

Chapter 18.02

AFFORDABLE (INCLUSIONARY) HOUSING

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18.02.010 Findings.

In enacting this chapter of the Capitola Municipal Code pertaining to the provision of affordable housing in the city of Capitola, the city council finds:

A. A decent home and suitable living environment for all Capitola residents and workers is a priority of the highest order. To this end, the housing element of the Capitola general plan discusses and analyzes the need to provide housing for senior citizens, disabled persons, single parent families, homeless persons and homeless families, and families of very low, low and moderate income levels. Similarly, the general plan housing element outlines the extremely high cost of housing both regionally and within the city. With respect to affordable housing in the city, the housing element articulates, among others, Policies 3.4, 3.5 and 3.6 intended to advance the general plan goal to “Encourage New Affordable Housing Opportunities Through Construction Of New Units.” These policies encourage the adoption of an inclusionary housing ordinance, which provides for construction of affordable housing units in connection with private market rate residential development or the payment of in lieu affordable housing fees in connection with market rate residential development, and further encourage the establishment of a housing trust fund to be used to facilitate the development of new affordable housing in the city.

B. In addition, state law including but not limited to the California Redevelopment Law and State Housing Law, articulate policies and goals, and impose legal obligations upon California cities, counties and redevelopment agencies, relative to the creation and provision of affordable housing by communities throughout the state, including the city of Capitola. Accordingly, a paramount goal of the city and the redevelopment agency is to provide and to create a regulatory environment conducive to the development of both rental and for-sale housing available to all economic sectors of the community with priority given to very low, low and moderate income households currently residing or working within the city.

C. There is currently an inadequate supply of housing in the city which is affordable to very low, low and moderate income households. Federal and state financial assistance and subsidy programs are not sufficient in themselves to close the gap between the cost of most housing in the city and the ability of very low, low and moderate income households to pay those housing costs.

D. The city, given current zoning regulations and very limited vacant residentially zoned property, is nearly “built out” for purposes of future residential development within the city. The inventory of land available for residential development in the city is at a premium and the inventory of land which can be used for the development of housing for very low, low and moderate income households becomes even more depleted with the development and/or improvement of each market rate housing unit in the city. Accordingly, housing opportunities for very low, low and moderate income households are diminished incrementally with the development of each new market rate housing unit which is constructed, rebuilt or substantially improved in the city. Single-family homes which are re-built, and residential remodel/additions which increase square footage more than fifty percent, affect the supply of affordable housing in the city when new, larger units replace older, smaller units. Many of the replaced older units were rentals, or were more accessible to be purchased by moderate income households.

E. According to published Multiple Listing Service home sales price statistics, over the last nine years, from 1996 to July 2004 the median countywide price of a for-sale single-family house has increased from two hundred forty thousand three hundred and fifty dollars to six hundred thirty five thousand dollars. The median countywide price for a for-sale townhouse/condominium has increased from one hundred sixty-four thousand five hundred dollars to four hundred twenty five thousand dollars over the same period. According to the Capitola’s adopted housing element, in 2004 the maximum affordable sales price for a moderate income, three-person household was two hundred fifty two thousand two hundred and fifty dollars. The maximum affordable sales price for a moderate income, four-person household was two hundred eighty thousand two hundred and fifty dollars. These figures demonstrate that the “affordability gap” herein referenced has increased incrementally over this nine-year period, thereby rendering affordable housing programs/subsidies currently in place increasingly ineffective in achieving their objectives to house very low, low and moderate income households in the city.

F. If very low, low and moderate income workers cannot find housing in the city, employers will have difficulty in securing a labor force and employees will be forced to commute. Automobile commuting increases air pollution, unnecessarily creates traffic congestion and develops a population which is separate and distinct from full-time residents, thereby resulting in diverse and often contrasting demands on limited city resources.

G. Residential housing projects which contribute to the city’s very low, low and moderate income housing stock serve to augment the city’s housing mix, increase the supply of housing for all economic sectors of the community and thereby assist in providing for a balanced community which is deemed to be in the public interest.

H. Increasing the supply of housing affordable to very low, low and moderate income families through the assistance and cooperation of private residential developers can be achieved only if the provision of such housing by private residential developers becomes more feasible. It is therefore necessary to provide flexibility in the manner and method by which private residential development contributes its fair share to the city's affordable housing stock.

I. Affordable housing is best integrated into the community when that housing is distributed throughout all areas of the city rather than concentrated in a single area.

J. Therefore in order to advance and achieve the affordable housing goals and policies of the city, redevelopment agency and state referenced in this section, adoption of the affordable housing regulations prescribed in this chapter is necessary and will serve to advance and protect the general health and welfare of the city's residents, workers and economy. (Ord. [879](#) § 3, 2004)

18.02.020 Words and phrases.

For purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

“Affordable housing” means housing capable of being purchased or rented by a very low, low or moderate income household, based on the household's ability to make monthly payments necessary to obtain housing. For-sale housing is considered affordable when a household pays no more than thirty-five percent of its gross monthly income for housing including utilities.

“Household” means all those persons, related or unrelated, who occupy a single housing unit.

“Housing development project” means any development project requiring a land use permit or approval from the city for: the construction of one or more housing units including single-family residences, condominiums, townhouses and apartments; the division of land into one or more residential parcels; the subdivision of mobile home parks; the conversion of one or more apartments to one or more condominiums; a demolish/rebuild of an existing housing unit, or a structural addition to an existing housing unit which will result in a fifty percent or greater increase in the housing unit's square footage.

“Low income household” means a household whose income, with adjustment for household size, is between fifty percent and eighty percent of the Santa Cruz County areawide median income.

“Moderate income household” means a household whose income, with adjustment for household size, is between eighty percent and one hundred twenty percent of the Santa Cruz County areawide median income.

“Very low income household” means a household whose income, with adjustments for household size, is less than fifty percent of the Santa Cruz County areawide median income.

“Unit” means a single-family home, condominium, apartment, mobile home parcel, or residential parcel. (Ord. [922](#) § 1, 2007; Ord. [891](#) § 1, 2005; Ord. [879](#) § 3, 2004)

18.02.030 Affordable housing requirements.

Subject to the exceptions set forth elsewhere in this chapter, each housing development project shall be required to contribute to the city’s affordable housing stock as follows:

A. Housing development projects creating seven or more for-sale housing units, residential parcels, mobile home parcels, or converted condominium units shall be required to reserve and restrict fifteen percent of the housing units, residential parcels or converted condominium units for sale to moderate, low or very low income households in accordance with the requirements of Section [18.02.040](#).

B. Housing development projects creating rental housing units, the development of fewer than seven for-sale housing units, residential parcels or converted condominiums, mobile home parcels, or a structural addition meeting the criteria specified in Section [18.02.020](#) shall be required to pay affordable housing in-lieu fees to the city’s housing trust fund in accordance with the requirements of Section [18.02.050](#). (Ord. [922](#) § 1, 2007; Ord. [879](#) § 3, 2004)

18.02.040 Provision of affordable housing units.

When a housing development project is required to construct or provide affordable housing units pursuant to this chapter, the housing development project shall comply with the following requirements:

A. In determining the number of affordable units required, developments which require fractional contribution pursuant to the requirements of this chapter shall pay affordable housing in-lieu fees in an amount prescribed by the affordable housing in-lieu fee schedule adopted, and from time to time revised, by city council resolution.

- B. All affordable housing units shall remain affordable for the natural life of the unit.
- C. The housing development project permit application submitted to the city shall specify the number, type, location, size and construction scheduling of all housing units which are part of the project, including the affordable housing units, and shall indicate which housing units are designated as affordable for purposes of complying with this chapter.
- D. Unless otherwise approved by the city planning commission or city council, affordable housing units shall be reasonably dispersed throughout the housing development project and shall be compatible with the design and use of the remaining housing units in the housing development project in terms of appearance, materials and finish quality.
- E. The housing development project developer shall have the option of reducing the interior amenity level and square footage of affordable housing units provided that all affordable housing units conform to the requirements of the city building and housing codes and further provided that all affordable units, at a minimum, shall have interior painting or other finish wall covering, floor covering, a stove, a dishwasher, an oven, built-in kitchen cabinets, washer and dryer hookups, a bath/shower, a toilet, a kitchen sink and a bathroom sink.
- F. All affordable housing units in a housing development project shall be constructed concurrently with, or prior to, the construction of the housing development project's market rate housing units and shall be sold concurrently with, or prior to, sale of the market rate housing units.
- G. Prior to recordation of the final subdivision map or issuance of building permits for the housing development project, the housing development project developer shall enter into a participation agreement with the city in a form suitable for recordation so as to assure compliance with the provisions of this chapter.
- H. A housing development project developer who is a subdivider may propose to comply with the requirements of this chapter by dedicating affordable lots to the city. The city council, at its sole discretion may grant, conditionally grant or deny the request. If the housing development project subdivider's proposal to dedicate affordable lots to the city is approved, the offer of dedication shall be made concurrently with the filing of the final subdivision map.

I. Where the city provides financial assistance to a housing development project in the form of a grant, subsidy, loan, fee waiver or any other action which confers a fiscal benefit on the housing development project developer, the city may condition the financial assistance with a requirement that the housing development project reserve or restrict more than fifteen percent of the housing development project's housing units, residential parcels or converted condominium units for sale to moderate, low or very low income households. (Ord. [891](#) § 2, 2005; Ord. [879](#) § 3, 2004)

18.02.050 In-lieu housing fees.

When a housing development project is required to pay affordable housing in-lieu fees, the housing development project shall pay fees in accordance with and comply with the following requirements:

A. The housing development project shall pay affordable housing in-lieu fees in an amount prescribed by the affordable housing in-lieu fee schedule adopted, and from time to time revised, by city council resolution.

B. Affordable housing in-lieu fees shall be paid in the following manner:

1. Housing development projects of two or more housing units, rental housing units, residential parcels or converted condominiums shall enter into a in-lieu fee agreement in a form suitable for recordation, which shall be recorded with the county recorder's officer prior to recordation of the final subdivision map, if new parcels are being created, or issuance of building permits if the project does not involve subdivision of parcels. The in-lieu fee agreement shall create a lien on each dwelling unit or parcel in order to ensure payment of the required in-lieu fees. The in-lieu fee amount applicable to each unit shall be paid prior to issuance of the certificate of occupancy for that unit by the building department. If an escrow account has been opened for the sale of a unit subject to the fee, the certificate of occupancy may be issued prior to payment of the fee if: the developer has provided a written request to the city requesting submittal of a demand for payment of the fee by the city, and the escrow officer has signed and returned the city demand for payment to the city. Developer shall include in such written request the name of the title company, escrow officer, escrow number, and contact information, and shall also include the requirement for payment of the fee in seller's escrow instructions. Upon receipt of payment in full of the applicable in-lieu fee from the sale of each unit in a project, the city shall record a release of the affordable housing encumbrances imposed on that unit by the recorded in-lieu fee agreement.

2. Housing development projects which entail the development of one housing unit, demolish/rebuild of an existing housing unit, or a structural addition to an existing housing unit which will result in a fifty percent or greater increase in the housing unit's square footage shall pay the in-lieu fee at the time of application for a building permit.

C. A housing development project developer who is otherwise required to pay an affordable housing in-lieu fee by this chapter may instead provide one or more affordable (not less than fifteen percent) for-sale housing units which shall be deed and time restricted in accordance with the provisions of Section [18.02.040](#).

D. Exemptions and Fee Waivers.

1. An applicant for demolish/rebuild or significant remodel/addition who is the owner/ occupant of the property and whose household income is at or below one hundred twenty percent of countywide median income may have their in-lieu fee waived by the city manager upon submittal of income and assets information to the city manager for review and verification.

2. An applicant for demolish/rebuild or significant remodel/addition whose application is in direct response to a fire or other natural disaster shall be exempt from this chapter.

3. An applicant for demolish/rebuild or significant remodel/addition who provides satisfactory evidence showing ownership of and residency in the unit for at least five years prior to the date of application may apply to the city manager for a waiver of the applicable in-lieu fee.

4. Developers of rental housing projects who provide evidence to the council's satisfaction that the units will: (a) be available to and rented for amounts affordable to lower income households on a long-term basis; and (b) will not be utilized as vacation rentals at any time, may apply to council for a waiver of the applicable in-lieu fees. Rental projects financed in whole or part by public or private funds that require ongoing affordability as a condition of funding shall qualify for this waiver.

E. Affordable housing in-lieu fees shall be deposited into the city's housing trust fund and all such fees shall be used, at the earliest time feasible, to assist in the construction of new low or very low income housing units with a minimum of fifty-five-year term affordability restrictions, the rehabilitation of low or very low income housing units which, upon rehabilitation, will have fifty-five-year term affordability

restrictions, or to assist low or very low income households in purchasing or renting housing units. (Ord. [891](#) § 3, 2005; Ord. [879](#) § 3, 2004)

18.02.060 For-sale housing units – Sales price and procedures.

When an affordable housing unit is sold or re-sold, the following requirements shall apply:

A. In calculating the maximum allowable sales price for housing units which, pursuant to this chapter, are deed restricted as affordable to very low, low or moderate income households, the city or the city's designee shall employ the following formula:

1. Single-Family Residences. Sales prices shall be set to equal the price affordable to a household earning the area median income adjusted for household size, with a household size equal to the number of bedrooms in the unit plus one, and a housing cost ratio equal to thirty-five percent of gross monthly household income, and a ten percent downpayment.
2. Condominiums/Townhouses. Sales prices shall be set to equal the price affordable to median income household earning the area median income adjusted for household size, where household size is equal to the number of bedrooms in the unit plus one, and a housing cost ratio equal to thirty-five percent of gross monthly household income, and a ten percent downpayment.
3. Mobile Home Parcels. No sale or resale price will be set for the inclusionary parcels created. Inclusionary parcels in a mobile home park will have initial and subsequent resales restricted to sale to a median income household adjusted by household size.

B. The re-sale purchase price of any affordable unit may be increased by the value of any substantial structural or permanent fixed improvements, which cannot be removed without substantial damage to the premises or substantial or total loss of value of the improvements. The value shall be determined by an appraiser designated by the city. Such adjustment cannot increase the resale price herewith allowed by more than ten percent. No improvements shall be deemed substantial unless the aggregate, actual, initial costs of the improvements to the owner exceed one percent of the purchase price paid by the selling owner for the premises.

C. If the city finds that the owner, through neglect, abuse or lack of adequate maintenance, has damaged an affordable unit, the city may require repairs be made at the owner's expense and be financed prior to sale or through the escrow account.

D. In cases where the owner or housing developer has made a good faith effort to sell an affordable housing unit at the allowable sales price established by the city, and has failed to sell that unit, the seller may request to make a monetary contribution to the affordable housing trust fund in exchange for the city's agreement to release the affordability deed restriction on that unit. The amount of the contribution would be determined by the city council, taking into consideration the then-current cost of developing similar affordable housing units and the remaining amount of time the subject unit was deed restricted for sale to very low, low or moderate income households. The city council in its sole discretion may grant, conditionally grant or deny the request. If the request is granted or conditionally granted, upon the city's receipt of the prescribed housing trust fund contribution, the subject affordable housing deed restriction shall be released and the seller shall be allowed to sell, rent or otherwise use the subject housing unit for residential purposes as the seller deems appropriate.

For purposes of this section, a good faith effort to sell a deed restricted affordable unit will, at a minimum, include listing the property in the pertinent multiple listing service for a minimum of two hundred forty days, actively marketing and showing the property in a manner that would be deemed professionally prudent by a full-time real estate agent or broker employed in the Santa Cruz County housing market. (Ord. [922](#) § 1, 2007; Ord. [891](#) § 4, 2005; Ord. [879](#) § 3, 2004)

18.02.070 Eligibility for affordable housing units.

A. Only households which qualify as very low, low, median or moderate income households, and who meet the asset limit, shall be eligible to purchase affordable units developed or funded in compliance with, or pursuant to, this chapter.

B. To be eligible to purchase affordable units created pursuant to this chapter, the total assets of a household shall be less than one and one-half times the annual household income limit for that unit. Assets to be used to purchase the affordable unit are excluded from the asset calculation.

C. Income eligibility to purchase affordable units created pursuant to this chapter shall be determined at the time of sale of the affordable unit by the city or the city's designee.

D. Applicants may appeal the city's income and asset eligibility determinations within thirty days of the date of their income eligibility letter. Appeals of the city's income and asset eligibility determinations shall first be made to a committee comprised of the city manager, mayor, community development director, and city attorney. Appeals shall be in the form of a letter addressed to the city manager, and

should document the reason the applicant believes an exception should be made. Appeals may be granted by the committee upon a finding, based upon documentary evidence produced by the appellant which clearly demonstrates that the subject household's future earning capacity will be significantly impaired in the immediately foreseeable future. The committee's decision may be appealed as set forth in Section [18.02.150](#).

E. The purchaser of an affordable ownership unit shall occupy the unit as his or her primary place of residence. If the unit ceases to function as a primary residence, it shall be sold according to the requirements of this chapter. (Ord. [982](#) § 1, 2013; Ord. [922](#) § 1, 2007; Ord. [891](#) § 5, 2005; Ord. [879](#) § 3 (part), 2004)

18.02.080 Marketing of affordable units for sale.

A. Any marketing communication advertising an affordable unit for sale shall fully disclose the affordable housing sale price and eligibility restrictions contained in this chapter.

B. Marketing of an affordable ownership unit shall be performed by the owner or owner's agent, with preference given to households who live or work in Capitola, who shall market the affordable unit for no more than the maximum sale price established by the city (excluding closing costs in sales transactions).

C. The purchaser of an affordable unit shall not pay more in closing costs than that which is reasonable and customary in Santa Cruz County.

D. The seller of an affordable unit shall pay any real estate sales commission associated with the sales transaction.

E. The owner of an affordable unit shall not use the unit as collateral for an amount exceeding ninety-five percent of the maximum sales price allowed by this chapter unless specifically allowed in writing beforehand by the city. All second mortgages shall require the prior written approval of the city. (Ord. [891](#) § 6, 2005; Ord. [879](#) § 3, 2004)

18.02.090 Secondary dwelling units – Non-applicability.

This chapter shall not apply to secondary dwelling units developed pursuant to Capitola Municipal Code Chapter [17.99](#). (Ord. [879](#) § 3, 2004)

18.02.100 Pre-approved projects – Non-applicability.

This chapter shall not apply to projects for which a development permit was issued by the city prior to the effective date of the ordinance codified in this chapter or to the projects for which an approved tentative map or vesting tentative map existed as of the effective date of said ordinance. (Ord. [879](#) § 3, 2004)

18.02.110 Fees.

Upon resale or refinance of an affordable unit, the owner or landlord shall pay a fee to the city to cover the city's costs in determining the maximum sales price and any other monitoring and document preparation processes as may be required of the city. The fee shall be established by city council resolution and shall be calculated so as to allow the city to recover the staff costs and administrative overhead incurred by the city in providing these services and preparing these documents. In addition, the city may similarly charge each prospective purchaser of an existing affordable unit a fee for determining eligibility. (Ord. [879](#) § 3, 2004)

18.02.120 Default/foreclosure.

A. Option to Purchase. In the event a default notice is recorded against an affordable unit, the city or its designee shall have the option to purchase the unit by paying the minimum amount that the owner would have received on the date of the foreclosure sale. Out of this sum, any lien holders shall be paid the amount of funds due them and the owner shall be paid the remaining balance.

B. In the event the city or its designee does not exercise its option to purchase the affordable unit prior to the trustee's sale or judicial foreclosure and the owner does not redeem the property by curing the default prior to sale or foreclosure, the unit shall thereafter be free from the restrictions of this chapter and the new owner may occupy, sell or rent the unit without restriction.

C. Notwithstanding subsection B of this section, single-family units that have never been sold to individual owner-occupants and multiple-family dwelling units shall not be released from the restrictions of this chapter through a trustee's sale or judicial foreclosure. In addition, affordable units shall not be released under the following circumstances:

1. The city has not been provided a copy of the notice of default within ten days of its service upon the owner;
2. The owner does not allow the city to exercise its option to purchase; or

3. A lender has over-encumbered the property and refuses to release its interest in the property for the maximum allowable sales price. (Ord. [879](#) § 3, 2004)

18.02.130 Conflicts of interest.

The following individuals are ineligible to purchase an affordable unit as their residence:

- A. The city manager, city attorney, community development director and members of the planning commission and city council;
- B. The owner or developer of an affordable housing project or affordable unit; and
- C. The immediate relatives of persons identified in subsections A and B of this section. (Ord. [879](#) § 3, 2004)

18.02.140 Violations.

It is unlawful and a violation of this chapter for an applicant or owner of an affordable unit or any employee or agent of an applicant or owner to:

- A. Sell an affordable unit to anyone who has not first been qualified as eligible;
- B. Sell an affordable unit to any person who has a conflict of interest as defined by this chapter;
- C. Sell an affordable unit for an amount exceeding the maximum sales price;
- D. Solicit, require or accept in connection with the sale of an affordable unit any payment or other contribution of cash, property or services from a purchaser or tenant the value of which, when added to the purchase price paid for an affordable unit, would exceed the maximum sales price or maximum rental prescribed by this chapter;
- E. Wilfully and knowingly make a false statement or representation, or knowingly fail to disclose a material fact for the purpose of qualifying as eligible to purchase or rent an affordable unit under this chapter; or
- F. Violate any other provision of this chapter. The city may prosecute any violation of this chapter criminally, civilly or administratively in accordance with Title [4](#) of this code. (Ord. [891](#) § 7, 2005; Ord. [879](#) § 3, 2004)

18.02.150 Appeal.

Any applicant or other person whose interests are adversely affected by any determination in regard to the requirements of this chapter may appeal to the city council in accordance with the provisions of Chapter [2.52](#) of this code. (Ord. [879](#) § 3, 2004)

The Capitola Municipal Code is current through Ordinance 1040, passed March 26, 2020.

Disclaimer: The city clerk's office has the official version of the Capitola Municipal Code. Users should contact the city clerk's office for ordinances passed subsequent to the ordinance cited above.

City Website: <http://www.cityofcapitola.org/>

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