

The City of Santa Barbara's Affordable Housing Policies and Procedures

APPENDIX D - INCLUSIONARY HOUSING ORDINANCE Effective April 1, 2018

The following summarizes the main requirements of the Inclusionary Housing Ordinance, but the reader is encouraged to refer to the text of the Ordinance for more complete information. The Ordinance is located at Chapter 30.160 of the City's Municipal Code and is attached at the end of this document.

A. Projects of Ten or More Ownership Units or Lots

For all residential subdivision developments of 10 or more units, the developer must either designate at least 15% of the total units as inclusionary units for owner-occupancy by middle-income households, or must pay an in-lieu fee. As an incentive to provide the units on-site, the developer is entitled to a density bonus for the number of inclusionary units to be provided on-site. The City also may (but is not required to) provide zoning modifications (such as reduced setback requirements, for example) to facilitate the increased density. Other Ordinance requirements:

- In determining the number of inclusionary units required, any decimal fraction of less than 0.5 shall be rounded down, and any decimal fraction of 0.5 or more shall be rounded up.
- The Ordinance also applies to "dry lot" subdivisions that would create lots for the eventual development of 10 or more units, and requires the payment of an in-lieu fee.
- Prices of the inclusionary units are generally required to be affordable to middle income households, using a target income of 120% of Area Median Income (AMI). Currently the maximum sale prices for inclusionary units are:
 - 1 bedroom, \$ 272,100
 - 2 bedroom, \$ 339,900
 - 3 bedroom, \$ 403,300
- For inclusionary units built as duplexes, or especially large and luxurious condominiums that approximate the livability and features that buyers might expect from duplex units, the Community Development Director may approve a target income of 130% of AMI. For example, a 2-bedroom unit at this price point could be sold for a maximum of \$ 373,800.
- Inclusionary units built as detached single-family homes, each on its own separate lot, shall be sold at prices affordable to upper-middle income households, using a target income of 160% of AMI. For example, a 2-bedroom unit at this price point could be sold for a maximum of \$ 475,800.

- Inclusionary units must be disbursed evenly throughout the development and must be comparable in construction quality and exterior design to the market-rate units, but may be smaller in size and have different interior finishes and features.
- The average number of bedrooms in the inclusionary units must at least equal that of the market-rate units. The minimum unit sizes and number of baths are also specified.
- All inclusionary units must be completed and occupied concurrently with or prior to the market-rate units. In phased projects, inclusionary units must be included proportionally in each phase.
- Affordability control documents must be approved by the City and recorded prior to the issuance of the grading permit or building permit, whichever comes first.
- For every residential development to which the Ordinance applies, an Inclusionary Housing Plan must be submitted as part of the application. The Ordinance specifies the required elements which must be included in such Plan.
- Projects that voluntarily provide at least 30% of their units at prices affordable to upper- middle income households are exempt from the Ordinance. Unlike inclusionary units required under this ordinance, however, there is no entitlement to a density bonus for these upper-middle income units. As an example of maximum sale prices, the current maximum sale price for a 2 bedroom upper-middle income unit using a Target Income of 160% of AMI is \$475,800.

In-Lieu Fee and Alternate Methods of Compliance for Projects of 10 or More Units

The requirements of the Ordinance may also be satisfied by paying an in-lieu fee. As of April 1, 2018 the formula for calculating the in-lieu fee results in a fee of \$435,150 per required inclusionary unit. The in-lieu fee is calculated as follows: The median sale price of 2-bedroom condominiums in the City during the most recent 4 quarters from April 1, 2017 through March 31, 2018 is \$639,000¹ less 15% to arrive at the “estimated production cost of a 2-bedroom unit” (\$543,150) less the affordable sale price of a 2-bedroom low-income unit under the City’s policies (\$108,000), which equals \$435,150. The in-lieu fee represents the difference between the cost of building a new unit and the maximum sales price of a low-income affordable unit.

The in-lieu fee is re-calculated annually when HUD publishes new Area Median Income figures. The in-lieu fee amount noted above will remain in effect until HUD publishes the AMI figures in 2019. The in-lieu fee for a project is the fee that is in effect as of the date of final Planning Commission approval of the project. The in-lieu fee must be paid prior to the issuance of building permits (except for projects of 1 through 4 units, where

¹ Redfin Website

payment of the fee may be delayed until just prior to issuance of the Certificate of Occupancy).

To encourage projects with smaller-than-average units, the in-lieu fee is reduced for projects in which the average size of market-rate units is smaller than 1,700 square feet, per the following table:

Average Unit Size of Market-Rate Units in Net Square Feet	Percentage Reduction in In-Lieu Fee	Reduced In-Lieu Fee
1,400 to 1,699	15%	\$369,877
1,100 to 1,399	20%	\$348,120
800 to 1,099	25%	\$326,362
Below 800	30%	\$304,605

The Planning Commission may accept alternate methods of compliance that are proposed by the applicant, including off-site construction of the inclusionary units, dedication of land for affordable housing purposes, or a combination of approaches. For example, the requirements may be met through a combination of providing inclusionary units on-site and paying an in-lieu fee. A 10-unit project would have an inclusionary requirement of 1.5 units. This could be met by building 2 affordable inclusionary units on-site, or by paying an in-lieu fee for 1.5 units. Unless the average size of the market rate units is below 1,700 square feet, the in-lieu fee for 1.5 units would be $(1.5 \times \$435,150 = \$652,725)$. Or, the requirements could be met by building one affordable inclusionary unit and paying one-half of the in-lieu fee for one unit $(.5 \times \$435,150 = \$217,575)$.

B. Projects of Two through Nine Ownership Units or Lots

All residential subdivision projects of 2 through 9 units or lots (including condominium conversion projects) must pay an inclusionary housing fee. Unlike the inclusionary requirements for projects of 10 or more units, there is no requirement that these smaller projects provide an affordable unit, and there is no entitlement to a density bonus if an affordable unit is included by choice as an alternative to paying the inclusionary housing fee.

The pro-rated inclusionary housing fee for smaller projects is currently \$21,757 per unit or lot. This is equal to 5% of the \$435,150 in-lieu fee. This fee amount will be in effect

until HUD publishes the Area Median Income numbers in 2019. For projects involving the construction of 5 or more units, the fee must be paid prior to the issuance of building permits. To reduce the financial impact on projects of 4 units or less, the due date for payment of the in-lieu fee is postponed until just prior to issuance of the Certificate of Occupancy.

To encourage projects with smaller-than-average units, the pro-rated inclusionary housing fee is reduced for projects in which the average size of market-rate units are smaller than 1,700 square feet, per the following table:

Average Unit Size of Market-Rate Units in Net Square Feet	Percentage Reduction in In-Lieu Fee	Reduced In-Lieu Fee	Pro-Rated Inclusionary Fee (5% of Reduced in-Lieu Fee)
1,400 to 1,699	15%	\$369,877	\$18,493
1,100 to 1,399	20%	\$348,120	\$17,405
800 to 1,099	25%	\$326,362	\$16,317
Below 800	30%	\$304,605	\$15,229

Partial Exemption: For projects that involve the construction of up to 4 new units, 1 unit is exempt from the inclusionary fee requirement. Projects that will provide up to 4 new units and include one existing unit that will remain on site are eligible for this partial exemption. Projects that include conversion of 2 or more units to condominiums, or that involve creating new lots without concurrent approval of new units, or that include the construction of 5 or more new units, are not eligible for this exemption.

C. Examples and Tables

Condo Conversion: Application to convert an 8-unit apartment building into 8 condominium units: An inclusionary fee of \$174,056 (8 x \$21,757) must be paid prior to the issuance of a building permit. However, if the average size of the condo units is under 1,700 square feet, the fee will be reduced. For example, for an average unit size of 1,000 square feet the fee would be \$130,536 (8 x \$16,317).

“Dry-Lot Subdivision”: Application to subdivide a parcel into 9 residential lots for sale to future owner-builders: An inclusionary housing fee of \$195,813 (9 x \$21,757) must be paid prior to recordation of the Final Subdivision Map. For a subdivision of 10 lots, a

15% inclusionary requirement will apply so the in-lieu fee would be \$652,725 (15% x 10 x \$435,150).

Condo Conversion plus New Construction: Application to convert a duplex apartment into 2 residential condominiums and to build 2 additional units on the lot: An inclusionary housing fee of \$87,028 (4 x \$21,757) must be paid. The fee for the 2 condominium conversion units must be paid prior to the recordation of the final subdivision map. Because the project is no more than 4 units, payment of the fee for the remaining 2 units may be delayed until just prior to the issuance of the Certificate of Occupancy. This project is not subject to the partial (1-unit) exemption described above because this involves a condominium conversion. Projects where the market rate units average under 1,700 square feet may get a reduction in the in-lieu fee.

Projects of up to 4 New Units: Application to demolish a duplex apartment building and build 4 new condominium units on the lot: This is subject to the partial exemption described above because it involves the construction of no more than 4 new units. An inclusionary housing fee of \$65,271 (3 x \$21,757) must be paid, but payment may be deferred to just prior to the Certificate of Occupancy because the project is 4 or fewer units. Projects where all units average under 1,700 square feet may get a reduction in this fee.

Subdivision with 2 Existing Houses: Application to do a lot split of a large lot with 2 existing houses to create 4 lots, with the 2 existing houses to be each on their own lots and 2 new houses to be built each on their own lots: This is subject to the partial exemption described above because this is not a condominium conversion and involves the addition of no more than 4 new units. An inclusionary housing fee of \$65,271 (3 x \$21,757) must be paid prior to the Certificate of Occupancy, but payment may be deferred to just prior to the Certificate of Occupancy because the project is 4 or fewer units. Projects where all units average under 1,700 square feet may get a reduction in this fee.

TABLES: The following 3 tables provide additional information and examples for projects of 2 through 9 units, depending on factors such as the number of existing units on the site and whether any units are being converted to condominiums.

- **Use Table 1 if there are no existing units on the site, or if all existing units will be demolished prior to the construction of the new project**
- **Use Table 2 if there is one (and only one) existing unit that will remain on the site**
- **Use Table 3 if there are 2 or more existing units to remain on the site that will be converted to condominiums**

<p style="text-align: center;">Inclusionary Table 1</p> <p style="text-align: center;">If There Are No Existing Units on the Site,</p> <p style="text-align: center;">or If All Units will be Removed</p> <p style="text-align: center;">(the Project is all new construction)</p>		
Number of New Units to be Built	Number of Units For Which a 5% In-Lieu Fee Requirement Applies	Total Pro-Rated In-Lieu Fee Required*
1	The Inclusionary Ordinance does not apply to 1-unit projects because there is no subdivision, condo map or new lot creation	NA
2	1 - (1 unit is exempt**)	\$21,757
3	2 - (1 unit is exempt**)	\$43,514
4	3 - (1 unit is exempt**)	\$65,271
5	5	\$108,785
6	6	\$130,542
7	7	\$152,299
8	8	\$174,056
9	9	\$195,813
10 or More	15% Inclusionary Requirement Applies	NA
<p>*Pro-rated in-lieu fee = 5% of the full in-lieu fee (\$435,150 x 5% = \$21,757). However, the in-lieu fee will be reduced if the average size of the market-rate units is below 1,700 sq. ft.</p>		
<p>**In projects that propose to build up to 4 new units, one unit is exempt from payment of the pro-rated in-lieu fee; however, this exemption does not apply to projects that involve the conversion of existing units to condominiums. (see SBMC 30.160.030.A.2).</p>		

<p style="text-align: center;">Inclusionary Table 2</p> <p style="text-align: center;">If There is One (and only one) Existing Unit to be Retained on the Site</p>		
Number of New Units to be Built	Number of Units For Which a 5% In-Lieu Fee Requirement Applies	Total Pro-Rated In-Lieu Fee Required*
1	1 – (1 unit is exempt**)	\$21,757
2	2 - (1 unit is exempt **)	\$43,514
3	3 - (1 unit is exempt**)	\$65,271
4	4 - (1 unit is exempt**)	\$87,028
5	6	\$130,542
6	7	\$152,299
7	8	\$174,056
8	9	\$195,813
9 or more	15% Inclusionary Requirement Applies	NA
<p>*Pro-rated in-lieu fee = 5% of the full in-lieu fee (\$435,150 x 5% = \$21,757). However, the in-lieu fee will be reduced if the average size of the market-rate units is below 1,700 sq. ft.</p>		
<p>**In projects that propose to build up to 4 new units, one unit is exempt from payment of the pro-rated in-lieu fee (see SBMC 30.160.30.A.2)</p>		

Inclusionary Table 3

If the Project Involves a Condominium Conversion

(Whether or Not New Units are Also Being Constructed)

If there are 2 or more existing units on the site that will be converted to condominiums,

Add the number of existing units to the number of new units (if any).

Examples:

What is the Number of Existing Units?	What is the Number of New Units to be Built?	Number of Units For Which a 5% In-Lieu Fee Requirement Applies	Total Pro-Rated In-Lieu Fee Required*
2	1**	3	\$65,271
2	2**	4	\$87,028
3	4**	7	\$152,299
4	5	9	\$195,813
5	5	10 (so 15% inclusionary requirement applies)	NA

*Pro-rated in-lieu fee = 5% of the full in-lieu fee (\$435,150 x 5% = \$21,757). However, the in-lieu fee will be reduced if the average size of the market-rate units is below 1,700 sq. ft.

**There is no 1-unit exemption when a condominium conversion is part of the project

Chapter 30.160 Inclusionary Housing

Sections:

- 30.160.010 Purpose
- 30.160.020 Definitions
- 30.160.030 Inclusionary Requirements
- 30.160.040 Exemptions
- 30.160.050 Incentives for On-Site Housing
- 30.160.060 Affordable Housing Standards
- 30.160.070 In-Lieu Fees
- 30.160.080 Alternative Methods of Compliance
- 30.160.090 Inclusionary Housing Plan Processing
- 30.160.100 Eligibility for Inclusionary Units
- 30.160.110 Owner-Occupied Units; Sales Price; Long-Term Restriction
- 30.160.120 Adjustments and Waivers
- 30.160.130 Affordable Housing Inclusionary Fund

30.160.010 Purpose

The purposes of this Chapter, which shall be known as the “Inclusionary Housing Ordinance,” are the following:

- A. To encourage the development and availability of housing affordable to a broad range of Households with varying income levels within the City;
- B. To promote the City’s goal to add affordable housing units to the City’s housing stock;
- C. To increase the availability of housing opportunities for Middle Income and Upper-Middle Income households within the City limits in order to protect the economic diversity of the City’s housing stock, reduce traffic, commuting and related air quality impacts, and reduce the demands placed on transportation infrastructure in the region; and
- D. To implement policies of the Housing Element of the General Plan which include: a. adopting an inclusionary housing program to meet the housing needs of those not currently served by City Housing and Redevelopment Agency programs; and b. encouraging the development of housing for first time home buyers, including moderate and Middle Income households.

30.160.020 Definitions

As used in this Chapter, the following terms shall have the meaning and usage indicated below:

- A. **Affordable Housing Policies and Procedures.** The City’s Affordable Housing Policies and Procedures as adopted by the City Council of the City of Santa Barbara and amended from time to time.
- B. **Affordable Housing Inclusionary Fund.** That special fund of the City established by the City as provided in Section 30.160.130, Affordable Housing Inclusionary Fund.
- C. **Area Median Income.** The median household income as provided in Section 50093(c) of the California Government Code, as it is currently enacted or hereinafter amended.

D. **Household.** One person living alone or two or more persons sharing residency whose income is considered for housing payments.

E. **Inclusionary Housing Plan.** A plan for a residential development submitted by an Applicant as provided by Subsection 30.160.090.B, Inclusionary Housing Plan.

F. **Inclusionary Unit.** An Ownership Unit that must be offered to eligible purchasers (in accordance with eligibility requirements set by the City) at a City-approved affordable sale price according to the requirements herein.

G. **Market-Rate Unit.** An Ownership Unit in a Residential Development that is not an Inclusionary Unit.

H. **Middle Income Household.** A Household whose income is between 120 percent and 160 percent of the Area Median Income, adjusted for household size.

I. **Off-Site Inclusionary Unit.** An Inclusionary Unit that will be built separately or at a different location than the main development.

J. **On-Site Inclusionary Unit.** An Inclusionary Unit that will be built as part of the main development.

K. **Ownership Unit.** A residential unit that may be sold separately under the requirements of the State Subdivision Map Act. For purposes of this Chapter, a residential unit may be designated as an Ownership Unit whether or not it is rented by the owner thereof. The following shall be considered to be a single Ownership Unit:

1. A residential unit together with an Accessory Dwelling Unit approved under Section 30.185.040, Accessory Dwelling Unit, or
2. A residential unit together with an additional residential unit on the same lot approved under Section 30.185.050, Additional Residential Unit.

L. **Residential Development.** Proposed residential development requiring a tentative subdivision map under the City's Subdivision Ordinance. Residential Development shall include the conversion of rental housing to condominiums or similar uses as described in Chapter 30.155, Conversion of Residential Units to Condominiums, Hotels, or Similar Uses.

M. **Residential Lot Subdivision.** The subdivision of land into individual parcels where the application to the City for the subdivision approval does not include a concurrent request for City design approval of the residential units or homes to be constructed upon on such lots.

N. **Target Income.** A number, expressed as a percentage of Area Median Income, used in calculating the maximum sale price of an affordable housing unit. It is the household income to which the unit is targeted to be affordable.

O. **Unit Size.** All of the livable floor area within the perimeter walls of a residential unit.

P. **Upper-Middle Income Household.** A Household whose income is between 160 percent and 200 percent of the Area Median Income, adjusted for household size.

30.160.030 Inclusionary Requirements

A. General Requirements.

1. **Developments of Ten or More Units.** For all Residential Developments of ten or more residential units, at least 15 percent of the total units must be constructed and offered for sale as Inclusionary Units restricted for owner occupancy by Middle Income Households or, in the case of Residential Lot Subdivisions for the construction of single unit homes, by Upper-Middle Income Households as specified herein.

2. Developments of Less Than Ten Units But More Than One Unit –Payment

of an In-Lieu Fee. For all Residential Developments of less than ten units and more than one unit, the Applicant shall, at the Applicant's election, either provide at least one unit as an owner-occupied Middle Income restricted Unit, or pay to the City an in-lieu fee equal to five percent of the in-lieu fee specified by Subsection 30.160.070.B, Calculation of In-Lieu Fee, multiplied by the total number of residential units of the Residential Development; provided, however, that for those Residential Developments which are not a condominium conversion project (as defined by Chapter 30.155, Conversion of Residential Units to Condominiums, Hotels, or Similar Uses) and which propose to construct two to four residential units, the required in-lieu fee shall equal five percent of the in-lieu fee specified by Subsection 30.160.070.B, Calculation of In-Lieu Fee, multiplied by the number of units in the Residential Development which exceed one residential unit.

B. Residential Lot Subdivisions.

1. **Subdivisions of Ten or More Parcels.** For all Residential Lot Subdivisions where the lots to be approved would permit the eventual development of ten or more Residential Units, the Applicant shall pay an in-lieu fee corresponding to 15 percent of the number of Residential Units that might eventually be built on the lots, or the Applicant may propose an alternative means of compliance with this Chapter pursuant to Section 30.160.080, Alternative Methods of Compliance.

2. **Subdivisions of Less Than Ten Parcels.** For all Residential Lot Subdivisions where the real property parcels to be approved would result in the eventual development of less than ten Residential Units but more than one Residential Unit, the Applicant shall, at the Applicant's election, either provide that one Residential Unit will be constructed as an owner-occupied Middle Income Household restricted Unit, or pay an in-lieu fee corresponding to five percent of the in-lieu fee specified by Subsection 30.160.070.B, Calculation of In-Lieu Fee, multiplied by the number of Residential Units that might eventually be built as part of the subdivision. At the option of the Applicant, the Applicant may propose an alternative means of compliance with this Chapter pursuant to Section 30.160.080, Alternative Methods of Compliance.

C. **Existing Residential Units.** Existing Ownership Units that are to be retained shall be included in the number of units in the Residential Development for purposes of calculating the number of Inclusionary Units required under this Section; however, the number of such existing units to be included in the calculation shall not exceed the number of proposed new Ownership Units to be added.

D. **Density Bonus Units.** Any additional owner-occupied units authorized and approved as a density bonus under the State Density Bonus law or the City's Affordable Housing Policies and Procedures will not be counted in determining the required number of Inclusionary Units.

E. **Rounding.** See Section 30.15.050, Fractions.

F. **Price Limits for Inclusionary Units.** Inclusionary Units must be restricted for sale at affordable prices as follows:

1. Except as provided in the following subsections, Inclusionary Units must be restricted to and sold at prices affordable to Middle Income Households, calculated according to procedure specified in the City's Affordable Housing Policies and Procedures [applicable as of the date of Planning Commission's approval] using a Target Income of 120 percent of the then current Area Median Income.

2. The Community Development Director may approve a Target Income of 130 percent of Area Median Income for Inclusionary Units built as duplexes, or exceptionally large condominiums, in accordance with the City's Affordable Housing Policies and Procedures.

3. Inclusionary Units built as detached single unit homes, each on its own separate lot, must be restricted to and sold at prices affordable to Upper-Middle Income Households, with sale prices calculated according to the procedure specified in the City's Affordable Housing Policies and Procedures using a Target Income of 160 percent of Area Median Income.

4. Nothing herein shall preclude an Applicant/Owner from voluntarily agreeing to restrict the Inclusionary Units for sale to very-low, low or moderate income households at the Target Incomes specified for such income categories in the City's Affordable Housing Policies and Procedures.

G. Combining Residential Developments. If two proposed Residential Developments that share a common boundary are under development review by the City simultaneously such developments will be treated under this Chapter as if they were combined for purposes of determining the number of Inclusionary Units or Inclusionary Lots required under this Chapter, provided they are proposed by the same Applicant or by joint Applicants which share a substantial legal commonality of ownership and control. Applicants which are related partnerships or corporations will be deemed to share a substantial commonality of ownership and control if more than 60 percent of the natural persons who are general partners are the same for each partnership or, in the case of corporate ownership, the applicant individual or entity controls 60 percent of more of the voting stock or shares of each corporation.

30.160.040 Exemptions

A. Projects Exempted from Inclusionary Requirements. The requirements of this Chapter shall not apply to the following types of development projects:

1. **Rental Units.** A project constructing Residential Units which may not be separately owned, transferred, or conveyed under the state Subdivision Map Act.

2. **Casualty Reconstruction Projects.** The reconstruction of any residential units or structures which have been destroyed by fire, flood, earthquake or other act of nature, which are being reconstructed in a manner consistent with the requirements of Subsection 30.165.080.C, Repair and Replacement of Damaged or Destroyed Nonconforming Buildings.

3. **Voluntarily Affordable Projects.** Residential Developments which propose that not less than 30 percent of the units of the development will be deed restricted for occupancy by families qualifying as Upper Middle Income (or lower income) households pursuant to and in accordance with the City's Affordable Housing Policies and Procedures.

4. **Employer-Sponsored Housing Projects.** Employer-Sponsored Housing Projects developed in accordance with the Average Unit-Size Density Incentive Program of Chapter 30.150, Average Unit-Size Density Incentive Program.

30.160.050 Incentives for On-Site Housing

A. Providing Units On-Site. An Applicant for a Residential Development of ten or more residential units who elects to satisfy the inclusionary housing requirements of this Chapter by producing owner-occupied Inclusionary Housing units on the site of a Residential Development shall be entitled to a density bonus for the number of Inclusionary Units to be provided on-site, in accordance with the City's density bonus program for owner-occupied units as described in the City's Affordable Housing Policies and Procedures without the need for the Applicant to separately apply for a lot area modification for the density bonus.

B. Use of Modifications. Applicants may request Modifications to zoning requirements that will facilitate increased density for the purpose of accomplishing the goals of this Chapter, including, but

not limited to, Modifications to parking, setbacks, open yard, and solar access requirements as specified in Chapter 30.250, Modifications.

30.160.060 Affordable Housing Standards

A. **Construction Standards for Inclusionary Units.** Inclusionary Units built under this Chapter must conform to the following standards:

1. **Design.** Except as otherwise provided in this Chapter, Inclusionary Units must be dispersed evenly throughout a Residential Development and must be comparable in construction quality and exterior design to the Market-Rate Units constructed as part of the Development. Inclusionary Units may be smaller in aggregate size and may have different interior finishes and features than Market-Rate Units so long as the interior features are durable, of good quality and consistent with contemporary standards for new housing.
2. **Bedrooms and Bathrooms.** The average number of bedrooms in the Inclusionary Units must equal or exceed the average number of bedrooms in the Market-Rate Units of the development. Absent a waiver from the Community Development Director, two-bedroom Inclusionary Units shall generally have at least one and one-half bathrooms, and three-bedroom Inclusionary Units shall generally have at least two bathrooms. However, the required number of bathrooms shall not be greater than the number of bathrooms in the Market- Rate Units. The minimum Unit Size of each Inclusionary Unit shall be in conformance with the City's Affordable Housing Policies and Procedures.
3. **Timing of Construction.** All Inclusionary Units must be constructed and occupied concurrently with or prior to the construction and occupancy of Market- Rate Units of the development. In phased developments, Inclusionary Units may be constructed and occupied in proportion to the number of units in each phase of the Residential Development.
4. **Duration of Affordability Requirement.** Inclusionary Units produced under this Chapter must be legally restricted to occupancy by Households of the income levels for which the units were designated pursuant to and in conformance with the City's Affordable Housing Policies and Procedures.

30.160.070 In-Lieu Fees

A. **Payment of In-Lieu Fee to City.** The requirements of this Chapter may also be satisfied by paying an in-lieu fee to the City for deposit into the City's Affordable Housing Inclusionary Fund as such fund is provided for in Section 30.160.130, Affordable Housing Inclusionary Fund.

B. **Calculation of In-Lieu Fee.** The in-lieu fee for each required Inclusionary Unit that is not constructed on-site will be calculated as of the date of Planning Commission final approval in a manner sufficient to make up the monetary difference between the following:

1. The Estimated Production Cost of a two-bedroom condominium unit in the City as defined in this Section, and
2. The price of a two-bedroom residential unit affordable to a Low-Income Household calculated according to the procedure specified in the City's Affordable Housing Policies and Procedures for a two-bedroom unit.
 - a. *Target Income.* The target income for this calculation shall be 70 percent of Area Median Income, and the housing-cost-to-income ratio for this calculation shall be 30 percent.

b. *Estimated Production Cost.* The Estimated Production Cost shall be deemed to be the median sale price of two-bedroom condominium units in the City less a 15 percent adjustment to reflect an Applicant/Developer's anticipated profit.

c. *Median Sale Price.* The median sale price of two-bedroom condominium units in the City shall be established by the City Council, based on data provided by the Santa Barbara Association of Realtors or other source selected by the City Council, for sales during the four most recent calendar quarters prior to the calculation.

d. *Annual Review.* The City Council may annually review the median sale price of two-bedroom condominium units in the City, and may, based on that review, adjust the in-lieu fee amount.

C. **Prorating.** If the calculation for the required number of Inclusionary Units as provided in Section 30.160.030, Inclusionary Requirements, results in a fraction of a unit, the amount of in-lieu fee for such fractional unit shall be prorated.

D. **Reduction of In-Lieu Fee for Smaller Units.** For Residential Developments, the amount of the in-lieu fee shall be reduced where the average Unit Size of the Market- Rate Units is less than 1,700 square feet, according to the following:

1. If the average Unit Size of the Market-Rate Units is between 1,400 and 1,699 square feet, the in-lieu fee shall be reduced by 15 percent.
2. If the average Unit Size of the Market-Rate Units is between 1,100 and 1,399 square feet, the in-lieu fee shall be reduced by 20 percent.
3. If the average Unit Size of the Market-Rate Units is between 800 and 1,099 square feet, the in-lieu fee shall be reduced by 25 percent.
4. If the average Unit Size of the Market-Rate Units is below 800 square feet, the in-lieu fee shall be reduced by 30 percent.

E. **Timing of Payment of In-Lieu Fee.** The timing of payment of the in-lieu fee varies according to the type of development and the number of units to be developed, as follows:

1. **New Construction of Five or More Units.** For new construction of five or more residential units, the in-lieu fee shall be paid prior to the issuance of a building permit for the Development; for phased-construction developments, payment of the applicable in-lieu fees shall be made for each portion of the Development prior to the issuance of a building permit for that phase of the Development. In the event that the Applicant/Developer intends to pay the in-lieu fee from proceeds of a bank construction loan, and such bank requires the issuance of a building permit prior to funding the construction loan, the Applicant/Developer may request that the Community Development Director issue the building permit prior to payment of the fee. The Community Development Director may approve such request provided the Applicant/Developer agrees in writing that the fee will be paid within ten days after the issuance of the building permit, and further agrees that the building permit will be deemed revoked by the City and work undertaken pursuant to the building permit stopped if the in-lieu fee is not paid within such ten-day period.
2. **Condominium Conversions.** For condominium conversions, payment of the in-lieu fee shall be made prior to recordation of the Final Subdivision Map.
3. **Residential Lot Subdivisions.** For Residential Lot Subdivisions, payment of the in-lieu fee shall be made prior to recordation of the Final Subdivision Map.
4. **Residential Developments of Four Units or Less.** For residential developments of four units or less which are subject to this Chapter and which elect to pay an in-lieu fee under the

requirements of this Chapter, the in-lieu fees shall be paid to the City prior to the issuance of a Certificate of Occupancy.

F. **Delayed Payment.** When payment is delayed, in the event of default, or for any other reason, the amount of the in-lieu fee payable under this Section will be based upon the greater of the fee schedule in effect at the time the fee is paid or the fee schedule in effect at the time of Planning Commission approval.

30.160.080 Alternative Methods of Compliance

A. **Alternative Methods of Compliance – Applicant Proposals.** An Applicant, at the Applicant's option, may propose an alternative means of compliance with this Chapter by submitting to the City an Inclusionary Housing Plan prepared in accordance with the following alternative compliance provisions:

1. **Off-Site Construction.** All or some of the required Inclusionary Units may be constructed off-site if the Planning Commission (or the City Council on appeal) finds that the combination of location, unit size, unit type, pricing, and timing of availability of the proposed off-site Inclusionary Units would provide equivalent or greater benefit than would result from providing those Inclusionary Units on-site as might otherwise be required by this Chapter. Prior to the recordation of the Final Subdivision Map for the Residential Development subject to the inclusionary requirements of this Chapter, the Applicant shall post a bond, bank letter of credit, or other security acceptable to the Community Development Director, in the amount of the in-lieu fee per Section 30.160.070, In-Lieu Fees, which the City may call and may deposit in the Affordable Housing Inclusionary Fund and may spend in accordance with the terms of that Fund in the event that the off-site inclusionary units are not completed (as evidenced by the issuance of a certificate of occupancy for such units) according to the schedule stated in the Inclusionary Housing Plan submitted by the Applicant and prior to the completion and occupancy of the Residential Development.

2. **Dedication of Land for Affordable Housing Purposes.** In lieu of building Inclusionary Units on or off-site or the payment of in-lieu fees, an Applicant may choose to dedicate land to the City [or a City-designated non-profit housing developer] under circumstances where the land is suitable for the construction of Inclusionary Units and under circumstances which the Planning Commission, or the City Council on appeal, reasonably has determined to be of equivalent or greater value than would be produced by applying the City's current in-lieu fee to the Applicant's inclusionary housing obligation.

3. **Combination of Approaches.** The Planning Commission, or the City Council on appeal, may accept any combination of on-site construction, off-site construction, in-lieu fees and land dedication which, in the Planning Commission's or City Council's determination, would provide equivalent or greater benefit than that which might result from providing Inclusionary Units onsite.

B. **Discretion of Planning Commission or City Council.** The Planning Commission, or the City Council on appeal, may approve, conditionally approve or reject any alternative proposed by an Applicant as part of an Affordable Housing Plan. Any approval or conditional approval must be based on a finding that the purposes of this Chapter would be better served by implementation of the proposed alternative. In determining whether the purposes of this Chapter would be better served under the proposed alternative, the Planning Commission, or the City Council on appeal, should consider the extent to which other factors affect the feasibility of prompt construction of

the Inclusionary Housing Units, such as site design, zoning, infrastructure, clear title, grading and environmental review.

30.160.090 Inclusionary Housing Plan Processing

A. **Generally.** The submittal of an Inclusionary Housing Plan and recordation of an approved City affordability control covenant shall be a pre-condition on the City approval of any Final Subdivision Map, and no building permit shall be issued for any Development to which this Chapter applies without full compliance with the provision of this Section. This Section shall not apply to exempt projects or to projects where the requirements of the Chapter are satisfied by payment of an in-lieu fee under Section 30.160.070, In-Lieu Fees.

B. **Inclusionary Housing Plan.** Every Residential Development to which this Chapter applies shall include an Inclusionary Housing Plan as part of the application submittal. No application for a tentative map, subdivision map, or building permit for a development to which this Chapter applies may be deemed complete until an Inclusionary Housing Plan is submitted to and approved by the Community Development Director as being complete. At any time during the formal development review process, the Community Development Director may require from the Applicant additional information reasonably necessary to clarify and supplement the application or determine the consistency of the Project's proposed Inclusionary Housing Plan with the requirements of this Chapter.

C. **Required Plan Elements.** An Inclusionary Housing Plan must include the following elements or submittal requirements:

1. The number, location, structure (attached, semi-attached, or detached), and size of the proposed Market-Rate and Inclusionary Units and the basis for calculating the number of Inclusionary Units;
2. A floor or site plan depicting the location of the Inclusionary Units and the Market-Rate Units;
3. The income levels to which each Inclusionary Unit will be made affordable;
4. The methods to be used to advertise the availability of the Inclusionary Units and select the eligible purchasers, including preference to be given, if any, to applicants who live or work in the City in conformance with the City's Affordable Housing Policies and Procedures;
5. For phased Development, a phasing plan that provides for the timely development of the number of Inclusionary Units proportionate to each proposed phase of development as required by Paragraph 30.160.060.A.3, Timing of Construction;
6. A description of any Modifications as listed in Chapter 30.250, Modifications, that are requested of the City;
7. Any alternative means designated in Section 30.160.080.A, Alternative Methods of Compliance-Applicant Proposals, proposed for the Development along with information necessary to support the findings required by Section 30.160.080.B, Discretion of Planning Commission or City Council, for approval of such alternatives; and
8. Any other information reasonably requested by the Community Development Director to assist with evaluation of the Plan under the standards of this Chapter.

D. **Affordability Control Covenants.** Prior to issuance of a grading permit or building permit, whichever is requested first, a standard City affordability control covenant must be approved and executed by the Community Development Director, executed by the Applicant/Owners, and recorded against the title of each Inclusionary Unit. If subdivision into individual property parcels has not been finalized at the time of issuance of a grading permit or building permit, an overall

interim affordability control covenant shall be recorded against the Residential Development, and shall be replaced by separate recorded affordability control covenants for each unit prior to issuance of a Certificate of Occupancy for such units.

30.160.100 Eligibility for Inclusionary Units

A. **General Eligibility for Inclusionary Units.** No Household may purchase or occupy an Inclusionary Unit unless the City has approved the Household's eligibility, and the Household and City have executed and recorded an affordability control covenant in the chain of title of the Inclusionary Unit. Such affordability control covenant is in addition to the covenant required in Section 30.160.090, Inclusionary Housing Plan Processing, above. The eligibility of the purchasing household shall be established in accordance with the City's Affordable Housing Policies and Procedures and any additional eligibility requirements agreed upon in writing by the Applicant and the City.

B. **Owner Occupancy.** A Household which purchases an Inclusionary Unit must occupy that unit as a principal residence, as that term is defined for federal tax purposes by the United States Internal Revenue Code.

30.160.110 Owner-Occupied Units; Sales Price; Long-Term Restriction

A. **Initial Sales Price.** The initial sales price of an Inclusionary Unit must be set in accordance with the City's Affordable Housing Policies and Procedures, using the Target Income requirements specified in this Chapter.

B. **Transfers and Conveyances.** A renewal of the affordability controls covenant will be entered into upon each change of ownership of an Inclusionary Unit and upon any transfer or conveyance (whether voluntarily or by operation of law) of an owner-occupied Inclusionary Unit as such covenants are required in accordance with the City's Affordable Housing Policies and procedures.

C. **Resale Price.** The maximum sales price and qualifications of purchasers permitted on resale of an Inclusionary Unit shall be specified in the affordability control covenant and shall be in conformance with the City's then approved and applicable Affordable Housing Policies and Procedures.

30.160.120 Adjustments and Waivers

A. **Adjustments and Waivers.** The requirements of this Chapter may be adjusted to propose an alternative method of compliance with this Chapter in accordance with Section 30.160.080, Alternative Methods of Compliance, or waived, in whole or in part, by the City if the Applicant demonstrates to the Planning Commission, or the City Council on appeal, that applying the requirement of this Chapter would be contrary to the requirements of the laws of the United States or California or the Constitutions thereof.

B. **Timing of Waiver Request.** To receive an adjustment or waiver, the Applicant must make an initial request of the Planning Commission for such an adjustment or waiver and an appropriate demonstration of the appropriateness of the adjustment or waiver when first applying to the Planning Commission for the review and approval of the proposed Residential Development.

C. **Waiver and Adjustment Considerations.** In making a determination on an application to adjust or waive the requirements of this Chapter, the Planning Commission, or the City Council on appeal, may assume each of the following when applicable:

1. That the Applicant is subject to the inclusionary housing requirement or in lieu fee;
2. The extent to which the Applicant will benefit from inclusionary incentives under Section 30.160.050, Incentives for On-Site Housing; and
3. That the Applicant will be obligated to provide the most economical Inclusionary Units feasible in terms of construction, design, location and tenure.

D. Written Decision. The Planning Commission, or the City Council on appeal, will determine the application and issue written findings and a decision within 60 days of the public hearing on the Adjustment/Waiver Request.

E. Appeal to the City Council. Upon a decision by the Planning Commission on the proposed overall Residential Development, any action taken by the Commission made pursuant to a request for an adjustment for an alternative method of compliance under Section 30.160.080, Alternative Methods of Compliance, or for a waiver pursuant to this Section, may be appealed to the City Council in accordance with the appeal procedures of Section 30.205.150, Appeals, and Santa Barbara Municipal Code Section 1.30.050.

30.160.130 Affordable Housing Inclusionary Fund

A. Inclusionary Fund. There is hereby established a separate City Affordable Housing Inclusionary Fund (“Fund”) maintained by the City Finance Director. This Fund shall receive all fees contributed under Sections 30.160.070, In-Lieu Fees, and 30.160.080, Alternative Methods of Compliance, and may, at the discretion of the City Administrator, also receive monies from other sources.

B. Purpose and Limitations. Monies deposited in the Fund must be used to increase and improve the supply of housing affordable to Upper-Middle, Middle, Moderate-, Low-, and Very Low-Income Households in the City and to ensure compliance of such Households with the City's Affordable Housing Policies and Procedures. Monies may also be used to cover reasonable administrative or related expenses associated with the administration of this Section, including, but not limited to, the City's purchase and resale of affordable housing units that are in default of the affordable control covenant recorded against that property, provided that the City shall, at all times, comply with the applicable provisions and requirements of the state Mitigation Fee Act, Govt. Code Sections 66000 - 66025.

C. Administration. The Fund shall be administered by the Community Development Director, who may develop procedures to implement the purposes of the Fund consistent with the requirements of this Chapter and any adopted budget of the City.

D. Expenditures. Fund monies shall be used in accordance with the City's Housing Element, Redevelopment Plan, the City's Affordable Housing Policies and Procedures, or subsequent plan adopted by the City Council to construct, rehabilitate or subsidize affordable housing or assist other governmental entities, private organizations or individuals to do so. Permissible uses include, but are not limited to, assistance to housing development corporations, equity participation loans, grants, pre-home ownership coinvestment, pre-development loan funds, participation leases or other public-private partnership arrangements. The Fund may be used for the benefit of both rental and owner-occupied housing in accordance with the applicable requirements of the state Mitigation Fee Act, Govt. Code Sections 66000 - 66025.

E. Community Development Director's Annual Report. The Community Development Director, with the assistance of the City Finance Director, shall report annually to the City Council on the status of activities undertaken with the Fund. The report shall include a statement of income,

expenses, disbursements and other uses of the Fund. The report should also state the number and type of Inclusionary Units constructed during that year.