

SANTA CLARA COUNTY INCLUSIONARY HOUSING GUIDELINES

Ordinance No. NS-1200.368



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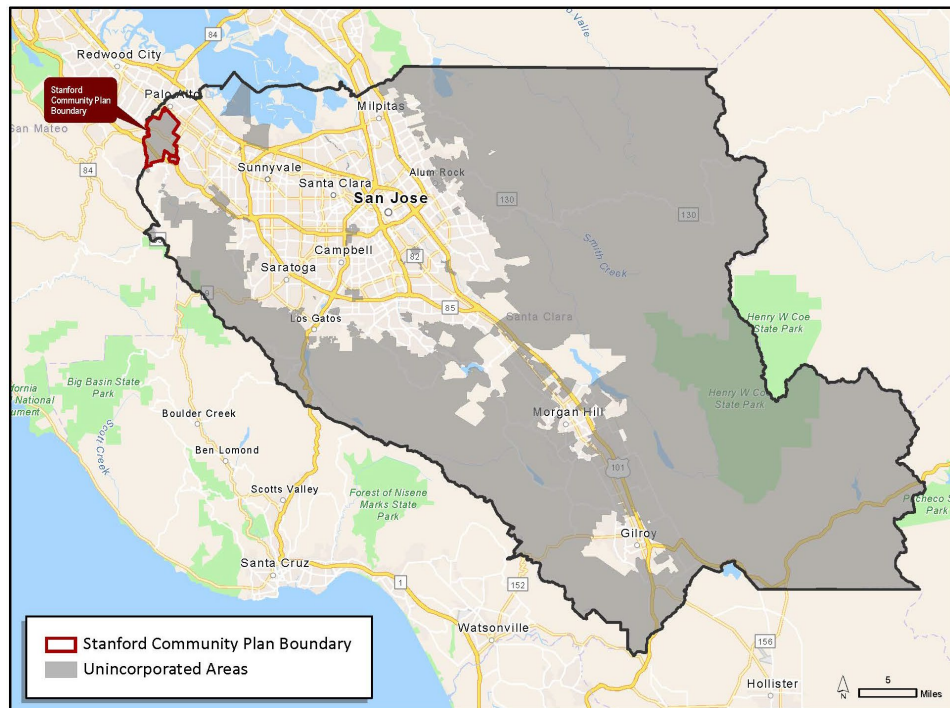
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SECTION 1: BACKGROUND

On October 20, 2020, the Board of Supervisors adopted Ordinance No. NS-1200.375, which established an inclusionary housing requirement for the unincorporated areas of Santa Clara County, extending the previously adopted inclusionary housing requirement for the Stanford Community Plan Area.¹ The Inclusionary Housing Ordinance (IHO) generally requires the inclusion of affordable housing units within these areas when Market Rate Units are constructed. The IHO is codified in Section 4.20.130 of the Zoning Ordinance of the County of Santa Clara (County). The operative date of the IHO for areas within the unincorporated County was June 1, 2021, and the operative date for the Stanford Community Plan Area was July 1, 2019.

The IHO states that “[t]he Planning Commission shall adopt Inclusionary Housing Guidelines to assist in the implementation and administration” of the IHO. To that end, these Guidelines and subsequent updates approved by the Planning Commission are intended to be the administrative procedures to implement the IHO.

Figure 1. Stanford Community Plan Area and Unincorporated Areas



¹ Figure 1 shows the unincorporated areas of Santa Clara County along with the Stanford Community Plan Area

SECTION 2: APPLICABILITY

All Residential Development² is required to comply with the IHO, except for the following projects that are deemed exempt (Zoning Ordinance Section 4.20.130(C) and (D)):

1. Projects that are not Residential Developments.
2. Projects that create less than three Dwelling Units.
3. Any Residential Development project with an application that was deemed complete pursuant to Section 5.20.080 of the County Zoning Ordinance, prior to the Operative Date of the IHO.
4. Reconstruction of Residential Development that was destroyed by fire, flood, earthquake, or other act of nature, within 2 years of such an event so long as the number of units does not exceed the number of units before the loss.
5. Accessory dwelling units, as defined by Section 2.10.030 of the County Code.
6. Agricultural employee housing, as defined by Section 2.10.030 of the County Code.
7. Expanded residential community care facilities, as defined by Section 2.10.040 of the County Code.
8. Student Housing.

² Residential Development is defined in Section 4.20.130(B)(19) of the County's Zoning Ordinance and means "[a]ny development that would create three (3) or more new, additional, or modified Dwelling Units by any of the following means or combination thereof: (a) The construction of new Dwelling Units, including additions to existing multifamily structures; (b) The conversion of a use to residential from another use; (c) The conversion of a use to For Sale residential from a Rental residential use; or (d) The subdivision of land that would allow residential Dwelling Units."

SECTION 3: INCLUSIONARY HOUSING PROCESS

Overview

The following timeline summarizes the typical step-by-step process for development projects subject to the IHO:

Step 1: Submit Affordable Housing Plan

- The Applicant submits a draft Affordable Housing Plan (AHP), as described in the Affordable Housing Plan section below, concurrently with submission of the applicable land use entitlement application, such as Use Permit, Architecture and Site Approval, or a Tentative Map application, to be reviewed by the Office of Supportive Housing (OSH) and the Planning Department.

Step 2: Inclusionary Housing Agreement

- Once the AHP is approved, the Applicant shall enter into an Inclusionary Housing Agreement for the benefit of the County of Santa Clara (County), managed by OSH, prior to final map approval for subdivisions and/or prior to Building Permit for other applicable development projects, which the Inclusionary Housing Agreement will be recorded against the property as a restriction on the Inclusionary Units.

Step 3: Compliance

- Rental Units: After the Residential Development has received its final permit sign off or the equivalent, the Property Administrator in a rental Residential Development that is subject to the IHO shall submit an annual Compliance Report to OSH no later than 12:00 pm on December 1st of each calendar year. An Applicant may contact Assetmanagement@hhs.sccgov.org prior to submission, to verify the information required to be included in the Compliance Report.
- For Sale Units: The Property Administrator shall be responsible for collecting from each Eligible Household who purchases a For Sale Inclusionary Unit, an annual Certificate of Program Compliance Form that states in writing that the document was completed in good faith with no deception or fraud and that the household is in current compliance with the Inclusionary Housing Agreement and other requirements of the IHO.

SECTION 4: AFFORDABLE HOUSING PLAN

The Applicant³ must prepare and submit an AHP proposal and applicable fee, if adopted by the Board of Supervisors, as part of the application for a Planning Permit⁴ for a Residential Development. The draft AHP shall demonstrate how the Applicant proposes to satisfy the affordable housing obligation of the Residential Development, as required by the IHO (Zoning Ordinance Section 4.20.130(E) or 4.20.130(M)). The Applicant's AHP must be reviewed by the OSH and the Department of Planning and Development and approved by the County Executive (or his or her designee) prior to the approval of any Planning Permit. It is recommended that the Applicant consult early with OSH and the Department of Planning and Development during the predevelopment or site planning process for individual sites to allow the Applicant sufficient time to develop a site-specific AHP. The AHP shall be submitted and approved concurrently with the associated Planning Permit.

OSH and the Department of Planning and Development will have 30 calendar days to review each AHP submitted by the Applicant and to provide written notice of the completeness or incompleteness of the AHP. If the AHP is incomplete, OSH and the Department of Planning and Development shall provide a complete list of items in the AHP that were incomplete. If the AHP is determined to be incomplete, the Applicant may resubmit the AHP, which will start a new 30 calendar day period for OSH and the Department of Planning and Development to review the AHP and to provide written notice of the completeness or incompleteness of the AHP.

The AHP shall address the requirements listed below and are also included in **Exhibit B**.

Any request for a waiver, adjustment or reduction of one or more of the requirement(s) of the IHO and/or these Guidelines shall be submitted concurrently with the draft AHP. The request for a waiver, adjustment, or reduction shall set forth in detail the factual and legal basis for the claim.

³ Applicant is defined in Section 4.20.130(B)(3) of the County's Zoning Ordinance as "[o]ne or more person(s) or entity(ies) that applies for a Residential Development in the County, regardless of whether the person(s) or entity(ies) have an ownership or leasehold interest in the property on which the development is proposed."

⁴ Planning Permit is defined in Section 4.20.130(B)(17) as "[a] land use permit or approval including but not limited to a tentative map, parcel map, use permit, architecture and site approval, cluster development permit, development agreement, special use permit, or any other discretionary permit. Does not include General Plan and specific plan amendments, zoning ordinances and amendments, area development policies, or the General Use Permit as described in the Stanford Community Plan."

Rental Units Requirements – Projects outside of Stanford Community Plan Area

Sixteen percent (16%) of the total Dwelling Units in any Rental Residential Development shall be made available at an affordable rent, as defined in California Health and Safety Code Section 50053, as applicable. These units shall be considered the Inclusionary Units. 100% of the Inclusionary Units provided in any Rental Residential Development shall be affordable to Lower-Income Households (LI) or below. If the calculation of required Inclusionary Units results in a fraction, the applicant may satisfy the inclusionary housing requirements by the payment of a fee to the County in lieu of constructing the affordable unit(s).

Example: A new 10-unit rental Residential Development is proposed. Application of the 16% inclusionary requirement results in a requirement for 1.6 Inclusionary Units. The AHP shall: (1) provide one Inclusionary Unit and pay an additional in lieu fee for 0.6 Inclusionary Units (see calculation below) or (2) provide two Inclusionary Units with no additional in lieu fee. Inclusionary Units may be built on- or off-site (as described in further detail below in “Alternative Compliance”) or be converted from existing Market Rate units. Refer to Exhibit D which establishes the Board adopted in lieu fee of \$259,000 per one inclusionary unit (the fee amount may change due over time due to housing market fluctuations).

Fractional Unit Calculation Example

10 units with a 16% inclusionary requirement = 1.6 inclusionary units

1 inclusionary unit to be developed on or off site

Remaining 0.6 requires in lieu fee of \$155,400 (0.6 x \$259,000)

Affordable Rent for Rental Inclusionary Units (outside Stanford Community Plan Area)

All rental Inclusionary Units shall be rented to Extremely Low-Income, Very Low-Income, or Lower-Income Households, and the maximum allowable monthly rent or “affordable housing cost” for rental inclusionary units shall be no more than “affordable rent” as defined by California Health and Safety Code Section 50053, as applicable. Based on these definitions and County policy, affordable rent will be calculated as follows:

- **Extremely Low-Income Units:** “Affordable Housing Cost” for Extremely Low-Income Households is the product of 30 percent times 30 percent of the area median income adjusted for family size appropriate to the unit. Health and Safety Code Section 50053(b)(1).

- **Very Low-Income Units:** “Affordable Housing Cost” for Very Low-Income Households is the product of 30 percent times 50 percent of the area median income adjusted for family size appropriate to the unit. Health and Safety Code Section 50053(b)(2).
- **Lower-Income Units:** “Affordable Housing Cost” for Lower-Income Households is the product of 30 percent times 60 percent of the area median income adjusted for family size appropriate for the unit, provided, for those Lower-Income Households with gross incomes that exceed 60 percent of the area median income adjusted for family size, “Affordable Housing Cost” is the product of 30 percent times the actual gross income of the household. Health and Safety Code Section 50053(b)(3).

Rental Units Requirements – Projects within Stanford Community Plan Area

Sixteen percent (16%) of the total Dwelling Units in any Rental Residential Development shall be made available at an affordable rent, as defined in California Health and Safety Code section 50053, as applicable. These units shall be considered the Inclusionary Units. If the calculation of required Inclusionary Units results in a fraction, the number of Inclusionary Units required to be constructed at the time of the Residential Development will be rounded down to the nearest whole number, and any decimal fraction above the nearest whole number will be banked for inclusion in a subsequent Residential Development. Of the total number of Inclusionary Units provided in any Rental Residential Development, 15% shall be affordable to Very Low-Income (VLI) Households or below, 45% shall be affordable to Lower-Income Households (LI) or below, and 40% shall be affordable to Moderate-Income Households (MI) or below. In applying the forgoing percentages by income category, standard rounding shall apply with fractions greater or equal to 0.5 rounded up, and fractions less than 0.5 rounded down. However, deviation from standard rounding is permitted, if necessary for the number of units by income category to sum to the total number of required Inclusionary Units. In such cases, the result that minimizes rounding error will be used. Where two solutions exist with equal rounding error, the solution that provides an Inclusionary Unit at a lower rent and affordability level will be used.

Example: A new 104-unit rental Residential Development is proposed. The AHP shall allocate 16 Inclusionary Units (16% x 104 unit equals 16.64 units, which rounds down to 16 units and minimizes rounding error, as opposed to rounding up to 17 units). The 0.64 fractional unit requirement may be banked and carried forward to a subsequent project. The 16 Inclusionary units, are distributed by income level as follows:

- 3 Very Low-Income (15% of required units)
- 7 Lower-Income (45% of required units)

- 6 Moderate-Income (40% of required units)

Units in Project		104	
Required Inclusionary Units		16.64	16%
Inclusionary Units Required after rounding		16	
Fractional unit carried forward to subsequent project		0.64	
	Percentage	Inclusionary Units Required by income prior to rounding	Inclusionary Units Required after rounding
Very Low	15%	2.400	3
Low	45%	7.200	7
Moderate	40%	<u>6.400</u>	<u>6</u>
Total		16.000	16

round up to equal 16 units.
standard rounding
standard rounding

Affordable Rent for Rental Inclusionary Units (within Stanford Community Plan Area)

All rental Inclusionary Units shall be rented to Extremely Low-Income, Very Low-Income, Lower-Income or Moderate-Income Households, and the maximum allowable monthly rent or “affordable housing cost” for rental inclusionary units shall be no more than “affordable rent” as defined by California Health and Safety Code Section 50053, as applicable. Based on these definitions and County policy, affordable rent will be calculated as follows:

- **Extremely Low-Income Units:** “Affordable Housing Cost” for Extremely Low-Income Households is the product of 30 percent times 30 percent of the area median income adjusted for family size appropriate to the unit. Health and Safety Code Section 50053(b)(1).
- **Very Low-Income Units:** “Affordable Housing Cost” for Very Low-Income Households is the product of 30 percent times 50 percent of the area median income adjusted for family size appropriate to the unit. Health and Safety Code Section 50053(b)(2).
- **Lower-Income Units:** “Affordable Housing Cost” for Lower-Income Households is the product of 30 percent times 60 percent of the area median income adjusted for family size appropriate for the

unit, provided, for those Lower-Income Households with gross incomes that exceed 60 percent of the area median income adjusted for family size, “Affordable Housing Cost” is the product of 30 percent times the actual gross income of the household. Health and Safety Code Section 50053(b)(3).

- **Moderate-Income Units:** “Affordable Housing Cost” for Moderate-Income Households is the product of 30 percent times 110 percent of area median income adjusted for family size appropriate for the unit, provided, for those Moderate-Income Households with gross incomes that exceed 110 percent of the area median income adjusted for family size, “Affordable Housing Cost” is the product of 30 percent times the actual gross income of the household. Health and Safety Code Section 50053(b)(4).

For purposes of determining affordable rent, rent is an average of estimated housing costs for the next twelve months. “Rent” includes the total of monthly payments for all of the following⁵:

- Use and occupancy of a housing unit and land and facilities associated therewith.
- Any separately charged fees or services charges associated by the lessor which are required of all tenants, other than security deposits.
- A reasonable allowance for utilities not included in the above costs, including garbage collection, sewer, water, electricity, gas, and other heating, cooking, and refrigeration fuels. Utilities does not include telephone service. Such an allowance shall take into consideration the cost of an adequate level of service.
- Possessory interest taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than the lessor.

Renter Application Process & Household Eligibility

The Applicant, and all successors in interest, shall be solely responsible for marketing the rental Inclusionary Units and screening household eligibility for the rental Inclusionary Units in conjunction with the lease up and marketing for Market Rate Units consistent with the marketing plan provided in the approved AFP. The Applicant is responsible for compliance with all applicable Federal, State and local regulations. The Applicant may designate a property manager, operator, leasing agent, or other individual or entity to administer marketing and screening activities in compliance with the IHO and these Guidelines.

⁵ 25 California Code of Regulations Section 6918

Renter Household Income Qualifications

To qualify to rent a rental Inclusionary Unit, combined income and assets of all adult household members must not exceed the income and asset limits provided in these Guidelines, and adjusted annually by the Department of Housing and Urban Development and published by the California Department of Housing and Community Development (“HCD”) in the California Code of Regulations, as soon as possible after adoption by the Secretary of Housing and Urban Development. Income shall have the definition utilized by the Department of Housing and Urban Development, as set forth in 24 CFR, Part 5, Subpart F (Section 5.609). Affordable income definitions for an applicable Inclusionary Unit shall be consistent with applicable State of California Health and Safety Code Sections 50079.5, 50093, 50105, and 50106 noted below:

- **Extremely Low-Income (ELI):** Extremely Low-Income Households are defined by Health and Safety Code Section 50106 and include households who have an income that does not exceed 30 percent of area median income, adjusted for family size and revised annually by the United States Department of Housing and Urban Development and published by HCD in the California Code of Regulations as soon as possible after adoption by the Secretary of Housing and Urban Development.
- **Very Low-Income (VLI):** Very Low-Income Households are defined in Health and Safety Code Section 50105 and include households who have an income that does not exceed 50 percent of area median income, adjusted for family size and revised annually by the United States Department of Housing and Urban Development and published by HCD in the California Code of Regulations as soon as possible after adoption by the Secretary of Housing and Urban Development.
- **Lower-Income (LI):** Lower-Income Households are defined in Health and Safety Code Section 50079.5 and include households who have an income that does not exceed 80 percent of area median income, adjusted for family size and revised annually by the United States Department of Housing and Urban Development and published by the HCD in the California Code of Regulations as soon as possible after adoption by the Secretary of Housing and Urban Development.
- **Moderate-Income (MI):** Moderate-Income Households are defined in Health and Safety Code Section 50093 and include households who have an income that does not exceed 120 percent of area median income, adjusted for family size and revised annually by the United States Department of Housing and Urban Development and published by HCD in the California Code of Regulations as soon as possible after adoption by the Secretary of Housing and Urban Development.

For Sale Unit Requirements – Projects outside of Stanford Community Plan Area

Sixteen percent (16%) of the total Dwelling Units in any For Sale Residential Development shall be made available for sale at an Affordable Housing Cost as defined in California Health and Safety Code Section 50052.5, as applicable. These units shall be considered the Inclusionary Units. Of the total number of Inclusionary Units provided in any For Sale Residential Development, 100% shall be affordable to Moderate-Income Households (MI) or below. However, the Applicant may propose in its AHP to make all or a portion of the Inclusionary Units affordable to lower income households by using affordable homeownership financing provided by the County, the Applicant, or other available sources of funds.

If the calculation of required Inclusionary Units results in a fraction, any decimal fraction above a whole number of Dwelling Units shall either be paid as an in lieu fee, or rounded up to require the provision of an additional Inclusionary Unit.

For Sale Unit Requirements – Projects within the Stanford Community Plan Area

Sixteen percent (16%) of the total Dwelling Units in any For Sale Residential Development shall be made available for sale at an Affordable Housing Cost as defined in California Health and Safety Code section 50052.5, as applicable. These units shall be considered the Inclusionary Units. Of the total number of Inclusionary Units provided in any For Sale Residential Development, 100% shall be affordable to Moderate-Income Households (MI) or below. However, the Applicant may propose in its AHP to make all or a portion of the Inclusionary Units affordable to lower income households by using affordable homeownership financing provided by the County, the Applicant, or other available sources of funds.

If the calculation of required Inclusionary Units results in a fraction, the required number of Inclusionary Units will be banked until they can be included in a subsequent Residential Development. Applicant may propose to build Inclusionary Units which will apply to a future Residential Development, as part of a current Residential Development, if this is specified in the AHP for both Residential Developments.

Pricing of For Sale Inclusionary Units (for Projects outside and within the Stanford Community Plan Area)

All For Sale Inclusionary Units shall be sold to households, as specified in the Inclusionary Housing Agreement, and the maximum allowable “Affordable Housing Cost” for For Sale Inclusionary Units shall be based on the definition for Moderate-Income Households contained in California Health and Safety Code

Section 50052.5, as applicable⁶. Affordable sales prices will be determined by OSH based on the following process:

1. Determine the monthly Affordable Housing Cost:

- a. Identify the median income level for the applicable household size.
- b. Multiply by 110% to arrive at the income level applicable to the determination of Affordable Housing Cost.
- c. Multiplied by 35% for Moderate-Income Households (or 30% for Lower-Income Households) to identify the share of annual income available for housing costs, provided for any Moderate-Income Household that has a gross income that exceeds 110 percent of the Area Median Income adjusted for family size, multiply the gross income of such household by 35% to identify the share of annual income available for housing costs)."
- d. Divide by 12 to determine the monthly Affordable Housing Cost.

2. Subtract non-mortgage housing costs from the monthly Affordable Housing Cost to determine the monthly Affordable Mortgage Payment. The following non-mortgage housing costs must be deducted from the monthly Affordable Housing Cost:

- a. Homeowner Association Fees (HOA) – Actual amount approved by the State of California Bureau of Real Estate for the project. If this is not known yet, a professional HOA budget preparer's estimate may be submitted instead.
- b. Property Tax – Estimated property taxes based on the Affordable Sales Price and the applicable ad valorem property tax rate for the property along with all other estimated parcel taxes, assessments, community facility district special taxes, or other on-going charges estimated to apply as part of the property tax bill for the unit based on then current rates.
- c. Utility Costs – per the current Utility Allowance schedule provided by the Santa Clara County Housing Authority. The utility allowance must include heating, cooking, other electric, water heater, water, and garbage, if not included in HOA fees.
- d. Estimated Hazard Insurance Cost, to the extent not funded from the HOA.
- e. Mortgage Insurance Premium – calculated using rates published by the Federal Housing Administration ("FHA") applicable to down payments of less than 20%.

⁶ For Moderate-Income Households, the product of 35 percent times (i) 110 percent of the area median income adjusted for family size appropriate for the unit, or (ii) (for those Moderate-Income Households with gross incomes that exceed 110 percent of the area median income adjusted for family size) gross income of such household adjusted for family size appropriate for the unit, as applicable.

3. **Calculate the Affordable Loan Amount that reflects the mortgage loan that could be obtained based on the monthly Affordable Mortgage Payment determined in Step 2, above⁷.** The Affordable Loan Amount shall be based on a thirty (30) year fully amortizing fixed rate mortgage. This mortgage amount does not include any pre-paid points or loan fees. The interest rate applied must reflect the existing market conditions for similar loans.
4. **Add to the Affordable Loan Amount determined in Step 3 an assumed down payment amount of 5% and the sum of any deferred mortgages approved by OSH (or if no deferred mortgage loans, an assumed deferred loan in the amount of 20% of the Affordable Loan Amount) to determine the Affordable Sales Price.** The Affordable Sales Price may not exceed the fair market value of the home at the time of sale.
5. **Affordable Sales Prices applicable to subsequent re-sale of For Sale Inclusionary Units will be based on provisions set forth in the Inclusionary Housing Agreement restricting the Inclusionary Unit.**

[Allowable Financing for For Sale Inclusionary Units](#)

For Sale Inclusionary Units shall only be purchased by eligible households who satisfy the income and assets criteria in these Guidelines. Additionally, only (1) Qualified Mortgages, as defined in the Dodd-Frank Wall Street Reform and Consumer Protection Act, and (2) loans offered through Stanford Faculty Staff Housing (FSH) shall be used by an eligible household to purchase an available Inclusionary Unit, unless otherwise approved by OSH. Except for loans offered through Faculty Staff Housing (FSH), subordinate loans not specifically authorized by the OSH, equity lines of credit, reverse mortgages, or negative amortization financing are prohibited, and any such encumbrance shall be deemed a default and violation of the Inclusionary Housing Agreement and these Guidelines. The County reserves all rights and remedies allowed under federal and state law to enforce its Inclusionary Housing Agreement and the IHO and maintain the long-term affordability of designated For Sale Inclusionary Units, from and after the date of acquisition by an eligible household that owns such Inclusionary Unit.

[Additional Criteria for Occupants \(for Rental and For Sale Inclusionary Units\)](#)

To be eligible for an Inclusionary Unit, the occupant must also satisfy the following:

- The household is comprised of ALL individuals who will be occupying the Inclusionary Unit over the next or upcoming twelve months. All adult household members are considered co-applicants.

⁷ This reference to a thirty (30) year fully amortizing fixed rate mortgage is not intended to limit purchasers to this financing option.

Eligibility application will list all household members who are living together in the same dwelling unit at the time of and, have been living together in the same dwelling unit, prior to the date of application. Valid third-party documents (such as utility bills, official mail) must be provided, to verify that each member of the household resides, and has been residing for at least 60 days, at the same dwelling unit and street address;

- Total gross (pre-tax) annual income and assets of all adult Household members over the age of 18 combined do not exceed the income and asset limits provided in these Guidelines, adjusted for the size of the household. Income and assets shall be calculated under the definition used by the Department of Housing and Urban Development, as set forth in 24 CFR, Part 5, Subpart F (Section 5.609); and
- All of the current members of the household must individually meet all program eligibility requirements applicable to individuals. If the household member is new to the residence or if they are not claimed on the previous year's tax return, the applicant will be required to submit viable and verifiable third-party documentation that the household member will live with the applicant over the coming 12 months. All letters of explanation provided by the applicant must be signed by the applicant under penalty of perjury.
- The eligible household satisfies the specific criteria established for the type of Inclusionary Unit being applied for in a Residential Development (e.g. For Sale vs. Rental unit, Applicable Income Level, Financial/Credit, etc.)

Marketing and Selection Criteria for Both For-Sale and Rental Units

The Applicant (including designated property manager, operator) and all successors in interest, shall be responsible for marketing and rental/sale of Inclusionary Units. The Applicant shall determine the selection criteria for occupancy of Inclusionary Units as set forth in the AHP. The Applicant shall preliminarily screen all prospective buyers to ensure compliance with the applicable income and asset restrictions and OSH shall subsequently verify the eligibility of each buyer identified by the Applicant prior to close of escrow for all initial sales. The Applicant is responsible for compliance with all applicable Federal, State and local regulations and the Inclusionary Housing Agreement shall be recorded as a restriction against the property, running with the land and binding upon successor owners of the Inclusionary Unit. For all subsequent sales, the purchaser of an Inclusionary Unit must execute and consent to the restrictions set forth in the Inclusionary Housing Agreement

for their unit at close of escrow, including without limitation, the affordability restrictions and owner-occupancy requirements.

Residential Development with Both For-Sale and Rental Units

When a Residential Development includes both For-Sale and Rental Dwelling Units, the provisions of these Guidelines that apply to For-Sale Residential Development shall apply to that portion of the development that consists of For-Sale Dwelling Units, while the provisions of these Guidelines that apply to Rental Residential Development shall apply to that portion of the development that consists of Rental Dwelling Units.

Housing Incentives

As part of its AHP submission, the Applicant for a Residential Development providing Inclusionary Units upon the same site as the Market Rate Units may, at the Applicant's sole option, submit a written request for density bonus, waivers or incentives pursuant to California Government Code Section 65915 et seq. and Section 4.20.030 of the County Code, if the Residential Development includes the provision of affordable Inclusionary Units within the Residential Development that meets the minimum thresholds for density bonus pursuant to California Government Code Section 65915 et seq.

The incentives requested by the Applicant of the Residential Development shall be included in the proposed Affordable Housing Plan, and any incentives authorized by the County pursuant to Section 4.20.030 of the County Ordinance Code shall be included in the Affordable Housing Plan, if approved by the County, for the Residential Development.

Timing of Construction and Delivery

All required Inclusionary Units shall be made available for occupancy concurrently with the first Market Rate Units available for occupancy in the Residential Development.

Site, Design, and Construction Standards

The Inclusionary Units shall be similar in quality and design to the Market Rate Units in the Residential Development. The Applicant is responsible for documenting the basic level of proposed market rate finishes, appliances and amenities prior to issuance of occupancy permits and shall provide written acknowledgement disclosures to all potential purchasers/renters when the Inclusionary Units are available for marketing. Additionally, the Applicant shall be solely responsible for responding to any proposed accommodations that may be requested by potential occupants and compliance with applicable Federal or State regulations.

Inclusionary Units should be dispersed throughout a development project and shall not be concentrated in buildings, floors, or sections except where circumstances deem the unit location necessary to implement a legitimate governmental regulation or public policy, such as maximizing ground floor units for accessibility of elderly or disabled residents in response to reasonable accommodation requests. Accessory dwelling units, as defined by Section 2.10.030 of the County Ordinance Code do not qualify as Inclusionary Units.

Relocation Requirements

Where existing tenants or residents may be displaced by the construction of new Inclusionary Units, the Applicant shall, as part of its AHP submission, be responsible for demonstrating how the Applicant shall comply with all federal and state laws, regulations, and requirements regarding displacement and relocation of existing tenants or residents, including any applicable relocation assistance requirements set forth in Section 1946(d) of the Civil Code.

Alternative Compliance (outside and within Stanford Community Plan Area)

As an alternative to the on-site construction of Inclusionary Units in a Residential Development pursuant to the requirements specified in Section 4.20.130(E) of the IHO, an Applicant may comply with the IHO through the following compliance methods, which shall be specified in the submitted AHP.

For Residential Developments **outside** the Stanford Community Plan Area, the following alternative compliance options apply:

1. **Off-Site Inclusionary Units – Rental Residential Development.** The Applicant may develop Inclusionary Units at another off-site location within the unincorporated or in the nearest incorporated city, pursuant to the affordability requirements specified in the IHO. The number of Inclusionary Units required shall be at least 16 percent (16%) of the combined number of Market Rate Units in the Residential Development plus the off-site Inclusionary Units. These units shall be in addition to any Inclusionary Units required or agreed to by Applicant in another jurisdiction (no double counting). The off-site Inclusionary Units shall be available for occupancy at the same time as the first Market Rate Units are available for occupancy in the Residential Development.
2. **In lieu fee.** For fractional units and Residential Developments of less than seven units, the Applicant may pay the fee specified at Section 4.20.130(H)(1)(c) of the IHO.

Example: Fractional unit in lieu Fee = fractional unit (0.64) multiplied by \$259,000 dollars. Refer to Exhibit D for the Board Resolution determining the in lieu Fee structure. The in lieu fee structure may be updated from time to time to reflect up to date affordable housing monetary needs.

3. **Conversion of Existing Units.** The Applicant may convert existing Market Rate Units, whether currently owned by the Applicant or proposed to be acquired, to units affordable to Very Low-Income or Lower-Income Households only if criteria specified at Section 4.20.130(H)(1)(d) of the IHO and the following are met:

- a. Two converted units must be provided for each required Inclusionary Unit in the Residential Development. These units shall be in addition to any Inclusionary Units required by another jurisdiction as a result of rehabilitating the existing units.
- b. The converted Inclusionary Units shall comply with the site, design, and construction standards provided in the Site, Design, and Construction section of the Guidelines. The Applicant shall comply with the notice and relocation requirements in the Notice and Relocation Requirements section of the Guidelines before commencing rehabilitation.
- c. The conversion of the Dwelling Units shall be completed prior to or concurrently with the first Market Rate Units made available for occupancy in the Residential Development.

4. **Combination of Methods to Provide Inclusionary Housing**

An Applicant of a Residential Development may propose any combination of basic inclusionary compliance options available to such a development, pursuant to Section 4.20.130(H) of the IHO. Such proposals shall be made in the draft AHP and considered in accordance with the IHO and these Guidelines. The applicable decision maker shall approve the AHP if it conforms to the provisions and intent of the IHO and these Guidelines. The applicable decision maker may approve the AHP if it deviates from the provisions of the IHO and these Guidelines but the methods of compliance provide substantially the same or greater level of affordability and the total amount and type of affordable housing provided is the same or greater than what is required by the IHO.

For Residential Developments within the Stanford Community Plan Area, the following alternative compliance options apply:

1. **Transfer within the Stanford Community Plan Area.** Subject to notification to the OSH Director and Department of Planning and Development Director through the AHP, the Applicant may transfer required Inclusionary Units to another residential development within the Stanford Community Plan Area. These transferred Inclusionary Units shall be in addition to any Inclusionary Units required in the other residential development (no double counting).
2. **Off-Site (Outside Plan Area) Inclusionary Units.** The Applicant may develop Inclusionary Units at another location within a six-mile radius of the Stanford Community Plan area. If the Applicant proposes construction of the required Inclusionary Units off-site (Outside Plan Area), the number of Inclusionary Units required shall be at least 16 percent (16%) of the combined number of Market Rate Units in the Residential Development plus the off-site Inclusionary Units. These units shall be in addition to any Inclusionary Units required or agreed to by Applicant in another jurisdiction (no double counting).

Example: A project that provides 100 Market Rate units within the Stanford Community Plan Area and provides off-site Inclusionary Units outside of the Stanford Community Plan Area must provide 19.05 Inclusionary Units based on applying the 16% requirement to the total number of Market Rate Units and Inclusionary Units. $19.05 = 16\% (100 \text{ Market Rate Units} + 19.05 \text{ Off-site Inclusionary Units})$.

3. **Conversion of Existing Units.** The Applicant may convert existing on- or off-site Market Rate Units, whether currently owned by the Applicant or proposed to be acquired, to units affordable to Very Low or Lower Income Households only, if all of the following criteria are met. The Applicant shall comply with all federal and state laws, regulations, and requirements regarding displacement and relocation.
 - a. Two converted units must be provided for each required Inclusionary Unit in the Residential Development. These units shall be in addition to any Inclusionary Units required by another jurisdiction as a result of rehabilitating the existing units.
 - b. The converted Inclusionary Units shall comply with the site, design, and construction standards provided in the Inclusionary Housing Guidelines, and Applicant shall comply with the notice and relocation requirements in the Inclusionary Housing Guidelines before commencing rehabilitation.
 - c. The conversion of the Dwelling Units shall be completed prior to or concurrently with the first Market Rate Units made available for occupancy in the Residential Development.

4. **Banked Units.** The Applicant for a For Sale Residential Development may elect to satisfy the IHO and these Guidelines by banking the Inclusionary Unit requirement for development as Rental Inclusionary Units pursuant to these Guidelines.
5. **Combination of Methods to Provide Inclusionary Housing.** An Applicant of a Residential Development may propose any combination of basic inclusionary compliance options available to such a development pursuant to section H(2) of the IHO. Such proposals shall be made in the Draft AHP and considered in accordance with the IHO and these Guidelines. The applicable decision maker shall approve the AHP if it conforms to the provisions and intent of the IHO and these Guidelines. The applicable decision maker may approve the AHP if it deviates from the provisions of the IHO and these Guidelines but the methods of compliance provide substantially the same or greater level of affordability and the total amount and type of affordable housing provided is the same or greater than what is required by the IHO

SECTION 5: INCLUSIONARY HOUSING AGREEMENT

Prior to the issuance of any Building Permit or Final Map recordation for Residential Development, the Applicant shall enter into a written Inclusionary Housing Agreement (Agreement) with the County of Santa Clara. The Agreement shall ensure the long-term affordability of the Inclusionary Units consistent with the approved AHP, application of equity on for-sale units, asset limits, and any other applicable requirements of the IHO or these Guidelines.

Once the Inclusionary Housing Agreement has been finalized, OSH will route the document for execution by the Applicant and the County Executive or designee. Upon execution of the Inclusionary Housing Agreement by the Applicant and the County Executive, and prior to issuance of Building Permit for the Residential Development, OSH shall record the Inclusionary Housing Agreement with the County Clerk-Recorder as a restriction on the Inclusionary Units. The Applicant is responsible for payment of all applicable recording or processing fees.

Inclusionary Units Availability

The Applicant shall prepare a proposed schedule for the availability of Inclusionary Units that is consistent with the planned availability of the Market Rate Units. Staff will work with the Applicant to distribute units proportionately throughout the development. A copy of the unit availability schedule will be documented in the Inclusionary Housing Agreement. As a general requirement, all the Inclusionary Units in a project shall be complete and available for occupancy concurrently with the first Market Rate Units made available for

occupancy. To ensure compliance with this section, the Inclusionary Housing Agreement may condition issuance of the final certificate of occupancy or equivalent for a specified number of Market Rate Units on completion of Inclusionary Units within the Residential Development or phase thereof.

SECTION 6: MONITORING AND COMPLIANCE PROCEDURES

As states in Section 4.20130(J) of the IHO, Inclusionary Units shall be subject to an agreement with the County to ensure the long-term affordability of the Dwelling Units pursuant to the Inclusionary Housing Guidelines. Inclusionary Units shall remain affordable to the targeted income group for **no less than 55 years**.

Rental Units

Beginning after the Residential Development has received its final Certificate of Occupancy or the equivalent, the Property Administrator in a rental Residential Development subject to the IHO shall submit an annual Compliance Report to OSH no later than 12:00 Noon on December 1st of each calendar year that includes the following items:

- **Tenant Income Certification (TIC):** Annual income verification conducted by the Property Administrator for each adult tenant in a household residing in an Inclusionary Unit to confirm the household's continuing program eligibility and ability to occupy a designated Inclusionary Unit. The Property Administrator shall affirm in writing under penalty of perjury that the annual certification is accurate and was conducted in good faith with no deception or fraud.
- **Current Rent Rolls:** A copy of the updated rent roll documenting tenant names, unit number, unit size, household size, maximum allowable affordable rent for each Inclusionary Unit, current rent, maximum eligible income for each Inclusionary Unit, and current income.
- **Certificate of Program Compliance:** The Property Administrator shall obtain from each tenant an annual Certificate of Program Compliance Form that states in writing that the document is accurate and was conducted in good faith with no deception or fraud and that the household is in compliance with applicable maximum income limits and the Inclusionary Housing Guideline requirements.

Over-Income Tenants

In the event that the annual certification process documents that a previously eligible household's income now exceeds the applicable income limits for such household's Inclusionary Unit, but does qualify at the next income level (e.g. a household that qualified as Extremely Low Income now qualifies as a Very Low

Income household, or a household that qualified as a Very Low Income now qualifies as a Low Income household) the operator or property manager may elect to allow the household to continue to rent the Inclusionary Unit and, upon no less than 60-day advance notice to the household, the operator or property manager may increase the household's rent to the maximum allowable monthly rent for the next income level; provided, however, such unit shall continue to be counted as an Inclusionary Unit at the household's original qualifying income limit. However, once the over-income tenant vacates the unit, the unit must be rented to a new household at the original income level.

In the event that the annual certification process documents that a previously eligible household's income now exceeds the applicable income limits for Moderate-Income Units (applicable to Stanford Community Plan projects only), then the Property Administrator may elect to allow the household to occupy their unit as a Moderate-Income Unit until their income increases to exceed 140% of AMI, adjusted for family size appropriate for the unit, unless otherwise prohibited by state or federal law. The Unit will continue to be classified as a Moderate-Income Unit until the household income exceeds 140% of AMI, adjusted for family size appropriate for the unit, at which time the rent for the unit shall become unrestricted hereunder, and after which time the Property Administrator shall rent another unit of comparable size to a Moderate-Income household. If no alternative unit is available, the next available unit must be rented to at the original income level.

For Sale Units

The Property Administrator shall be responsible to provide the County any document, verification, certification or other documents requested by County to verify that the For Sale Inclusionary Units continue to comply with the IHO, including without limitation, the affordability restrictions and owner occupancy requirements set forth in the Inclusionary Housing Agreement.

EXHIBIT A

Definitions

The following definitions shall apply to these Guidelines:

Affordable Housing Cost: The affordable rent for rental units shall be as defined by California Health and Safety Code section 50053, as applicable.

Inclusionary Housing Agreement: means an agreement between the applicant and the County guaranteeing the affordability of rental or ownership dwelling units in accordance with the provisions of County's Inclusionary Housing Ordinance.

Affordable Housing Plan: The plan for meeting the inclusionary housing requirements of the County Inclusionary Housing Ordinance that is submitted by the Applicant to the County as part of an application for a Planning Permit for a Residential Development and which is also as an Exhibit document that is attached to the executed Inclusionary Housing Agreement for each new residential development.

Applicant: One or more person(s) or entity(ies) that applies for a Residential Development regardless of whether the person(s) or entity(ies) have an ownership or leasehold interest in the property on which the development is proposed.

Area Median Income or AMI: The annual median income for the County, adjusted for household size, as published periodically in the California Code of Regulations, Title 25, Section 6932, or its successor provision.

Building Permit: The full structural building permits or partial permits (i.e., foundation-only permits).

Certificate of Occupancy: The final inspection approval of the Building Inspection Office on the building permit inspection card for a complete building or structure.

County Executive: The County Executive or designee.

Dwelling Unit: A building or portion thereof that is designed, intended or used for dwelling purposes for one household, but shall not include Student Housing or Accessory dwelling units, as defined by Section 2.10.030 of the County Code.

Extremely Low Income Household or ELI Household: A household as defined in California Health and Safety Code § 50106.

For Sale: Any Dwelling Unit, including a condominium, stock cooperative, community apartment, or attached or detached single-family home, for which a parcel or tentative and final map is required for the lawful subdivision of the parcel upon which the Dwelling Unit is located or for the creation of a unit in accordance with the Subdivision Map Act (California Government Code § 66410 et seq.) or any Residential Development that includes such a For Sale Dwelling Unit. For avoidance of doubt, a For Sale Dwelling Unit can be owned in fee simple or can be leased pursuant to a ground lease with a term of not less than 35 years.

Inclusionary Housing Guidelines or "Guidelines": The requirements for implementation and administration of County of Santa Clara Inclusionary Housing Ordinance as adopted by the Planning Commission.

Inclusionary Unit: A Dwelling Unit required by this Section to be affordable to Extremely Low, Very Low, Lower, or Moderate Income Households.

Lower-Income Households: Households as defined in California Health and Safety Code § 50079.5.

Market Rate Unit: A new Dwelling Unit in a Residential Development that is not an Inclusionary Unit as defined by this Section, or a Dwelling Unit subject to a long-term affordability agreement, regulatory agreement or deed restriction ensuring affordability, that will expire within one year are Market Rate Units for the purposes of this Section.

Moderate Income Household: A household as defined in California Health and Safety Code § 50093(b).

Operative Date: The operative date of the Inclusionary Housing Ordinance which is July 1, 2019.

Planning Permit: A tentative map, parcel map, use permit, single building site approval, architecture and site approval, cluster development permit, development agreement, special use permit, or any other discretionary

permit. Does not include General Plan and specific plan amendments, zoning ordinances and amendments, area development policies, or the General Use Permit as described in the Stanford Community Plan.

Property Administrator: The Applicant, property manager, operator, leasing agent, or other individual or entity designated to administer the IHO rental and sale requirements for a respective qualifying Residential Development.

Rental: A Dwelling Unit that is not a For Sale Dwelling Unit. Does not include any Dwelling Unit, whether offered for rental or for sale, that may be sold as the result of the lawful subdivision of the parcel upon which the Dwelling Unit is located in accordance with the Subdivision Map Act.

Residential Development: Any development that would create three or more new, additional, or modified Dwelling Units by any of the following means or combination thereof:

- a. The construction of new Dwelling Units, including additions to existing structures;
- b. The conversion of a use to residential from another use;
- c. The conversion of a use to For Sale residential from a Rental residential use; or
- d. The subdivision of land to develop residential Dwelling Units.

Student: A matriculated undergraduate or graduate student of Stanford University, but shall not include postdoctoral fellows.

Student Housing: Housing provided solely to Students, including, but not limited to, dormitories, apartments, family student housing, graduate student housing, and other housing provided to matriculated students of Stanford University, but shall not include any housing provided for postdoctoral fellows.

Very Low-Income Household: A household earning no more than the amount defined by California Health and Safety Code § 50105.

EXHIBIT B

Affordable Housing Plan Components Checklist

The Affordable Housing Plan required by the County's Inclusionary Housing Ordinance and these Guidelines must include the following minimum information which helps document the Applicant proposal to satisfy housing obligations associated with proposed new development:

	Name of Current Property Owner where new residential development is being proposed.
	Name of Property that is proposed to be developed/redeveloped
	Address of Property that is proposed to be developed/redeveloped
	Assessor Parcel Number / Property Tax ID Number
	Name of Legal Entity proposing to develop new residential development
	Name of Legal Entity proposing to operate/rent/sell new residential development units
	Name of Legal Entity proposing to manage new residential development (if applicable)
	Address of Property that is proposed to be developed/redeveloped with Off Site or Stanford Area Plan Transfer Inclusionary Units. If applicable
	Contiguous Property Ownership identify all contiguous property under common ownership or control and identify the maximum potential residential dwelling units. If the maximum potential residential dwelling units total three or more, an Inclusionary Housing Agreement shall be recorded against the project and all contiguous property under common ownership or control.
	Acknowledgement Letter or Affidavit documentation from Property Owner accepting Off Site or Transfer Units if applicable (<i>Must note intent to execute required Affordability Agreement and record Regulatory Agreement or Deed Restrictions on Title</i>).
	Assessor Parcel Number/Property Tax ID Number of Property that is proposed to be developed/redeveloped with Off Site or Stanford Area Plan Transfer Inclusionary Units. If applicable.
	Verified distance of Off Site or Stanford Area Plan Inclusionary Units if applicable (attached map documentation with radius as applicable)
	Total gross square footage of all buildings and ancillary structures proposed which are intended for occupation or storage purposes.
	Total gross square footage and net residential square footage that can be occupied by future residents of all proposed residential uses
	Total number of existing residential units and type (e.g. 1-bdrm/1-bath, 2-bdrm/1-bath, etc.)

	Total number of existing unit and type (e.g. 1-bdrm/1-bath , 2-bdrm/1-bath, etc.) with number to be demolished/converted and the current audited tenant rent roll
	Total number of existing accessible units and type
	Proposed relocation plan for existing occupants (attach plan and proposed schedule prepared by relocation consultant) if applicable.
	Name and contact information for relocation consultant if applicable
	Proposed moving expense subsidy per household (note number of households is not necessary equivalent to the number of existing units) if applicable
	Proposed amount of relocation (total and per household) if applicable
	Total number of new residential units proposed and type (e.g. 1-bdrm/1-bath, 2-bdrm/1-bath, etc.)
	Total number of for sale/rental units
	Total number of calculated on-site inclusionary units by type and affordability level (based on requirements noted on Page 3-4)
	Total number of inclusionary units and type proposed to be provided on-site with associated affordability levels and accessibility (e.g. ELI, VLI, LI, Moderate)
	Total number of proposed Off Site or Stanford Area Plan Transfer Inclusionary Units if applicable
	Project Narrative which describes the proposed new residential development, proposed land uses, proposed phasing, overall summary of construction schedule, square footage, heights, total number and type of units, accessibility of units and common areas, availability of elevators/lifts, anticipated sales prices/asking rents, and the Applicant's proposal for complying with the Inclusionary Housing Guidelines. The narrative should describe whether the developments will be for For Sale vs. Rental, proposed preliminary or anticipated exterior finishes, proposed amenities and common areas of all units, available parking and type (i.e. covered, designated, open, etc.), proposed On Site, Transfer, and Off Site Inclusionary Units with affordability levels, and any proposed transit subsidy. If proposed finishes in Inclusionary Units will differ from the selected finishes in market rate units, such variations must be requested in the AHP.
	Project Vicinity Map showing development site and location of any Transfer or Off-Site Inclusionary Units.
	Legal Description(s) of subject property and any other properties proposed Transfer or Off-Site Inclusionary Unit

	Assessor Parcel Map(s) depicting the subject property boundaries and any other properties proposed Transfer or Off-Site Inclusionary Unit
	Site Plan, Development Plans, and Floor Plans depicting inclusionary unit locations (Must note if proposal is for off-site inclusionary units)
	Associated Renderings and Materials Board depicting proposed unit finishes/amenities
	Proposed Marketing/Outreach Plan for lease up or unit disposition with any proposed selection preference criteria to be applied (i.e. College Academic Faculty, Graduate Student/Teaching Assistants, University Employees, Public Agency Employees, Commuter Range Eligibility, First Time Homebuyer, International Students, Disability Accommodations, etc.).
	Regulatory Agreements and any other Legal Agreements or Restrictions that will be used to maintain housing affordability other than the Inclusionary Housing Agreement, including sample form of documents that will be provided to affordable homebuyers who will purchase Inclusionary Units.

EXHIBIT C

Allowable Household Income

Maximum Income Limits

See the California Department of Housing and Community Development [website](#) for up-to-date housing income categories.

Financial Components of Income:

See the [Section 8 Definition of Annual Income](#) to determine your households eligible income level.

EXHIBIT D

Inclusionary Fee Resolution

RESOLUTION NO. BOS-2020-161

**RESOLUTION OF THE BOARD OF SUPERVISORS OF
THE COUNTY OF SANTA CLARA ESTABLISHING THE
INCLUSIONARY HOUSING IN LIEU FEE AMOUNT**

WHEREAS, there is a severe shortage of housing in Santa Clara County, and the region, that is affordable to Extremely Low, Very Low, Low, and Moderate Income Households;¹

WHEREAS, given the shortage of affordable housing units in Santa Clara County, and the region, there is an urgent need to establish programs to increase the affordable housing supply to families and individuals in the region and one approach is the adoption of an inclusionary housing requirement on the development of market-rate residential construction;

WHEREAS, an inclusionary housing program is consistent with state Housing Element law acknowledging that local governments “have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community”;²

WHEREAS, local governments are to set up programs to support local financing and subsidy for the development of affordable housing through various financing mechanisms;³

WHEREAS, on September 25, 2018, the Board of Supervisors adopted an ordinance (Ordinance No. NS-1200.368) adding Section 4.20.130 of Title C, Appendix 1, Zoning establishing an inclusionary housing requirement for the Stanford University Community Plan Area;

WHEREAS, the establishment of an inclusionary housing requirement for the Stanford University Community Plan Area was intended to be the first step in an incremental approach to a broader, County-wide inclusionary housing requirement for certain new residential development;

WHEREAS, at its regular meeting on October 6, 2020, the Board of Supervisors held a public hearing considering this Resolution, the adoption of an ordinance amending Section 4.20.130 of Title C, Appendix 1, Zoning (Ordinance No. NS-1200.375) establishing

¹ See generally County of Santa Clara, *County of Santa Clara Housing Element Update 2015-2022* (June 10, 2014), available at: https://www.sccgov.org/sites/dpd/DocsForms/Documents/HealthElement_2015_Adopted_Final.pdf; Association of Bay Area Governments, Planning and Research Department, *Regional Forecast for Plan Bay Area 2040* (Feb. 2016), http://reports.abag.ca.gov/other/Regional_Forecast_for_Plan_Bay_Area_2040_F_030116.pdf.

² Gov. Code, § 65580(d).

³ *Id.*, § 65583(c)(6).

Countywide inclusionary housing requirements, and providing for an in lieu fee compliance option (“In Lieu Fee”) for certain housing developments in unincorporated county outside of the Stanford Community Plan Area (“Ordinance”);

WHEREAS, the In Lieu Fee is necessary for those housing developments in unincorporated county outside of the Stanford Community Plan Area because unlike housing development within the Stanford Community Plan Area, where fractional inclusionary units can be banked and applied towards future developments, it is not possible to bank fractional inclusionary units in unincorporated county outside of the Stanford Community Plan Area given the multitude of applicants and property owners in unincorporated county;

WHEREAS, Section 4.20.130(H)(1)(c)(i) of the Ordinance provides that the In Lieu Fee shall be established and set by a Resolution of the Board of Supervisors, and that the Board may update periodically, as necessary;

WHEREAS, Keyser Marston Associates, Inc. (“KMA”), a consulting firm commissioned by the County, prepared studies dated July 2020, and entitled “Supplemental Analysis, Context and Recommendations to Support Consideration of Countywide Inclusionary Housing and Mitigation Fee Ordinances” and “Supplement to the Affordable Housing Nexus Studies to Provide Updated Countywide Maximum Fee Level Findings” to support consideration of the potential expansion of affordable housing requirements to new development throughout the unincorporated area of the County. The studies also contained detailed analysis for the estimated cost of constructing affordable units. The study identified a proposed in lieu fee amount for residential projects necessary to fund 100% of the County’s estimated cost of assistance to create affordable units to replace affordable units that are not provided on-site as part of the residential project;

WHEREAS, the proposed in lieu fee of \$259,000 per inclusionary unit reflects the County’s estimated cost to replace each affordable unit not provided on-site. The proposed amount is based on subsidy requirements for Low Income units net of financing available through Low Income Housing Tax Credits, as identified in the 2020 KMA studies;

WHEREAS, Section 4.20.130(O) of the Ordinance provides that all monies collected by the County in lieu of constructing affordable units on-site shall be deposited in the inclusionary housing fund;

WHEREAS, Ordinance No. NS-1200.375 was considered by the Planning Commission at a duly noticed public hearing on August 27, 2020 where evidence, both written and oral, was duly presented to and considered by the Planning Commission and where the Planning Commission was also presented with this Resolution; and,

WHEREAS, a public hearing notice of the Board’s consideration of this Resolution was mailed by the Clerk of the Board at least 14 days prior to the October 6, 2020 meeting and data regarding the In Lieu Fee was made available for public inspection at least 10 days prior to the October 6, 2020 meeting.

NOW, THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA HEREBY RESOLVES AS FOLLOWS:

1. The foregoing recitals are true and correct and incorporated into this Resolution.
2. The Board of Supervisors has reviewed and accepted the studies prepared by KMA dated July 2020, and finds that the analysis therein supports the in lieu fees established by this Resolution.
3. This Resolution is adopted pursuant to Section 4.20.130 (H)(1)(c) (In Lieu Fee) of Ordinance No. NS-1200.375 amending Section 4.20.130 of Title C, Appendix 1, Zoning, and relating to inclusionary housing in unincorporated Santa Clara County. The definitions set forth in Section 4.20.130(B) (Definitions) of Ordinance No. NS-1200.375 shall apply to this Resolution.
4. The Board of Supervisors hereby establishes the In Lieu Fee at \$259,000 per Inclusionary Unit that is not built. The amount due with respect to fractional Inclusionary Unit requirements shall be determined by multiplying the fractional number of Inclusionary Units required by the amount of the In Lieu Fee. The In Lieu Fee shall take effect on January 1, 2021, the Operative Date of Ordinance No. NS-1200.375 for areas outside of the Stanford Community Plan Area.
5. The In Lieu Fee shall be indexed annually based on the Engineering News-Record Construction Cost Index for San Francisco, or its equivalent, to ensure that the fee continues to reflect actual costs of construction.
6. The In Lieu Fees shall be deposited in the Inclusionary Housing Fund as described in Section 4.20.130(O) of the Ordinance.

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7. The In Lieu Fees shall be used to provide affordable housing within Santa Clara County.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, on OCT 06 2020 by the following vote:

AYES: CHAVEZ, ~~GORTESE~~, ELLENBERG
SIMITIAN, WASSERMAN

NOES: ~~GORTESE~~

ABSENT: NONE

ABSTAIN: ~~NONE~~




CINDY CHAVEZ, President
Board of Supervisors

~~Signed and certified that a copy of this
Document has been delivered by
electronic or other means to the President,
Board of Supervisors~~
ATTEST:



MEGAN DOYLE
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:



FOR ELIZABETH G. PIANCA
ELIZABETH G. PIANCA
Lead Deputy County Counsel