controlled by the applicant, the property lines of which are contiguous at any

point, or the property lines of which are separated only by a public or private street, road, or other public or private right-of-way, or separated only by the lands owned or controlled by the applicant.

2. Concurrent Adjacent Residential Projects. Applications for concurrent adjacent residential developments which together will result in the creation of three (3) or four (4) new dwelling units, parcels providing building sites for a total of three (3) or four (4) new dwelling units, or a combination of new dwelling units and parcels together providing for a total of three (3) or four (4) new dwelling units, developed by applicants on adjacent properties either at one time or in phases shall be subject to the requirements of this Section. For purposes of this paragraph: “adjacent properties” shall include all adjacent parcels of land owned or controlled by the applicants, the property lines of which are contiguous at any point, or the property lines of which are separated only by a public or private street, road, or other public or private right-of-way, or separated only by the lands owned or controlled by the applicants; and “concurrent” applications shall include all applications which have been submitted and are concurrently being processed for action by the County. If the property ownership and application for one project contain no parties in whole or part, or their spouses, who are also a party to the property ownership and application of the concurrent adjacent development, the concurrent applications may be granted an exception to the Inclusionary Housing In-lieu Fee for Small Residential Projects imposed by this Section upon a showing satisfactory to the decision-making body that neither project receives direct financial benefit by virtue of the concurrent adjacent development.

3. Sequential Adjacent Residential Projects. Applications by the same owner or applicant for sequential adjacent residential developments which together will result in the creation of three (3) or four (4) new dwelling units, parcels providing building sites for a total of three (3) or four (4) new dwelling units, or a combination of new dwelling units and parcels together providing for a total of three (3) or four (4) new dwelling units, developed on the same or adjacent properties either at one time or in phases shall be subject to the Inclusionary Housing In-lieu Fee for Small Residential Projects imposed by this Section. For purposes of this paragraph: “same owner or applicant” shall include any person who participates in the development as a full or partial owner or applicant, or a spouse of such person; “adjacent properties” shall include all adjacent parcels of land owned or controlled by the owner and/or applicant, the property lines of which are contiguous at any point, or the property lines of which are separated only by a public or private street, road, or other public or private right-of-way, or separated only by the lands owned or controlled by the owner and/or applicant; and “sequential” projects shall include all projects for which applications have been submitted to the County within a period of ten (10) years.

(b) Payment of Inclusionary Housing In-lieu fee for Small Residential Projects. Those projects identified in subsection (a) of this Section and *not* identified in subsection (a) of Section 17.10.030 shall pay the Inclusionary Housing In-lieu Fee for Small Residential Projects to the County for each new unit or new parcel in the project. Payment of this fee

shall be a condition of project approval for the land division and associated development permits and also a condition of building permit issuance.

1. Exemptions. For a project of three or four new units, two of the new units shall be exempt from this fee requirement.

(c) Lien on Designated Parcels. Prior to the recording of the Final Parcel Map creating the new parcels, an Agreement creating an enforceable lien in the applicable fee amount on the third and/or fourth parcels in the project shall be executed and recorded in the Official Records of Santa Cruz County. This Agreement shall be signed by the owners of the property and any existing holders of trust deeds on the property, and by the Planning Director or his/her designee on behalf of the County, and shall be binding on all heirs, assigns and successors in interest of the property owner. The Agreement shall require the following provisions:

1. Payment of the Inclusionary Housing In-lieu Fee for Small Residential Projects for each parcel prior to issuance of a building permit or transfer of ownership, whichever occurs first.
2. Payment of the fee at the rate in effect at time of payment as shown in the then current Affordable Housing Guidelines and/or Unified Fee Schedule.
3. The County shall record a release of this lien for each subject parcel upon receipt of fee payment for the respective parcel.

Alternatively, the project developer may opt to pay this fee for the subject parcel(s) prior to recordation of the final parcel map rather than record the Agreement specified above.

(d) Fee Rate. The Inclusionary Housing In-lieu Fee for Small Residential Projects shall be that amount set forth in the Affordable Housing Guidelines that is in effect on the date of the fee payment. The fee may be adjusted as deemed necessary by the Board of Supervisors as described in subsection (e) below.

(e) Adjustment of In-Lieu Fee for Small Residential Projects. The Inclusionary Housing In-lieu Fee for Small Residential Projects shall be shown in the Affordable Housing Guidelines and shall be a part of the County's Unified Fee Schedule. At the time of the biannual review of the Unified Fee Schedule, the rate for the Inclusionary Housing In-lieu Fee for Small Residential Projects may be reviewed and may be adjusted at that time.

(f) Measure J Trust Fund. All Inclusionary Housing In-lieu Fees for Small Residential Projects and accrued interest received pursuant to this Section shall be deposited into a trust fund known as the Measure J Trust Fund, maintained by the County. The trust funds shall be expended at the discretion of the County Board of Supervisors for the purposes of developing or preserving affordable housing units in the County.

SECTION IV

Section 17.10.032 of the Santa Cruz County Code is hereby amended to read as follows:

17.10.032 Development of on-site affordable dwelling units.

(a) Affordable Unit Standards. Affordable dwelling units may be constructed within a residential project with reduced size and interior amenities compared to the market rate units provided that the affordable units comply with all development standards enumerated in the Affordable Housing Guidelines as well as the following development standards:

1. Unit location. The affordable dwelling units shall be distributed throughout the development project. This distribution requirement may only be waived by the decision-making body upon a finding that such distribution is infeasible for one or more of the following reasons:
 - (i) Significant topographic or other constraints exist rendering such distribution infeasible; or
 - (ii) Substantially improved site design will result from such waiver; or
 - (iii) Substantially improved building design and an approved unit amenity level will result from such waiver; or
 - (iv) Significant economic hardship that does not apply to other projects in the County will result from such distribution.

2. Parcel Size. The parcels on which the affordable units are located shall be no smaller than the smallest parcel on which market rate units in the project are to be located.

3. Bedroom Count. The average bedroom count in the affordable units shall not be less than the average bedroom count in the market rate units in the project.

4. Exterior Design. The exterior design of the affordable units shall be consistent with the market rate units in the development based on exterior design details, materials and number of stories, with no significant identifiable differences between the units visible from the street. In addition, the size of affordable units shall be reasonably consistent with the rest of the project, with an affordable unit size not less than 75% of the average size of market rate units, unless a smaller unit size is allowed by the decision-making body at the time of project approval and with the written findings that a smaller size will provide adequate and decent affordable housing, the affordable units will provide housing units compatible with the remainder of the development, and that a larger unit size would impose a financial hardship on the project developer. In no case shall an affordable unit size be less than the minimum specified by the Affordable Housing Guidelines.

- (b) Timing of Completion. Affordable units shall be made available for occupancy either prior to or concurrently with the date that the market rate units in a project are made available for occupancy, and in the same ratio as the affordable unit requirement which is applicable to the project. For example, for a project with a twenty-five percent (25%) affordable housing requirement, at least one affordable unit shall receive final Building Permit inspection clearances concurrently with or prior to the final clearance of every third market rate unit constructed in the project until all of the affordable housing units required in the project have been constructed. For

a project with a fifteen (15%) affordable housing requirement, at least one affordable unit shall receive final Building Permit inspection clearances concurrently with or prior to the final clearance of every sixth market rate unit constructed in the project until all of the affordable housing units required in the project have been constructed. In no case shall the last market rate unit in the project receive final Building Permit inspection clearances until the last affordable unit in the project has received final Building Permit clearance.

(c) Recording of Declaration of Restrictions. Prior to the issuance of a Building Permit for an affordable dwelling unit, the property owner having authority to encumber the property and any existing holders of trust deeds on the property shall sign an Affordable Housing Program Declaration of Restrictions which subjects the affordable unit to the requirements of this Chapter and the County's Affordable Housing Guidelines, both as amended from time to time, including the specific ownership and occupancy restrictions established for the units pursuant to Section 17.10.030(d). The Declaration of Restrictions shall be permanently binding on the heirs, assigns and successors in interest of the property owner, and shall be recorded in the Official Records of Santa Cruz County. (Ord. 4509, 8/25/98)

SECTION V

Section 17.10.034 of the Santa Cruz County Code is hereby amended to read as follows:

17.10.034 Affordable housing in-lieu fee

(a) Fee Authorization. An in-lieu fee may be paid for each affordable unit required pursuant to Section 17.10.030(b) in place of constructing the affordable housing within the project. If the in-lieu fee option is designated in the recorded Participation Agreement for the project, the Participation Agreement shall create a lien on each dwelling unit or parcel in that portion of the development generating the affordable housing requirement in order to provide for payment of the in-lieu fee pursuant to this Section.

(b) In-Lieu Calculation. The fee is keyed to the average price of the ultimate market rate units or lots developed, and is structured to provide developers with an alternative way to meet their affordable housing obligation. The amount of an affordable housing in-lieu fee shall be determined based on the average sales price of the market rate dwelling units and/or parcels in a project sold to bona fide purchasers for value according to the then current Affordable Housing Fee Schedule, shown in Section 13 of the Affordable Housing Guidelines and/or in the County's Unified Fee Schedule in effect at the time of fee payment.

(c) Fee Payment Process. A proportionate part of the in-lieu fee shall be paid out of the sales escrow for the sale to a bona fide purchaser for value of each dwelling unit or parcel in the project for which the fee requirement was established. For example, for a five unit project with a fifteen (15) percent affordable housing requirement resulting in an obligation to provide one affordable unit, a partial in-lieu fee shall be paid out of the sales escrow for each of the units sold in the amount of one-fifth of the in-lieu fee based on the sales price of each unit. All in-lieu fee payments shall be non-refundable once they have been received by the County.

(d) Release of Project Encumbrances. Concurrent with the partial payment of an in-lieu fee from the sale of each unit in a project, the County shall record a release of the affordable housing encumbrances imposed on that unit through the recorded Participation Agreement.

(e) Measure J Trust Fund. All affordable housing in-lieu fees and accrued interest received pursuant to this Chapter shall be deposited into a separate trust fund, known as the Measure J Trust Fund, maintained by the County. The trust funds shall be expended at the discretion of the County Board of Supervisors for the purposes of developing or preserving affordable housing units in the County.

(f) Annual Adjustment of In-Lieu Fee. The In-Lieu Fee is determined by the Affordable Housing Fee Schedule, which shall be a part of the County's Unified Fee Schedule. At the time of the biannual review of the Unified Fee Schedule, the in-lieu fee rates shall be reviewed. The review shall utilize the latest real estate data regarding the sales prices of lots and homes in Santa Cruz County and the current affordable unit prices. If determined to be necessary by the Board of Supervisors, the Affordable Housing Fee Schedule shall be adjusted at that time and updated in the new Unified Fee Schedule.

(Ord. 4509, 8/25/98)

SECTION VI

Section 17.10.037 of the Santa Cruz County Code is hereby added:

17.10.037 Existing Unit Conversion Program and Measure J Trust Fund.

(a) Existing Unit Conversion Program. As an alternative to constructing an affordable unit pursuant to Section 17.10.032, a developer of a project with an obligation for a whole unit or units of affordable housing may participate in the Existing Unit Conversion Program. This program allows developers to satisfy their inclusionary housing requirement through the purchase and sale of existing housing units as affordable units pursuant to the following requirements and the applicable sections of the Affordable Housing Guidelines:

(1) The use of this option shall be approved by the Approving Body as a part of the original development permit.

(2) Developers shall convert at least two existing units for each inclusionary unit that would otherwise be required to be built.

(3) The units shall be located in the same Planning Area as the market rate development.

(4) Recording of Declaration of Restrictions. The execution and recording of the standard Affordable Housing Declaration of Restrictions shall be required of the purchasing household as a condition of sale. The purchasers of the converted units having authority to encumber the property and any existing holders of trust deeds on the property shall sign an Affordable Housing Program Declaration of Restrictions which subjects the affordable unit to the requirements of this Chapter and the County's Affordable Housing Guidelines, both as amended from time to time, including the specific ownership and occupancy restrictions established for the units pursuant to Section 17.10.030(d). The Declaration of Restrictions shall be permanently binding

on all heirs, assigns and successors in interest of the property owner, and shall be recorded in the Official Records of Santa Cruz County.

(5) Timing of Completion. Converted units shall be made available for occupancy either prior to or concurrently with the date that the market rate units in a project are made available for occupancy, and in the same ratio as the affordable unit requirement which is applicable to the project. For example, for a project with a fifteen percent (15%) affordable housing requirement, at least two converted units shall be transferred to eligible purchasers concurrently with or prior to the final clearance of every sixth market rate unit constructed in the project until all of the converted units required by the project have been sold. For a project with twenty percent (20%) affordable housing requirement, at least two converted units shall be transferred to eligible purchasers concurrently with or prior to the final clearance of every fourth market rate unit constructed in the project until all of the converted units required by the project have been constructed. In no case shall the last market rate unit in the project receive final Building Permit inspection clearances until the last converted unit in the project has been sold to an eligible purchaser.

(b) Measure J Trust Fund. A trust fund shall be established and shall be known as the Measure J Trust Fund. The trust funds shall be expended at the discretion of the County Board of Supervisors for the purposes of developing or preserving affordable housing units, or for other activities which increase the affordable housing stock in the County. All fractional amounts of the affordable housing obligation and accrued interest received pursuant to this Chapter shall be deposited into a trust fund known as the Measure J Trust Fund, to be maintained by the County. The amount of the contribution to this fund from applicable development shall be the fractional amount of the inclusionary housing unit obligation as determined by Section 17.10.030(b) and shall be based on the Affordable Unit Fee Schedule, as adopted and amended by the Board of Supervisors as part of the Unified Fee Schedule.

(1) Fee Payment Process. A proportionate part of the fractional unit fee shall be paid out of the sales escrow for the sale to a bona fide purchaser for value of each market rate dwelling unit or parcel in the project for which the fee requirement was established. For example, for a five unit project with a fifteen percent affordable housing requirement resulting in an obligation to provide 0.75 affordable units, a partial fee shall be paid out of the sales escrow for each of the units sold in the amount of one-fifth of the fractional fee based on the applicable fee rate shown in Section 13 of the then current Affordable Housing Guidelines. All fractional fee payments shall be non-refundable once they have been received by the County.

(2) Release of Project Encumbrances. Concurrent with the partial payment of a fractional fee from the sale of each unit in a project, the County shall record a release of the affordable housing encumbrances imposed on that unit through the recorded Participation Agreement.

(3) Annual Adjustment of Fee Schedule. At the time of the annual update of the income and rent indices in the Affordable Housing Guidelines, the Affordable Unit Fee Schedule shall be reviewed and may be adjusted by the administering agency.

SECTION VII

Section 17.10.038 of the Santa Cruz County Code is hereby deleted:

SECTION VIII

The amendments to Chapter 17.10 of the Santa Cruz County Code made effective by this ordinance shall not be applicable to any application for a residential development or land subdivision deemed complete on or before the effective date of this ordinance, and said application shall instead be subject to the provisions of Chapter 17.10 in effect on April 9, 2002.

SECTION XI

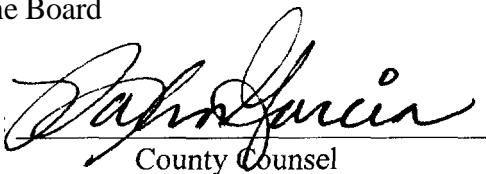
This ordinance shall take effect on the 31st day after the date of final passage.

PASSED AND ADOPTED this d a y of _____, 2002, by the Board of Supervisors of the County of Santa Cruz by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

Chairperson of the Board of Supervisors

ATTESTED: _____
Clerk of the Board

APPROVED AS TO FORM: 
County Counsel

DISTRIBUTION: County Counsel
Planning
CAO