

**Marin County, Ca Municipal Code: Affordable and Inclusionary Housing**

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**Title 22 Development Code**

- **Article III—SITE PLANNING AND GENERAL DEVELOPMENT REGULATIONS**
  - **Chapter 22.22 AFFORDABLE HOUSING REGULATIONS**

**22.22.010 Purpose of Chapter.**

This Chapter provides procedures which are intended to achieve the following goals:

- A. Countywide Plan housing goals. Enhance the public welfare and ensure that further residential, commercial, and industrial development contribute to the attainment of the housing goals of the Countywide Plan by increasing the production of housing affordable by

households of very low, low and moderate income, and stimulating funds for development of low income housing.

- B. Reduce affordable housing shortage. Reduce the housing shortage for very low, low, and moderate income households.
- C. Balanced community. Achieve a balanced community with housing available for households with a range of income levels.
- D. Inclusionary housing. Ensure that remaining developable land within the County is utilized in a manner consistent with the County's housing policies and needs. This can be accomplished by requiring twenty percent of the total number of housing units of all new residential developments containing two or more units to be affordable by households of very low or low income and by requiring that twenty-five percent of the total number of very low, low, and moderate income housing units generated by new commercial and industrial developments to be affordable by households of very low, low or moderate income.  
(Ord. 3393 Exh. A (part), 2003)

### **22.22.015 Density for Affordable Housing Projects.**

The density for affordable housing units that meet the affordability requirements of this section shall be determined through the Use Permit procedures of Chapter 22.48 (Use Permits) if the proposed density complies with the density range established by the Marin Countywide Plan. This provision shall only apply to dwelling units that comply with the affordability requirements of this Chapter. (Ord. 3393 Exh. A (part), 2003)

### **22.22.020 General Requirements--Housing Projects.**

Any proposed development of two or more residential parcels or housing units intended for permanent occupancy, including but not limited to single-family housing, multi-family housing, condominiums, townhouses, stock cooperatives, or subdivisions that create the potential for one or more additional housing units, shall comply with all the following requirements. The inclusionary housing requirements of this Section shall be imposed only once on a given development.

This Section does not apply to residential development projects that comply with the provisions of 22.24.030 (State-Mandated Density Bonus and Other Incentives) and to agricultural worker housing, second units, or any deed-restricted housing development that is affordable to very low or low income persons.

- A. Where allowed. An affordable housing project in compliance with this Chapter may be allowed with Use Permit approval in any zoning district provided that the review authority first finds that residential uses are allowed by the applicable Countywide Plan land use designation.
- B. Number of Inclusionary Units Required. Proposed residential development projects with two or more units shall:
  - 1. Provide twenty percent of the total number of housing units within the development as inclusionary units, affordable by low or very low income households; or

2. Provide twenty percent of the total number of parcels in the case of land subdivisions, for the development of inclusionary units;
  3. Where the application of the above percentages results in any decimal fraction less than or equal to 0.50, the project applicant shall pay an in-lieu fee proportional to the decimal fraction in compliance with 22.22.080 (In-Lieu Participation Fees for Residential Development). Any decimal fraction greater than 0.50 shall be interpreted as requiring one additional dwelling unit or lot, except that developments with less than five units may have the option of providing one unit or lot or paying the required in-lieu participation fees.
- C. Conditions of approval. Any development permit for a residential development project that is subject to the requirements of this Chapter shall contain conditions of approval that will ensure compliance with the provisions of this Chapter. The conditions of approval shall:
1. Specify the construction of the inclusionary units and/or the timing of payment of in-lieu fees;
  2. Specify the number of inclusionary units at appropriate price levels, to be determined by the review authority;
  3. Specify provisions for a density bonus and/or other incentives in compliance with State law (Government Code Sections 65915 et seq.), and Chapter 22.24 (Affordable Housing Incentives) where applicable; and
  4. Require a written agreement between the County and the applicant which indicates the number, type, location, approximate size, and construction scheduling of all housing units, and the reasonable information that shall be required by the County for the purpose of determining compliance with this Chapter. This agreement shall also specify provisions for income certification and screening of potential purchasers and/or renters of inclusionary units, and specify resale control mechanisms.
- D. Location and type of inclusionary units.
1. All inclusionary residential units shall be provided within the development, except as provided for in Section 2 below. Inclusionary units shall be reasonably dispersed throughout the development, where feasible.
  2. If the Director finds that the required inclusionary units cannot be provided on-site, one or more of the following alternative means may be approved for compliance with the requirements of this chapter:
    - a. The inclusionary residential units may be constructed on one or more sites not contiguous with the proposed development if the Director finds that placement of the required housing units within the larger development is not reasonable or appropriate, taking into consideration factors, including, but not limited to, overall project character, density, location, size, accessibility to public transportation, and proximity to retail and service establishments. Additionally, the Director shall find that the off-site construction will provide an equivalent or better means of serving the County in achieving its affordable housing goals than construction of the on-site inclusionary housing units. The off-site property shall be located in an area with appropriate zoning, character and density, location, size, accessibility to public transportation, and other services, consistent with sound community planning principles.

- b. The project applicant may dedicate suitable real property for the required housing to the County or its designee to be developed by the County, or a profit or nonprofit, private or public applicant if the Director finds that placement of the required housing units within the larger development is not reasonable or appropriate, taking into consideration factors, including, but not limited to, overall project character, density, location, size, accessibility to public transportation, and proximity to retail and service establishments. Additionally, the Director shall find that the dedication of real property will provide an equivalent or better means of serving the County in achieving its affordable housing goals than construction of the on-site inclusionary housing units. The off-site property shall be located in an area with appropriate community character, residential density, location, and accessibility, to public transportation, and other services, consistent with sound community planning principles. Additionally, the property shall be offered in a condition that is suitable for development and devoid of contaminants and other hazardous wastes and shall be appropriately sized and zoned for development equivalent to the residential units that are not created on-site.
  - c. Inclusionary residential units not constructed within the larger development shall be constructed within the unincorporated area of the County. Inclusionary units may also be constructed within the boundaries of a City or Town provided there is an interagency agreement with the County which defines the sharing of affordable housing resources and compliance with fair share housing allocations.
  - d. The project applicant may pay an in-lieu participation fee in compliance with 22.22.080 (In-Lieu Participation Fees). The Director shall apply the lowest preference to the payment of an in-lieu fee for compliance with the requirements of this chapter.
- E. Design and character of inclusionary units. Inclusionary units shall contain on average the same number of bedrooms as the non-inclusionary units in the development, and shall be compatible with the design and use of the remaining units in appearance, materials, amenities, and finished quality. All inclusionary rental units on the ground floor that are provided in compliance with this chapter shall be accessible to the disabled.
- F. Interior design. The applicant may have the option of reducing the interior amenity level, as well as the square footage of the inclusionary units below that of large market-rate units, provided all of the units conform to the requirements of County Building and Housing Codes and the Director finds that the reduction in interior amenity level would still meet the purpose of this chapter and provide a quality living environment.
- G. Rental units within an ownership housing development. The applicant shall have the option, in a homeownership development, of constructing rental units in a number sufficient to meet the inclusionary requirements of this Chapter. These rental units shall be subject to 22.22.030 (Inclusionary requirements for rental housing developments), below. The County shall assist the applicant in identifying available financing and/or subsidies for the rental housing development.
- H. Timing of construction. All inclusionary housing units and other phases of a development shall be constructed prior to or concurrent with the construction of noninclusionary units, unless the Director approves a different schedule.
- I. Eligible occupants. All inclusionary units shall be sold or rented to low or very low income households as certified by the Housing Authority.  
(Ord. 3393 Exh. A (part), 2003)

### **22.22.030 Inclusionary Requirements for Rental Housing Developments.**

The following requirements apply to proposed residential development projects with housing units intended for rental, in addition to the provisions of Section 22.22.020 (General Requirements - Housing Projects), above. The provisions of this Section do not apply to housing developments that comply with the provisions of Section 22.24.030 (State-Mandated Density Bonus and Other Incentives) and to agricultural worker housing, second units, or any deed-restricted housing development that is affordable to very low or low income persons.

A. Limitation on rental prices. In rental developments of two or more units, twenty percent of the units shall be inclusionary rental units in perpetuity, unless the review authority reduces the term of the inclusionary requirement to reflect the maximum term that is permitted by the financing sources. The inclusionary rental units shall be offered at rent levels not exceeding thirty percent of the gross income of households earning fifty percent of area median income. Where housing financing is available for rental subsidy, units shall be made available to very low income households.

The housing unit rental prices shall be established by the County or its designee and shall be based on the number of bedrooms and location.

B. Eligible tenants. The County shall contract with the Housing Authority to screen applicants for the inclusionary rental units, and to refer eligible tenants to the applicant or owner of the rental units. The applicant or owner shall have final discretion in the selection of eligible tenants, provided that the same rental terms and conditions are applied to tenants of inclusionary units as are applied to all other tenants, with the exception of rent levels, household income, and any requirements of government subsidy programs.

C. Designated administrator. The Housing Authority shall be the agency designated to administer inclusionary housing programs on behalf of the County. The Housing Authority shall require guarantees, enter into recorded agreements with applicants, and take other appropriate steps necessary to ensure that the required inclusionary income rental dwelling units are provided, and that they are rented to low or very low income households. When these requirements have been met to the satisfaction of the Housing Authority, the Housing Director shall prepare a certification indicating that the applicant has complied with the requirements of this Section, and shall transmit it to the County.

(Ord. 3393 Exh. A (part), 2003)

### **22.22.040 Inclusionary Requirements for Ownership Housing Developments.**

The following requirements apply to residential development projects with units intended for sale, in addition to the provisions of Section 22.22.020 (General Requirements). The provisions of this Section do not apply to housing developments that comply with the provisions of Section 22.24.030 (State-Mandated Density Bonus and Other Incentives) and to agricultural worker housing, second units, or any deed-restricted housing development that is affordable to very low or low income persons.

A. Limitation on sales prices. In ownership residential development projects of two or more units, twenty percent of the units shall be inclusionary units affordable by households earning sixty percent of the area median income in perpetuity, unless the review authority reduces the term of the inclusionary requirement to reflect the maximum term that is permitted by the financing sources. Low income units shall be sold to a range of families earning no more than sixty percent of the area median income. The housing unit sales prices shall be established by the County or its designee, and shall be based on the number of bedrooms and location.

B. Duration of initial inclusionary requirement. The applicant shall be required to offer to the Housing Authority, or a County designated party, all the inclusionary units required by this Chapter for sale to eligible purchasers for a period of not less than ninety days from the date of the County's issuance of a Certificate of Occupancy.

Sale and resale restrictions are removed in the event the Housing Authority or County designee does not complete the sale of a unit to an eligible purchaser or public entity or non-profit organization responsible for providing affordable housing.

C. Notice of resale restrictions. The Housing Authority shall advise all prospective purchasers of the resale restriction applicable to ownership inclusionary units contained in Section 22.22.070 (Control of Resale).

D. Screening of eligible purchasers. The Housing Authority shall review the assets and income of prospective purchasers of the ownership inclusionary units on a project-by-project basis. The Housing Authority shall advertise the inclusionary units to the general public. Upon notification of the availability of ownership units by the applicant, the Housing Authority shall seek and screen qualified purchasers through a process involving applications and interviews. Where necessary, the Housing Authority shall hold a lottery to select purchasers.

The applicant/owner shall select buyers from the list of qualified purchasers provided by the Housing Authority; provided, that the same terms and conditions (except income) are applied to purchasers of inclusionary units as are applied to all other purchasers. Preference will be given to residents of the County and/or to people employed in the County.

(Ord. 333393 Exh. A (part), 2003)

#### **22.22.050 Inclusionary Requirements for Lot Subdivisions.**

In subdivisions of two or more parcels, where one or more additional housing units could be developed, twenty percent of the developable parcels or their equivalent shall be set aside for immediate or future development of low or very low income units. The land may be developed by the applicant or another profit or nonprofit applicant, private or public, or deeded to the County or its designee. The units built on the parcels may be rental or owner occupied, and shall be in compliance with the requirements of this Chapter. The method of providing inclusionary units from lot subdivisions shall be specified in the conditions of approval of each applicable subdivision. (Ord. 3393 Exh. A (part), 2003)

#### **22.22.060 Eligibility Requirements for Ownership Housing Developments.**

A. In establishing moderate household income, the County or its designee shall consider, among other things, the median household income data provided periodically by the Department of Housing and Urban Development (HUD), household size and number of dependents, and all sources of family income and assets.

B. Every purchaser of an inclusionary housing unit shall certify, by a form acceptable to the County, that the unit is being purchased for the purchaser's primary place of residence. The Housing Authority shall verify this certification.

Failure of the purchaser to maintain eligibility for a homeowner's property tax exemption shall be construed to mean that the inclusionary unit is not the primary place of residence of the purchaser.

(Ord. 3393 Exh. A (part), 2003)

### **22.22.070 Control of Resale.**

- A. Limitation on resale price. In order to maintain the availability of the housing units constructed in compliance with this Chapter, the County shall impose the following resale condition. The price received by the seller of a resale unit shall be the lowest of the following:
1. Median income. The original price paid by the seller increased by an amount equal to purchase price multiplied by the percentage increase in the median household income for the San Francisco Primary Metropolitan Statistical Area since the date of purchase;
  2. Index price. The original price increased by an amount equal to the original price multiplied by the percentage increase in the Consumer Price Index for the San Francisco Bay Area since the date of purchase; or
  3. Fair market value. The fair market value of the resale unit as determined by an appraiser selected and paid for by the seller.
- B. Eligible purchasers. Homeownership inclusionary units shall be sold and resold from the date of the original sale only to very low or low income households, as determined to be eligible for inclusionary units by the Housing Authority, in compliance with the requirements of this Chapter.

The seller shall not levy or charge any additional fees nor shall any "finders fee" or other monetary consideration be allowed other than customary real estate commissions and closing costs.

- C. Deed restrictions. The owners of any inclusionary unit shall attach and legally reference in the grant deed conveying title of any inclusionary ownership unit a declaration of restrictions provided by the Housing Authority, stating the restrictions imposed in compliance with this Chapter. The grant deed shall afford the grantor and the County the right to enforce the attached declaration of restrictions. The declaration of restrictions shall include all applicable resale controls, occupancy restrictions, and prohibitions required by this Chapter.
- D. Monitoring of resales. The Housing Authority shall be given the responsibility of monitoring the resale of ownership inclusionary units. The Housing Authority or its assignee shall have a ninety-day option to commence purchase of ownership inclusionary units after the owner gives notification of intent to sell. Any abuse in the resale provisions shall be referred to the County for appropriate action.

(Ord. 3393 Exh. A (part), 2003)

### **22.22.080 In-Lieu Participation Fees for Residential Development.**

- A. Purpose. The purpose of this Section is to provide the means to levy fees for construction of affordable housing, when the inclusion of affordable housing is impractical or unreasonable within a proposed residential development or in cases where the inclusionary requirement includes a decimal fraction of a unit, and a combination of both inclusionary units and in-lieu fees is required.

B. Use of in-lieu participation fees. In-lieu fees shall be used by the County, or its designee (e.g., a non-profit housing development corporation) for the purpose of developing affordable housing for very low and low income households, with preference for use in the unincorporated areas of the County.

C. Calculation of in-lieu fees. The in-lieu participation fees for all residential development, including lot subdivisions, shall be calculated as the difference between the ability of low income families (earning sixty percent of median income for ownership units and fifty percent of median income for rental units) to pay for housing, and the estimated cost of a market rate unit of appropriate size, to be determined by the County. This differential shall be multiplied by the required number of inclusionary units to determine the total required fee to be paid in-lieu of constructing below market rate units. For the purposes of applying percentages to in-lieu fees on developments of two or more units, decimal fractions of a unit shall be used.

Estimates of the price of a market rate unit and the corresponding in-lieu participation fee are to be determined periodically by the Director.

D. Timing of in-lieu fee payment. At the option of the applicant, in-lieu participation fees may be paid as proceeds from sales are received, or at the time of sale of the last unit or parcel. The in-lieu fees shall constitute a lien on the property, which shall be recorded as a separate document at the recordation of the subdivision map. The in-lieu fee shall be due within twenty-four months from the date of approval of the development, regardless of whether or not the individual parcels have been sold. The lien shall include a provision for foreclosure under power of sale if the in-lieu payment is not made within twenty-four months from the recordation of the lien, regardless of whether or not the individual parcels have been sold. If payment of the in-lieu fee is not made in full at the end of the twenty-four-month period, any unpaid balance shall accrue interest at the rate of one percent per month.

(Ord. 3393 Exh. A (part), 2003)

### **22.22.090 Availability of Government Subsidies.**

It is the intent of this Chapter that the requirements for inclusionary units affordable by very low and low income families shall not be determined by the availability of government subsidies. This is not to preclude the use of these programs or subsidies. This Chapter is also not intended to be an undue burden on the applicants of residential developments. Therefore, as detailed in Chapter 22.24 (Affordable Housing Incentives), incentives are given to provide inclusionary units. (Ord. 3393 Exh. A (part), 2003))

### **22.22.095 Inclusionary Requirements for Commercial and Industrial Development.**

Any proposed commercial or industrial development, including light industrial, office/research and development, warehouse, hotel, and retail uses, shall provide the amount of affordable inclusionary residential units in compliance with the following requirements. The inclusionary units may be developed by the applicant or another profit or nonprofit applicant, private, or public. In order to provide a jobs/housing balance and address traffic congestion concerns, the review authority may condition the project to include market rate housing in excess of the inclusionary units required in this chapter on a case-by-case basis through the discretionary permit review process.

A. Where Allowed. Required inclusionary residential units are allowed in any zoning district where residential uses are permitted as a principal use and with Use Permit approval in any other zoning district. Inclusionary units that are required to be built on-site shall comply with all other provisions of this title.

B. Number of Inclusionary Units Required. Proposed commercial and industrial development projects shall comply with the following requirements:

1. Twenty-five percent of the total number of housing units for very low, low, and moderate income households that are generated by the development shall be provided within the development;
2. Where the application of the above percentages results in any decimal fraction less than or equal to 0.50, the project applicant shall pay an in-lieu fee proportional to the decimal fraction in compliance with 22.22.096 (In-Lieu Participation Fees for Commercial and Industrial Development). Any decimal fraction greater than 0.50 shall be interpreted as requiring one additional dwelling unit.

C. Conditions of approval. Any development permit for a commercial or industrial development project that is subject to the requirements of this Chapter shall contain conditions of approval that will ensure compliance with the provisions of this Chapter. The conditions of approval shall:

1. Specify the construction of the inclusionary units and/or the timing of payment of in-lieu fees;
2. Specify the number of inclusionary units at appropriate price levels to be determined by the review authority; and
3. Require a written agreement between the County and the applicant which indicates the number, type, location, approximate size, and construction scheduling of all housing units, and the reasonable information that shall be required by the County for the purpose of determining compliance with this Chapter. This agreement shall also specify provisions for income certification and screening of potential purchasers and/or renters of inclusionary units, and specify resale control mechanisms. All rental units developed in compliance with this Chapter shall be affordable to very low, low, or moderate income renters in perpetuity, unless the review authority reduces it to fifty-five years. The requirements of 22.22.030 and 22.22.040 shall apply where applicable.

D. Location and type of inclusionary units.

1. All inclusionary residential units shall be provided within the development, except as provided for in Section 2 below.
2. If the Director finds that the required inclusionary units cannot be provided on-site, one or more of the following alternative means may be approved for compliance with the requirements of this chapter:
  - a. The inclusionary residential units may be constructed on one or more sites not contiguous with the proposed development if the Director finds that placement of the required housing units within the larger development is not reasonable or appropriate, taking into consideration factors, including, but not limited to, overall project character, density, location, size, accessibility to public transportation, and proximity to retail and service establishments or where the nature of the commercial or industrial use or its surroundings is incompatible with residential uses in terms of noise or other nuisance, health, or safety hazards. Additionally, the Director shall find that the off-site construction will provide an equivalent or better means of serving the

County in achieving its affordable housing goals than construction of the on-site inclusionary housing units. In allowing compliance through off-site construction, the Director may consider commercial lending requirements which render construction of the housing on-site infeasible. The off-site property shall be located in an area with appropriate zoning, character and density, location, size, accessibility to public transportation, and other services, consistent with sound community planning principles.

- b. The project applicant may dedicate suitable real property for the required housing to the County or its designee to be developed by the County, or a profit or nonprofit, private or public applicant if the Director finds that placement of the required housing units within the larger development is not reasonable or appropriate, taking into consideration factors, including, but not limited to, overall project character, density, location, size, accessibility to public transportation, and proximity to retail and service establishments or where the nature of the commercial or industrial use or its surroundings is incompatible with residential uses in terms of noise or other nuisance, health or safety hazards. Additionally, the Director shall find that the dedication of real property will provide an equivalent or better means of serving the County in achieving its affordable housing goals than construction of the on-site inclusionary housing units. In allowing compliance through off-site dedication, the Director may also consider commercial lending requirements which render construction of the housing on-site infeasible. The off-site property shall be located in an area with appropriate community character, residential density, location, and accessibility to public transportation, and other services, consistent with sound community planning principles. Additionally, the property shall be offered in a condition that is suitable for development and devoid of contaminants and other hazardous wastes and shall be appropriately sized and zoned for development equivalent to the residential units that are not created on-site.
  - c. Inclusionary residential units not constructed within the larger development shall be constructed within the unincorporated area of the County. Inclusionary units may also be constructed within the boundaries of a City or Town provided there is an inter-agency agreement with the County which defines the sharing of affordable housing resources and compliance with fair share housing allocations.
  - d. The project applicant may submit a housing mitigation plan which includes financial subsidies towards new affordable housing development in the County. This alternative may be acceptable if the Director finds that it would provide a better means of serving the County in achieving its affordable housing goals than construction of the on-site inclusionary housing units, that there are sufficient County resources to monitor and implement the plan, and that compliance with the alternative means described in Sections a, b, and c is not feasible.
  - e. The project applicant may pay an in-lieu participation fee in compliance with Section 22.22.096 (In-Lieu Participation Fees for Commercial and Industrial Development). The Director shall apply the lowest preference to the payment of an in-lieu fee for compliance with the requirements of this chapter.
- E. Number of Very Low, Low and Moderate Income Households Generated. The number of new very low, low and moderate income households that are generated by new non-residential development shall comply with Table 3-3.1.

Table 3-3.1

**NUMBER OF NEW VERY LOW, LOW AND MODERATE INCOME  
HOUSEHOLDS GENERATED BY  
COMMERCIAL AND INDUSTRIAL DEVELOPMENT**

<b>DEVELOPMENT TYPE</b>	<b>Number of New Very Low, Low and Moderate Income Households (per 1,000 square feet of floor area<sup>1</sup>)</b>
Manufacturing/Light Industry/Assembly	0.18
Office <sup>2</sup> /Research and Development	0.34
Warehouse	0.09
Hotel/Motel <sup>3</sup>	0.08
Retail/Restaurant	0.23

1 For purposes of this Chapter, the floor area excludes all areas permanently allocated for vehicle parking, unless such areas are used for commercial or industrial purposes.

2 Office uses include those associated with professional, business, and medical services.

3 Accessory uses, such as retail, restaurant, and meeting facilities within a hotel shall be subject to requirements for a retail use.

F. Size, design and character of inclusionary units. Inclusionary units shall provide a mixture of sizes and shall be compatible with the design of the commercial or industrial development or the predominant residential character in the immediate neighborhood in appearance, materials, amenities, and finished quality. All inclusionary rental units on the ground floor that are provided in compliance with this chapter shall be accessible to the disabled.

G. Timing of construction. All inclusionary housing units and other phases of a development shall be constructed prior to or concurrent with the construction of the commercial or industrial development, unless the Director approves a different schedule.

H. Eligible occupants. All inclusionary units shall be rented or sold to very low, low, or moderate income households as certified by the Housing Authority.

I. Encouragement for On-site Housing. As an inducement for the development of on-site housing, the Director may grant a reduction in the site development standards of this Development Code or architectural design requirements which exceed the minimum building standards approved by the State Building Standards Commission in compliance with State law (Health and Safety Code Sections 18901 et seq.), including, but not limited to setback, coverage, and/or parking requirements.

(Ord. 3393 Exh. A (part), 2003)

**22.22.096 In-Lieu Participation Fees for Commercial and Industrial Development.**

- A. Purpose. The purpose of this Section is to provide the means to levy fees for construction of affordable housing, when the inclusion of affordable housing is impractical or unreasonable within a proposed commercial or industrial development or in cases where the inclusionary requirement includes a decimal fraction of a unit, and a combination of both inclusionary units and in-lieu fees is required.
- B. Use of in-lieu participation fees. In-lieu fees shall be used by the county, or its designee (e.g. a non-profit housing development corporation) for the purpose of developing affordable housing for very low and low income households, with preference for use in the unincorporated areas of the County.
- C. Calculation of in-lieu fees. The in-lieu participation fees for all commercial and industrial development shall be determined based on Table 3.3-2. The fees represent twenty-five percent of the fees that are necessary to subsidize housing for new very low, low, and moderate income households that would be created from the commercial or industrial development.

**Table 3.3-2  
IN-LIEU PARTICIPATION FEES FOR  
COMMERCIAL AND INDUSTRIAL DEVELOPMENT  
(per square feet of floor area<sup>1</sup> unless noted otherwise)**

Development Type	Fee
MANUFACTURING/LIGHT INDUSTRY/ASSEMBLY	\$3.74
OFFICE <sup>2</sup> /RESEARCH AND DEVELOPMENT	\$7.19
Warehouse	\$1.94
Hotel/Motel <sup>3</sup>	\$1,745 per room
Retail.Restaurant	\$5.40

1 For purposes of this Chapter, the floor area excludes all areas permanently allocated for vehicle parking, unless such areas are used for commercial or industrial purposes.

2 Office uses include those associated with professional, business, and medical services.

3 Accessory uses, such as retail, restaurant, and meeting facilities within a hotel shall be subject to requirements for a retail use.

(Ord. 3393 Exh. A (part), 2003)

**22.22.100 Fee Waiver for Inclusionary Units.**

In order to facilitate the construction of affordable housing units, the County may waive any County fees applicable to the inclusionary units of a proposed residential, commercial, or industrial development. (Ord. 3393 Exh. A (part), 2003)

**22.22.110 Technical Assistance.**

In order to emphasize the importance of securing housing as a part of this program, the County shall provide assistance in obtaining financial subsidy programs to applicants. (Ord. 3393 Exh. A (part), 2003)

### **22.22.120 Appeals of Affordable Housing Requirements.**

- A. Any person aggrieved by any action involving disapproval, suspension or revocation of a Building or Occupancy Permit or disapproval, suspension or revocation of any development approval may appeal the action or determination to the Commission, with further appeal possible to the Board, in compliance with Chapter 22.114 (Appeals).
- B. Any applicant or other persons who contend that their interests are adversely affected by any determination or requirement of the Housing Authority staff in compliance with this Chapter may appeal the determination to the Housing Director. Further appeal recourse is open to the Board of Commissioners of the Housing Authority.
- C. The appeal shall clearly specify how the action of the Housing Authority staff fails to conform to the provisions of this Chapter, thereby adversely affecting the appellant's interests. The appeal shall be filed in duplicate in the public office of the Housing Authority. Subsequent appeal may be made to the Board of Supervisors, in compliance with Chapter 22.114 (Appeals). The Board, by resolution, may reverse or modify any determination or requirement of the Housing Authority if it can make the finding that the action under appeal does not conform with the provisions of this Chapter or to the contract between the Housing Authority and the County.

(Ord. 3393 Exh. A (part), 2003)

- **Chapter 22.24 AFFORDABLE HOUSING INCENTIVES**

### **22.24.010 Purpose of Chapter.**

This Chapter provides procedures for County and State mandated residential density bonuses, and other incentives required by State law, to encourage the production of affordable housing. No single residential development shall be granted more than one density bonus in compliance with this Section. (Ord. 3380 Exh. B (part), 2003)

### **22.24.020 County Density Bonuses.**

- A. Applicability. The density bonus allowed by this Section applies only to a residential development project that proposes to provide inclusionary housing units, and is exclusive of, and not a substitute for, other density bonus(es), and shall not be combined with another density bonus program.
- B. Eligibility. Density bonuses may be granted in compliance with this Chapter only where the proposed density (including the density bonus) complies with all applicable Countywide Plan policies, including traffic standards, environmental standards, and Countywide Plan designations.

- C. Determination of bonus. The granting of this density bonus shall be based on a project-by-project analysis and the determination that the increase in density will not be detrimental to the public health, safety, welfare, and/or environment.
- D. Amount of bonus. The review authority shall favorably consider the applicability of an increase in density of up to ten percent of the number of units normally allowed by the applicable zoning district in a proposed residential development or subdivision.  
(Ord. 3380 Exh. B (part), 2003)

### **22.24.030 State-Mandated Density Bonus and Other Incentives.**

As required by State law (Government Code Section 65915), this Section offers incentives to applicants for providing housing that is affordable to the types of households and qualifying residents identified in Subsection A.2., below. The incentives include the ability to construct twenty-five percent more residential units than normally allowed by the applicable zoning district and the Community Development Element of the Countywide Plan, and other incentives provided by this Section. In offering these incentives, this Section carries out the requirements of State law (Government Code Sections 65302, 65913, and 65915, et seq.).

- A. Eligibility for bonus and incentives. In order to be eligible for a density bonus and other incentives as provided by this Section, a proposed residential development shall:
  - 1. Consist of five or more units;
  - 2. Be designed and constructed so that at least one of the following standards is met:
    - a. Twenty percent of the total number of proposed units are for lower income households, as defined in State law (Health and Safety Code Section 50079.5);
    - b. Ten percent of the total number of proposed units are for very low income households, as defined in State law (Health and Safety Code Section 50105); or
    - c. Fifty percent of the total number of proposed units are for qualifying residents (senior citizens) as defined by Section 51.2 of the Civil Code (senior citizens of any income level); and
  - 3. Comply with all other applicable provisions of this Development Code.
- B. Type of bonus and incentives allowed. A residential development project that complies with all applicable provisions of this Section shall be entitled to the following density bonus and other incentives. If a density bonus and/or other incentives cannot be accommodated on a site due to strict compliance with the provisions of this Development Code, the review authority is authorized to waive or modify development standards as necessary to accommodate all bonus units and other incentives to which the development is entitled.
  - 1. Density bonus. The density bonus allowed by this Section shall consist of a twenty-five percent increase in the number of housing units normally allowed by the zoning district, and the land use designation of the Community Development Element of the Countywide Plan applicable to the site.

The density bonus units shall not be included when determining the number of housing units that is equal to ten or twenty percent of the total.

2. Other incentives. In conjunction with action on a residential development project, an eligible residential development project shall be entitled to at least one of the concessions or incentives identified by State law (Government Code Section 65915[b]), as follows.
  - a. A reduction in the site development standards of this Development Code, or architectural design requirements which exceed the minimum building standards approved by the State Building Standards Commission in compliance with State law (Health and Safety Code Sections 18901 et seq.), including, but not limited to setback, coverage, and/or parking requirements.
  - b. Approval of mixed-use zoning in conjunction with the proposed residential development project if non-residential land uses will reduce the cost of the residential development, and the non-residential land uses are compatible with the residential development project and surrounding development.
  - c. Other regulatory incentives or concessions proposed by the applicant or the County that will result in identifiable cost reductions.

The review authority shall approve one or more of the above incentives in conjunction with action on a residential development project, notwithstanding other provisions of this Development Code, unless it makes a written finding that the additional concession or incentive is not required in order for the sales price for the targeted units to be set in compliance with State law (Government Code Section 65915[c]). If the review authority does not grant at least one additional concession or incentive in compliance with this Section, the continued affordability of all lower-income housing units receiving a density bonus may be limited to a period not to exceed ten years.

- C. Location of housing units. The review authority, at its sole discretion, may allow an applicant seeking a density bonus under this Section to construct the bonus units and/or housing units for low or very low income households on one or more sites other than the proposed site for the residential development, and for which a density bonus is sought. If an off-site location for these units is approved, no additional density bonus will be allowed on the off-site parcel.
- D. Continued availability. The sale, household selection, and resale of housing units provided under this Section shall comply with Section 22.22.070 (Control of Resale), other applicable provisions of Chapter 22.22 (Affordable Housing Requirements) and State law (Government Code Section 65916).
- E. Early determination of allowed bonus and incentives. An applicant may submit a preliminary proposal for a residential development project in compliance with State law (Government Code Section 65915) for an early determination of allowed bonus and incentives as follows.
  1. Application. The preliminary proposal shall include all information required by the Agency and any required filing fee(s).
  2. Commission determination. In compliance with Chapter 22.118, the Commission shall hold a public hearing to determine the extent of any allowed bonus and/or other incentives described in Subsection 22.24.030.B (Type of bonus and incentives allowed), above. The hearing shall be held within ninety days of the receipt of a complete preliminary proposal.

The Commission shall instruct the Director to notify the applicant of its determination in writing, as follows:

- a. The determination shall state whether the County will grant an additional incentive or make written findings that the additional incentive is unnecessary for the affordability of the inclusionary housing units.

- b. The Commission's determination may be subject to modification based upon subsequent environmental review of a formal land use permit application, in compliance with CEQA.
  - c. The determination shall state that the total number of units to be approved shall comply with the findings of the environmental review process, and applicable Countywide and Community Plan policies.
3. Request for determination with formal submittal. If a request for a density bonus or other incentive in compliance with this Chapter is submitted with a subdivision or Master Plan application, the Director may request that the applicant waive the requirement for a determination on the proposal within ninety days of the receipt of a complete application and, if the request is granted, the Commission may review and act upon the bonus/incentive proposal at the same time as the subdivision or Master Plan application.  
(Ord. 3380 Exh. B (part), 2003)