



STAFF REPORT

TO: Planning Commission    DATE: July 14, 2015  
FROM: Danielle Staude, Senior Planner  
SUBJECT: Inclusionary Housing Ordinance

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1    **ISSUE:**

2    Public hearing to discuss the proposed Inclusionary Housing Ordinance (EXHIBIT A) that  
3    would adjust the affordable housing “threshold level” (or project size) for when a project may  
4    build versus pay an in-lieu fee for the purposes of providing affordable housing in Mill Valley.  
5

6    **RECOMMENDATION:**

7    Receive presentation, discuss and consider Resolution 15-05 (EXHIBIT B) recommending that  
8    City Council adopt an ordinance modifying Title 20 “Zoning” of the Mill Valley Municipal  
9    Code, amending Chapter 20.80 “Inclusionary Housing Regulations” (EXHIBIT A).  
10

11   **BACKGROUND:**

12    Inclusionary housing regulations require “new housing developments of 2 or more units to  
13    contribute to the attainment of the City’s housing goals by increasing the production of units  
14    affordable by households of low and moderate income and additionally stimulating funds for  
15    development of low and moderate income housing.”  
16

17    Updating the inclusionary housing ordinance to strengthen and enhance the program’s  
18    effectiveness in providing affordable housing has been identified as an implementing program in  
19    the 2009-2014 and 2015-2023 Housing Elements and has been identified by City Council and  
20    Planning Commission as a priority.

21  
22    Based on this charge, a Planning Commission study session was held on June 23, 2015 to discuss  
23    proposed modifications to Section 20.80 “Inclusionary Housing Requirements.” Planning  
24    Commission agreed with staff’s proposed approach to swiftly move forward with reducing the  
25    project size that can pay an lieu fee (from 2-9 units to 2-3 units), and then come back to  
26    Planning Commission later this year to address the remainder of the inclusionary housing  
27    ordinance outlined on the next page, once the Residential Nexus Study is completed.

28  
29    Staff’s reasoning for taking this approach in updating the inclusionary housing regulations is  
30    two-fold:

- 31        1) The majority of multi-family redevelopment projects typically fall within the 2-9 unit
- 32        range; and,

33 2) There is general agreement within the community and among City decision makers that  
 34 building an actual affordable unit is preferable to collecting an in-lieu fee. The high  
 35 construction costs, high real estate/land values and Mill Valley’s predominantly small-  
 36 scale multi-family project capabilities are significant barriers in the effective use of in-  
 37 lieu fees.  
 38

Proposed Approach to Updating to Section 20.80 “Inclusionary Housing Requirements”	
Housing Element Program #15	Status
<ul style="list-style-type: none"> <li>Reduce the project size threshold when projects are required to provide affordable units rather than being permitted to pay an in lieu fee</li> </ul>	Under review as part of this staff report.
<ul style="list-style-type: none"> <li>Move to a fee-based program for rental housing with on-site and off-site alternatives to insure compliance with recent case law regarding inclusionary rental housing (the Palmer decision)</li> </ul>	
<ul style="list-style-type: none"> <li>Increase the percentage of affordable units required from 15% to 20%-25%</li> </ul>	To be updated in association with the Residential Nexus Study.
<ul style="list-style-type: none"> <li>Require deeper income to address affordability for very low and low income households</li> </ul>	
<ul style="list-style-type: none"> <li>Considering replacement unit requirements for removal of existing rental units</li> </ul>	
<ul style="list-style-type: none"> <li>Require greater parity in development and design standards between project affordable and market rate units</li> </ul>	
<ul style="list-style-type: none"> <li>Extend affordable in-lieu requirements to single family homes (see Housing Program #16)</li> </ul>	
<ul style="list-style-type: none"> <li>Update the current housing in-lieu fee calculation</li> </ul>	
<ul style="list-style-type: none"> <li>Define additional public benefits that the City may require from housing developers</li> </ul>	

39  
 40 **DISCUSSION:**  
 41 The substantive modifications to the Inclusionary Housing Regulations (EXHIBIT A) are  
 42 outlined below, and include slight modifications since the June 23, 2015 Planning Commission  
 43 Study Session to address the City Attorney’s legal review and Planning Commission comments.  
 44 (Note: minor edits are included in EXHIBIT A but not detailed below). Staff is also coordinating  
 45 with the City Clerk and other departments on a standard formatting of Municipal Code  
 46 regulations, such as capitalizing definitions, and the proposed regulations will be formatted  
 47 accordingly as part of the City Council adoption process.  
 48

49 **20.80.030: “Definitions”**

- 50 • (K) Clarification of definitions for very-low, low and moderate income households;
- 51 • (L) Addition of “mixed use development” to definition of project

52  
 53 **20.80.040(N) “General Requirements”**

- 54 • Clarification that the number of affordable units required to build based on rounding, and  
 55 that projects resulting in 4 new units must build one (1) inclusionary unit.  
 56  
 57  
 58

59 **20.80.050 “Rental Projects”**

- 60 • This section has been clarified and now explains inclusionary requirements for all rental  
61 projects, indicating that rental projects of 2 or more units are eligible to pay an in-lieu fee.  
62 This modification is based on recent case law, in which *Palmer/Sixth Street Properties v.*  
63 *City of Los Angeles*), the CA Court of Appeals concluded that the City’s inclusionary  
64 housing ordinance conflicted with the Costa-Hawkins Rental Housing Act which allows  
65 landlords to set rents at the commencement of a tenancy. Thus, until the application of  
66 Costa-Hawkins is clarified by the State legislature, local inclusionary requirements are  
67 limited to: 1) for-sale housing projects and 2) rental projects receiving financial or  
68 regulatory assistance for the City subject to a written development agreement. Staff has  
69 provided an alternative to paying the impact fee for rental projects (Section 20.80.050(B))  
70 that is at the discretion of the applicant. This language is similar to other local ordinances  
71 (specifically Emeryville and Walnut Creek), noting how it is compliant with the Costa-  
72 Hawkins Act.

73  
74 **20.80.060 “Ownership Projects”**

- 75 • This section has been clarified and now explains inclusionary requirements for all  
76 ownership projects, indicating that ownership projects between 2-3 units must pay an in-  
77 lieu fee. (The actual fee schedule remains the same, but now only applies to those  
78 projects with 2-3 new units). Currently the project threshold is 2-9 units that are eligible  
79 to pay an in-lieu fee.
- 80 • Additional language was also added to allow ownership projects of 2-3 units the option to  
81 build an inclusionary unit as opposed to paying the in-lieu fee.

82  
83 **20.80.090 “In-Lieu Fee”**

- 84 • Clarification of those projects that qualify to pay a fee in-lieu of building an affordable  
85 unit. (Ownership projects resulting in 2-3 new units can pay an in-lieu fee and all rental  
86 projects can pay an in-lieu fee).
- 87 • The proposed modifications addressed as part of EXHIBIT A do not modify fee  
88 requirements beyond the existing regulations, except for in the case of rental projects, due  
89 to recent case law.

90  
91 **NEXT STEPS:**

92 Once Planning Commission approves the draft ordinance by way of resolution, staff will prepare  
93 the draft ordinance for formal adoption as part of City Council hearing(s).

94  
95 **ENVIRONMENTAL REVIEW:**

96 The 2009-2014 Housing Element included Housing Program #13, which was carried over as  
97 Housing Program #15 in the 2015-2023 Housing Element and that requires certain amendments to  
98 the City’s inclusionary housing ordinance. This project does not substantively modify the City’s  
99 land use and has been evaluated as part of the certified and adopted MV2040 EIR.<sup>1</sup>

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<sup>1</sup> Pursuant to the California Environmental Quality Act (CEQA, codified at Public Resources Code § 21000 *et seq.*) and the State CEQA Guidelines (14 CCR § 15000 *et seq.*), on October 7, 2013, the City Council certified and adopted an Environmental Impact Report (EIR) for the MV2040 General Plan and 2009-2014 Housing Element (State Clearinghouse No. 2013052005) based on the written findings, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program set forth in Mill Valley City Council Resolution CC1343.

101 Thus, pursuant to CEQA Guidelines Section 15162, no subsequent or supplemental EIR or  
102 Negative Declaration is required in connection with subsequent discretionary approvals of the  
103 same project unless: (i) substantial changes are proposed to the project that indicate new or more  
104 severe impacts on the environment; (ii) substantial changes have occurred in the circumstances  
105 under which the project was previously reviewed that indicates new or more severe environmental  
106 impacts; or (iii) new important information shows the project will have new or more severe  
107 impacts than previously considered; or (iv) additional mitigation measures are now feasible to  
108 reduce impacts or different mitigation measures can be imposed to substantially reduce impacts.

109  
110 **GENERAL PLAN COMPLIANCE:**

111 Modification to the inclusionary housing ordinance is consistent with Housing Element Program  
112 #15, which indicates that the City will re-evaluate and amend the City’s Inclusionary Housing  
113 ordinance, including the project threshold size.

114  
115 **EXHIBITS:**

- 116 A. Draft Inclusionary Housing Regulations
- 117 B. Planning Commission Resolution (15-05)

118  
119 **ONLINE RESOURCES:**

120 <http://www.cityofmillvalley.org/Index.aspx?page=1523>

- 121 • See August 19, 2014 for ZDAC Meeting
- 122 • See September 8, 2014 for Joint City Council/Planning Commission Meeting)

1 Note: Modifications to the existing inclusionary housing ordinance, Chapter  
2 20.80, are reflected below in ~~strikeout~~ and colored text.

3  
4 Chapter 20.80

5  
6 INCLUSIONARY HOUSING REQUIREMENTS

7  
8

<b>Sections:</b>	
20.80.010	Findings.
20.80.020	Purpose.
20.80.030	Definitions.
20.80.040	General <u>inclusionary</u> requirements for new residential developments of 2 or more units <del>or lots</del> .
20.80.050	Inclusionary unit requirements for rental residential developments of <del>10</del> <u>2 or more dwelling units</u> .
20.80.060	Inclusionary <del>unit</del> requirements for ownership residential developments of <del>10</del> <u>4 or more dwelling units or lots and with a gross density of greater than one unit per acre</u> .
20.80.070	Eligibility requirements <u>to rent/own affordable housing units</u> .
20.80.080	<u>Continued affordability</u> and control of resale.
20.80.090	In-lieu participation fee requirements <u>s</u> for residential developments of two <u>(2)</u> <del>to nine or more dwelling units or lots or those with a gross density of less than one unit per acre</del> .
20.80.100	Availability of government subsidies.
20.80.110	Fee <u>Adjustments and</u> <del>Waivers</del> <u>s</u> for inclusionary units.
20.80.120	Technical assistance.
20.80.130	Enforcement.
20.80.140	Appeals.

9  
10  
11 **20.80.010 Findings.**

12 The City finds that Mill Valley is experiencing a housing shortage for low and moderate income  
13 households. A goal of the City is to achieve a balanced community with housing available for  
14 households of a range of income levels. Increasingly, persons with low and moderate incomes  
15 who work and/or live within the City are unable to locate housing at prices they can afford and  
16 are increasingly excluded from living in the City. The City finds that the high cost of newly  
17 constructed housing does not, to any appreciable extent, provide housing affordable by low and  
18 moderate households, and that continued new development which does not include nor contribute  
19 toward lower cost housing will serve to further aggravate the current housing problems by  
20 reducing the supply of developable land. The City further finds that the housing shortage for

21 persons of low and moderate incomes is detrimental to the public health, safety and welfare, and  
22 further that it is a public purpose of the City, and a public policy of the State of California as  
23 mandated by the requirements for a Housing Element of the City's General Plan to make  
24 available an adequate supply of housing for persons of all economic segments of the community.  
25 (Ord. 1077 § 1, April 18, 1988)

26

27 **20.80.020 Purpose.**

28 The purpose of this chapter is to enhance the public welfare and assure that new housing  
29 developments which include two or more residential dwelling units or lots contribute to the  
30 attainment of the City's housing goals by increasing the production of units affordable by  
31 households of low and moderate income, and additionally stimulating funds for development of  
32 low and moderate income housing. (Ord. 1077 § 1, April 19, 1988)

33

34 **20.80.030 Definitions.**

35 For the purposes of this chapter, certain words and phrases shall be interpreted as set forth in this  
36 section unless it is apparent from the context that a different meaning is intended.

- 37 A. "Affordable by" means housing available at a sales price or rent which a certain size  
38 household can afford to pay for housing, as established by the Housing Authority.
- 39 B. "Applicant" means any person, firm, partnership, association, joint venture, corporation, or  
40 any entity or combination of entities which seeks City permits and approvals.
- 41 C. "At one location" means all adjacent land owned or controlled by the applicant, the property  
42 lines of which are contiguous at any point, or the property lines of which are separated only  
43 by a public or private street, road, or other public or private right-of-way.
- 44 D. "Dwelling unit" means a dwelling designed for occupancy by one household. For purposes  
45 of this chapter, a dwelling unit shall not include a residential second unit approved and  
46 constructed under the provisions of Chapter 20.90.
- 47 E. "Housing Authority" means the Housing Authority of the County of Marin, a non-profit  
48 public corporation.
- 49 F. "Housing costs" means the monthly mortgage principal and interest, property taxes,  
50 homeowners insurance, and condominium fees, where applicable, for ownership units; and  
51 the monthly rent for rental units.
- 52 G. "HUD" means the United States Department of Housing and Urban Development or its  
53 successor.
- 54 H. "Inclusionary unit" means an ownership or rental housing unit as required by this chapter,  
55 which is affordable by households with low or moderate income.
- 56 I. "Income eligibility" means the gross annual household income considering household size  
57 and number of dependents, income of all wage earners, elderly or disabled family members  
58 and all other sources of household income.
- 59 J. "In-lieu participation fee" means a fee paid to the City housing fund to facilitate the  
60 construction of low and moderate income housing elsewhere in the community.

- 61 K. “Moderate, low and very low income levels” means those determined periodically by the U.
- 62 S. Department of Housing and Urban Development based on the San Francisco-Oakland
- 63 Standard Metropolitan Statistical Area (SMSA) median income levels by family size:
- 64 1. Moderate ~~h~~Income Households, greater than 80% up to 120% of the SMSA median.
- 65 2. Low ~~h~~Income Households, greater than 50% up to 80% of the SMSA median.
- 66 3. Very ~~h~~low ~~h~~Income Households, under-up to 50% of the SMSA median.
- 67 L. “Project” means a housing or mixed use development at one location including all units or
- 68 lots for which discretionary approvals have been applied for or granted within a 12-month
- 69 period.
- 70 M. “Resale controls” means legal restrictions by which the price of inclusionary units will be
- 71 controlled to insure that the unit is affordable by low or moderate income households over
- 72 time. (Ord. 1077 §§ 1, 3, 4, April 18, 1988)

73

74 **20.80.040 General requirements for new residential developments of two or more units**

75 **~~or lots.~~**

- 76 A. Any discretionary approval for a new residential development project of two or more
- 77 dwelling units or lots including, but not limited to, single family dwellings, apartments,
- 78 condominium developments, townhouse developments, mixed use developments, or land
- 79 subdivisions shall have conditions attached which will assure compliance with the provisions
- 80 of this chapter. Such conditions shall specify the timing of in-lieu fees and/or the construction
- 81 of the inclusionary units, the number of inclusionary units at appropriate price levels,
- 82 provision for income certification and screening of potential purchasers and/or renters of
- 83 inclusionary units and a resale control mechanism.

84 In addition, the conditions shall require a written agreement to indicate the number, type,

85 location, approximate size and construction scheduling of all inclusionary dwelling units and

86 such reasonable information as shall be required by the City for the purpose of determining

87 the applicant’s compliance with this chapter.

- 88 B. All inclusionary units in a project and phases of a project ~~should~~shall be constructed
- 89 concurrently with or prior to the construction of non-inclusionary units, unless the City finds
- 90 that extenuating circumstances exist.
- 91 C. All inclusionary units shall be sold or rented to moderate, low or very low income
- 92 households as certified by the Housing Authority.
- 93 D. Unless the City finds compelling reasons to the contrary, the inclusionary units shall be
- 94 reasonably dispersed throughout the development, shall contain on average the same
- 95 number of bedrooms as the non-inclusionary units in the development, and shall be
- 96 compatible with the design of the market rate units in terms of appearance, materials, and
- 97 finished quality.
- 98 E. With City approval, the applicant shall have the option of reducing the interior amenity level
- 99 of the inclusionary units below that of the market rate units provided such units conform to
- 100 the requirements of applicable building and housing codes.

- 101 F. With City approval, the applicant shall have the option of reducing the square footage of the  
 102 inclusionary units below that of the market rate units provided all units conform to the  
 103 requirements of applicable building and housing codes.
- 104 G. If the City finds that the construction of the required inclusionary units or that the payment  
 105 of in-lieu fees is not feasible or appropriate as part of a development project, the applicant  
 106 shall have the option to construct the inclusionary units on a site or sites within the  
 107 incorporated area of the City not contiguous with the development.
- 108 H. If the City finds that the construction of the required inclusionary units or that the payment  
 109 of in-lieu fees is not feasible or appropriate as part of a development project, the applicant  
 110 shall have the option of donating land on-site or off-site as an alternative to providing the  
 111 inclusionary units on-site.
- 112 I. Prior to City approval of the options set forth in Sections 20.80.040(G) and (H), the City  
 113 must also find that the particular option will result in at least equivalent contribution toward,  
 114 and is consistent with, City goals.
- 115 J. With City approval, the applicant shall have the option, in a homeownership project, of  
 116 providing rental units in a number sufficient to meet the inclusionary requirements of this  
 117 chapter. These rental units shall be subject to Section 20.80.050. The City will assist the  
 118 applicant in obtaining available financing and/or subsidies for such a project.
- 119 K. The City will consider requests to reduce the total number of required moderate income  
 120 inclusionary units within a project, or increase the number of market rate units or lots, if  
 121 some or all of the units are sold or rented at prices affordable to low income households.
- 122 L. The City will consider requests for additional market rate units or lots for moderate income  
 123 units provided in excess of the number of moderate income units required to be developed.
- 124 M. Prior to City approval of the options set forth in Sections 20.80.040(K) and (L), the City  
 125 must find that the request provides at least equivalent contribution toward City goals and is  
 126 consistent with the environmental constraints of the site. (Ord. 1077 § 5, April 19, 1988)
- 127 N. In calculating the number of required inclusionary affordable units, any decimal fraction  
 128 greater than 0.50 shall be construed as requiring one dwelling unit, except for ownership  
 129 projects of 4 new units, which shall build one (1) affordable unit as outlined in this Chapter.

130

131 **20.80.050 Unit requirements for rental residential developments ~~of 2-10 or more dwelling~~**  
 132 **units.**

- 133 A. In rental projects of 2 or more dwelling units shall pay an in-lieu fee as stipulated in  
 134 20.80.090. ~~of 10 or more dwelling units with a gross density of less than seven units per acre,~~  
 135 ~~10% of the units shall be inclusionary rental units affordable by moderate income households.~~  
 136 ~~In rental projects of 10 or more dwelling units with a gross density of seven or more units per~~  
 137 ~~acre, 15% of the units shall be inclusionary rental units affordable by moderate income~~  
 138 ~~households.~~
- 139 B. As an alternative to paying the in-lieu fee, or where an applicant elects to initially rent all of  
 140 the units in a residential ownership project, an applicant may propose to provide dwelling  
 141 units in the residential development project as rental inclusionary units as outlined in Section  
 142 20.80.060, and based on the following provisions:



- 143 1. The inclusionary rental units shall be offered at rent levels not exceeding the maximum  
 144 housing unit rental price affordable by moderate income households at 30% of gross  
 145 income. If housing assistance rental subsidies are available, units ~~should~~ shall be made  
 146 available to lower income households.
- 147 2. ~~B.~~ The City shall contract with the Housing Authority or other City-designated agency to  
 148 screen applicants for the inclusionary rental units, and to refer eligible households to the  
 149 developer or owner. The developer or owner shall retain final discretion in the selection  
 150 of the eligible households; provided, that the same rental terms and conditions (except  
 151 rent levels and income) are applied to tenants of inclusionary units as are applied to all  
 152 other tenants, except as required to comply with government subsidy programs.
- 153 3. ~~C.~~ The Housing Authority or other City-designated agency shall have the authority on  
 154 behalf of the City to require guarantees, to enter into recorded agreements with  
 155 developers, and to take other appropriate steps necessary to assure that the required  
 156 moderate income rental dwelling units are provided and that they are rented to moderate,  
 157 low, or very low income households. When this has been assured to the satisfaction of the  
 158 Housing Authority, or city designee, the Housing Authority or city designee, shall  
 159 prepare a certification indicating that the developer has complied with the requirements  
 160 of this section, and shall transmit this certification to the City. (Ord. 1077 § 6, April 19,  
 161 1988)
- 162 4. To ensure compliance with the Costa Hawkins Act (Chapter 2.7 of Title 5 of Part 4 of  
 163 Division 3 of the Civil Code), the City may only approve a proposal to provide rental  
 164 affordable units if the applicant agrees in a recorded agreement with the City to limit  
 165 rents in consideration for a direct financial contribution or a form of assistance specified  
 166 in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the  
 167 Government Code. Such a proposal must be made by the applicant and not by the City, in  
 168 the event that a court finds that this subsection would violate the Costa-Hawkins Act, the  
 169 court shall sever this subsection from the remainder of this ordinance, and the remainder  
 170 of this ordinance including but not limited to the requirement that an applicant pay the in-  
 171 lieu fee shall remain in full force and effect.

172

173 **20.80.060 Inclusionary unit requirements for ownership residential developments ~~of 10~~**  
 174 **four (4) or more dwelling units or lots and with a gross density of greater than**  
 175 **one unit per acre.**

- 176 A. In ownership residential projects of 2-3 new dwelling units, the applicant shall pay the in-  
 177 lieu fee as outlined in Section 20.80.90.
- 178 B. In ownership residential projects of ~~10~~ four (4) or more new dwelling units ~~or lots with a~~  
 179 ~~gross density greater than one and less than seven units or lots per acre,~~ a minimum of 10%  
 180 of the units shall be inclusionary units sold at prices affordable by moderate income  
 181 households. In ownership residential projects of 10 or more units ~~with a gross density of~~  
 182 ~~seven or more units per acre,~~ a minimum of 15% of the units shall be inclusionary units sold  
 183 at prices affordable by moderate income households.
- 184 B. The inclusionary units required by this section are to be made available for purchase by  
 185 moderate-income households by action of the City of Mill Valley in accordance with the  
 186 inclusionary housing policies of the most recently adopted Housing Element of the ~~1984~~

187 Mill Valley General Plan. This represents an affordable housing program in which the  
188 Housing Authority of the County of Marin is designated to act as the implementing agent  
189 for the City.

190 C. The applicant shall be required to offer to the Housing Authority all such inclusionary units  
191 as are required by this section for sale to eligible purchasers for a period of not less than 90  
192 days from the date of the City's permission to occupy. Sale restrictions are removed in the  
193 event the Housing Authority does not complete the sale to an eligible purchaser (purchase  
194 contingent on a one percent of sales price refundable cash deposit and initiation of escrow  
195 within 30 days of submission of cash deposit) within 90 days from the date of project  
196 completion. The Housing Authority shall advise all prospective purchasers of the resale  
197 restriction applicable to ownership inclusionary units as specified in Section 20.80.080.

198 D. The Housing Authority shall review the assets and household income of prospective  
199 purchasers of the ownership inclusionary units on a project-by-project basis. The Housing  
200 Authority shall advertise the inclusionary units to the general public. Upon notification of  
201 the availability of ownership units by the developer, the Housing Authority shall seek and  
202 screen qualified purchasers through a process involving applications and interviews. Where  
203 necessary, the Housing Authority shall hold a lottery to select purchasers. In general, the  
204 selection process shall be designed to give preference first to employees of the City of Mill  
205 Valley and the Mill Valley School District, then to current residents of Mill Valley and then  
206 to people employed in Mill Valley.

207 E. The Housing Authority shall be given the responsibility to monitor the occupancy of each  
208 inclusionary unit in a discrete fashion to guard against potential program abuses and  
209 violations of the deed restrictions. Any irregularities or suspected abuses will be reported to  
210 the City in writing for any action it deems appropriate. (Ord. 1077 § 7, April 19, 1988)

211 F. As an alternative to providing the inclusionary units as provided in this Section, an applicant  
212 may elect to pay the in-lieu fee as described in Section 20.80.090.

213

214 **20.80.070 Eligibility requirements**

215 A. In establishing moderate household income, the Housing Authority shall consider, among  
216 other things, the median household income data provided periodically by HUD, household  
217 size and number of dependents, and all sources of family income and assets.

218 B. Every purchaser of an inclusionary dwelling unit shall certify by a form acceptable to the  
219 City that the unit is being purchased for the purchaser's primary place of residence and that  
220 the purchaser does not own another residence. The Housing Authority staff shall verify this  
221 certification. Failure, by the purchaser, to maintain eligibility for homeowners property tax  
222 exemption shall be construed to mean that the inclusionary unit is not the primary place of  
223 residence of the purchaser.

224 C. The policies governing the selection of home buyers for certification by the Housing  
225 Authority under the provisions of this chapter shall be established by the City. These shall  
226 include, but not be limited to, maximum income and asset limits, order of preference and  
227 policy on first-time home buyers. The most recently established criteria shall be used by the  
228 Authority in structuring the lottery. The City shall notify the Housing Authority in writing  
229 of any additions or modifications to its selection policies.

230 **20.80.080 Control of resale.**

- 231 A. In order to maintain the availability of the housing units constructed pursuant to the  
232 requirements of this chapter, the City shall impose the following resale conditions. The price  
233 received by the seller of an inclusionary unit shall be limited to the purchase price plus an  
234 increase based on: the Bay Area Consumer Price Index; an amount consistent with the  
235 increase, since the date of purchase in the Marin County median income established by the  
236 Housing Authority; or the fair market value, whichever is least.
- 237 B. Ownership inclusionary units constructed under the requirements of this chapter which are  
238 subsequently offered for sale or sold shall be offered to the Housing Authority or its  
239 assignee at the price stipulated in Section 20.80.080(A) for a period of 90 days from the date  
240 a notification of intent to sell is given by the first purchaser or subsequent purchaser(s).  
241 Homeownership inclusionary units shall be resold only to moderate income households as  
242 determined to be eligible for inclusionary units by the Housing Authority according to the  
243 requirements of this chapter. The seller shall not levy or change any additional fees nor shall  
244 any “finders fee” or other monetary consideration be allowed other than real estate  
245 commissions and closing costs.
- 246 C. The following procedure shall be followed in the event of the resale of an inclusionary unit:
- 247 1. The Housing Authority shall notify the City in writing within five working days  
248 of receipt of notice of intent to sell or notice of default. In so doing, the Authority shall  
249 also advise the City of its proposed schedule and methodology for selecting qualified  
250 buyers (conforming to the City’s most recently established criteria for eligibility and  
251 selection); indicate the re-sale price set pursuant to the formula in the applicable deed  
252 restriction; specify the dates by which the Housing Authority is required under the  
253 provisions of that deed restriction to exercise its option to purchase and to close  
254 escrow. If, in the determination of the Housing Authority, the re-sale price generated  
255 from the formula in the deed restriction would result in a price not affordable to  
256 families earning less than 120% of median income as published by HUD, the Housing  
257 Authority will advise the City of this fact so that the City may consider using an  
258 alternate basis for establishing the maximum income limits for eligibility.
- 259 2. Within 60 calendar days of receipt of the notice of intent to sell, the Housing  
260 Authority shall conduct a lottery from an active and current list of interested  
261 applicants.
- 262 3. Within five working days after the lottery the Housing Authority shall advise the  
263 City in writing of progress in finding an eligible and qualified buyer. Such advisory  
264 notice shall offer a determination on the feasibility of selling the unit to an eligible  
265 buyer within the time prescribed.
- 266 4. Within 10 days prior to the date established in the deed restriction requiring the  
267 Housing Authority to exercise its option to purchase, the Housing Authority and City  
268 will consult to jointly determine how to proceed and whether or not the Housing  
269 Authority (or the City) should exercise the option to purchase. The City shall confirm  
270 such understanding with the Housing Authority in writing. Such correspondence  
271 would indicate, for example, that the Housing Authority or City will exercise the  
272 option; or that the option is not to be exercised.

- 273 5. If the Housing Authority and City determine that the option to purchase should  
 274 be exercised, the Housing Authority will designate either the prospective eligible  
 275 buyer from the lottery and/or the City as assignee and proceed according to  
 276 instructions in the deed restrictions to exercise this option and open escrow.
- 277 6. After the first 30 days of the option period, the Housing Authority shall submit a  
 278 status report to the City and assist in exploring alternatives to purchase if appropriate.  
 279 At 60 days into the option period, or upon sale to an eligible buyer, whichever is  
 280 earlier, the Housing Authority shall again notify the City of the status of the re-sale.
- 281 7. If it becomes necessary, for whatever reason, for the Housing Authority and City  
 282 to purchase a unit, then the Authority and City shall immediately meet to determine the  
 283 most expeditious course of action to take, so that the unit can be re-sold. At such time,  
 284 the parties shall consider how closing costs, loss of interest, and other unrecoverable  
 285 expenditures, shall be handled.
- 286 D. The Housing Authority may, during the re-sale process, make recommendations to the City  
 287 that a more current form of the deed restrictions be substituted at the time of re-sale. This  
 288 might, for example, adjust the time frames or the re-sale formula.
- 289 E. If the Housing Authority, its assignee or the City elects not to exercise its option to purchase  
 290 the unit, the original developer of the unit or the City shall have the exclusive right to  
 291 repurchase the unit for the price specified in Section 20.80.080(A) for a period of 30 days  
 292 from the date of the decision by the Housing Authority.
- 293 F. The owners of any inclusionary unit shall attach and legally reference in the grant deed  
 294 conveying title of any such inclusionary ownership unit a declaration of restrictions  
 295 provided by the Housing Authority, stating the restrictions imposed pursuant to this chapter.  
 296 The grant deed shall afford the grantor and the City the right to enforce the attached  
 297 declaration of restrictions. The declaration of restrictions shall include all applicable resale  
 298 controls, occupancy restrictions, and prohibitions as required by this chapter.
- 299
- 300 **20.80.090 In-lieu participation fee requirements for residential developments of two or**  
 301 **more units to ~~nine dwelling units or lots or those with a gross density of less~~**  
 302 **~~than one unit per acre.~~**
- 303 A. If an applicant for a project identified in Sections 20.80.50 or 20.80.60 elects not to provide  
 304 inclusionary units, the applicant ~~Projects of two to nine three residential ownership dwelling~~  
 305 ~~units or lots or those with a gross density of less than one unit per acre~~ shall contribute an  
 306 in-lieu participation fee to the City housing fund. These in-lieu fees shall be used by the City  
 307 or its designee such as a non-profit housing development corporation for the purpose of  
 308 developing affordable housing for low or moderate income households elsewhere in the  
 309 City. Inclusionary units and in-lieu fees are not considered to be mutually exclusive.
- 310 B. In-lieu participation fee for the second residential unit ~~or lot~~ and each residential unit ~~or lot~~  
 311 thereafter shall be calculated as follows:
- 312 1. Residential second units approved and constructed under the provisions of  
 313 Chapter 20.90 and other residential dwelling units with a gross enclosed floor area of  
 314 700 square feet or less: Exempt from in-lieu fee.

- 315           2. Residential dwelling units with a gross enclosed floor area of 701 to 1,000 square  
316 feet: 5% of the current inclusionary subsidy differential established by the City.
- 317           3. Residential dwelling units with a gross enclosed floor area of 1,001 to 1,500  
318 square feet: 8% of the current inclusionary subsidy differential established by the City.
- 319           4. Residential dwelling units with a gross enclosed floor area greater than 1,500  
320 square feet or new residential lots: 11% of the current inclusionary subsidy differential  
321 established by the City.

322           The inclusionary subsidy differential is the difference between what a moderate income  
323 family (earning 100% of median income) can afford to pay for housing and the estimated  
324 total cost of a new unit for appropriate size, as determined by the City. The inclusionary  
325 subsidy differential shall be calculated and adjusted annually by the Director of Planning  
326 and Building.

- 327   C. The in-lieu participation fees shall be due prior to occupancy of the first unit or recording of  
328 the Final Subdivision Map. At the option of the developer, in-lieu participation fees may be  
329 paid as proceeds from sales are received; in which case, the in-lieu fees shall constitute a  
330 lien on the property, which shall be recorded as a separate agreement concurrent with the  
331 recordation of the final subdivision map. The in-lieu fee shall be due within 24 months from  
332 the date of the recordation of the final subdivision map for the development, regardless. The  
333 lien on each unit shall be released when its proportionate share is paid out of escrow. The  
334 lien shall include a provision for foreclosure under power of sale on any unsold units or lots  
335 if the in-lieu payment is not made within 24 months from the recordation of the lien,  
336 regardless of whether or not all of the individual units or lots have been sold. (Ord. 1077 §  
337 8, April 19, 1988)

338

339   **20.80.100 Availability of government subsidies.**

340   It is the intent of this chapter that the requirements for inclusionary units affordable by moderate  
341 income families shall not be determined by the availability of government subsidies. This is not to  
342 preclude the use of such programs or subsidies, if available.

343

344   **20.80.110 Fee waiver for inclusionary units.**

345   In the attempt to avoid any undue burden on developers who are required to provide moderate  
346 income inclusionary units under the provisions of this chapter, the City may waive or reduce park  
347 dedication, and other City fees applicable to the inclusionary units of a proposed housing  
348 development.

349

350   **20.80.120 Technical assistance.**

351   In order to emphasize the importance of securing low and very low income housing as a part of  
352 this program, the City staff, other agencies, and/or designated consultants shall provide advice on  
353 financial subsidy programs to applicants. The City may recommend that this be a part of the  
354 environmental review process. During individual project review, consideration shall be given to  
355 an economic analysis which will indicate the most suitable methods for the terms of this chapter  
356 to be implemented. This is to be done for the purpose of increasing the feasibility and lowering  
357 the cost of units affordable to moderate, low and very low income families.

358

359 **20.80.130 Enforcement.**

360 A. The provisions of this chapter shall apply to all agents, successors and assignees of an  
361 applicant once only for development of the site. No building permit or occupancy permit  
362 shall be issued, nor any development approval granted, after the effective date of this  
363 ordinance, for any project which does not meet the requirements of this chapter.

364 B. In addition to, or in lieu of, the provisions of subsection A of this section, the City shall  
365 institute appropriate legal actions or proceedings including but not limited to equitable relief  
366 for the enforcement of this chapter. (Ord. 1261 § 9, November 4, 2013)

367

368 **20.80.140 Appeals.**

369 A. Any person aggrieved by any action involving denial, suspension or revocation of a building  
370 or occupancy permit or denial, suspension or revocation of any development approval may  
371 appeal such action or determination to the Planning Commission, with further appeal  
372 possible to the City Council.

373 B. Any applicant or other person who contends that his or her interests are adversely affected  
374 by a determination or requirement of the Housing Authority staff in regard to this chapter  
375 may appeal to the City Council. The appeal shall set forth specifically wherein the action of  
376 the Housing Authority staff fails to conform to the provisions of this chapter thereby  
377 adversely affecting the applicant's interests. The City Council may reverse or modify any  
378 determination or requirement of the Housing Authority if it finds that the action under  
379 appeal does not conform with the provisions of this chapter or to the contract between the  
380 Housing Authority and the City. (Ord. 1034 § 1, May 20, 1985)

381

382

**RESOLUTION NO. PC15-05**

**A RESOLUTION OF THE MILL VALLEY PLANNING COMMISSION  
RECOMMENDING THAT THE MILL VALLEY CITY COUNCIL  
REVIEW AND ADOPT AN ORDINANCE TO AMEND TITLE 20.80  
“INCLUSIONARY HOUSING REGULATIONS” OF THE MILL VALLEY  
MUNICIPAL CODE (EXHIBIT A)**

**WHEREAS**, one of the two primary goals of the MV2040 General Plan is to “encourage continued diversity of housing, income levels and lifestyles in the community”; and

**WHEREAS**, the 2015-2023 Housing Element is one of the nine elements of the MV2040 General Plan; and

**WHEREAS**, the 2015-2023 Housing Element was certified by the California Department of Housing and Community Development (HCD) in May 2015; and

**WHEREAS**, the Section 2 of the 2009-2014 Housing Element establishes a “Housing Plan” identifying housing goals, policies and programs relative to the maintenance, preservation, improvement, and development of housing for all economic segments of the community; and

**WHEREAS**, the 2009-2014 Housing Element included Housing Program #13, which was carried over as Housing Program #15 in the 2015-2023 Housing Element and that requires certain amendments to the City’s inclusionary housing ordinance; and

**WHEREAS**, Housing Element Program #15 of the 2015-2023 Housing Element identifies updating Mill Valley’s inclusionary housing regulations contained in Title 20.80 of the Mill Valley Municipal Code, including reducing the project size threshold for when projects are required to provide affordable units rather than being permitted to pay an in lieu fee; and

**WHEREAS**, pursuant to the California Environmental Quality Act (CEQA, codified at Public Resources Code § 21000 *et seq.*) and the State CEQA Guidelines (14 CCR § 15000 *et seq.*), on October 7, 2013, the City Council certified and adopted an Environmental Impact Report (EIR) for the MV2040 General Plan and 2009-2014 Housing Element (State Clearinghouse No. 2013052005) based on the written findings, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program set forth in Mill Valley City Council Resolution CC1343; and

**WHEREAS**, on May 4, 2015, the City Council found that no additional environmental review was required in connection with the 2015-2023 Housing Element, said project being appropriately covered by the Environmental Impact Report (EIR) for the MV2040 General Plan and 2009-2014 Housing Element (State Clearinghouse No. 2013052005) (see Mill Valley City Council Resolution No. 15-18); and

**WHEREAS**, pursuant to CEQA Guidelines Section 15162, no subsequent or supplemental EIR or Negative Declaration is required in connection with subsequent discretionary approvals of the same project unless: (i) substantial changes are proposed to the project that indicate new or more severe impacts on the environment; (ii) substantial changes have occurred in the circumstances under which the project was previously reviewed that indicates new or more severe environmental impacts; or (iii) new important information shows the project will have new or more severe impacts than previously considered; or (iv) additional mitigation measures are now feasible to reduce impacts or different mitigation measures can be imposed to substantially reduce impacts.

**WHEREAS**, this project does not substantively modify the City’s land use and has been evaluated as part of the certified and adopted MV2040 EIR.

**WHEREAS**, Planning Commission, along with the community, had the opportunity to review and discuss the regulations set forth in EXHIBIT A “Draft Inclusionary Housing Regulations” at the following publicly noticed Planning Commission meetings: July 14, 2015 and June 23, 2015.

**NOW, THEREFORE, BE IT RESOLVED** that Planning Commission finds, in connection with the proposed inclusionary housing ordinance amendments, that:

1. Substantial changes to the project or the circumstances surrounding the project have not occurred that would create new or more severe impacts than those evaluated in the previously certified EIR. The project will not have one or more significant effects not discussed in the previously certified EIR, not have more severe effects than previously analyzed, and that additional or different mitigation measures are not required to reduce the impacts of the project to a level of less than significant. In addition, no new information of substantial importance has surfaced since the certification of the MV 2040 General Plan EIR.
2. Based on these findings and all evidence in the record, the Planning Commission concurs with the staff determination that no additional environmental review is required pursuant to CEQA in connection with the City’s consideration of this Housing Element program and related inclusionary housing ordinance amendments.

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that the Planning Commission of the City of Mill Valley, having considered all evidence in the public record, does hereby recommend that the Mill Valley City Council:

Review and adopt the proposed modifications to Title 20 “Zoning” of the Mill Valley Municipal Code, amending Chapter 20.80 “Inclusionary Housing Regulations” (EXHIBIT A)



Motion by Commissioner:

Second by Commissioner:

**THE FOREGOING RESOLUTION was adopted at Planning Commission meeting of July 14, 2015 by the following vote:**

AYES:

NOES:

ABSENT:

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Ricardo Capretta, Chair, City of Mill Valley Planning Commission

ATTEST:

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Vin Smith, Director of Planning & Building