




# County of Santa Cruz

## HOUSING ADVISORY COMMISSION

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Jan. 3, 2011

TO: HOUSING ADVISORY COMMISSION  
FROM: Erik Schapiro, Housing Chief   
SUBJECT: Proposed Amendments to the Measure J Program

As you know, the County of Santa Cruz Planning Department administers the 1978 voter approved Measure J Program. This program requires developers to provide affordable housing in all new development projects with five or more units. Today there are more than 500 price-restricted homes located throughout the unincorporated County. These units are limited to low- and moderate-income households who live or work in Santa Cruz County.

As part of our ongoing efforts to evaluate our program operations, identify modifications in response to changing circumstances, and to incorporate best practices into our program operations, we have identified a number of issues and suggest a number of changes be made to the ordinance. The changes include the following ordinance amendments:

- Conform our program to a State Appellate Court ruling that exempts rental projects from inclusionary requirements.
- Provide the County an option to purchase newly built Measure J homes or when new Measure J owners list their units for sale.
- Modify the terms of the Existing Unit Conversion program to broaden the program appeal.
- Limit future ability of new Measure J owners to convert home to rental use.
- Restore changes to the ordinance previously approved by the Board in 2002 but inadvertently deleted from the Code.

County Counsel has prepared a draft of the proposed ordinance to facilitate your Commissions review of these changes. (See Exhibit 1)

### Exempt Rental Projects From Inclusionary Requirement:

Over the years, there have been several legal challenges to the applicability of inclusionary programs to rental projects and recently, the Appellate Court (*in Palmer v. the City of Los Angeles*) ruled that jurisdictions cannot impose any affordability or household eligibility restrictions on projects made up entirely of rental units. In an effort

to comply with State law, it will be necessary to amend County Code Section 17.10 to exempt rental projects from the County's inclusionary requirement.

#### County Option to Purchase Measure J Homes:

Currently all Measure J owners, including developers who construct new Measure J units, are responsible for identifying a Measure J buyer. The County's role is limited to certifying that all eligible purchasers meet program requirements. Prior to the recent decline in housing prices, the demand for Measure J homes – particularly newly built homes - greatly exceeded the number of Measure J homes on the market. Over the years, questions have been raised about how new buyers are selected, whether units are kept off the open market, and the extent to which interested members of the public have an equal opportunity to purchase Measure J homes. To address fairness issues, potential buyers have requested that the County institute a more equitable system to identify potential buyers.

While the County has been reluctant to involve itself in a real estate transaction involving the transfer of a Measure J home from one owner to the next, there are circumstances where the County has been directly involved in acquiring Measure J units and identifying eligible purchasers. The County has taken possession of a number of Measure J units through the Affordable Housing Preservation Program and has transferred over 20 homes to eligible purchasers. In addition, in some cases, developers have asked the County to identify eligible purchasers. In these cases, the County has utilized its Interested Purchasers list and conducted a lottery system to provide a transparent and equitable process to identify Measure J buyers. This process has been extremely well received by the public.

Over the past three years, County staff has gained the experience and expertise to handle straightforward real estate transactions. To this end, County staff believes that the public would be better served if the County, rather than the developer, had the option (not the obligation) to purchase and identify Measure J buyers, particularly for highly desirable units with high buyer demand. The proposed ordinance amendment would provide the County with the option to purchase (or assign) Measure J units at the restricted resale price and transfer to eligible purchasers for 1) newly built Measure J units; and 2) when new Measure J owners list their homes for sale. While the County does not intend to utilize this provision in the current housing market where buyer demand is at a low point, this provision may be utilized when there is an especially strong demand for a limited number of highly sought after Measure J units. In those cases, Measure J buyer selection would be based on a transparent and equitable process.

#### Remove the Planning Area Requirement of the Existing Unit Conversion Program

The County's Affordable Housing Ordinance requires the project approval to specify which of the following methods a developer will use to meet the affordable housing obligation: 1) build on-site units as part of the project; 2) pay an in-lieu fee; 3) partner



with a non-profit developer to create a greater number of affordable units than would otherwise be required, or an equal number of affordable units with a greater level of affordability; or 4) acquire double the number of existing market rate units than the number of required Measure J units, and add the newly acquired units to the program the "Existing Unit Conversion" option). Prior to resale to a Measure J purchaser, each home must meet a salability standard enumerated in the Affordable Housing Guidelines, which will often require unit upgrades.

While the ordinance provides these four options to meet affordable housing requirements, typically developers are required to construct on-site units and occasionally the in-lieu fee option is utilized. Staff does not generally encourage market rate developers to partner with non-profit developers because the affordable units generally would be created without the market rate developers contribution. However staff believes that the Existing Unit Conversion program is a potentially beneficial option for the County, although minor modifications are needed to increase the program appeal.

The Existing Unit Conversion program provides an opportunity to create a greater number of affordable units, as well as potentially upgrade existing housing stock. By purchasing two existing units for each one unit obligation this approach has the potential for developers to actually create more affordable units while the overall cost of meeting their requirement could be less than the lost opportunity costs associated with building the inclusionary unit. While various developers have expressed interest in this program, this option has not been utilized for two reasons: 1) the ordinance requires that new units added to the program must be located in the same planning area as the market rate development project. This provision curtails the potential number of homes that would be eligible for the program, especially when a market project is located in a less populous planning area; and 2) given the timing and logistics of acquiring and rehabilitating units, it is impractical for developers to be required to commit to this program at the project approval stage.

In an effort to better facilitate this program, staff proposes to 1) eliminate the planning area requirement; and 2) allow developers with a permit condition to build inclusionary units also have the option to utilize the Existing Unit Conversion Program without modifying their permit condition. Staff believes that these changes will potentially increase the total number of permanently affordable units created through the Measure J program, and at the same time, result in improving housing quality through the upgrade of older homes that may be required as part of enrolling units in the program.

#### Limit future ability of new Measure J owners to convert home to rental use.

Ever since the program's inception, the Measure J program required the initial occupant of a Measure J unit to either meet the County moderate income requirements for an owner occupied unit or low income requirement for a rental unit. Measure J homeowners were allowed to convert their unit to a rental unit through Investor-Owner provisions of the ordinance.



Based on 2009 monitoring information, there are currently over 70 Measure J rental units. This includes 41 rental units located in the Casa Linda and Vista Prieta affordable senior projects, which were both, built as ownership projects but have gradually become more than 50% rental. The remaining rental units are disbursed among single-family homes, condominiums and town homes. Based on a staff analysis of the Investor-Owner component of the program, a few key issues have emerged.

- ♦ An increasing number of traditionally owner occupied Measure J homes (that are part of the single family home, condominium or town home inventory) have been converted to rental units, and the staff anticipates a continuation of this trend, thereby removing Measure J units from the owner-occupied inventory.
- ♦ Measure J rental units are more difficult to monitor than ownership units. Monitoring ownership units involves an initial income certification and annual verification that the Measure J owner continues to utilize their home as the primary residence. Evidence of primary residence includes verification that Measure J owner is receiving a homeowner exemption, which is easily documented through the Assessor's Office. For rental units, the County must certify the income eligibility of the tenant prior to the landlord and tenant entering into a rental agreement. This process can be time-consuming, and may interfere with landlords filling a vacant unit. If a landlord circumvents this process and rents a unit prior to the County certifying the eligibility of the tenant and the County retroactively deems the tenant ineligible, then the enforcement measures may involve the landlord displacing the tenant, even if the tenant's income was just slightly over the threshold amount. In addition, regular verification of Measure J rent levels is also necessary and County staff must cross check the owner's and tenant's tenancy records to ensure Measure J rent levels are being adhered to. In summary, monitoring investor owned units is more problematic than ownership units, places the County in a difficult enforcement position, and often involves tenant/landlord issues.

As noted above, monitoring investor owned rental units is a significant administrative burden with questionable benefit – there are a larger number of compliance issues and a serious enforcement effort involves a more intrusive monitoring program.

As a result of these factors, staff believes that the ordinance would better serve the community if Measure J units were restricted to owner occupancy. In an effort to implement this proposal fairly and without unduly affecting existing property owners, staff recommends that the proposed amendment include the following provisions:

1. All existing Measure J contracts will remain unaffected: existing Measure J owners would retain their ability to convert their home to a rental unit.

2. Proposed restrictions would only apply to new Measure J contracts – this involves purchasers of newly built units and new purchasers of existing Measure J homes. The two senior projects will be exempt from this provision due to the preponderance of rental units in these complexes and the limited demand for senior homebuyer units.
3. To account for unexpected changes in life circumstances that may justify the temporary rental of a Measure J home<sup>1</sup>, Measure J owners could rent their home for up to one year under the following circumstances as determined by the Planning Director in his/her sole discretion:
  - a) An owner of a Measure J home has resided therein for at least one year but is unable to continue to occupy the home either temporarily or permanently by reason of illness or absence from the area for other than vacation purposes; or
  - b) An owner or person in a fiduciary capacity has received title to a Measure J home as a result of the death of the previous owner, or due to bankruptcy or foreclosure procedures, and time is required to arrange for sale of the Measure J home to an eligible purchaser or to arrange for occupancy of the Measure J home by the owner.

Restore changes to the ordinance previously approved by the Board in 2002 but inadvertently deleted from the Code

In April, 2002, the Board of Supervisors adopted an amendment to the County Code that required the approving body (rather than a developer) to determine what method would be used by a developer to satisfy a project's affordable housing requirement. The ordinance amendment was inadvertently deleted from the Code when the Board adopted a series of Code changes in 2006. In consultation with County Counsel, it is recommended that the Board re-adopt this change as part of the actions being considered by the Commission.

**Conclusion/Recommendation**

The items discussed in this report will improve the operations of the Measure J program and staff recommends that the HAC endorse these proposed ordinance amendments.

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<sup>1</sup> This provision is based on the provisions of County Code Section 13.34.030 Temporary Rental of Mobile Homes, which provides for rental of a mobile home for up to one year in an owner-occupied mobile home park under specified conditions.



**Draft amendments to County Code Section 17.10 – Affordable Housing Ordinance. For review by Housing Advisory Commission**

**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 by homeowners 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:

- (A) Five or more new dwelling units;
- (B) Parcels providing building sites for a total of five or more new dwelling units; or
- (C) A combination of new dwelling units and parcels together providing for a total of five 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 or more new dwelling units, parcels providing building sites for a total of five or more new dwelling units, or a combination of new dwelling units and parcels together providing for a total of five 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 in 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 or more new dwelling units, parcels providing building sites for a total of five or more new dwelling units, or a combination of new dwelling units and parcels together providing for a total of five 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) of this section 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) of this chapter. 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 of this chapter, or alternately, shall meet the affordable housing requirement through the options provided in subsection (c) of this section:

(1) Standard Development. Standard development projects shall include the construction of affordable dwelling units equivalent in number to a minimum of fifteen (15) percent of the total number of new dwelling units and new undeveloped residential building sites in the project, or acquisition of existing units at a ratio of two to one for each unit of the affordability obligation, according to the regulations found in Section 17.10.037;

(2) Bonus Density Development. Development projects qualifying for bonus zoning density pursuant to Chapter 17.12 of this Code shall designate the affordable dwelling units;

(3) Priority Processing Development. Development projects qualifying for priority processing shall meet the requirements of Section

17.10.040 (Standard Priority Processing) by the construction of affordable dwelling units equivalent in number to a minimum of twenty-five (25) percent of the total number of new dwelling units and new undeveloped residential building sites in the project; or development projects which are developed with bonus density and include the construction of affordable dwelling units equivalent in number to a minimum of thirty-five (35) percent of the total number of new dwelling units and new undeveloped residential building sites in the project before the density bonus is applied shall be entitled to priority processing;

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

(5) Non-residential to Residential Rezoning and/or General Plan Amendment. Nonresidential parcels which as a result of a rezoning and/or General Plan Amendment are rezoned or designated as residential shall be required to provide forty (40) percent of the total number of units as affordable in accordance with Section 13.10.215(a)(1) of this Code, except that rezonings into the Regional Housing Need "R" Combining District per Section 13.10.475 through 13.10.478 of this Code are exempt from this requirement. A minimum of one-half of the affordable units shall be affordable to below average (lower) income households. All affordable units must be constructed on-site. Development under these provisions shall only qualify for incentives and concessions relating to site standards as identified in Section 17.12.040 of this Code but are not eligible for additional Density Bonus units. If the calculation of the affordable housing obligation under subsection (b) of this section results in any fractional obligation above a whole unit, the project developer shall contribute funds equivalent to the fractional amount to the Measure J Trust Fund as provided in Section 17.10.034 of this chapter. No alternative options for satisfying the affordable requirement is allowed.

(6) Regional Housing Need "R" Combining District.

(A) The following requirements apply to sites designated in the Regional Housing Need "R" Combining District:

(i) Sites shall first meet the requirements of 17.10.030(b)(1).

(ii) An additional affordable housing requirement of 25% of the total number of new dwelling units is required. Units meeting the 25% requirement will be considered Enhanced Affordable units and shall meet the requirements of 17.10.030(b)(6).

(iii) Notwithstanding subsections (i) and (ii) above, in the event that a Developer believes that the affordable housing requirements for a project proposed for a site designated in the Regional Housing Need "R" Combining District renders the project financially infeasible, the developer may request relief from a proportional amount of the affordability requirements. That request shall be submitted to the Planning Director with all supporting



information, including the development pro forma for the project. The Planning Director shall analyze that request and make suitable recommendations to the Board of Supervisors. In the event that the Board finds that the developer has provided evidence that fulfillment of the affordable housing requirements renders the project financially infeasible, the Board shall grant an increase in the allowed unit resale price, above the price restrictions contained in Sections 17.10.030(b)(1) and 17.10.030(b)(6), in an amount equal to that required to render the project financially feasible. In the event that such price modifications are granted, the developer shall grant the County Redevelopment Agency the option to purchase units at the revised sales price for the purpose of writing them down to suitable levels of affordability.

(iv) All affordable units must be constructed on-site.

(v) Developments under these provisions are eligible for concessions relating to site standards as identified in County Code Section 13.10.477(b)3.

(vi) Developments under these provisions are eligible for incentives and concessions relating to site standards as identified in County Code Section 17.12.040 where the percentage of affordable units provided exceeds 40%, but are not eligible for additional Density Bonus units.

(vii) No alternative options, including those set forth in subsection (c) for satisfying the affordable housing requirement are allowed for projects within the Regional Housing Need "R" Combining District.

(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)(1) of this section, the affordable housing requirements of this chapter may be satisfied by one or a combination of the following options, pursuant to Section 17.10.030 (f)3:

(1) Payment of an in-lieu fee pursuant to Section 17.10.034 of this chapter in place of constructing a required affordable dwelling unit; or

(2) Participation in the Existing Unit Conversion Program pursuant to Section 17.10.034 of this chapter; or

(3) Financial contribution to a non-profit sponsored affordable housing project pursuant to Section 17.10.036 of this chapter in place of constructing a required affordable dwelling unit on-site. 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.

~~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 affordable housing units created pursuant to 17.10.030(b)(1) 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 Chapter 17.12 of this Code and/or public funding programs. For affordable units in the Regional Housing Need "R" Combining District, the Enhanced Affordable units shall have a maximum allowable sales price limited to be affordable to Enhanced Moderate income households unless otherwise required to be affordable at a lower income level. 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 affordable housing units created pursuant to 17.10.030(b)(1) and rented in accordance with the requirements of the unit's Declaration of Restrictions 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 Chapter 17.12 of this Code and/or public funding programs. For affordable units in the Regional Housing Need "R" Combining District, the Enhanced Affordable units shall have a maximum allowable rental price that shall be affordable to Enhanced Low income households unless otherwise required to be affordable at a lower income level. 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. For units developed pursuant to 17.10.030(b)(1), 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 Chapter 17.12 of this Code and/or public funding programs. For Enhanced Affordable units (17.10.030(b)(6)), the income and assets of owner-occupant households shall not exceed the limits for an Enhanced Moderate income household, ~~and for tenant households, shall not exceed the limits for an Enhanced Low income household,~~ unless more stringent limits are required by funding sources. 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 option(s) pursuant to subsections (b) and (c) of this section 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 that 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 holder 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 of this chapter 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 Approving Body shall designate the option for satisfying the affordable housing requirements of this chapter and the designated option shall be included in the The Participation Agreement. ~~shall designate the option selected by the applicant~~

~~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 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.

(g) Rental Housing Projects. Code Section 17.10.030 shall not apply to projects intended to be made up entirely of rental units, and new multifamily rental housing shall not be subject to any affordability or household eligibility restrictions. Rental units that convert to occupancy by homeowners will be subject to the requirements of County Code Section 14.02.040 regulating conversion to condominiums. Affordable units intended to be owner occupied and later rented out by the developer shall be rented in accordance with the requirements of the Affordable Housing Guidelines to a below-average income household. A rental housing project of five or more new dwelling units is a residential development subject to the inclusionary housing requirements of this chapter, and, notwithstanding any other provision of this code, shall satisfy the affordable housing obligations required by this chapter as follows:

~~—(1) The affordable housing obligation shall be calculated by multiplying the number of new dwelling units by the affordable housing percentage for the type of project, as specified in subdivision (b)(1) through (b)(5) of this Section.~~

~~—(2) For a rental housing project of seven new dwelling units or more, where such calculation results in a fractional number, the number of units shall be determined by rounding down to the nearest whole number.~~



~~—(3) A rental housing project shall not be subject to an inclusionary housing-in-lieu fee.~~

~~—(4) An alternative option authorized by subdivision (c) of Section 17.10.030 may not be used to satisfy an inclusionary housing obligation for a rental housing project.~~

~~—(5) If a rental housing project is later converted to an ownership housing project, it shall be subject to any applicable inclusionary housing fees in effect at that time. (Ord. 4509, 8/25/98; 4662 § 2, 4/23/02; 4764 § 4, 6/22/04; 4767 § 4, 8/3/04; Ord. 4783 § 4, 4/26/05; Ord. 4817 § 3, 3/7/06; Ord. 4843 § 2, 12/5/06; Ord. 4876 § 2, 5/22/07; Ord. 4879 §§ 2-4, 6/12/07)~~

#### **17.10.050 Investor-owner (rental) unit requirements.**

Affordable units under Declarations of Restrictions dated prior to the effective date of this ordinance may be ~~marketed- held~~ as investor-owner rental units subject to the following requirements:

- ~~(a) Developers of projects in which affordable units are built pursuant to the requirements of this chapter may retain all or a portion of the units as investor-owners to be rented to eligible renters in accordance with this section.~~
- ~~(b) Investor-owners may purchase affordable units either individually or in groups of units within a project for subsequent rental to eligible renters in accordance with this section. The sale of units to investor-owners shall be in accordance with Section 17.10.070 of this chapter and with the provisions of the Affordable Housing Guidelines, except that investor-owners need not be of average or below average income. Units sold to investor-owners must be subsequently rented to program eligible individuals per the requirements of said Guidelines.~~

~~(ea)~~ Except as otherwise provided in this subsection, affordable ownership units may be converted to affordable investor-owner (rental) units. The owner shall file a Notice of Intent to Rent with the administering agency prior to offering a unit for rent and shall be bound by the requirements of this section and the Affordable Housing Guidelines. The owner shall also record an amended Declaration of Restrictions stating that the unit is a rental unit as defined and governed by County Code Chapter 17.10 and the Affordable Housing Guidelines. Notwithstanding the foregoing,

an owner of an affordable unit who is determined by the administering agency to have rented the unit for rents in excess of the amounts permitted under this chapter shall only be eligible to convert the unit to a rental unit if the owner, within thirty (30) days after receipt of notice from the administering agency, cures the violation by paying to the administering agency the amount of the excess rents collected by the owner, and by recording an amended Declaration of Restrictions stating that the unit is a rental unit as defined and governed by County Code Chapter 17.10 and the Affordable Housing Guidelines. If the owner fails to cure the violation within the thirty (30) day period, the owner shall submit to the administering agency a written irrevocable offer to sell the unit to the County in a form approved by the administering agency for a price not in excess of the maximum sales price set in accordance with the resale price provisions of the Affordable Housing Guidelines, and subject to all the other resale price provisions of the Guidelines, including the provisions for an inspection and for owner responsibility for certain repairs.

(b) The Redevelopment Agency shall have the authority to lease affordable housing units to non-profit housing organizations for the provision of rental housing to lower income County households, in accordance with the Affordable Housing Guidelines.

(d) All affordable rental units shall be rented either:

- (1) To households participating in the Housing Authority of the County of Santa Cruz Section 8 Housing Assistance Program;
- (2) To any households earning below average income;
- (3) To households participating in programs such as the (A) HUD Section 8 New Construction program (B) the California Housing Finance Agency multiple-family lending program, or (C) other programs whereby projects receive direct Federal or State assistance to make units affordable to below average income households.

~~(e) Developers of projects not receiving direct federal or state assistance shall prepare and submit to the administering agency a certification of the availability of the affordable rental unit prior to final inspection of the project by the County. In the event of a subsequent vacancy, the owner shall notify, using a Notice of Intent to Rent, the administering agency that the unit is available for rental pursuant to this chapter. The units shall be rented to households certified by the administering agency as meeting the requirements of the Affordable Housing Guidelines of the affordable housing program established by Board of Supervisors Resolution as required by section 17.10.080 of this Chapter. The owner shall have discretion in the selection of eligible renters, provided that, except for the amount of rent to be charged pursuant to this Chapter, the same rental terms and conditions are applied to tenants of affordable units as to all other tenants, and not other or additional fees are charged.~~

-(d) All households renting affordable rental units shall be offered leases of at least twelve (12) months in duration, unless renting units held by the Redevelopment Agency which may be rented on a month-to-month basis.

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The rent stipulated in this lease shall not be higher than the maximum allowed by the Affordable Housing Guidelines in effect when the lease is signed. The owner of an affordable rental unit shall notify the tenants one hundred twenty (120) days prior to the termination of the restrictions of this Chapter, or the conversion of the unit to an affordable ownership unit and that this termination or conversion may mean that rents will be increased or the unit sold.

~~(g) The owner may convert an affordable rental unit to an affordable ownership unit by notifying the administering agency, in writing, of his intent to sell. The sales prices shall be set at the level allowed under the Affordable Housing Guidelines in effect at the time of the sale. (Ord. 3002, 10/28/80; 3234, 5/18/82; 3329, 11/23/82; Ord. 3502, 3/6/84; 3802, 12/16/86; 3881, 12/15/87; 4081, 10/16/90; 4425, 8/13/96; Ord. 4755 § 3, 1/27/04)~~

17.10.051

(a) Affordable units with Declarations of Restriction dated after the effective date of this ordinance shall be prohibited from use as investor-owner units except in the following circumstances, as determined by the Planning Director, which are also exempt from Section 17.10.050(d):

- 1) The unit has been owner-occupied for a minimum of one year, and the owner is unable to continue residing in the unit either temporarily or permanently due to illness or absence from the area;
- 2) The owner of the unit received title as the result of death, foreclosure, or bankruptcy of the previous owner, and requires time to arrange for the sale of the property.

(b) The Redevelopment Agency shall have the authority to lease affordable housing units to non-profit housing organizations for the provision of rental housing to lower income County households, in accordance with the Affordable Housing Guidelines.

(c) The following Senior Affordable projects shall be exempt from the requirements of this section: Casa la Familia and Vista Prieta.

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3. Erik would like to amend the "2 for 1" provision contained in Section 17.10.037(a)(5). Currently, this provision allows developers to satisfy their Measure J requirement by restricting two existing

units to satisfy their 1 unit requirement on the development site. The provision requires that the replacement units be located in the same planning area, i.e. a large lot subdivision in Corralitos would be required to find replacement dwellings in Corralitos. Erik would like to amend these provisions to allow the replacement housing to be located outside the planning area.

#### **17.10.037 Existing Unit Conversion Program and Measure J Trust Fund.**

(a) Existing Unit Conversion Program. As ~~an alternative a manner of meeting requirements of 17.10.030(b) to constructing an affordable unit pursuant to Section 17.10.030(b),~~ a developer of a project with an obligation for a whole unit or units of affordable housing may fulfill the requirements of Section 17.10.030(b) by participating 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 the build/convert 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 (15) percent 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 (20) percent 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 United 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 (15) 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 nonrefundable 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. (Ord. 4662 § 6, 4/23/02)

#### **17.10.070 Ownership unit requirements.**

(a) Unless otherwise stipulated in the Declaration of Restrictions, the owner of an affordable ownership unit, on its initial sale by the developer or resale, shall provide the County Redevelopment Agency with the first right of refusal to purchase the unit at the current sales price allowed by the



Affordable Housing Guidelines. Should the Redevelopment Agency decline the offer, then the seller may proceed to sell the unit to an average or below average income household for a price mutually agreed upon by the buyer and seller provided that this price is not in excess of the maximum sales price set according to the provisions contained in the Affordable Housing Guidelines.

(b) Prior to offering a unit for sale, the owner shall send a written Notice of Intent to Sell/Option to Purchase to the administering agency.

The administering agency will then notify the owner of the current maximum sales price and the agency's intent or refusal to purchase the unit. Prior to the close of the sale, the owner shall notify the administering agency of the proposed sale price and the administering agency shall review the proposed sale to assure conformance with this chapter and with the Affordable Housing Guidelines.

(c) Upon the sale of an affordable housing unit to any party other than the agency, the purchaser shall be required to enter into a new Affordable Housing Declaration of Restrictions which incorporates all current policies contained within the Affordable Housing Ordinance and Affordable Housing Guidelines.

(d) Closing costs and title insurance shall be paid pursuant to the custom and practice in the County of Santa Cruz at the time of opening of escrow. No charges or fees shall be imposed by the seller on the purchaser of an affordable unit which are in addition to or more than charges imposed upon purchasers of market rate unit, except for administrative fees charged by the administering agency established in the Affordable Housing Guidelines.

(e) The purchaser of an ~~ownership~~-affordable unit shall verify in a form acceptable to the County that the unit is being purchased for the purchaser's primary place of residence, and that if this unit ceases to function as his or her primary residence, it will ~~either~~ be sold according to the requirements of this chapter or rented to an eligible below average income household as certified by the administering agency in accordance with the requirements of Subsection 17.10.050(c) and (d) below.

(f) The following transfers of title or any interest therein shall not be treated as a sale or resale under the provisions of this section provided, however, that the Affordable Housing Restrictions shall continue to run with the title to said unit following such transfers:

(1) Transfers by gift, devise or inheritance to the purchaser-owner's spouse or children, or

(2) Transfers of title to a spouse as part of a divorce or dissolution proceeding, or

(3) Acquisition of title or interest therein in conjunction with marriage, or

(4) Acquisition of the unit by an employer pursuant to an employer sponsored relocation program, and subsequent sale by the employer to an

eligible purchaser or the County. In order for this exception to be applied, a new Affordable Housing Declaration of Restrictions shall be recorded, both when the employer acquires the unit and when the unit is sold to an eligible purchaser. No rental of the unit is permitted pursuant to this exception.

(g) The Board of Supervisors may provide, by resolution for a shared equity option, to allow the builder and purchasers of affordable ownership units to share in the ownership of such units. (Ord. 3002, 10/28/80; 3234, 5/18/82; 3329, 11/23/82; 3502, 3/6/84; 3802, 12/16/86; 3881, 12/15/87; 4081, 10/16/90; 4425, 8/13/96; Ord. 4755 § 5, 1/27/04)