**EXHIBIT LRP 2006-00003:A**

ORDINANCE NO. **3169**

AN ORDINANCE AMENDING TITLE 22 OF THE SAN LUIS OBISPO COUNTY CODE, THE LAND USE ORDINANCE, CHAPTER 22.12 BY ADDING AN INCLUSIONARY HOUSING ORDINANCE

The Board of Supervisors of the County of San Luis Obispo ordains as follows:

SECTION 1: Chapter 22.12 of the Land Use Ordinance, Title 22 of the San Luis Obispo County Code, is hereby amended by adding Section 22.12.080 as follows:

**22.12.080 – Inclusionary Housing**

**A. Purpose statement.** The purpose and intent of this Section is to:

1. Implement Housing Element Program HE 1.9 - Require Development of Affordable Housing.

2. Fulfill the responsibility of the County under State Housing Law (California Government Code Section 65580 et seq.) to provide housing opportunities for all economic segments of the County.

3. Address the shortage of affordable housing in the County for households with incomes below 160 percent of median.

4. Provide opportunities for persons who work throughout the County to live closer to employment centers in order to reduce the length and number of vehicle trips.

5. Promote the vitality of local businesses by ensuring that housing affordable to their employees is available near the place of business.

**B. Exemptions and Applicability.** This Section shall apply to all residential development with two or more dwelling units and to all commercial or industrial development with 5,000 square feet of floor area or more, except as follows:

**1. Exemptions**. The following development is exempt from the requirements of this Section:

a. Development that is non-residential or non-commercial in nature, such as educational facilities (i.e., schools and museums), religious institutions, public facilities and public infrastructure.

b. Rental housing secured for a period of 10 years or longer, to the satisfaction of the County.

c. Affordable housing development secured for a period of 30 years or longer, to the satisfaction of the County.

d. Any residential condominium conversion that is subject to the provisions of Section 22.22.080 – Residential Single Family and Multi-Family Categories.

e. Residential development that complies with California Government Code Section 65915 et seq. (the "State density bonus law"). Any affordable housing units provided in conformance with the State density bonus law will simultaneously satisfy the requirements of this Section.

f. Dwelling unit(s) of less than 900 square feet in size (each).

g. Residential addition, repair or remodel work that does not increase the number of existing residential dwellings.

h. Commercial structure repair or maintenance. Commercial structure addition or conversion to different commercial uses, cumulatively not exceeding 5,000 square feet.

i. Reconstruction of any structures destroyed by fire, flood, earthquake or other acts of nature provided that the reconstruction of the site does not increase the number of residential units or size of non-residential floor area beyond County approved pre-existing conditions.

j. Live-work units secured for a period of 10 years or longer, to the satisfaction of the County.

k. Residential care-taker units.

l. Residential care facilities.

m. Farm support quarters.

n. Employee housing units (deed restricted for very low, low, moderate and/or workforce households).

o. Secondary dwelling units.

2. **Applicability**. The following development is subject to the requirements of this Section:

a. Residential development with two or more dwelling units.

b. Commercial/industrial development with a floor area of 5,000 s.f. or more.

c. Mixed-use development.

d. Subdivision of land.

e. Construction of two or more new housing units on existing parcels.

**C. Inclusionary requirements for residential development.** For all residential development subject to this Section, the base density shall be determined at the time of application submittal pursuant to Subsection D, and a portion of that base density shall be restricted for occupancy by workforce, moderate, low or very-low income households as follows:

1. **Required Inclusionary housing by income group**. Inclusionary housing units shall be provided for each income group as follows:

Percentage of Base Density that shall be Inclusionary Housing Units

| Income Group | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 and thereafter |
|---|---|---|---|---|---|
| Workforce households | 1% | 2% | 3% | 4% | 5% |

| | | | | | |
|---|---|---|---|---|---|
| Moderate income households | 1% | 2% | 3% | 4% | 5% |
| Low income households | 1% | 2% | 3% | 4% | 5% |
| Very Low income households | 1% | 2% | 3% | 4% | 5% |
| Project Total | 4% | 8% | 12% | 16% | 20% |

Year 1 shall begin on the 31st day following the adoption of this Section by the Board of Supervisors.

2. **Establishing the Inclusionary requirement and fee schedule.** For all residential development the Inclusionary requirement is established upon approval of the land use permit or tentative approval of the subdivision map, whichever comes first. When the applicant proposes to pay in-lieu fees, pursuant to Subsection E.2 below, the appropriate in-lieu fee schedule to use will be determined as follows:

   a. Projects subject to ministerial permit or discretionary permit approval shall be subject to the in-lieu fee schedule in effect at the time that the construction permit for each single family dwelling unit or each multi-family structure is issued.

   b. For residential subdivisions in which the subdivider pays the in-lieu fee at the time of map recordation, the subdivision shall be subject to the in-lieu fee schedule in effect at the time the final map is recorded. The subdivided parcels resulting from the original subdivision map and subsequent development of the subdivided parcels shall not be subject to further Inclusionary housing requirements, unless the parcels are subject to further subdivisions that eliminate the boundaries of the subdivided parcel.

   c. For residential subdivisions, including residential condominium subdivisions, in which the subdivider defers fee payment until sale of the parcel or unit, the subdivided parcels or units shall be subject to the in-lieu fee schedule in effect at the time that the residential construction permit(s) for the parcel or unit is issued.

3. **Sequence of income groups applicable to required Inclusionary housing units**. The first required Inclusionary housing unit shall be for Workforce households, the second for moderate-income households, the third for lower-income households and the fourth for very low-income households. This sequence is repeated for each additional required Inclusionary housing unit(s).

4. **Fraction of Inclusionary housing units**. If the number of Inclusionary housing units required includes a fraction of a unit then the applicant shall pay a pro-rated in-lieu fee for the fractional unit, pursuant to Subsection E.2, or provide a whole unit.

5. **Subdivision of land**. The subdivision of land is subject to this Section. Alternative methods may be used to satisfy the inclusionary housing requirements, pursuant to Subsections E, F.1 and F.3. If in-lieu fees or housing impact fees are used, the fees may be paid prior to map recordation or deferred. If the fees are deferred then an Inclusionary Housing Agreement and/or trust deed(s) shall be recorded at the time the subdivision map is recorded, pursuant to Subsections J.3 and J.4.

**D. Determining base density.** Base density is the maximum number of dwellings, or in the case of a residential land division, the maximum number of residential parcels that may be allowable on a given site under this Title not including any density bonuses as provided under this Title or state statute. Establishing the base density is necessary for purposes of determining how many Inclusionary housing units must be provided and the total number of dwellings that may be allowable including the density bonus units. However, base density as determined under this Section does not affect the provisions of

this Title for review of proposed developments or land divisions which are not subject to this Section. Base density is determined as follows:

1. **Residential Multi-Family category**. The base density for a site in the Residential Multi-Family land use category is the number of multi-family dwellings that are allowable on the site in compliance with Section 22.10.130.B - Multi-Family Dwellings.

2. **Residential Single-Family category**. The base density for a site in the Residential Single-Family land use category is equal to the total usable site area divided by the applicable minimum parcel size in compliance with Subsections 22.22.080.A, B. and C., except that average slope for the entire site may be used for the slope test under Subsection 22.22.080.B instead of the average slope for each proposed parcel.

3. **Other land use categories**. The base density for a site in a land use category other than Residential Single-Family or Residential Multi-Family is the maximum number of residential parcels that are allowable under this Title, not including any density bonus as provided under this Title.

E. **Alternative methods for residential projects.** One or more alternative methods, such as constructing the Inclusionary housing units on-site or off-site, payment of an in-lieu fee or donation of land may be used to satisfy the requirements of this Section. Pursuant to Subsection J below the applicant shall submit a statement that includes a description of the required number of Inclusionary housing units and any alternative methods proposed to meet the requirements of this Section.

1. **On-site Inclusionary housing units**. The applicant may choose to provide all or a portion of the required Inclusionary housing units on-site, provided that the Inclusionary housing units are not constructed on prime agricultural soil.

2. **In-lieu fee**. The applicant may propose to pay an in-lieu fee instead of providing Inclusionary housing unit(s). The fee may be paid when construction permits are issued or be deferred. An Inclusionary Housing Agreement is required when fee payment is deferred until after construction permit issuance or subdivision map recordation, pursuant to Subsections J.3 and J.4. Fee payment may be deferred until the time of sale of individual ownership residential units or prior to final permit approval for occupancy for individual rental residential units. Where feasible, the cost of the in-lieu fee shall be spread evenly among the project's residential units. The in-lieu fee schedule is updated annually by resolution of the Board of Supervisors, and can be found in the Implementation Guidelines Manual.

3. **Off-site construction**. To the extent allowed by this Title and the applicable County ordinances, the applicant may propose to build Inclusionary housing units off-site. The number and sequence of Inclusionary housing units built off-site shall be equivalent to what is required for on-site Inclusionary housing units. Off-site unit(s) shall meet all the applicable standards and criteria of this Section, including but not limited to the standards of Subsection H.5. – Off-site construction.

4. **Land donation**. The applicant may donate land located on-site or off-site. Such land donation(s) shall meet all of the standards and criteria that apply to land donation offers, including but not limited to the standards of Subsection H.6. – Land Donation.

F. **Inclusionary requirements for commercial, industrial and mixed-use development.** Commercial and industrial development of 5,000 square feet or more of floor area for commercial or industrial use requires the payment of a housing impact fee or construction of Inclusionary housing units.

1. **Payment of housing impact fee**. The fee may be paid when the construction permit is issued. An Inclusionary Housing Agreement is required when fee payment is deferred until after

construction permit issuance or subdivision map recordation, pursuant to Subsections J.3 and J.4. The housing impact fee may be paid prior to final permit approval for occupancy, for new structures, structural additions, and/or for any remodel work or conversion of existing structures to a new or different commercial or industrial use. For commercial subdivisions, fee payment may be deferred no later than the sale of individual units. If no construction permit is issued then the housing impact fee shall be paid prior to approval of any land use permit for new or converted commercial or industrial structure(s). The housing impact fee schedule is updated annually by resolution of the Board of Supervisors, and can be found in the Implementation Guidelines Manual.

2. **Establishing the inclusionary requirement and fee schedule.** For all commercial, industrial, and mixed-use development the Inclusionary requirement is established upon approval of the land use permit or tentative approval of the subdivision map, whichever comes first. When the applicant proposes to pay housing impact fees, pursuant to Subsection F.1 above, the appropriate housing impact fee schedule to use will be determined as follows:

   a. Projects subject to ministerial permit or discretionary permit approval shall be subject to the housing impact fee schedule in effect at the time that the construction permit for each structure is issued. Projects for which no construction permit will be issued shall use the housing impact fee schedule in effect at the time that the land use permit is approved.

   b. For commercial/industrial subdivisions in which the subdivider pays the housing impact fee at the time of map recordation, the subdivision shall be subject to the housing impact fee schedule in effect at the time the final map is recorded. The subdivided parcels resulting from the original subdivision map and subsequent development of the subdivided parcels shall not be subject to further Inclusionary housing requirements, unless the parcels are subject to further subdivisions that eliminate the boundaries of the subdivided parcel.

   c. For commercial/industrial subdivisions, including condominium subdivisions, in which the subdivider defers fee payment until sale of the parcel or unit, the subdivided parcels or units shall be subject to the housing impact fee schedule in effect at the time that the construction permit(s) for the parcel or unit is issued.

3. **Alternative methods for commercial/industrial projects.** As an alternative to paying the housing impact fee, the applicant may propose to satisfy the Inclusionary housing requirement by using any one or a combination of the following alternative methods:

   a. **Construction of housing units.** To the extent allowed by this Title and County ordinances, the applicant may propose to build Inclusionary housing units on-site or off-site. The required number of Inclusionary housing units shall be determined as follows:

      (1) Calculate the required amount of housing impact fee(s).

      (2) The housing impact fee shall produce the same number of inclusionary housing units that an equal amount of in-lieu fees would produce for a residential project.

      (3) Refer to the in-lieu fee schedule and find the fee amount for a median sized dwelling unit. The median sized dwelling unit is determined annually by the Department of Planning and Building. The in-lieu fee schedule is in the Implementation Guidelines Manual.

      (4) The fee amount for each whole inclusionary housing unit is indicated by the in-lieu fee schedule. Refer to the whole unit cost associated with the median sized dwelling unit.

(5) When the fee collected from the project would produce a fraction of an inclusionary housing unit, the applicant shall pay a pro-rated housing impact fee or provide a whole unit.

The sequence of Inclusionary housing units by income level for both commercial and residential projects shall comply with Subsection C.3 above. Off-site unit(s) shall meet all of the applicable standards and criteria of this Section, including but not limited to the standards of Subsection H.5 – Off-site construction. Any additional residential units built shall be subject to Subsection C – Inclusionary requirements for residential development.

b. **Land donation.** The applicant may offer to donate land located on-site or off-site. Such land donation(s) shall meet all of the standards and criteria of this Section, including but not limited to the standards of Subsection H.6 – Land donation.

c. **Employee housing.** The applicant may offer to provide employee housing units located on-site or off-site. Such units may be rental units or ownership units, and shall be deed restricted pursuant to Section 22.12.070 – Housing Affordability Standards. The number of employee housing units and the sequence of units by income level shall comply with the standards of Subsection F.3.a above.

d. **Employee housing program.** The applicant may provide an affordable housing program(s) to its employees. Examples of such programs include, but are not limited to, a rental assistance program or a first-time homebuyer program. The number of employee housing units and the sequence of units by income level shall comply with the standards of Subsection F.3.a above.

e. **Credit for alternative methods.** Credit towards satisfying the Inclusionary housing requirement of a commercial/industrial project by using any of the alternative methods listed above shall be based on the monetary value of the proposed alternative method(s), at a one-to-one dollar value. The applicant shall describe all proposed alternative methods in an Inclusionary housing proposal that is submitted with the initial project application. The Planning Director, at his or her sold discretion shall determine the monetary value of the proposed alternative method(s) and whether the proposal provides the required amount of fee(s) and/or inclusionary housing units in conformance with this Section. No credit will be awarded for any surplus value, and any deficit balance shall be met through payment of a housing impact fee. All affordable housing that results from the use of alternative methods shall be located in the same Housing Market Area as the commercial/industrial project. Refer to the Implementation Guidelines Manual for the Housing Market Area map.

4. **Mixed-use projects**. In any mixed-use project the commercial and industrial floor areas are exempt from this Section and the residential areas are subject to Subsection C – Inclusionary requirements for residential development. A mixed-use project shall have at least 25% of its total floor area designated for habitable residential use.

G. **Development incentives for residential and commercial/industrial projects.** When the Inclusionary housing units required by this Section are to be constructed on-site or off-site the following incentives shall be available:

1. **Density bonus.** Within any approved residential development one density bonus unit shall be granted for each required Inclusionary housing unit that is constructed on-site or off-site. Such density bonus units are exempt from affordable housing standards. Any residential development that complies with California Government Code Section 65915 ("State density bonus law") is exempt from this Section. If a residential development qualifies for a density bonus under both

the California Government Code and this Section, then the applicant may use either the state or local density bonus benefits, but not both. The granting of density bonus benefits shall not, in and of itself, require a general plan amendment, zoning change or other separate discretionary approval. The base density and density bonus increase shall be granted in any approved residential development unless the decision making body finds that the proposed development would have a specific adverse impact on the physical environment or on public health and safety that cannot be satisfactorily mitigated or avoided without rendering the development unaffordable.

2. **Less than base density**. If the County approves the proposed residential development at an overall density lower than the base density, then the Inclusionary requirement of this Section shall be applied only to the actual number of market-rate units approved, not to a larger base density number.

3. **On-site housing for residential projects.** When all of a project's Inclusionary requirements are met by providing Inclusionary housing units on-site then the Inclusionary requirement of Subsection C shall be reduced by 25%. The standards of Subsection C regarding the sequence of the Inclusionary housing units by income group shall be adjusted evenly to reflect the 25% reduction.

4. **On-site housing for commercial/industrial projects.** When all of a project's Inclusionary requirements are met by providing Inclusionary housing units on-site then the Inclusionary requirement of Subsection F.3.a. shall be reduced by 25%. The sequence of the Inclusionary housing units by income group shall be adjusted evenly to reflect the 25% reduction.

5. **Modification of development standards for residential projects.** If the number of dwellings constructed on-site, in compliance with this Section, will exceed the base density amount then at the applicant's request the County shall grant at least one of the following additional incentives: a modification of the residential development standards for parking, height, private yard space, or setback. Requests shall be submitted along with the first application for a proposed project. The requested modification shall be granted unless the County finds that the proposed development would have a specific adverse impact on the physical environment or on public health and safety that cannot be satisfactorily mitigated or avoided without rendering the development unaffordable.

6. **Modification of development standards for commercial/industrial projects.** To assist with the placement of Inclusionary housing units within a commercial/industrial project, at the applicant's request the County shall grant at least one of the following additional incentives: modification of the development standards for parking, height, or setback. This incentive(s) shall be applied only to on-site Inclusionary housing units but not to any commercial portion of the project. Requests shall be submitted along with the initial application for a proposed project. The requested modification shall be granted unless the County finds that the proposed development would have a specific adverse impact on the physical environment or on public health and safety that cannot be satisfactorily mitigated or avoided without rendering the development unaffordable.

7. **Development of affordable housing within incorporated city limits.** Whenever an applicant uses an alternative method to satisfy the requirements of this Section, such as providing off-site Inclusionary housing units or a donation of land for affordable housing, and this results in the development of new affordable housing units within the urban limits of an incorporated city within this County, then the Inclusionary housing requirement of the applicant's project shall be reduced by 25% If a portion, but not all, of a project's Inclusionary housing requirement is met in this manner, then a proportionate amount of the project's Inclusionary housing requirement will be reduced.

**H. Development standards for Inclusionary housing.** Inclusionary housing units and land donation(s) that are provided in compliance with this Section are subject to the following standards:

1. **Affordability**. The selection of eligible households, calculation of sales prices and rental rates, and preparation of long term affordability agreements shall be in conformance with the provisions of Section 22.12.070 – Housing Affordability Standards. Inclusionary housing units shall be and shall remain affordable pursuant to Section 22.12.070.

2. **Inclusionary housing design in residential and mixed-use projects.**

   a. The Inclusionary housing units shall have compatible exterior designs and finishes to the development's market-rate units.

   b. The Inclusionary housing units may be smaller in size and have different interior finishes, features, and appliances so long as the interior components are durable, of good quality and consistent with contemporary standards for new housing.

   c. In 50 percent or more of the Inclusionary housing units the average number of bedrooms shall be equal to or greater than the average number of bedrooms in the development's market-rate units.

   d. Up to 30 percent of the Inclusionary housing units may be secondary dwelling units, pursuant to Section 22.30.470 – Residential-Secondary Dwellings.

3. **Inclusionary housing design in commercial/industrial projects.** Inclusionary housing units within commercial/industrial development shall be designed to include the following:

   a. An equal mix of one and two bedroom sized units, except where the County determines that other unit size(s) are suitable.

   b. Exterior designs and finishes that are compatible with the development's commercial/ industrial units.

   c. Convenient unit location(s) that provide safe pedestrian, vehicular and emergency response access.

   d. Placement within the commercial/industrial project to avoid noise, lighting and traffic conflicts.

4. **Existing housing units as Inclusionary housing units**. Existing housing units on the site of a new development may be designated as Inclusionary housing units if they meet the design standards of this Section. Existing housing units off-site shall not qualify as Inclusionary housing units.

5. **Off-site construction**. The applicant may propose to construct the required Inclusionary housing unit(s) at an off-site location in the same Housing Market Area. Refer to the Implementation Guidelines Manual for the Housing Market Area map.

   a. Prior to approval of such off-site units the County shall find either that the off-site units will not create an adverse concentration of affordable housing units within any certain area or that the public benefit of providing affordable housing justifies the adverse concentration.

b. The transferred unit(s) and receiver site shall comply with this Title and all applicable County ordinances.

c The transferred Inclusionary housing unit(s) shall not be included when calculating the required number of Inclusionary housing units for the receiver site, nor shall the receiver site qualify for any density increase in residential units on the basis of the transferred Inclusionary housing unit(s) that it receives.

6. **Land donation**. The applicant may donate land that is located on-site or off-site of the proposed development. The County shall evaluate such donations based on the following criteria:

a. Value of the land is of equal or greater value than the amount of the in-lieu fees or housing impact fees that would otherwise be required. An appraisal shall be submitted as prepared by qualified appraiser acceptable to the County. Costs associated with the appraisal, title insurance, property transfer, document recordation and related costs shall be borne by the applicant.

b. The land shall be donated to a nonprofit or for-profit developer acceptable to the County that is willing to develop affordable housing on the land.

c. The land must be acceptable to the Planning Director who will review to determine if the land is capable of being developed with residential units in conformance with the Land Use Element and Land Use Ordinance, and that such development of the land would not be significantly restricted by environmental constraints, hazardous materials, public service constraints, or public health and safety concerns.

d. Applicants/Developers may pool land to meet the Inclusionary housing requirements for multiple developments subject to County approval.

e. The donated land shall be located in the same Housing Market Area as the development project. Refer to the Implementation Guidelines Manual for the Housing Market Area map.

I. **Eligible residents.** The prospective residents of Inclusionary housing units that are developed in conformance with this Section are subject to the following standards and requirements:

1. **Income categories**. Only households that qualify as very low, low, moderate or workforce households pursuant to Section 22.12.070 – Housing Affordability Standards shall be eligible to rent, purchase or occupy an Inclusionary housing unit.

2. **Income verification**. The County or other organization designated by the County shall verify the household income of prospective renters or buyers prior to occupancy of any Inclusionary housing units. In addition to satisfying the income eligibility requirements of this Title, prospective residents shall also:

a. Prove that total household assets do not exceed one-half of the purchase price of the desired ownership unit.

b. Prove that they do not currently own a home.

3. **Primary Residence**. Any household that purchases an Inclusionary housing unit or occupies a rental Inclusionary housing unit shall occupy that unit as its primary residence, and shall not rent out any portion of the unit.

4. **Eligibility list**. The County may, at its discretion, maintain an active list of households that are eligible to rent or buy Inclusionary housing units.

## J. Compliance procedures.

1. **Residential development application**. For any project with an Inclusionary housing requirement the applicant shall submit the standard permit application along with a statement describing the Inclusionary housing proposal. The applicant's statement shall include the following information:

   a. A brief description of the proposed project, including its Inclusionary housing requirements, the number, type and location of Inclusionary housing units (on-site, off-site, or existing designated units), proposed tenure (for sale or rental), targeted income category for each unit, size comparison of market-rate and Inclusionary housing units, any alternative method(s) chosen to meet the Inclusionary housing requirements, calculation of in-lieu fee, an offer of land donation in conformance with the criteria described in Subsection H.6 above, or any combination thereof.

   b. A description of any development incentives, as described in Subsection G above, that are requested of the County.

2. **Commercial development application**. Applicants of (non-mixed-use) commercial and industrial development projects may pay the housing impact fee described in Subsection F.1 above, or propose an alternative method(s) pursuant to Subsection F.3 and submit an Inclusionary housing proposal.

3. **Payment of fees.** Whenever a fee payment will be deferred to a time after the issuance of a construction permit or after recordation of a final map an Inclusionary Housing Agreement and/or trust deed shall be executed, pursuant to Subsection J.4.

4. **Inclusionary Housing Agreement and/or trust deed.** The provision of Inclusionary housing units on-site or off-site, or the deferment of fees as described in Subsection J.3 – Payment of fees, or the use of any alternative method(s) described in Subsection E – Alternative methods for residential projects, or in Subsection F.3 – Alternative methods for commercial/industrial projects, are subject to this Subsection. Project compliance shall be secured with an Inclusionary Housing Agreement, except that deferred fees on vacant, subdivided parcels shall be secured by trust deed(s). The Inclusionary Housing Agreement or trust deed(s) shall be prepared by County Counsel.

   a. The Inclusionary Housing Agreement shall be executed and recorded to the County's satisfaction prior to any construction permit issuance or subdivision map recordation, whichever comes first. If no construction permit or subdivision map is required, then the Inclusionary Housing Agreement shall be executed and recorded prior to the approval of any land use permit. Any deferred fee amount shall be based on the fee schedule described above in Subsections C.2 and F.2 – Establishing the Inclusionary requirement and fee schedule.

   b. The relevant terms and conditions of the Inclusionary Housing Agreement shall be recorded as deed restrictions on owner-occupied Inclusionary housing units and projects containing rental Inclusionary housing units. All deferred fee amount(s) shall be recorded as a lien against the project site. In cases where the requirements of this Section are satisfied through a donation of land or development of off-site Inclusionary housing units the Inclusionary Housing

Agreement must simultaneously be recorded against the property to be donated or where the off-site units are to be developed.

c. If a subdivision will create vacant parcels for sale and the payment of in-lieu or housing impact fee(s) will be deferred to a time after map recordation, then a trust deed shall be recorded on each parcel when the map is recorded. The deferred fee amount shall be determined at the time that construction permit(s) are issued on the parcel and fee payment shall occur prior to final permit approval for occupancy or unit sale. The trust deed(s) shall indicate that future fee schedule(s) will be used to calculate deferred fee amounts. Where feasible the fee requirements shall be spread evenly among the parcels. Pursuant to Title 29, future fee schedules will be approved annually by resolution of the Board of Supervisors.

5. **Timing of construction and land donations**. Completion of Inclusionary housing units and securing of donated land shall occur as follows:

a. On-Site Inclusionary housing units.

(1) Small projects. For projects with a total of five residential units or less, the on-site Inclusionary housing unit shall be available for occupancy prior to final permit approval for occupancy of any on-site market-rate housing units.

(2) Large projects. For projects with a total of six or more residential units, whenever an individual Inclusionary housing unit is available for occupancy then a single group of up to five market-rate units may also be made available for occupancy. The project may have separate phases of unit occupancy wherein each phase includes one Inclusionary unit and up to five market-rate units.

(3) Alternative timing. The County may agree to an alternative timing arrangement, and if so then an agreement with a nonprofit housing development organization or a bond shall be provided to the County's satisfaction. If a bond is used, the bond shall secure a dollar amount adequate to cover the total cost of the bonded on-site units.

b. Off-site Inclusionary housing units shall be available for occupancy prior to final permit approval for occupancy for any on-site housing unit. The County may agree to an alternative timing arrangement, and if so then an agreement with a nonprofit housing development organization or a bond shall be provided to the County's satisfaction. If a bond is used, the bond shall secure a dollar amount adequate to cover the total cost of the bonded off-site units.

c. Any donation of land shall be secured by a trust deed that is recorded to the County's satisfaction prior to any construction permit issuance or subdivision map recordation, whichever comes first. If no construction permit or subdivision map is required, then the deed shall be recorded prior to the approval of any land use permit. The County may agree to an alternative timing arrangement, and if so then a bond shall be posted to the County's satisfaction. If a bond is used, the bond shall secure a dollar amount adequate to cover the total cost of the land to be donated.

K. **Special findings for inclusionary housing development.** Approval of any development pursuant to this Section is subject to the following findings:

1. **Housing Market Area.** All off-site inclusionary housing development proposed by the applicant shall be located within the same Housing Market Area unless the Review Authority determines that there are compelling public benefits for locating such development in an

adjacent Housing Market Area. One such benefit may be improvement of the job-housing balance within the same geographical area.

2. **Level of Severity III (LOS III) for water supply.** In communities with a certified Level of Severity III (LOS III) for the water supply, whenever the use of inclusionary density bonus units will cause a development to exceed the residential density otherwise allowed by County ordinances, then prior to project approval the decision-making body shall find substantial evidence to support a conclusion that the local water purveyor can supply adequate water for the project and for full community build-out within it's service area as provided for in the General Plan. If there is an inadequate water supply to support density bonus units then the developer shall use other options to satisfy the inclusionary housing requirement, such as payment of fees or donation of land.

**L. Adjustment or waivers.** The requirements of this Section may be adjusted or waived (in whole or in part) if the applicant demonstrates to the County that a reasonable relationship does not exist between the impact of a proposed development and the requirements of this Section, or that applying the requirements of this Section would take property in violation of the United States or California Constitutions. At the time of submittal of a project's first development application the applicant shall also make an initial request for an adjustment or waiver and shall submit evidence to adequately demonstrate the appropriateness of the request. The request shall include financial and other information that the County deems necessary to perform an independent evaluation of the applicant's rationale for the request. In making a determination the County may assume each of the following when applicable; (i) that the applicant is subject to the Inclusionary housing requirements of this Section; (ii) the extent to which the applicant may benefit from development incentives provided pursuant to Subsection G above; and (iii) that the applicant will be obligated to provide the most economical Inclusionary housing units feasible in terms of construction, design, location and tenure. The Director of Planning and Building will consider the request and issue a written decision. The Director's decision may be appealed in the manner and within the time set forth in Section 22.70.050 – Appeals. If the Planning Director determines requirements of this Section may be adjusted or waived (in whole or in part) then the Inclusionary housing requirement(s) of the proposed development shall be modified, adjusted or waived to reduce the obligations under this Section.

**M. Severability.** If any clause, sentence, section, part or provision of this Section that is imposed upon any person or entity is found to be unconstitutional, illegal, or invalid, then such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, subsection, part, provision, or such person or entity, and shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, parts, provisions, or the effect of this Section on other persons or entities.

**N. Annual Report.** The Planning Director shall prepare an annual report for the Planning Commission and the Board of Supervisors, and present the report at an agendized meeting. The report shall describe the progress made during the prior reporting period with regards to providing affordable housing pursuant to this ordinance. The Planning Commission may make recommendations regarding the ordinance or its implementation.

**O. Definitions.**

1. **Affordable** means housing which can be purchased or rented by a household with very low, low, moderate or workforce income, as described in Section 22.12.070 – Housing Affordability Standards.

2. **Affordable Housing Fund** means the fund established by the County to receive all in-lieu fees and housing impact fees contributed pursuant to this Section. See Title 29 – Affordable Housing Fund.

3. **Affordable housing unit** – see "Affordable."

4. **Applicant or Developer** means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities, which seeks County approval(s) for all or part of a residential or commercial development.

5. **Building valuation** means the total value of all construction work for which a construction permit is required, as determined by the Chief Building Official.

6. **Commercial/industrial development** means a development project involving primarily non-residential uses, including, but not limited to, retail, office, commercial-service, industrial and manufacturing uses as described in Title 22 – Land Use Ordinance for which a construction permit application or subdivision application was submitted to the County.

7. **County** means the County of San Luis Obispo.

8. **Household** means all the persons who occupy a housing unit.

9. **Housing impact fee** means a fee paid to the County to off-set the demand for housing created by commercial development.

10. **Implementation Guidelines Manual** means the guidelines manual that is produced and updated by the Department of Planning and Building. This manual includes current in-lieu and housing impact fee schedules, and the Housing Market Area Map.

11. **Inclusionary Housing Agreement** means a recorded agreement executed by the County and applicant or developer as provided by Subsection J – Compliance procedures.

12. **Inclusionary housing unit** means a dwelling unit which is developed under the provisions of this Section and which is and remains affordable to households of very low-income, lower-income, moderate income or workforce pursuant to this Section and Section 22.12.070 – Housing Affordability Standards.

13. **In-lieu fee** means a fee paid to the County as an alternative to the production of Inclusionary housing units.

14. **Low or lower income household** means a household whose annual income does not exceed 80 percent of the median income of the County of San Luis Obispo, pursuant to Land Use Ordinance Section 22.12.070 – Housing Affordability Standards.

15. **Market-rate unit** means a dwelling unit in a residential development or mixed-use development that is not an Inclusionary housing unit.

16. **Mixed-use development** means a development project that combines residential and non-residential uses on the same site, where the proposed residential unit(s) is in addition to any on-site residential caretaker unit(s) developed pursuant to Section 22.30.430. For the purposes of this Section, a mixed-use project shall have at least 25% of its total floor area designated for habitable residential use.

17. **Moderate income household** means a household whose annual income does not exceed 120 percent of the median income of the County of San Luis Obispo, pursuant to Land Use Ordinance Section 22.12.070 – Housing Affordability Standards.

18. **Off-site unit** means an Inclusionary housing unit that will be built separately or at a different location than the main development.

19. **On-site unit** means an Inclusionary housing unit that will be built as part of the main development.

20. **Planning Director** means the director of the Department of Planning and Building or his authorized representative.

21. **Residential development** means a development project which results in the subdivision of land or real property for residential use and/or the construction or conversion of dwelling(s), including but not limited to: detached residential single family dwellings, multi-family dwelling units, apartments, condominiums and mobilehomes, but excluding condominium conversion, mobilehome park conversion and mixed-use development..

22. **Review Authority** means the County representative or decision making body that has administrative permit and/or discretionary permit review authority over the application for subdivision and/or development project(s).

23. **Very-low income household** means a household whose annual income does not exceed 50 percent of the median income of the County of San Luis Obispo, pursuant to Land Use Ordinance Section 22.12.070 – Housing Affordability Standards.

24. **Workforce household or Workforce income household** means a household whose annual income does not exceed 160 percent of the median income of the County of San Luis Obispo, pursuant to Land Use Ordinance Section 22.12.070 – Housing Affordability Standards.

SECTION 2: Section 22.12.070F of the Land Use Ordinance, Title 22 of the San Luis Obispo County Code, is hereby amended as follows:

**F. Continued availability of affordable housing.** Affordable housing units which are subject to the standards of this section shall continue to be reserved as affordable housing as follows:

1. **For sale units**. Prior to the issuance of any project construction permits the property owner and the County shall enter into and record a Master Affordable Housing Agreement, prepared by County Counsel, assuring that the project will provide designated affordable housing unit(s). When a designated affordable housing unit is first sold to an eligible buyer, or when the owner-builder of a designated affordable housing unit requests final permit approval for occupancy of his residence, the buyer and County or the owner-builder and County shall enter into an Option to Purchase at Restricted Price Agreement which shall be recorded as an encumbrance on the property, and secured by a recorded deed of trust. The said Option to Purchase at Restricted Price Agreement shall supersede the Master Affordable Housing Agreement. Under the terms of the Option to purchase at Restricted Price Agreement, the maximum resale price of the housing unit shall be limited for a period of 45 years to the same formula used to determine the initial sales price, except that current information regarding median income, mortgage financing interest rate, taxes, insurance and homeowners association dues shall be applied. Adjustments to the maximum resale price as determined by the Planning and Building Department shall be made to ensure that the resale price is not lower than the original sales price, to increase the maximum resale price by the value of structural improvements made by the owner, and to comply with requirements of State or Federal mortgage lenders as necessary. Ownership of the property may only be transferred to a party that agrees to execute a new Option to Purchase at Restricted Price Agreement with a term of 45 years.

2. **Inclusionary housing units**: For any Inclusionary housing unit that is subject to Section 22.12.080 of this title and will be sold as an ownership unit, if there is a sales price difference of 10% or less between the current appraised market value of the unit and the affordable sales price established by this Section then that Inclusionary housing unit shall be reserved as affordable housing for a period of thirty (30) years in the following manner. When the Inclusionary housing unit is first sold to an eligible buyer, or when the owner-builder of a designated Inclusionary housing unit requests final permit approval for occupancy of his residence, the buyer and the County or the owner-builder and the County shall enter into an Option to Purchase at Restricted Price Agreement which shall be recorded as an encumbrance on the property and secured by a recorded deed of trust. The said Agreement and deed of trust shall establish the monetary difference between the initial affordable purchase price and the initial appraised market value as a loan payable to the County. Said loan shall accrue interest at a rate equal to 4.5 points added to the 11th District Cost of Funds as currently published by the Federal Home Loan Bank, amortized over 30 years. The monthly payments of principal and interest shall be waived by the County as long as the owner who was previously approved by the County as an eligible buyer or as an owner-builder continues to own and reside in the Inclusionary unit as his or her principal residence, and also continues to be a legal resident of the County of San Luis Obispo. Upon resale to a non-eligible buyer the County loan amount shall be determined by the Planning and Building Department and shall be adjusted to ensure that the resale price is not lower than the original affordable price, and to allow recovery of any downpayment and value of structural improvements.

The provisions of this Section shall not impair the rights of a first mortgage lender secured by a recorded deed of trust. The purchase money lender(s) shall have a higher priority than the County's loan. The County's security shall be prioritized as a second mortgage. This first priority applies to the purchase money lender's assignee or successor in interest, to:

a. Foreclose on the subject property in compliance with the remedies permitted by law and written in a recorded contract or deed of trust; or

b. Accept a deed of trust or assignment to the extent of the value of the unpaid first mortgage to the current market value in lieu of foreclosure in the event of default by a trustor; or

c. Sell the property to any person at a price consistent with the provisions of this Section subsequent to exercising its rights under the deed of trust.

In addition, the following types of transfers shall remain subject to the requirements of the County's loan and right of first refusal: transfer by gift, devise, or inheritance to the owner's spouse; transfer to a surviving joint tenant; transfer to a spouse as part of divorce or dissolution proceedings; or acquisition in conjunction with a marriage; or transfer as a result of foreclosure.

3. **Rental units**. Prior to the issuance of any project construction permits the property owner and the County shall enter into and record a Rent Limitation Agreement, prepared by County Counsel, assuring that the project will provide designated affordable housing unit(s). Rent levels shall be based on the same criteria as those used to compute the original rent ceiling in Subsection E for a period of at least 55 years. The rent levels will be enforced through the Review Authority imposing applicable conditions at the time of land use permit or subdivision approval for the project. If ownership of the property is transferred during the initial 55 years period, then a new Rent Limitation Agreement shall be executed with a term of 55 years.

SECTION 3. Regarding the Final Environmental Impact Report (FEIR) issued for amendments, the Board of Supervisors hereby certifies that the FEIR has been prepared and completed in compliance

with the California Environmental Quality Act, California Public Resources Code Section 21000 et seq. and the Board of Supervisors reviewed and considered the information contained in the FEIR prior to approving the amendments and that the FEIR reflects the lead agency's independent judgment and analysis. Further, the Board of Supervisors hereby adopts the recommended findings of the County Environmental Coordinator which are attached hereto and incorporated herein as though fully set forth.

SECTION 4. If any section, subsection, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 5: This ordinance shall take effect and be in full force on and after 30 days from the date of its passage hereof. Before the expiration of 15 days after the adoption of this ordinance, it shall be published once in a newspaper of general circulation published in the County of San Luis Obispo, State of California, together with the names of the members of the Board of Supervisors voting for and against the ordinance.

PASSED AND ADOPTED by the Board of Supervisors of the County of San Luis Obispo, State of California, on the 9th day of December, 2008, by the following roll call vote, to wit:

AYES: Supervisors Bruce S. Gibson, K.H.'Katcho' Achadjian, Jerry Lenthall, and Chairperson James R. Patterson

NOES: Supervisor Harry L. Ovitt

ABSENT: None

ABSTAINING: None

/s/James R. Patterson
Chairman of the Board of Supervisors,
County of San Luis Obispo,
State of California

ATTEST:

JULIE L. RODEWALD
County Clerk and Ex-Officio Clerk
of the Board of Supervisors
County of San Luis Obispo, State of California

By: /s/Sandy Currens, Deputy Clerk

[SEAL]

ORDINANCE CODE PROVISIONS APPROVED
AS TO FORM AND CODIFICATION:

WARREN R. JENSEN.
County Counsel

By:_____
Deputy County Counsel

Dated: _____