



**SAN BENITO COUNTY  
AGENDA ITEM  
TRANSMITTAL FORM**

Betsy Dirks  
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Kollin Kosmicki  
District No. 2  
Vice Chair

Peter Hernandez  
District No. 3  
Chair

Bob Tiffany  
District No. 4

Bea Gonzales  
District No. 5

**Item Number: 2.2**

**MEETING DATE:** 12/13/2022

**DEPARTMENT:** RESOURCE MANAGEMENT AGENCY

**AGENDA ITEM PREPARER:** Stephanie Reck

**DEPT HEAD/DIRECTOR:** Abraham Prado

**SUBJECT:**

**RESOURCE MANAGEMENT AGENCY - A. PRADO, ASSISTANT DIRECTOR PLANNING AND BUILDING**

(To be heard at 9:00am or soon thereafter as the matter may be heard)

1. Hold a public hearing to adopt amendments to Chapter 21.03 Affordable Housing Regulations. Proposed amendments include updates to definitions, the review process for development project applications requiring inclusionary contribution, fractional unit requirements, development standards, the process and site characteristic qualifications for in-lieu payments, use of the in-lieu fund, approval process for concessions and incentives, compliance with California Gov't Code § 65915 to § 56918 for density Bonus, and affordable by design standards, finding the matter exempt from the California Environmental Quality Act (CEQA). Adopt the ordinance entitled, "An ordinance of the San Benito County Board of Supervisors amending provisions of Chapter 21.03 Affordable Housing Regulations to Title 21 of the San Benito County Code" including findings of consistency with the General Plan and finding the ordinance exempt from the California Environmental Quality Act (CEQA).

2. Adopt an inclusionary housing in-lieu fee in the master fee schedule ordinance and adopt resolution adopting the new fee of \$30 per square foot. Adopt the ordinance entitled, "An ordinance of the San Benito County Board of Supervisors amending Appendix "A" of section 5.01.000 of the San Benito County Code, amending the master fee schedule, to add an in-lieu fee for affordable housing" including findings of consistency with the General Plan and finding the ordinance exempt from the California Environmental Quality Act (CEQA).

SBC FILE NUMBER: 790

RESOLUTION NO: 2022-149

ORDINANCE NO: 1052

**AGENDA SECTION:**

PUBLIC HEARING

**BACKGROUND/SUMMARY:**

## **CHAPTER 21.03 AFFORDABLE HOUSING REGULATIONS**

In 2016 the Board of Supervisors reestablished an Inclusionary Housing Ordinance, Ch. 21.03, which set specific percentages required for inclusionary housing based on the number of units. This ordinance was further revised in 2020 and again in 2022 through consultation with the Housing Advisory Committee of San Benito County.

This ordinance aims to address affordable housing needs as outlined in San Benito County's Regional Housing Needs Allocation Plan and Housing Element. These revisions strive to make the code more clear, concise, and user friendly.

Section 3 of the ordinance includes the addition of definitions for single-family housing, duplex housing, triplex housing, multi-family housing, and condominium housing. The definition of Affordable Housing Plan was updated to encompass both the housing plan and implementation plan for all affordable housing projects.

In Section 3, Section 4, and Section 9 of the ordinance the term, and definition for first approval was removed and a standard was created throughout chapter 21.03 which defines the review process and approving authority for all affordable housing plans. Projects are reviewed by the Housing Advisory Committee who provides recommendation to the Planning Commission, the Planning Commission will review and provide recommendation to the Board of Supervisors, the Board of Supervisors are the last reviewing body and have final approval on affordable housing plans and final maps.

Section 5 of the ordinance includes updates to inclusionary housing requirements and stipulates that developments of six (6) to ten (10) units will be eligible to pay an inclusionary housing fee as an alternative to building inclusionary units. Developments of 11 or more units must provide inclusionary units on-site or off-site unless the calculation results in a fraction.

In Section 5, Section 6, Section 7, and Section 8 of the ordinance fractional requirements were included and stipulate that all unit calculations that result in fractions of .7 or greater are to be rounded to the next whole unit, and fractions that are less than .7 are eligible for an in-lieu payment.

In Section 6 of the ordinance provisions for exterior appearance, number of bedrooms per unit, and minimum unit sizes were removed, updated, and included in section 15 Development Standards.

In Section 6 and Section 7 of the ordinance the inclusionary tables were updated to reflect that developments of one (1) to five (5) units have no inclusionary requirement, developments of six (6) to ten (10) units automatically qualify for an in-lieu payment, and developments of 11 or more are required to provide inclusionary units and pay a fee for any fractional units.

In Section 7 of the ordinance provisions were included to ensure that off-site units must result in the creation of newly constructed units, which are not otherwise planned.

In Section 8 of the ordinance provisions were included which address site characteristics that qualify a developer for an in-lieu payment as an alternative to building inclusionary units. Site characteristics that would qualify a developer include (1) septic systems or individual wells that are not connected to a public agency or regulated water purveyor, (2) zoning which requires large lot development, or (3) project site is not within 10 miles of an incorporated city.

Section 12 of the ordinance includes additions to the use of in-lieu fees. Among other uses, in-lieu fees can be used

to fund an affordable housing trust or as reasonable reimbursement to cover costs associated with impact fee waiver provided to developments that are 100% affordable.

Section 13 of the ordinance was updated to comply with California Gov't Code § 65915 to 65918 for Density Bonus. Revisions address the approval of concessions and incentives, fractional unit requirements for density bonuses, and incorporates the construction of rental or for-sale housing, including condominiums, in the definition of Housing Development.

Section 14 of the ordinance was updated to provide developers with the option of incorporating affordable by design standards. These standards will be assessed on a case-by-case basis and will incorporate modern affordable concepts into a project's development standards.

Section 15 of the ordinance was updated to include standards regarding the disbursement of affordable units throughout a development, architectural standards, average number of bedrooms per unit, and minimum unit sizes. Additional standards were implemented to ensure the issuance of building permits for affordable units to occur concurrently with or prior to that of market rate units.

### **INCLUSIONARY HOUSING IN-LIEU FEE**

In 2016 at the time of approval for the Inclusionary Housing Ordinance, an in lieu payment for the inclusionary housing was not determined, and a study to establish an appropriate price was conducted.

No in-lieu fees have been established; however, developers have voluntarily agreed to pay affordable housing fees. Through development agreements, developers have historically agreed to pay an affordable housing fee of \$4,500.00 per residential unit, paid to the County on a per-unit basis before the issuance of each Building Permit. An example of this would be the Sunnyside Estate. For additional information, please view the agreement at :

<https://www.cosb.us/home/showpublisheddocument/4900/637309310391800000>

The County has contracted with Vernazza Wolfe Associates to provide professional services to complete an affordability gap analysis and in-lieu fee feasibility study. For the last two years, County staff and Vernazza Wolfe Associates, housing consultant, have worked together also to develop a long-term Housing Strategy. Rental housing was added to the Affordable Housing Regulations Ordinance, and an In-Lieu Fee was calculated that could be implemented to cover the development situation in which the requirements from the Inclusionary Ordinance would result in less than a whole unit (referred to as fractional units). The County's Housing Advisory Committee, Planning Commission, and the Board of Supervisors have been kept informed about the progress of this work and have provided guidance.

The Inclusionary Housing Study provides detailed information on the Affordability Gap calculated for San Benito County, the Inclusionary Housing in-lieu fee calculated based on this gap, and the financial feasibility of the in-lieu fee.

The attached report provides the background information and in-lieu fee calculations for rental and for-sale housing. The maximum in-lieu fees were calculated for three different housing product types – single-family houses (scattered site), a single-family subdivision, and rental apartments. The information presented in this report will assist public officials in deciding what fees to adopt and provide guidance regarding additional inclusionary housing policies.

The following in-lieu fees based on the analysis explained in this study are as follows:

	For-Sale Homes
In-Lieu Fee Per Square Foot Based on the 15% Inclusionary Ordinance Requirement	\$30

This work is now completed, and it is up to the Board of Supervisors to approve or modify policy recommendations supported by this research effort.

County code chapter 21.03 affordable housing regulations govern the county in-lieu fee. In **§ 21.03.008 in-lieu payment and other alternative compliance mechanisms describes how fractional units are charged.**

Residential developments that require the construction of a fractional unit may apply to pay an in-lieu fee in an amount corresponding to the fractional unit, which would be computed and determined by staff. To *qualify for an in-lieu payment, the development must demonstrate that specific characteristics of the development site, including at least one of the following: (1) septic systems or individual wells that are not connected to a public agency or regulated water purveyor, (2) zoning which requires large lot development, or (3) is not within 10 miles of an incorporated city, make the site unsuitable for households at the required income levels. The evidence must be reviewed by the Housing Advisory Committee and the Planning Commission and the qualification for an in-lieu payment must be approved by the Board of Supervisors. Payment of in-lieu fees shall be made in full to the County prior to issuing a certificate of occupancy and final inspection unless an affordable housing agreement otherwise provides.*

**FISCAL IMPACT:** There is no fiscal impact associated with the County implementing an in-lieu fee. The Inclusionary Housing regulations require developments to include the inclusionary to pay an in-lieu fee; specific characteristics must be present and require approval from the planning commission and the Board of Supervisors.

**RESOLUTION OR ORDINANCE NEEDED FOR THIS ITEM:**

Yes

**CONTRACT NEEDED FOR THIS ITEM:**

No

**CONTRACT AND RFP HISTORY:**

N/A

**LAST CONTRACT AMOUNT OR N/A:**

N/A

**STATE IF THIS IS A NEW CONTRACT/ HOW MANY PAST AMENDED CONTRACTS/ OR N/A:**

N/A

**STRATEGIC PLAN GOALS: 1. Operational Development & Excellence**

Yes

**STRATEGIC PLAN GOALS: 2. Planning And Sustainable Growth**

Yes

**STRATEGIC PLAN GOALS: 3. Technology**

No

**STRATEGIC PLAN GOALS: 4. Community Engagement**

Yes

**STRATEGIC PLAN GOALS: 5. Health & Safe Community**

Yes

**BUDGETED:**

No

**BUDGET ADJUSTMENT NEEDED:**

No

**SOURCE OF FUNDING:**

N/A

**UNFUNDED MANDATE:**

No

**SBC BUDGET LINE ITEM NUMBER:**

N/A

**CURRENT FY COST:**

N/A

**STAFF RECOMMENDATION:**

1. Continue public hearing to adopt revisions to chapter 21.03 Affordable Housing Regulations.

2. Continue public hearing to consider implementing an Inclusionary Housing in-lieu fee in the

Master fee schedule ordinance.

Make Motion to:

Option 1:

1. Adopt ordinance entitled, "An ordinance of the San Benito County Board of Supervisors Amending Provisions of Chapter 21.03 Affordable Housing Regulations to Title 21 of the San Benito County Code."
2. Adopt resolution recommending amendments to Chapter 21.03 Affordable Housing Regulations;
3. Adopt ordinance entitled "An Ordinance of the San Benito County Board of Supervisors Amending Appendix "A" of Section 5.01.000 of the San Benito County Code, amending the Master Fee Schedule, to add an in-lieu fee for affordable housing."
4. Adopt resolution adopting new in-lieu fees;

Option 2:

1. Or; End public hearing, provide staff direction.

**ATTACHMENTS:**

Staff Report Summary of Ordinance Summary of Workforce Housing Summary of In-lieu Fee FINAL

BOS Public Hearing Notice and Summary of Ordinance Summary of In Lieu Fee 12-13-2022 FINAL

Ordinance No .Amending Chapter 21.03 of the San Benito County Code Affordable Housing Regulations FINAL je rev & signed

RESbos 2022-12-13 Affordable Housing Regulations In-lieu fee FINAL je rev & signed

RESpc 2022-16 Affordable Housing Regulations

ATTACHMENT A CH 21.03 Affordable Housing Regulations clean version

CH 21.03 Affordable Housing Regulations track changes version

ATTACHMENT B 2022-06-13 Inclusionary Housing Study

ATTACHMENT C In Lieu Fee

Affordable Housing Plan Workflow

BOS 2022-12-13 Affordable Housing Ordinance In-Lieu Fee Presentation