

ORDINANCE NO. 3497

**AN ORDINANCE OF THE MARIN COUNTY BOARD OF SUPERVISORS
ADOPTING REVISIONS TO THE DEVELOPMENT CODE PROVISIONS IN ACCORDANCE
WITH STATE DENSITY BONUS LAW AND AFFORDABLE HOUSING INCENTIVES**

SECTION I. FINDINGS

The Board of Supervisors of the County of Marin ordains as follows.

- A. In September 2004, the Governor signed SB 1818 which significantly changed the State's density bonus law. Government Code 65915 became effective on January 1, 2005. This law imposes new state housing mandates on California cities in the form of required density bonuses and incentives for housing developers. The law lowers both the set-aside requirements for affordable units and the density bonus. As additional affordable units are set aside, it gradually increases the density bonus to a maximum of 35 percent. This law also provides housing developers with additional incentives or concessions as the percentage of affordable units is increased. It also permits housing developers to request a waiver of development standards if necessary to make a development feasible. Jurisdictions must grant the requested concessions unless certain findings are made. Government Code 65915 also includes density bonus provisions for senior housing development and for housing developers that donate land to the County for affordable housing. This legislation also continued previous density bonus provisions to encourage the inclusion of child care facilities in affordable housing developments.
- B. In September 2005, the Governor also signed into law SB 435. This law expanded the scope of developments entitled to obtain density bonuses through Government Code 65915 to include senior mobilehome parks, community apartment developments, and stock cooperatives and made additional clarifications to the law.
- C. The County's zoning and planning regulations should be revised to be consistent with State law requirements. These permanent revisions will be implemented by this Development Code update.
- D. Government Code 65915 requires jurisdictions to adopt implementing ordinances. Notwithstanding the County's constitutional right to control land use, this proposed interim ordinance incorporates the new density bonus provisions and establishes an implementation process addressing the incentives and concessions required by State law.
- E. The County has received applications from developers seeking to take advantage of the State's new density bonus provisions.
- F. In accordance with Government Code 65915, this proposed ordinance would modify the County's existing density bonus regulations to alter the number of units that developers must agree to set aside as affordable to qualify for a density bonus and the corresponding density bonus percentages; to permit density bonuses for common interest developments, senior citizen developments, qualifying mobilehome parks, and donations of land; to authorize density bonuses for affordable housing developments that include a child care facility on site; and to provide required incentives, concessions, and development waivers.

- G. The Housing Element Implementing Program H3.T, Enact Density Bonus Zoning and other Incentives, states: "Amend the Zoning Ordinance to encourage an increase in the supply of well-designed housing for very low, low and moderate-income households." This ordinance updates the Development Code to fulfill this mandate.
- H. The Built Environment Implementing Program SV-5.1, Encourage Affordable Housing, states: "Within the maximum number of units permitted, encourage the provision of affordable units above and beyond minimum inclusionary requirements through a variety of mechanisms, including density bonuses, financing assistance, grants, and partnerships with affordable housing providers". This ordinance updates the Development Code to fulfill this mandate.
- I. On May 27, 2008 the Marin County Planning Commission held a duly-noticed public hearing to consider the proposed changes to the Development Code. That hearing was continued on June 9th, and the proposed changes were adopted by resolution for recommendation to the Board of Supervisors.
- J. On July 22, 2008, the Marin County Board of Supervisors held a duly-noticed public hearing to consider this Ordinance to amend the Development Code Density Bonus provisions in accordance with State density bonus law and affordable housing incentives. This hearing was continued to August 12, 2008.
- K. The proposed amendments to the Development Code are an implementing provision of the CWP update and provide density bonus standards consistent with State Law. Amendments are consistent with the goals and policies of the Countywide Plan because they correct, clarify, or otherwise revise existing regulations that implement policies and programs contained in the CWP. The potential impacts of implementing these standards have been adequately addressed in the certified CWP Update EIR. A subsequent or supplemental EIR is not required pursuant to CEQA Guidelines Section 15162 - "Subsequent EIRs" because the proposed project (i.e., proposed amendments) does not include substantial changes involving new or more severe environmental effects that would result from the adoption of these amendments, nor does the proposal involve new information that was not known at the time the EIR for the CWP was certified.

SECTION II. ACTION

- A. Marin County Development Code Sections 22.22, 22.24 and 22.130 shall be revised as provided in Exhibit "A" to this ordinance.

SECTION III: EFFECTIVE DATE

- A. This Ordinance shall be and is hereby declared to be in full force and effect from thirty (30) days from adoption and shall be published once before the expiration date of fifteen (15) days after its passage, with the names of the Supervisors voting for and against the same in the Marin Independent Journal, a newspaper of general circulation published in the County of Marin.

EXHIBIT A

CHAPTER 22.22 - AFFORDABLE HOUSING REGULATIONS

Sections:

- 22.22.010 - Purpose of Chapter
- 22.22.015 - Density for Affordable Housing Projects
- 22.22.020 - General Requirements—Housing Projects
- 22.22.030 - Inclusionary Requirements for Rental Housing Developments
- 22.22.040 - Inclusionary Requirements for Ownership Housing Developments
- 22.22.050 - Inclusionary Requirements for Lot Subdivisions
- 22.22.060 - Eligibility Requirements for Ownership Housing Developments
- 22.22.070 - Control of Resale
- 22.22.080 - In-lieu Participation Fees for Residential Development
- 22.22.090 - Availability of Government Subsidies
- 22.22.095 - General Requirements – Commercial and Industrial Development
- 22.22.100- In-lieu Participation Fees for Commercial and Industrial Development
- 22.22.110 – Waivers and Appeals to Affordable Housing Requirements

22.22.010 - Purpose of Chapter

This Chapter provides procedures and requirements applicable to property or development proposals in the unincorporated areas of the county, including the coastal zone, 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 20 percent of the total number of housing units of all new residential developments containing 2 or more units to be affordable by households of very low or low income and by requiring 25 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.

22.22.015 – Density for Affordable Housing Projects

The Board met in closed session to discuss the following: The maximum density in planned zoning districts and minimum lot size requirement in conventional zoning districts for deed-restricted housing developments that are affordable to very low or low income persons shall be determined through the Use Permit procedures of Chapter 22.48 (Use Permits) if the resulting density complies with the density range established by the Marin Countywide Plan.

22.22.020 - General Requirements—Housing Projects

Any proposed development of 2 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, 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 agricultural worker housing or second units. Section B does not apply to any deed-restricted housing development that is affordable to very low or low income households, or any residential development project developed at the targeted income level and percentage cited in the Housing Overlay Designation policies included in the Countywide Plan.

- A. Where allowed.** Development of affordable housing 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 2 or more units shall:
 1. Provide 20 percent of the total number of housing units within the development as inclusionary units, affordable by low or very low income households;
 2. Provide 20 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 Section 22.22.080 (In-Lieu Participation Fees). Any decimal fraction greater than 0.50 shall be interpreted as requiring one additional dwelling unit or lot.

**TABLE 3-4a
INCLUSIONARY HOUSING CALCULATION FOR RESIDENTIAL DEVELOPMENT**

Project Size (Number of Units)	Inclusionary Calculation	Inclusionary Requirement
1	N/A	N/A
2	0.4	Fee for 0.4 unit
3	0.6	1 unit
4	0.8	1 unit
5	1	1 unit
6	1.2	1 unit and Fee for 0.2 unit

7	1.4	1 unit and Fee for 0.4 unit
8	1.6	2 units
9	1.8	2 units
10	2	2 units

4. For purposes of complying with the requirements of this chapter, an existing lot that was developed with a primary residence as of July 13, 1006 is not counted in the total number of developable parcels. In this case, the inclusionary requirement is applied based on the net increase in the number of lots. This would also apply in cases where additional residences are proposed without a division of land.

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 any incentives granted pursuant to 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, 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, including the financing of ongoing administrative and monitoring costs.

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. The options below are listed in order of priority, with the provision of in-lieu fees being the lowest priority. 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 alternatives 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 a 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, including appropriate access and services, shall be devoid of contaminants and other hazardous wastes and shall be appropriately sized and zoned for development equivalent to or more than 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 pay an in-lieu participation fee in compliance with Section 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 exterior 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. Timing of construction.** All inclusionary housing units and other phases of a development shall be constructed prior to or concurrent with the construction of non-inclusionary units, unless the Director approves a different schedule.
- G. Eligible occupants.** All inclusionary units shall be sold or rented to low or very low income households as certified by the County or its designee.
- H. Applicability to density bonus projects.** All residential development projects are required to provide inclusionary units pursuant to this Chapter 22.22. Any affordable housing units that qualify a project for a density bonus pursuant to Government Code Section 65915 must be provided in addition to the required inclusionary units and may not also be counted as inclusionary units pursuant to this Chapter.

- I. Submittal of affordable housing plan.** An affordable housing plan shall be submitted as part of the first approval of any residential development project subject to this chapter and shall be processed, reviewed, and approved, conditionally approved, or denied concurrently with all other applications required for the project. The affordable housing plan shall include the following:
1. Number, affordability level, unit type, tenure, number of bedrooms, location, size, and design of all inclusionary units.
 2. Construction schedule and phasing of inclusionary units in relation to market-rate units.
 3. Provisions for income certification and screening of potential purchasers and/or renters of inclusionary units, resale control mechanisms, and ongoing monitoring and administration.
 4. Any requested alternative to on-site provision of units, including information as required by the Director to determine if the required findings can be made.
 5. Any incentives requested pursuant to Chapter 22.24 (Affordable Housing Incentives), including the additional information specified in that Chapter.
 6. Such additional information as may be required by the Director to ensure conformance of the project with this Chapter or the Countywide Plan.

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 agricultural worker housing or second units. Section A does not apply to any deed-restricted housing development that is affordable to very low or low income households, or any residential development project developed at the targeted income level and percentage cited in the Housing Overlay Designation policies included in the Countywide Plan.

- A. Limitation on rental prices.** In rental developments of 2 or more units, 20 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 affordable rent not exceeding 30 percent of the gross income of households earning 50 percent of area median income, adjusted for household size.

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.

If an applicant chooses to satisfy all or a portion of the inclusionary housing requirement with rental units, as permitted by Government Code Section 65589.8, then the written agreement between the County and the applicant shall include the applicant's agreement to the limitations on rents required by this Section.

- B. Eligible tenants.** Inclusionary rental units shall be rented to very low income households. The applicant or owner shall agree to advertise available rental housing, screen applicants and perform annual income certifications for the

inclusionary rental units, or retain a qualified agency to do so. 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. Administration.** The County or its designee shall monitor inclusionary housing programs. The applicant or owner shall enter into recorded agreements with the County and take appropriate steps necessary to ensure that the required inclusionary rental dwelling units are provided, and that they are rented to very low income households. Recorded documentation may include a Marketing Plan, Rent Regulatory Agreement, Compliance Report, Notice of Affordability Restrictions on Transfer of Property, and other documents as may be required by the County to maintain the continued affordability of the inclusionary units. The applicant or owner shall be required to provide tenant income qualification reports to the County for monitoring on an annual or biennial basis.
- D. Rental units with recorded subdivision maps.** It is the County's policy to protect and retain rental stock. Rental units that may be sold individually pursuant to recorded subdivision maps may be converted to ownership units if the owner receives written approval from the County to do so. The sales price at the time of the conversion shall be affordable to a buyer qualified at the previous rental level.
- E. Deed Restriction.** All inclusionary units shall be deed-restricted as affordable in perpetuity, unless the review authority reduces the term of the inclusionary requirement to reflect the maximum term that is permitted by the financing source.

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 agricultural worker housing or second units. Section A does not apply to any deed-restricted housing development that is affordable to very low or low income households, or any residential development project developed at the targeted income level and percentage cited in the Housing Overlay Designation policies included in the Countywide Plan.

- A. Limitation on sales prices.** In ownership residential development projects of 2 or more units, 20 percent of the units shall be inclusionary units affordable 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 housing unit sales prices shall be established by the County or its designee to be offered at an ownership cost affordable to a household earning 60 percent of the area median income, adjusted for household size, and shall be based on the number of bedrooms and location.
- B. Duration of initial inclusionary requirement.** For a period of not less than 90 days from the date of the County's approval of a final inspection, the applicant shall be required to offer to the County or its designee, all the inclusionary units required by this Chapter for sale to eligible purchasers.

In the event the County or its 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 within an additional 120 days of the above offer to transfer, the applicant shall provide an alternative means of compliance, subject to the approval of the Director.

- C. Notice of resale restrictions.** The County or its designee 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.** Inclusionary ownership units shall be sold to very low or low income households. The County or its designee shall review the assets and income of prospective purchasers of the ownership inclusionary units on a project-by-project basis. The County or its designee shall advertise the inclusionary units to the general public. Upon notification of the availability of ownership units by the applicant, the County or its designee shall seek and screen qualified purchasers through a process involving applications and interviews. Where necessary, the County or its designee shall hold a lottery to select purchasers from a pool of income-eligible applicants.
- E. Deed Restriction.** All inclusionary units shall be deed-restricted as affordable in perpetuity, unless the review authority reduces the term of the inclusionary requirement to reflect the maximum term that is permitted by the financing source.

22.22.050 - Inclusionary Requirements for Lot Subdivisions

In subdivisions of 2 or more parcels, where one or more additional housing units could be developed, 20 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. Calculation of the inclusionary requirement shall be consistent with Section 22.22.020.B.4.

22.22.060 - Eligibility Requirements for Ownership Housing Developments

- A. In establishing very low or low income household eligibility, the County or its designee shall utilize data establishing Area Median Income by household size provided periodically by either the Department of Housing and Urban Development (HUD) or the California Department of Housing and Community Development (HCD), and shall consider, among other things, household size and number of dependents, and all sources of household 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 County or its designee 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.

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 County or its designee, 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, upon purchase, sign and record appropriate resale and other restrictions, deeds of trust, and other documents as provided by the County or its designee, stating the restrictions imposed in compliance with this Chapter. The recorded documents shall afford the grantor and the County the right to enforce the restrictions. The restrictions shall include all applicable resale controls, occupancy restrictions, and prohibitions required by this Chapter.
- D. Monitoring of resales.** The County or its designee shall be given the responsibility of monitoring the resale of ownership inclusionary units. The County or its designee shall have the option to commence purchase of ownership inclusionary units after the owner gives notification of intent to sell or in the event of any default or violation of the deed restrictions. Any abuse in the resale provisions shall be referred to the County for appropriate action.

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 60 percent of median income for ownership units and 50 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 2 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.** The Director shall determine when in-lieu fees shall be paid, including whether payment shall be made in a single payment prior to recordation of the map or in an installment plan. If the installment method of payment is approved by the Director, the in-lieu fee shall in no case be due later than 24 months from the recordation of the map. If an installment plan is approved, the in-lieu fees shall constitute a lien on the property, which shall be recorded as a separate document at the recordation of the map. The lien shall include a provision for foreclosure under power of sale if the in-lieu payment is not made within 24 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 24-month period, any unpaid balance shall accrue interest at the rate of 1% per month.

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.

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 (25) 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 Section 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. 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 3-4b.

**TABLE 3-4
NUMBER OF NEW VERY LOW, LOW AND MODERATE INCOME HOUSEHOLDS
GENERATED BY COMMERCIAL AND INDUSTRIAL DEVELOPMENT**

Development Type	Number of New Very Low, Low and Moderate Income Households (per 1,000 square feet of floor area ¹)
Manufacturing/Light Industry/Assembly	0.18
Office ² /Research and Development	0.34
Warehouse	0.09
Hotel/Motel ³	0.08
Retail/Restaurant	0.23
Non-residential uses including assisted living	Applicant to provide information and statistics on new jobs generated by use.

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.

D. 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 55 years. The requirements of Section 22.22.030 and Section 22.22.040 shall apply where applicable.

E. 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. The options below are listed in order of priority, with the provision of in-lieu fees being the lowest priority.
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 a 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, including appropriate access and services, shall be devoid of contaminants and other hazardous wastes and shall be appropriately sized and zoned for development equivalent to or more than 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.

- 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 County or its designee.

22.22.100 – 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 3-4c. The fees represent 25% 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 3-4c
IN-LIEU PARTICIPATION FEES FOR
COMMERCIAL AND INDUSTRIAL DEVELOPMENT
(per square feet of floor area¹ unless noted otherwise)**

Development Type	Fee
Manufacturing/Light Industry/Assembly	\$3.74
Office ² /Research and Development	\$7.19
Warehouse	\$1.94

Hotel/Motel ³	\$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.

22.22.110 – Waivers and Appeals of Affordable Housing Requirements

A. An applicant may request that the requirements of this Chapter 22.22 be waived or modified, based on substantial evidence that applying the requirements of this Chapter would result in an unconstitutional taking of property or would result in any other unconstitutional result. Any request for a waiver or modification shall be submitted concurrently with the affordable housing plan required by Section 22.22.020(I). The applicant shall bear the burden of presenting substantial evidence to support the request and shall set forth in detail the factual and legal basis for the claim, including all supporting technical documentation. Any request for a waiver or modification based on this section shall be reviewed and considered at the same time as the affordable housing plan. In deciding whether to grant the waiver or modification, the review authority shall assume each of the following when it is applicable to the project:

1. The applicant will provide the most economical inclusionary units feasible in terms of construction, design, location and tenure.
2. The applicant is likely to obtain housing subsidies when such funds are reasonably available.
3. The applicant will benefit from the inclusionary incentives set forth in Chapter 22.24 (Affordable Housing Incentives).

The waiver or modification may be approved only to the extent necessary to avoid an unconstitutional result, after adoption of written findings, based on substantial evidence. If a waiver or modification is granted, any change in the project shall invalidate the waiver or modification, and a new application shall be required for a waiver or modification pursuant to this section.

B. 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 of Supervisors, in compliance with Chapter 22.114 (Appeals).

C. Any applicant or other persons who contend that their interests are adversely affected by any determination or requirement of the County or its designee in compliance with this Chapter may appeal the determination to the Planning Commission. Subsequent appeal may be made to the Board of Supervisors.

D. The appeal shall clearly specify how the action of the County or its designee fails to conform to the provisions of this Chapter, thereby adversely affecting the appellant's interests. 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 County or its designee if it can make the finding that the action under appeal does not conform with the provisions of this Chapter.

CHAPTER 22.24 - AFFORDABLE HOUSING INCENTIVES

Sections:

22.24.010 - Purpose of Chapter

22.24.020 – County Incentives for Inclusionary and Other Affordable Housing

22.24.030 – Density Bonus and Other Incentives Pursuant to State Law

22.24.010 - Purpose of Chapter

This Chapter provides procedures for granting incentives for the construction of affordable housing to encourage the production of affordable housing and to achieve the following additional goals:

- A. Countywide Plan goals and policies.** To implement goals and policies contained in the Countywide Plan providing for incentives for the construction of affordable housing.
- B. Compliance with State law.** To comply with the provisions of Government Code Section 65915, which mandates the adoption of a County ordinance specifying procedures for providing density bonuses and other incentives and concessions, as required by that section.

22.24.020 - County Incentives for Inclusionary and Other Affordable Housing

The incentives provided by this Section 22.24.020 are available to residential development projects which either: 1) comply with Chapter 22.22 (Affordable Housing Regulations); 2) are comprised of deed-restricted housing that is affordable to very low or low income persons; or 3) are developed pursuant to the Housing Overlay Designation policies included in the Countywide Plan. Residential development projects which have been granted a density bonus pursuant to Section 22.24.030 are not eligible for the County density bonus described in subsection (A) below but may be granted the other incentives included in this section..

- A. County density bonus.** The density bonus allowed by this Section shall not be combined with the density bonus permitted by Section 22.24.030 or with any other density bonus. No single residential development project shall be granted more than one density bonus.
 - 1. Eligibility.** The County density bonus may be granted 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.
 - 2. 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.
 - 3. Amount of bonus.** The review authority may grant an increase in density of up to 10 percent of the number of units normally allowed by the applicable zoning district in a proposed residential development or subdivision.

- B. Interior design.** The applicant may have the option of reducing the interior amenity level and the square footage of inclusionary units below that of large market-rate units, provided that 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 will provide a quality and healthy living environment. The County strongly encourages the use of green building principles such as the use of environmentally preferable interior finishes and flooring, as well as the installation of water and energy efficient hardware, wherever feasible.
- C. Unit types.** In a residential project which contains single-family detached homes, inclusionary units may be attached living units rather than detached homes or may be constructed on smaller lots, and in a residential project that contains attached multistory living units, affordable units may contain only one story, provided that all of the units conform to the requirements of County Building and Housing Codes and the Director finds that the modification of the design will provide a quality living environment..
- D. 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 Chapter 22.22 (Affordable Housing Regulations). These rental units shall be subject to Section 22.22.030 (Inclusionary requirements for rental housing developments). The County may assist the applicant in identifying available financing and/or subsidies for the rental housing development.
- E. On-site inclusionary housing for commercial and industrial development.** As an inducement to the development of on-site inclusionary housing in commercial and industrial development, the County 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.
- F. Affordable housing on mixed-use and industrial sites.** In commercial/mixed-use and industrial land use categories, as designated in the Countywide Plan, the floor-area ratio may be exceeded for deed-restricted units that are affordable to very low or low income persons, subject to any limitations in the Countywide Plan. For deed-restricted units that are affordable to moderate-income persons, the floor area ratio may be exceeded in areas with acceptable levels of traffic service, subject to any limitations in the Countywide Plan, and so long as the level of service standard is not exceeded.
- G. Impacted roadways.** In areas restricted to the low end of the density range due to vehicle Level of Service standards, affordable housing developments may be considered for densities higher than the low end standard per the Countywide Plan.
- H. Fee waivers.** The County may waive any County fees applicable to the affordable or deed-restricted units of a proposed residential, commercial, or industrial development. In addition, for projects developed pursuant to Housing Overlay Designation policies and for deed-restricted housing developments that are affordable to very low or low income persons, the Director may waive fees or transfer In-Lieu Housing Trust funds to pay for up to 100 percent of Community Development Agency fees, based on the proportion of the project that is affordable to very low or low income persons and the length of time that the housing shall remain affordable.

- I. **Projects developed pursuant to Housing Overlay Designation policies.** Residential development projects developed in conformance with Housing Overlay Designation policies may be granted adjustments in development standards, such as parking, floor area ratio, and height, as provided in the Countywide Plan, not to exceed unit counts identified in the Countywide Plan.
- J. **Technical assistance.** In order to emphasize the importance of securing affordable housing as a part of the County's affordable housing program, the County may provide assistance in obtaining financial subsidy programs to applicants.
- K. **Priority processing.** The County shall priority process projects developed pursuant to Housing Overlay Designation policies and deed-restricted housing developments that are affordable to very low or low income persons.

22.24.030 - Density Bonus and Other Incentives Pursuant to State Law

This Section specifies procedures for providing density bonuses and other incentives and concessions as required by State law (Government Code Section 65915).

- A. **Density bonuses; calculation of bonuses.** Pursuant to State law, a residential development project is eligible for a density bonus if it meets the requirements as described below and shown in Table 3-5a.
 - 1. The residential development project must result in a net increase of at least 5 dwelling units.
 - 2. A residential development project is eligible for a 20 percent density bonus if the applicant seeks and agrees to construct any one of the following, in addition to the inclusionary units required by Chapter 22.22 and in addition to any affordable units required by Housing Overlay Designation policies:
 - a. 10 percent of the units at affordable rent or affordable ownership cost for low income households;
 - b. 5 percent of the units at affordable rent or affordable ownership cost for very low income households; or
 - c. a senior citizen housing development of 35 units or more as defined in Section 51.3 of the Civil Code.
 - 3. A residential development project is eligible for a 5 percent density bonus if the applicant seeks and agrees to construct the following, in addition to the inclusionary units required by Chapter 22.22 and in addition to any affordable units required by Housing Overlay Designation policies:
 - a. 10 percent of the units at affordable ownership cost for moderate income households,
 - b. Located in a common interest development, as defined in Section 1351 of the Civil Code; and

- c. All of the dwelling units in the project are offered to the public for purchase.
4. The density bonus for which the residential development project is eligible shall increase if the percentage of units affordable to very low, low, and moderate income households exceeds the base percentage established in subsections (2) and (3) above, as follows:
- a. Very low income units - For each 1 percent increase above 5 percent in the percentage of units affordable to very low income households, the density bonus shall be increased by 2.5 percent, up to a maximum of 35 percent.
 - b. Low income units - For each 1 percent increase above 10 percent in the percentage of units affordable to low income households, the density bonus shall be increased by 1.5 percent, up to a maximum of 35 percent.
 - c. Moderate income units - For each 1 percent increase above 10 percent in the percentage of units affordable to moderate income households, the density bonus shall be increased by 1 percent, up to a maximum of 35 percent.

**TABLE 3-5a
DENSITY BONUS CALCULATION**

Income Category	% Affordable Units*	Bonus Granted	Additional Bonus for Each 1% Increase in Affordable Units*	% Affordable Units Required for Maximum 35% Bonus*
Very low income	5%	20%	2.5%	11%
Low income	10%	20%	1.5%	20%
Moderate income (for-sale common interest development only)	10%	5%	1%	40%
Senior citizen housing development	--	20%	--	--
*Note: Required inclusionary units and any affordable units required by Housing Overlay Designation policies will not be counted as affordable units for the purpose of granting incentives and concessions.				

5. The following provisions apply to the calculation of density bonuses:
- a. Each residential development project is entitled to only one density bonus, which may be selected based on the percentage of either units affordable to very low income households, units affordable to low income households, or units affordable to moderate income households, or the project's status as a senior citizen housing development. Density bonuses from more than one category may not be combined.

- b. Consistent with Section 22.24.030.A.2 and 22.24.030.A.3, required inclusionary units and any affordable units required by Housing Overlay Designation policies will not be counted as affordable units for the purpose of granting a density bonus. Affordable units qualifying a project for a density bonus must be provided in addition to required inclusionary units, in addition to affordable units required by Housing Overlay Designation policies, and must be included in the base density.
 - c. When calculating the number of permitted density bonus units, any calculations resulting in fractional units shall be rounded up to the next larger integer. When calculating the number of required affordable units, any calculations resulting in fractional units shall be rounded up to the next larger integer.
 - d. The density bonus units shall not be included when determining the number of affordable units required to qualify for a density bonus.
 - e. A project proposed below the base density may qualify for incentives and concessions if it meets the requirements of Section 22.24.030.B.3.
 - f. The applicant may request a lesser density bonus than the project is entitled to, but no reduction will be permitted in the number of required affordable units.
 - g. The County may, at its sole discretion, grant a density bonus exceeding the state requirements where the applicant agrees to construct a greater number of affordable housing units or at greater affordability than required by this subsection (A). If an additional density bonus is granted by the County and accepted by the applicant, the additional density bonus shall be considered an incentive or concession for purposes of Section 65915.
6. Density bonuses may also be granted for child care facilities and land donation in excess of that required by Chapter 22.22, pursuant to Government Code Sections 65915(h) and 65915(i).

B. Incentives and concessions. Subject to the findings included in Section 22.24.030(E), when an applicant seeks a density bonus and requests incentives or concessions, the County shall grant incentives or concessions as shown in Table 3-5b and as described in this section

**TABLE 3-5b
DENSITY BONUS INCENTIVES AND CONCESSIONS
REQUIRED BY GOVERNMENT CODE SECTION 65915**

Affordability Category	% of Units		
Very low income (Health & Safety Code Section 50105)	5%	10%	15%
Low income (Health & Safety Code Section 50079.5)	10%	20%	30%
Moderate-income (ownership units only) (Health & Safety Code Section 50093)	10%	20%	30%
Maximum Incentive(s)/Concession(s)	1	2	3

Notes:

(A) A concession or incentive may be requested only if an application is also made for a density bonus, except as may be permitted pursuant to Section 22.24.030(B)(3).

(B) Required inclusionary units and any affordable units required by Housing Overlay Designation policies will not be counted as affordable units for the purpose of granting incentives and concessions.

(C) Concessions or incentives may be selected from only one category (very low, low, or moderate).

(D) No concessions or incentives are available for land donation or senior housing.

(E) Day care centers may have one concession or a density bonus at the County's option, but not both.

1. For the purposes of this section, incentive or concession means the following:
 - a. A reduction in the site development standards of this Development Code or other County policy, or local 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 height, setback, coverage, floor area, and/or parking requirements, which result in identifiable, financially sufficient, and actual cost reductions based upon appropriate financial analysis and documentation as specified in Section 22.24.030(D).
 - 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 existing or planned surrounding development.
 - c. Other regulatory incentives or concessions proposed by the applicant or the County that will result in identifiable, financially sufficient, and actual cost reductions, including those incentives listed in Section 22.24.020, and based upon appropriate financial analysis and documentation as specified in Section 22.24.030(D).
2. Nothing in this section requires the provision of direct financial incentives for the residential development project, including but not limited to the provision of financial subsidies, publicly owned land, fee waivers, or waiver of dedication requirements. The County at its sole discretion may choose to provide such direct financial incentives. Any such incentives may require payment of prevailing wages by the residential development project if required by State law.
3. The County, at its sole discretion, may provide incentives or concessions for a residential development project that is eligible for a density bonus pursuant to Section 22.24.030(A) but where the applicant does not request a density bonus, providing the following findings can be made:
 - a. The project is a deed-restricted housing development that is affordable to very low or low income persons, or is any residential development project developed pursuant to the Housing Overlay Designation policies included in the Countywide Plan.

- b. The incentive or concession is in compliance with the California Environmental Quality Act and will not be detrimental to the public interest, health, safety, convenience, or welfare of the County, or injurious to the property or improvements in the vicinity and zoning district in which the real property is located.
4. Pursuant to Government Code Section 65915(p), an applicant for a residential development project that is eligible for a density bonus pursuant to Section 22.24.030(A) may request that onsite vehicular parking ratios, inclusive of handicapped and guest parking not exceed the following standards:
 - a. For zero to one bedroom dwelling units: 1 onsite parking space.
 - b. For two to three bedroom dwelling units: 2 onsite parking spaces.
 - c. For four or more bedroom dwelling units: 2.5 onsite parking spaces.

Onsite parking may include tandem and uncovered parking

5. An applicant for a residential development project that is eligible for a density bonus pursuant to Section 22.24.030(A) and who requests a density bonus, incentives, or concessions may seek a waiver of development standards that have the effect of precluding the construction of the project with the density bonus or with the incentives or concessions permitted by this section. The applicant shall show that the waiver is necessary to make the residential development project economically feasible, based upon appropriate financial analysis and documentation as specified in Section 22.24.030(D).

C. Standards for affordable housing units. Affordable units that qualify a residential development project for a density bonus pursuant to this section shall conform to the following provisions applicable to inclusionary units:

1. Section 22.22.020(C) (Conditions of approval).
2. Section 22.22.020(E) (Design and character of inclusionary units).
3. Section 22.22.020(F) (Timing of construction).
4. Section 22.22.020(G) (Eligible occupants), except that affordable ownership units designated for moderate income households shall be sold to moderate income households as certified by the County or its designee.
5. Section 22.22.030 (Inclusionary Requirements for Rental Housing Developments), except that rental prices shall be determined pursuant to Health and Safety Code Section 50053 and Section 6922, Title 25, California Code of Regulations, and the units shall be affordable for at least 30 years.
6. Section 22.22.040 (Inclusionary Requirements for Ownership Housing Developments), except that sales prices shall be determined pursuant to Health and

Safety Code Section 50052.5 and Section 6924, Title 25, California Code of Regulations. Units affordable to very low and low income households shall be affordable for 30 years or as long a period of time as permitted by current law, and units affordable to moderate income households shall be affordable in perpetuity.

7. Section 22.22.050 (Inclusionary Requirements for Lot Subdivisions).
8. Section 22.22.060 (Eligibility Requirements for Ownership Housing Developments).
9. Section 22.22.070 (Control of Resale).

D. Application for density bonus, incentives, and concessions. Any request for a density bonus, incentive, concession, parking reduction, or waiver pursuant to this Section 22.24.030 shall be included in the affordable housing plan submitted as part of the first approval of any residential development project and shall be processed, reviewed, and approved, conditionally approved, or denied concurrently with all other applications required for the project. The affordable housing plan shall include, for all affordable units that qualify a residential development project for a density bonus pursuant to this section, the information that is required for inclusionary units as specified in Section 22.22.020(I). In addition, when requested by staff, the affordable housing plan shall include the following information:

1. A description of any requested density bonus, incentive, concession, waiver of development standards, or modified parking standard.
2. Identification of the base project without the density bonus, number and location of all affordable units qualifying the project for a density bonus, and identification of the density bonus units.
3. A pro forma demonstrating that any requested incentives and concessions result in identifiable, financially sufficient, and actual cost reductions, unless the request for incentives and concessions is submitted pursuant to Section 22.24.030(B)(3). The pro forma shall include: (a) the actual cost reduction achieved through the incentive or concession; and (b) evidence that the cost reduction allows the developer to provide affordable rents or affordable sales prices.
4. For waivers of development standards: (a) a pro forma demonstrating that the waivers are necessary to make the residential development project economically feasible; and (b) evidence that the development standards for which the waivers are requested would have the effect of precluding the construction of the residential development project at the density or with the incentives or concessions requested.
5. The County may require that any pro forma submitted pursuant to subsections (3) and (4) include information regarding capital costs, equity investment, debt service, projected revenues, operating expenses, and such other information as is required to evaluate the pro forma. The cost of reviewing any required pro forma data, including but not limited to the cost to the County of hiring a consultant to review the pro forma, shall be borne by the applicant.

6. If a density bonus is requested for a land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the findings in Government Code Section 65915(h) can be made.
7. If a density bonus or concession is requested for a child care facility, the application shall provide evidence that the findings in Government Code Section 65915(i) can be made.
8. If a request for a density bonus, incentive, concession, parking reduction, or waiver is submitted after the first approval of any residential development project, an amendment to earlier approvals may be required if the requested density bonus, incentive, concession, parking reduction, or waiver would modify either the earlier approvals or the environmental review completed pursuant to the California Environmental Quality Act.

E. Review of application. Any request for a density bonus, incentive, concession, parking reduction, or waiver pursuant to this Section 22.24.030 shall be submitted as part of the first approval of any residential development project and shall be processed, reviewed, and approved or denied concurrently with the discretionary applications required for the project..

1. Before approving a request for a density bonus, incentive, concession, parking reduction, or waiver, the review authority shall make the following findings, as applicable:
 - a. The residential development project is eligible for a density bonus and any concessions, incentives, waivers, or parking reductions requested; conforms to all standards for affordability included in this chapter; and includes a financing mechanism for all implementation and monitoring costs.
 - b. Any requested incentive or concession will result in identifiable, financially sufficient, and actual cost reductions based upon appropriate financial analysis and documentation if required by Section 22.24.030(D), unless the incentive or concession is provided pursuant to Section 22.24.030(B)(3).
 - c. If the density bonus is based all or in part on dedication of land, all of the findings included in Government Code Section 65915(h) can be made.
 - d. If the density bonus, incentive, or concession is based all or in part on the inclusion of a child care facility, all of the findings included in Government Code Section 65915(i) can be made.
 - e. If the incentive or concession includes mixed uses, all of the findings included in Government Code Section 65915(k)(2) can be made.
 - f. If a waiver is requested, the waiver is necessary to make the housing units economically feasible, and the development standards would have the effect of precluding the construction of the residential development project at the densities or with the incentives or concessions permitted by this Section 22.24.030.

2. The review authority may deny a request for an incentive or concession for which the findings set forth in Section 22.24.030(E)(1) above can be made only if it makes a written finding, based upon substantial evidence, of either of the following:
 - a. The incentive or concession is not required to provide for affordable rents or affordable ownership costs; or
 - b. The incentive or concession would have a specific adverse impact upon public health or safety, or the physical environment, or on any real property that is listed in the California Register of Historic Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low, very low and moderate income households. For the purpose of this subsection, "specific adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions, as they existed on the date that the application was deemed complete.
3. The review authority may deny a request for a waiver for which the findings set forth in Section 22.24.030(E)(1) above can be made only if it makes a written finding, based upon substantial evidence, of either of the following:
 - a. The modification would have a specific adverse impact upon health, safety, or the physical environment, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low, very low and moderate income households. For the purpose of this subsection, "specific adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application was deemed complete; or
 - b. The modification would have an adverse impact on any real property that is listed in the California Register of Historic Resources.
4. The review authority may deny a density bonus, incentive, or concession that is based on the provision of child care facilities and for which the required findings can be made only if it makes a written finding, based on substantial evidence, that the County already has adequate child care facilities.

Chapter 22.130 – Definitions

22.130.030 – Definitions of Specialized Terms and Phrases

Affordable Housing. Dwelling units that are rented or sold at rates that are affordable to households of moderate, low, or very low income, as described in Chapter 22.22 (Affordable Housing Regulations) or Chapter 22.24 (Affordable Housing Incentives) and defined by Health and Safety Code Sections 50052.5 and 50053.

Affordable Ownership Cost. Figure at which affordable housing must be provided for purchase, which is calculated as annual housing costs, during the first calendar year of a household's occupancy, including mortgage payments, property taxes, homeowners insurance, and homeowners association dues, if any, which do not exceed the following:

(1) For inclusionary units required by Chapter 22.22, annual housing costs cannot exceed 30 percent of 60 percent of area median income, adjusted for household size.

(2) For affordable housing that qualifies a project for a state density bonus, annual housing costs cannot exceed the following:

(a) for moderate income households: 35 percent of 110 percent of area median income, adjusted for household size.

(b) for low income households: 30 percent of 70 percent of area median income, adjusted for household size.

(c) for very low income households: 30 percent of 50 percent of area median income, adjusted for household size.

Affordable Rent. Annual rent, including utilities and all fees for housing services, which does not exceed the following:

(1) For inclusionary units required by Chapter 22.22, annual rent cannot exceed 30 percent of 50 percent of median area income, adjusted for household size.

(2) For affordable housing that qualifies a project for a state density bonus, annual rent cannot exceed the following:

(a) for low income households: 30 percent of 60 percent of area median income, adjusted for household size.

(b) for very low income households: 30 percent of 50 percent of area median income, adjusted for household size.

Area Median Income. Median income for Marin County as published by the U.S. Department of Housing and Urban Development (HUD) or the California Department of Housing and Community Development (HCD) with adjustments for household size. Current or applicable schedule to be applied is at the discretion of the Director.

Base Density. This definition applies only to projects that seek a density bonus. The base density is the lower of 1) the number of units/lots that are calculated using the minimum lot area or maximum density associated with the zoning district or 2) the maximum density allowed by the Countywide Plan for sites with sensitive habitat, or located within the Ridge and Upland Greenbelt, or lacking public water or sewer systems, or if the project will result in an exceedance to the Level of Service Standards.

Below Market Rate. Housing that is sold or rented at a price which is below the prevailing rate for equivalent housing units within the same community.

Density Bonus. An increase in the number of dwelling units over the base density.

Inclusionary Unit/Lot. An ownership or rental housing unit or lot that is required by Chapter 22.22 (Affordable Housing Regulations) of this Development Code to be rented at affordable rents or sold at an affordable ownership cost to very low or low income households, as specified.

Household Income. The gross annual household income considering household size, income of all wage earners, elderly or disabled family members, and all other sources of household income.

Moderate, Low, and Very Low Income-Households. Households whose incomes do not exceed income limits for moderate, low, and very low income households, respectively, as determined and published periodically by the U.S. Department of Housing and Urban Development (HUD) or the California Department of Housing and Community Development (HCD) with adjustments for household size. For inclusionary housing, income levels are generally defined as:

1. Moderate income, 80 to 120 percent of area median income;
2. Low income, 50 to 80 percent of area median income.
3. Very low income, under 50 percent of area median income.

Resale Controls. Legal restrictions by which the price of affordable housing units will be controlled to ensure that the units remain affordable to very low, low or moderate-income County households, as applicable, over a specified period of time.