

## **Napa County, Ca Municipal Code: Affordable and Inclusionary Housing**

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### **Title 15 Buildings and Construction**

- **15.60 AFFORDABLE HOUSING**

#### **15.60.010 Definitions.**

Unless the context clearly requires otherwise, the definitions in this section shall govern the provisions of this chapter.

“Addition” means, for purposes of Sections 15.60.070 through 15.60.120 of this chapter, adding gross square feet to an existing nonresidential development project.

“Affordable rent” means monthly rent, including utilities and all fees for housing services, equal to or less than one-twelfth of thirty percent of income for the specified target income household. Affordable rent shall be based on presumed occupancy levels of one person in a studio unit, two persons in a one bedroom unit, three persons in a two bedroom unit, and one additional person for each additional bedroom thereafter.

“Affordable sales price” means the maximum purchase price that will be affordable to the specified target income household. A maximum purchase price shall be considered affordable only if each monthly owner-occupied housing payment is equal to or less than one-twelfth of thirty percent of income for the specified target income household. In setting the affordable sales price, realistic assumptions regarding down payment, mortgage interest rate and term will be required and those assumptions must demonstrate that targeted income families can reasonably qualify. If evidence is presented which shows to the satisfaction of the county that targeted income buyers can qualify for financing even though the percentage of their income allocated to housing is higher than thirty percent, then a corresponding increase may be approved in the affordable sales price. Affordable sales price shall be based upon presumed occupancy levels of one person in a studio unit, two persons in a one bedroom unit, three persons in a two bedroom unit, and one additional person for each additional bedroom thereafter.

“Affordable units” means and is limited to those dwelling units which are required to be rented at affordable rents or purchased at an affordable sales price to specified households as described in Sections 15.60.130 through 15.60.270 of this chapter.

“Annual household income” means the combined gross income for all adult persons living in a dwelling unit as calculated for the purpose of the Section 8 program under the United States Housing Act of 1937, as amended, or its successor.

“Board” means the Napa County board of supervisors.

“Building division” means the building division of the Napa County conservation, development and planning department.

“Building permit” means a permit issued pursuant to Chapter 15.12 of this code.

“Construction” is, for purposes of Sections 15.60.070 through 15.60.120 of this chapter, a new nonresidential development project.

“Construction costs” means the estimated cost per square foot of construction, as established by the building division for use in the setting of regulatory fees, multiplied by the total square footage to be constructed.

“County” means the unincorporated portions of Napa County.

“Discretionary permit” shall include use permits issued pursuant to Chapter 18.124 of the Napa County Code, including minor modification approvals as set forth in Section 18.124.130; and the approval of tentative, final or parcel maps pursuant to Title 17 of the Napa County Code.

“Dwelling unit” shall have the meaning set forth in Section 18.08.260.

“Gross square feet” is the area included within the surrounding walls of a nonresidential development project as calculated by the building division in accordance with its standard

practice in calculating structural perimeters. This area does not include garages or carports. For purposes of the requirements of Sections 15.60.070 through 15.60.120, the square footage of any tank or wine crush pad or similar non-walled wine-related structure shall be included in the gross square feet of a nonresidential development project.

“Housing board” means the housing trust fund board established pursuant to Section 15.60.030(B).

“Housing director” means the county executive officer for the county or the designee of such person.

“Housing fund” means the county of Napa affordable housing trust fund established pursuant to Section 15.60.020.

“Interior remodel” is, for purposes of Sections 15.60.070 through 15.60.120, an improvement which results in a change in the type of use of a previously occupied nonresidential development project that increases the employee density of the project as determined by the planning director.

“Low income households” are those households with incomes of up to eighty percent of median income.

“Market rate units” means dwelling units in a residential project which are not affordable units.

“Median income” means the median income, adjusted for family size, applicable to Napa County as published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provision) by the United States Department of Housing and Urban Development.

“Moderate income households” are those households with incomes of up to one hundred twenty percent of median income.

“Monthly owner-occupied housing payment” shall be that sum equal to the principal, interest, property taxes, homeowner’s insurance and homeowner’s association dues paid on an annual basis divided by twelve.

“Nonresidential development project” means any development or use for which a discretionary permit or building permit is required, other than those developments or uses involving solely the construction or remodeling of dwelling units.

“Planning commission” shall mean the Napa County conservation, development and planning commission.

“Planning director” means the director of the Napa County conservation, development and planning department or the designee of said director.

“Residential project” means the construction or remodeling of any dwelling unit located within the boundaries of the county for which a building permit or discretionary permit is issued by the county; provided, however, that residential project shall not include (1) the construction of any dwelling unit for which the construction costs do not exceed fifty-five thousand dollars, (2) the remodeling of any dwelling unit for which the construction costs do not exceed fifteen thousand dollars or (3) the construction or remodeling of any dwelling unit within the area of any subdivision for which the final or parcel map was recorded within the five-year period prior to the issuance of the building permit with respect to such construction or remodeling, unless approval or conditional approval of the tentative map, or

recording of the parcel map (if no tentative map was required), for such subdivision was expressly conditioned upon participation in an inclusionary system such as that established by Sections 15.60.130 through 15.60.270 or such participation was expressly required as an environmental mitigation measure for the subdivision.

“Section,” unless otherwise indicated, means a section of the Napa County Code.

“Very low income households” are those households with incomes of up to fifty percent of Median Income. (Ord. 1243 § 1 (part), 2004)  
15.60.010

#### **15.60.020 Housing fund—Established.**

There is established the county of Napa affordable housing trust fund (the “housing fund”). Separate accounts within such housing fund may be created from time to time to avoid commingling if required by law or as deemed appropriate to further the purposes of the fund. (Ord. 1243 § 1 (part), 2004)

#### **15.60.030 Housing fund—Administration.**

A. The housing fund shall be administered by the housing director who shall have the authority to govern the housing fund consistent with this chapter, and to prescribe procedures for said purpose, subject to approval by the board.

B. In addition, a housing trust fund board (the “housing board”) shall be established by the board. The housing board may, in the board’s discretion, be a joint housing board consisting of representatives from participating member jurisdictions. The housing board shall annually develop a housing assistance plan program and financing strategy, subject to approval by the board, to further define and prioritize the uses of the moneys in the housing fund. The composition, size, term, decision-making authority and other organizational features of the housing board shall be as determined by resolution of the board. (Ord. 1243 § 1 (part), 2004)

#### **15.60.040 Housing fund—Purposes and use of funds.**

A. Moneys deposited in the housing fund along with any interest earnings on such moneys shall be used to increase and improve the supply of housing affordable to households of moderate, low and very low income households. Moneys may also be used to cover reasonable administrative expenses not reimbursed through processing fees, including reasonable consultant and legal expenses related to the establishment and/or administration of the housing fund and reasonable expenses for administering the process of calculating, collecting, and accounting for inclusionary fees. No portion of the housing fund may be diverted to other purposes by way of loan or otherwise.

B. Moneys in the housing fund shall be used in accordance with the priorities identified by the housing assistance plan program and financing strategy described in Section 15.60.030(B) to construct, rehabilitate or subsidize very low, low and moderate income housing and/or to assist other governmental entities, private organizations or individuals in the construction, rehabilitation, location or subsidy of very low, low and moderate income housing. Moneys in the housing fund may be disbursed, hypothecated, collateralized or otherwise employed for these purposes from time to time as the housing director determines is appropriate to accomplish the purposes of the housing fund. These uses include, but are not limited to, assistance to housing development corporations, equity participation loans, grants, pre-home ownership co-investment, pre-development loan

funds, participation leases, or other public/private partnership arrangements. The housing fund moneys may be extended for the benefit of rental or owner occupied housing or housing services.

C. Expenditures by the housing director from the housing fund shall be controlled, authorized and paid in accordance with general county budgetary policies. Execution of contracts related to the use or administration of housing fund moneys shall be in accordance with standard board policy. (Ord. 1243 § 1 (part), 2004)

#### **15.60.050 Location of housing units and housing services to be assisted with housing fund moneys.**

A. Subject to board approval, the housing board shall develop criteria for the location of the housing units to be assisted with housing fund moneys. One of the purposes of these criteria shall be to help ensure that housing fund moneys are used to assist the county in meeting its fair share housing goals as set forth in the housing element of the Napa County general plan.

B. With respect to moneys generated by the housing impact fee established by Sections 15.60.070 through 15.60.120, these criteria shall also ensure a reasonable geographical linkage between the nonresidential development projects subject to such fee and the housing assistance provided with the housing fund moneys collected in connection with such projects, such that those receiving the housing assistance could reasonably commute to the commercial locations. The housing board may elect to utilize a zone system which provides that funds from nonresidential projects within a specified zone be spent for housing assistance within the same zone. The boundaries of any such zones shall take into account the transportation network of Napa County such that the geographic linkage mentioned above is retained. The zone system may be developed jointly between the county and the incorporated cities within Napa County to designate specific geographic areas within the city limits and unincorporated areas for the expenditure of funds. If due to regional growth, increased traffic congestion, or other factors, the housing board determines that at any time in the ensuing year sites which meet the geographic linkage requirement mentioned above will not be available for assistance, the housing board may develop and present to the board a proposal for ensuring a continued linkage between nonresidential development projects subject to Sections 15.60.070 through 15.60.120 and the location of assisted housing. Such a proposal may be presented in connection with the annual evaluation described in Section 15.60.060 below. (Ord. 1243 § 1 (part), 2004)

#### **15.60.060 Housing fund—Annual evaluation.**

Commencing after the end of the 2004-2005 fiscal year and annually thereafter, the housing director, planning director and auditor shall jointly report to the board and the planning commission, within sixty days of the end of such fiscal year, on the status of activities undertaken with the housing fund. The report shall include a statement of income, expenses, disbursements and other uses of the housing fund. The report shall also detail the number of individuals assisted and the number of housing units constructed or assisted during that year, stating the amount of such assistance. The report shall evaluate the efficiency of this chapter in mitigating the shortage of low income housing available in the county generally and to employees of the nonresidential projects subject to Sections 15.60.070 through 15.60.120 in particular. In this report, the housing director or planning director shall also recommend any changes to this chapter, the housing element of the Napa County general plan, other ordinances, housing board objectives or other actions necessary to carry out its purposes, including any adjustments necessary to the fees or number of housing units required. Any report that contains a recommendation from the housing director or planning director that the housing impact fees established pursuant to

Sections 15.60.070 through 15.60.120 be increased shall discuss the impact of such an increase on the county's ability to compete in the regional market for commercial and industrial projects. The report shall also contain the findings required by Government Code Sections 66001(d) and 66006(b) (or their successor provisions). (Ord. 1243 § 1 (part), 2004)

#### **15.60.080 Application of Sections 15.60.070 through 15.60.120.**

Sections 15.60.070 through 15.60.120 shall apply to nonresidential development projects that are proposing the construction, addition or interior remodeling of any nonresidential development project. Sections 15.60.070 through 15.60.120 shall apply to mixed or combined use projects if such projects propose the construction, addition or interior remodeling of nonresidential uses. Notwithstanding the foregoing, Sections 15.60.070 through 15.60.120 shall not apply to projects which fall within one or more of the following categories:

- A. The precise portion of a nonresidential development project for which a discretionary permit was issued on or before January 1, 1993, unless such discretionary permit has, as a condition of approval or environmental mitigation measure, compliance with a housing fee program such as that found in Sections 15.60.070 through 15.60.120; or
- B. Projects that are the subject of development agreements currently in effect with the county, approved prior to January 1, 1993, where such agreements expressly preclude the county from requiring compliance with a housing fee program such as that found in Sections 15.60.070 through 15.60.120; or
- C. The nonresidential uses set forth in a building permit application accepted as complete by the county prior to January 1, 1993; or
- D. That portion of any nonresidential development project located on property owned by the state of California, the United States of America or any of its agencies, with the exception of such property not used exclusively for governmental or educational purposes; or
- E. Any nonresidential development project to the extent it has received a vested right to proceed without housing fees pursuant to state law; or
- F. Uses operated by nonprofit organizations which provide food storage, meal service and/or temporary shelter to the homeless; or
- G. All uses labeled "E" in Table 2 to Sections 15.60.070 through 15.60.120. (Ord. 1243 § 1 (part), 2004)

#### **15.60.090 Nonresidential development fee—Housing fee requirement.**

A. Except as provided in Sections 15.60.070 through 15.60.120, no building permit shall be issued for any nonresidential development project subject to Sections 15.60.070 through 15.60.120, as set forth in Section 15.60.080, unless and until payment of a housing fee is either made to the county (who shall deposit such fee in the housing fund established pursuant to Sections 15.60.020 through 15.60.060) or secured pursuant to subsection (D) of this section. The housing fee shall be calculated as follows;

Housing fee = (gross square footage of nonresidential space) X (applicable fee by type of use as listed in Table 1 to Sections 15.60.070 through 15.60.120)

For purposes of Sections 15.60.070 through 15.60.120, the fees for an interior remodel shall be the fees for the new use as defined in Table 1, less any fees that either were paid or would have been paid based on the original use of the building. If the nonresidential development project is in whole or part a replacement for space previously on the site, but demolished within one year prior to the filing of the application for the new construction or remodel, credit shall be given for the space demolished or to be demolished at the rate applicable to the prior use of that space.

B. As an alternative to payment of the housing fee set forth in subsection (A) above, an applicant for a nonresidential development project subject to the requirements of Sections 15.60.070 through 15.60.120 may submit a request to mitigate the impacts of such development through the construction of residential units or the dedication of land or mixed use or other resources. Such requests shall be considered on a case-by-case basis by the planning commission and shall be approved, at the planning commission's sole discretion, if the planning commission determines that such alternative compliance will further affordable housing opportunities in the county to an equal or greater than payment of the housing fee.

C. Where participation in a housing fee system as established by Sections 15.60.070 through 15.60.120 was expressly required for a nonresidential development project pursuant to a development agreement or as an environmental mitigation measure or condition of approval for issuance of a discretionary permit, but a building permit with respect to such project has been issued prior to the effective date of the ordinance codified in Sections 15.60.070 through 15.60.120, any fee to be paid pursuant to this section shall either be paid within sixty days of the effective of this chapter or, if the certificate of occupancy with respect to such project has not yet been issued, secured within that same time period as provided by subsection (D) of this section.

D. For all fees not paid upon issuance of building permits pursuant to subsection (A) of this section, the planning director may require the applicant, prior to issuance of the building permit, to execute a contract to pay the fee prior to issuance of the certificate of occupancy for the nonresidential development project. The obligation to pay the fee shall inure to the benefit of, and be enforceable by, the county. The contract shall contain a legal description of the property affected, shall be recorded in the office of the county recorder of Napa County and, from the date of recordation, shall constitute a lien for the payment of the fee, which shall be enforceable against successors in interest to the property holder or lessee at the time of the issuance of the building permit. The contract shall be recorded in the grantor-grantee index in the name of the county as grantee and in the name of the property holder or lessee at building permit issuance as grantor. The contract may require appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and that the fee be paid to the county from the sale proceeds in escrow prior to disbursing proceeds to the seller.

E. No temporary or permanent certificate of occupancy for any nonresidential development project shall be issued until the permittee has paid the housing fee described in subsection (A) of this section or otherwise satisfactorily complied with the requirements of Sections 15.60.070 through 15.60.120. Release of utilities shall not be authorized for any nonresidential development project until notification is received from the planning director that all requirements of Sections 15.60.070 through 15.60.120 have been met. (Ord. 1243 § 1 (part), 2004)

#### **15.60.100 Nonresidential development fee—Administration.**

A. Compliance with Sections 15.60.070 through 15.60.120 will be made a condition of approval of each discretionary permit approved for a nonresidential development project

subject to Sections 15.60.070 through 15.60.120. The application procedures defined in subsection (B) below shall apply to all discretionary permit applications.

B. Applications for building permits for any project subject to the provisions of Sections 15.60.070 through 15.60.120 shall not be deemed complete unless the application contains (1) a statement of the number of gross square feet in a nonresidential development project to be constructed, added or remodeled that are subject to the requirements of Sections 15.60.070 through 15.60.120, together with documentation sufficient to support the application; (2) the intended use or uses for the nonresidential development project by gross square feet; and (3) if payment of the housing fee is to be deferred pursuant to Section 15.60.090(D) and if required by the planning director, a contract executed by applicant meeting the requirements of that section.

C. The planning director, with the concurrence of the housing director, shall determine the amount of fee and shall so inform the appropriate county official who shall collect the required fee and deposit it in the housing fund in accordance with the provisions of Sections 15.60.070 through 15.60.120. Except as provided in subsection (D) below, the planning director shall use the matrix in Table 2 to Sections 15.60.070 through 15.60.120 to relate the anticipated use of the nonresidential development project to a type of use in Table 1 to Sections 15.60.070 through 15.60.120 and a resulting fee per square foot, or to identify the use as exempt or requiring a special fee. In calculating the fee, the planning director shall use those versions of Table 1 and Table 2 in effect at the time of the issuance of the building permit. In the case of large, mixed-use development projects involving the simultaneous construction of different structures and/or different uses, the planning director may utilize the categories in Table 2 and the types of uses in Table 1 to create a mixed fee to be collected for all building permits in the project. In that case, the mixed fee shall be designed to approximate the revenue which would have been collected had the appropriate type of use category in Table 1 been applied to each individual portion of the project. The applicant may appeal the planning director's fee determination pursuant to this subsection according to the provisions of Chapter 2.88 of the Napa County Code.

D. The planning director shall determine the housing fee based on a case-by-case calculation of employee density in the following situations:

1. In the case of uses listed as "S" in Table 2;
2. In the case of a use which does not fall into one of the uses listed in Table 2 and the planning director determines that (a) the building size is an inappropriate indicator of employee density, or (b) insufficient generalized information is available to permit a determination that the use falls within one of the use categories listed in Table 2.
3. In the case of uses involving one or fewer employees, which uses shall be exempt from the fee requirement. Upon the conversion of the building to another use or upon the remodeling of the building to permit additional employees, the appropriate fee shall be paid.

E. The planning director's determination of employee density pursuant to subsection (D) of this section shall be based on: data concerning anticipated employee density for the project submitted by the applicant; employment surveys or other research on similar uses submitted by the applicant or independently researched by the planning director; or any other data or information the planning director determines relevant. The applicant may appeal the planning director's fee determination pursuant to subsection (D) of this section according to the provisions of Chapter 2.88 of the Napa County Code. Any application for a building permit for any project where a special fee determination is requested shall be accompanied by information sufficient to enable the planning director to make a determination of employee density pursuant to this subsection.

F. (Reserved).

G. The fees set forth in Tables 1 and 2 shall be reviewed and, if appropriate, revised, effective January 1st of each year. The housing director and planning director shall jointly prepare a recommendation to the board for such revision on an annual basis in accordance with the requirements of Section 15.60.060.

H. The rates set herein for the housing impact fee shall be adjusted annually on or about January 1st of each year starting in the year 2005 by the percentage change corresponding to the percentage change in the construction price index for a wood frame wood dwelling unit in the unincorporated areas of the county based on the valuation method used to issue building permits by the Napa County conservation, development and planning department in the unincorporated areas of the county. (Ord. 1243 § 1 (part), 2004)

**Table 1**

**HOUSING FEE REQUIREMENT**

	<b>Fee Per</b>
<b>Type of Use</b>	<b>Square Foot (sf)</b>
Office	\$2.00
Hotel	3.00
Retail	2.00
Industrial	1.00
Warehouse*	0.80
* Warehouse uses of under 30,000 square feet shall be treated as industrial uses.	

**Table 2**

**NONRESIDENTIAL LAND USE MATRIX WITH SPECIAL CATEGORICAL FEE DETERMINATIONS AND EXEMPTIONS**

<b>NONRESIDENTIAL USE</b>	<b>OFF</b>	<b>RETAIL</b>	<b>WH</b>	<b>IND</b>	<b>HOTEL</b>	<b>OTHER FEE</b>
Agricultural uses						E
Amusement centers—Indoor only						S
Amusement enterprise—Outdoor						S
Animal or poultry slaughter				X		
Appliance repair shop		X				
Assembly plants				X		
Auto sales, service, rental storage						
Repair/body shop				X		

Sales/service		X				
Bakery or bakery goods store		X				
Bank—Savings and loan	X					
Barber shop, beauty shop		X				
Bed and breakfast inn					X	
Beverage bottling plant (non-wine)				X		
Boat manufacturing				X		
Bus and other transit terminals, depots, and passenger stations, public and private						S
Bus and other transit vehicle maintenance				X		
Cabinet shop				X		
Cement or clay products manufacturing				X		
Child care center						E
Christmas tree sales lots						E
Church						E
Cleaning, laundry agency		X				
Cleaning plant commercial				X		
Concrete batch plant				X		
Convenience market		X				
Dairy products processing				X		
Dance, music, voice studio		X				
Delivery service				X		
Drive-in restaurant/food stand		X				
Equipment rental		X				
Florist		X				
Food processing plant				X		
Food store/delicatessen		X				
Fuel yard						S
Furniture refinishing				X		
Furniture store		X				
Garment manufacturing				X		

shop						
Golf course						S
Health club and fitness facilities		X				
Hotel					X	
Janitorial service company				X		
Junkyard				X		
Laboratory—Medical, dental, optical	X					
Laboratory—Research and experimental				X		
Laundromat—Self service center		X				
Lumber—Retail		X				
Machine shop				X		
Major medical care facility/hospital						S
Marinas						S
Medical clinic or office	X					
Metal fabrication				X		
Monument works, stone				X		
Mortuary/crematorium						S
Motel					X	
Nonprofit organization—Food preparation for off-site consumption						E
Nonprofit organization—Food storage and distribution						E
Nonprofit organization—Meal service facility						E
Nursery for flowers and plants		X				
Offices	X					
Parking lot, garage of facility						E
Pest control company				X		
Photographic studio		X				
Prescription pharmacy/optician		X				
Printing—Non-retail				X		
Printing and copying—Retail		X				

Private club—Social center						S
Private trade schools		X				
Public utility yard						E
Railroad yard or shops						S
Recycling center—Public access				X		
Recycling plant				X		
Residential care facility—Nonprofit						E
Residential care facility—Private						S
Restaurant/bar		X				
Retail stores and services		X				
School—Nonprofit						E
Service station		X				
Shop for building contractor				X		
Sign shop		X				
Sports complex						S
Tire shop, including recapping		X				
Towing service				X		
Trucking terminal				X		
Truck and tractor repair				X		
Veterinary office/animal hospital or dog kennel	X					
Wholesale stores and distribution						S
Wine offices	X					
Wine production, including bottling				X		
Wine storage			X			
Wine tank and crush pads			X			
Wine visitor center/conference room		X				

X Project is subject to fee for nonresidential use category.

S Fee amount determined by planning director on a project-by-project basis.

E Nonresidential project is exempt from the requirements of Sections 15.60.070 through 15.60.120.

#### **15.60.110 Nonresidential development fee—Enforcement.**

A. The Napa County office of county counsel or the Napa County district attorney, as appropriate, shall be authorized to enforce the provisions of Sections 15.60.070 through 15.60.120, and all regulatory agreements executed in connection with the requirements of Sections 15.60.070 through 15.60.120, by civil action or any other proceeding or method permitted by law.

B. Failure of any official to fulfill the requirements of a provision of Sections 15.60.070 through 15.60.120 shall not excuse any applicant from fulfilling the remaining requirements of Sections 15.60.070 through 15.60.120. (Ord. 1243 § 1 (part), 2004)

#### **15.60.120 Nonresidential development fee—Grandfathering.**

Notwithstanding any other provision of Sections 15.60.070 through 15.60.120, any applicant that had a building permit application on file with the county as of the close of business on September 17, 2004 and would have been issued a building permit but for the injunction issued by the Napa Superior Court in DeHaro v. County of Napa, et. al., Napa Superior Court Case No. 26-22255, shall be subject to the fees established by this chapter that were in effect as of September 16, 2004. (Ord. 1243 § 1 (part), 2004)

#### **15.60.130 Residential development inclusionary requirement—Basic requirement.**

At least ten percent of all new dwelling units in a residential project constructed in the county shall be affordable as prescribed in Section 15.60.160 or Section 15.60.170, as applicable, and shall be constructed not later than the related market rate units, unless one of the alternative actions set forth in Section 15.60.190 or Section 15.60.210 is performed. For fractions of affordable units, including fractions resulting from construction of less than ten dwelling units, the owner of the property must either construct the next higher whole number of affordable units, perform an alternative action pursuant to Section 15.60.190 or Section 15.60.220(C) or pay the fee specified in Section 15.60.210 for the fraction; provided, however, that Sections 15.60.130 through 15.60.270 shall not apply to construction of a single dwelling unit which is the whole of a residential project and which is built and owned, and after completion occupied for two years, by a moderate income household. For purposes of this section, a dwelling unit shall be deemed "built" by its owner if it is built by or for a permit holder who intends to reside in the dwelling unit. (Ord. 1243 § 1 (part), 2004)

#### **15.60.140 Affordable housing incentives.**

In the case of residential projects which meet the affordability requirements specified in Section 15.60.130 through the actual construction of affordable units rather than the payment of fees as permitted by Section 15.60.210, application fees for building permits shall be waived for affordable units constructed in connection with such residential project. In addition, the planning commission may consider, on a case-by-case basis, the provision of additional incentives as provided by law or in the housing element of the Napa County general plan. (Ord. 1243 § 1 (part), 2004)

#### **15.60.150 Time performance required.**

A. No temporary or permanent certificate of occupancy for any new dwelling unit in a residential project shall be issued until the permittee has met the on-site construction

requirement of Section 15.60.130 or has satisfactorily performed one of the alternative actions set forth in Section 15.60.190 or 15.60.210.

B. Release of utilities shall not be authorized for any residential project until notification is received from the planning director that all requirements of Sections 15.60.130 through 15.60.270 have been met.

C. For residential projects consisting of single dwelling units that claim exemption from the affordability requirements specified in Section 15.60.130 on the basis of the proviso contained in the last sentence of that section, no temporary or permanent certificate of occupancy shall be issued until the permittee has made a showing acceptable to the planning director that such an exemption is appropriate. The planning director shall develop and implement regulations designed to ensure that such initially exempt dwelling units remain in compliance with the terms of the exemption throughout the first two years of occupancy. A dwelling unit found to be out of compliance at any time during such two-year period shall be required to pay one hundred twenty-five percent of the then current in-lieu fee for that dwelling unit, as specified by Sections 15.60.210 and 15.60.220. Such payment, however, shall not limit the county's ability to proceed against any party pursuant to Section 15.60.250 or other applicable law. (Ord. 1243 § 1 (part), 2004)

#### **15.60.160 Requirements for rental affordable units.**

A. One-half of the affordable units which are required to be constructed in connection with construction of rental market rate units shall be available at affordable rents to very low income households. The remaining one-half of the required affordable units shall be available at affordable rents to low income households. Where the number of required affordable units is an odd number, the number of affordable units constructed for very low income households may be one less than the number of affordable units constructed for low income households.

B. With respect to any particular rental residential project, the planning commission may, upon the recommendation of the housing director, forgive all or a portion of the affordability requirement set forth in subsection (A) above upon a showing by the applicant that imposition of such requirement on the residential project will cause undue hardship and that such residential project will contribute significantly to affordable housing opportunities in the county. (Ord. 1243 § 1 (part), 2004)

#### **15.60.170 Requirements for owner-occupied affordable units.**

One-half of the affordable units which are required to be constructed in connection with the construction of market rate units intended for owner-occupancy shall be available at affordable sales prices to households whose annual household income does not exceed one hundred percent of median income. The remaining one-half of the required affordable units shall be available at affordable sales prices to moderate income households. Where the number of required affordable units is an odd number, the number of units affordable to moderate income households may be one greater than the number affordable at or below one hundred percent of median income. (Ord. 1243 § 1 (part), 2004)

#### **15.60.180 Basic requirements for owner-occupied and rental affordable units.**

Affordable units shall be comparable in number of bedrooms, exterior appearance and overall quality of construction to market rate units in the same residential project. Subject to the approval of the planning director, square footage of affordable units and interior

features in affordable units need not be the same as or equivalent to those in market rate units in the same residential project, so long as they are of good quality and are consistent with contemporary standards for new housing. Affordable units shall be dispersed throughout the residential project, or, subject to the approval of the planning director, may be clustered within the residential project when this furthers affordable housing opportunities. (Ord. 1243 § 1 (part), 2004)

#### **15.60.190 Equivalency proposals permitted.**

Projects proposing to meet the minimum requirement for affordability through equivalency shall submit an equivalency proposal to the planning commission for approval. Such proposals shall show how the alternative proposed will further affordable housing opportunities in the county to an equal or greater extent than compliance with the express requirements of Sections 15.60.130 through 15.60.270. Applicants proposing to construct rental affordable units in lieu of owner-occupied affordable units as permitted by Section 65589.8 of the Government Code (or its successor provision) shall submit an equivalency proposal pursuant to this section. (Ord. 1243 § 1 (part), 2004)

#### **15.60.200 Continued affordability.**

A. Prior to the issuance of certificates of occupancy for affordable units, regulatory agreements and, if the affordable units are owner-occupied, resale restrictions, deeds of trust and/or other documents, all of which must be acceptable to the planning director and consistent with the requirements of Sections 15.60.130 through 15.60.270, shall be recorded against parcels having such affordable units and shall be effective for a minimum of forty years with respect to each affordable unit.

B. Notwithstanding any other provision in Sections 15.60.130 through 15.60.270:

1. The maximum sales price permitted on resale of an affordable unit intended for owner-occupancy shall not exceed the seller's purchase price, adjusted for the percentage increase in median income since the seller's purchase, plus the value of substantial structural or permanent fixed improvements to the property as determined by the planning director. For purposes of this subdivision, median income shall be calculated based upon the presumed occupancy levels used to determine affordable sales price.

2. The resale restrictions shall provide that in the event of the sale of an affordable unit intended for owner-occupancy, the county shall have the right to purchase such affordable unit at the maximum price which could be charged to an eligible household.

C. No household shall be permitted to occupy an affordable unit, or purchase an affordable unit for owner-occupancy, unless the county or its designee has approved the household's eligibility, or has failed to make a determination of eligibility within the time or other limits provided by a regulatory agreement or resale restrictions. If the county or its designee maintains a list of eligible households, households selected to occupy affordable units shall be selected first from that list to the extent provided in the regulatory agreement or resale restrictions. (Ord. 1243 § 1 (part), 2004)

#### **15.60.210 Alternatives to construction—Payment of fees.**

A. Whenever construction of affordable units is required by Section 15.60.160 or 15.60.170, an applicant may instead pay the in-lieu fee calculated in accordance with Section 15.60.220.

B. An applicant must pay the in-lieu fee calculated in accordance with Section 15.60.220 to satisfy any requirement that a fraction of an affordable unit be built unless the applicant

constructs the next higher whole number of affordable units as permitted by Section 15.60.130 or submits an acceptable equivalency proposal as permitted by Section 15.60.190. (Ord. 1243 § 1 (part), 2004)

#### **15.60.220 In-lieu fees.**

A. If fees are paid in lieu of providing affordable units, the fees shall be paid upon issuance of building permits for the market rate units in a residential project, or, if requested by the applicant, deferred until issuance of the certificate of occupancy pursuant to subsection (G) of this section. If building permits are issued for only part of a residential project, the fee amount shall be based only on the number of permitted market rate units. Notwithstanding the foregoing, where participation in an inclusionary system such as that established by Sections 15.60.130 through 15.60.270 was expressly required for a residential project pursuant to a development agreement or as an environmental mitigation measure or condition of approval for issuance of a discretionary permit, but a building permit with respect to such project has been issued prior to the effective date of the ordinance codified in Sections 15.60.130 through 15.60.270, any fee to be paid pursuant to this section shall either be paid within sixty days of the effective date of the ordinance codified in Sections 15.60.130 through 15.60.270 or, if the certificate of occupancy with respect to such project has not yet been issued, secured within that same time period as provided by subsection (G) of this section.

B. The initial fee schedule shall be:

1. For market rate units in a residential project for which the projected construction costs are less than seventy-seven thousand dollars, one percent of such construction costs.
2. For market rate units in a residential project for which the projected construction costs are equal to or greater than seventy-seven thousand dollars, two percent of such construction costs.

C. The fee required by this section may be satisfied either by cash payment or, upon approval of the planning director, by the dedication to the county of land of a value equal to or greater than the amount of the fee.

D. With respect to rental residential projects, construction costs shall be separately calculated and fees paid for each dwelling unit within a residential project.

E. The amount of the in-lieu fee payable under this section shall be based upon the fee schedule in effect at the time of issuance of the building permit with respect to the residential project.

F. Any unpaid fees required pursuant to Sections 15.60.130 through 15.60.270 shall be paid in full to the county before any temporary or permanent certificate of occupancy may be issued for any dwelling unit in the residential project.

G. For all fees not paid upon issuance of building permits pursuant to subsection (A), the planning director may require the applicant, prior to issuance of the building permit, to execute a contract to pay the fee prior to issuance of the certificate of occupancy for the residential project. The obligation to pay the fee shall inure to the benefit of, and be enforceable by, the county. The contract shall contain a legal description of the property affected, shall be recorded in the office of the county recorder of Napa County and, from the date of recordation, shall constitute a lien for the payment of the fee, which shall be enforceable against successors in interest to the property holder or lessee at the time of the issuance of the building permit. The contract shall be recorded in the grantor-grantee index in the name of the county as grantee and in the name of the property holder or

lessee at building permit issuance as grantor. The contract may require appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and that the fee be paid to the county from the sale proceeds in escrow prior to disbursing proceeds to the seller.

H. The projected construction costs of market rate dwelling units for the housing in-lieu fee shall be adjusted annually on or about January 1st of each year starting in the year 2005 by the percentage change equal to the percentage change in the United States Department of Housing and Urban Development published median income for Napa County for that year. (Ord. 1243 § 1 (part), 2004)

#### **15.60.230 Annual fees.**

A. For each rental affordable unit provided under Sections 15.60.130 through 15.60.270, the current owner may be required to pay an annual monitoring fee for the term of required affordability. Such fee shall be specified in the regulatory agreement(s) required by Section 15.60.200.

B. For each owner-occupied affordable unit provided under Sections 15.60.130 through 15.60.270, the current owner may be required to pay a transfer fee for any change of ownership during the term of required affordability. Such fee shall be specified in the resale restrictions required by Section 15.60.200. (Ord. 1243 § 1 (part), 2004)

#### **15.60.240 Use and expenditure of fees.**

All fees collected under Sections 15.60.130 through 15.60.270 shall be deposited into the housing fund established pursuant to Sections 15.60.020 through 15.60.060. (Ord. 1243 § 1 (part), 2004)

#### **15.60.250 Enforcement.**

A. It shall be a misdemeanor for any person to sell or rent an affordable unit under Sections 15.60.130 through 15.60.270 at a price or rent exceeding the maximum allowed under Sections 15.60.130 through 15.60.270 or to a household not qualified under Sections 15.60.130 through 15.60.270.

B. The Napa County office of county counsel or the Napa County district attorney, as appropriate, shall be authorized to enforce the provisions of Sections 15.60.130 through 15.60.270 and all regulatory agreements and resale controls placed on affordable units by civil action and any other proceeding or method permitted by law.

C. Failure of any official to fulfill the requirements of a provision of this chapter shall not excuse any applicant from fulfilling the remaining requirements of Sections 15.60.130 through 15.60.270. (Ord. 1243 § 1 (part), 2004)

#### **15.60.260 Discretionary permit requirements.**

Every discretionary permit approved after the effective date of the ordinance codified in Sections 15.60.130 through 15.60.270 for a residential project shall contain as an express condition of approval a requirement of compliance with Sections 15.60.130 through 15.60.270. (Ord. 1243 § 1 (part), 2004)

### **15.60.270 Residential in-lieu fee—Grandfathering.**

Notwithstanding any other provision of Sections 15.60.130 through 15.60.270, any applicant that had a building permit application on file with the county as of the close of business on September 17, 2004 and would have been issued a building permit but for the injunction issued by the Napa Superior Court in DeHaro v. County of Napa, et. al., Napa Superior Court Case No. 26-22255, shall be subject to the fees established by this chapter that were in effect as of September 16, 2004. (Ord. 1243 § 1 (part), 2004)

### **15.60.280 Reduction/adjustment/waiver.**

A. A developer of any project subject to the requirements in this chapter may appeal to the planning commission for a reduction, adjustment, or waiver of the requirements based upon the absence of any reasonable relationship or nexus between the impact of the development and either the amount of the fee charged or the inclusionary requirements.

B. A developer subject to the requirements of this chapter who has received an approved tentative subdivision or parcel map, use permit or similar discretionary approval and who submits a new or revised tentative subdivision or parcel map, use permit or similar discretionary approval for the same property may appeal for a reduction, adjustment or waiver of the requirements with respect to the number of lots or square footage of construction previously approved.

C. Any such appeal shall be made in writing and filed with the conservation, development and planning department not later than ten days before the first public hearing on any discretionary approval or permit for the development, or if no such discretionary approval or permit is required, or if the action complained of occurs after the first public hearing on such permit or approval, then the appeal shall be filed within ten days after payment of the fees objected to. The appeal shall set forth in detail the factual and legal basis for the claim of waiver, reduction, or adjustment. The planning commission shall consider the appeal at the public hearing on the permit application or at a separate hearing within sixty days after the filing of the appeal, whichever is later. The appellant shall bear the burden of presenting substantial evidence to support the appeal including comparable technical information to support appellant's position. No waiver shall be approved by the planning commission for a new tentative subdivision or parcel map, use permit or similar discretionary approval on property with an approved tentative subdivision or parcel map, use permit or similar discretionary permit unless the planning commission finds that the new tentative subdivision or parcel map, use permit or similar discretionary approval is superior to the approved project both in its design and its mitigation of environmental impacts. The decision of the planning commission shall be final. If a reduction, adjustment, or waiver is granted, any change in use within the project shall invalidate the waiver, adjustment, or reduction of the fee or inclusionary requirements. (Ord. 1243 § 2, 2004)

### **15.60.290 Refunds.**

A. Whenever a person or entity pays the fees established by to this chapter and thereafter fails to proceed with the development project in a timely manner so that the privilege of doing so has elapsed, or where there has been an error in the calculation or payment of the fees, the county shall refund any fees owed to the person or entity under the following circumstances:

1. The person or entity submits a written request for a refund to the planning director in accordance with the time lines set forth in subsection (B) below.
2. The county shall pay the principal amount of the fee.

3. The county shall pay interest on the refund at the rate earned by the treasurer/tax collector on her pooled account, provided the county shall not pay interest where the cost of calculating and paying the interest exceeds the estimated amount of the interest. It shall be presumed that calculating and paying interest in an amount estimated to be less than twenty-five dollars exceeds the cost of doing so.

B. In order to be eligible for a refund, the person or entity seeking a refund must make a written request within the following time lines:

1. For an error in the calculation or payment of the fees, within ninety days of approval or within ninety days of imposition of the fee;
2. For any development that has not proceeded in a timely manner, within ninety days of when the privilege of proceeding with the development has elapsed. (Ord. 1243 § 3, 2004)