

EXHIBIT A

ORDINANCE NO. _____ (N.C.S.)

AN ORDINANCE OF THE CITY OF SALINAS AMENDING ARTICLE III OF ARTICLE 17 (HOUSING) OF THE SALINAS MUNICIPAL CODE RELATING TO THE PROVISION OF INCLUSIONARY HOUSING

BE IT ORDAINED BY THE COUNCIL OF SALINAS:

SECTION ONE: Finding and Declarations.

The city council of Salinas finds and declares as follows:

- a) Although Salinas has historically included much of the housing affordable to Monterey County's workforce, housing costs have escalated sharply, increasing faster than incomes for most groups in the community. In 2014, the Salinas Metropolitan Statistical Area (MSA) ranked as the fifth least affordable region in the United States. There is a severe shortage of adequate, affordable housing for extremely low, very low, lower, median, moderate, and workforce income households, as evidenced by the following:
 - (1) According to the Salinas housing element, 12.7 percent of Salinas households are extremely low income households; 15.6 percent of Salinas households are very low income households; and 19.1 percent are lower income households. In 2014 only 16.7 percent of the homes sold in the Salinas MSA were affordable to a household earning the area's median income, and prices have risen rapidly since then. Median rents are not affordable to extremely low, very low, and lower income households, which together comprise almost half the city's population.
 - (2) Because of the shortage of affordable housing in Salinas, half of the households in the city overpay for housing. The housing element found that forty-nine percent of Salinas households who own their homes pay more than thirty percent of income for housing, and twenty-four percent pay more than fifty percent of their income for housing. Fifty-two percent of renter households pay more than thirty percent of income for housing, and twenty-four percent of renter households pay more than fifty percent of their income for housing. These households are overpaying for their housing, according to standards of the United States Department of Housing and Urban Development, and the percentage of those overpaying has substantially increased since 2000, when thirty-one percent of Salinas owners and forty percent of Salinas renters paid more than thirty percent of their income for housing. Nearly three-quarters of lower income households are overpaying for housing. Providing decent housing at affordable costs allows households to utilize their resources for other necessary pursuits, such as education, food, investment, and saving for retirement. Providing decent rental housing at affordable costs allows households to save money to purchase a home.
 - (3) Many households are overcrowded. According to the housing element, Salinas households are much larger than the state average. The average household size in Salinas is 3.66, while in California the average household size is 2.90. Over seventeen percent of all households in Salinas are overcrowded. Five percent of households in the city are severely overcrowded.
- b) The 2015-2023 regional housing needs allocation for the city, mandated by California Government Code Section 65584 and prepared by the Association of Monterey Bay Area Governments, states that fifty-eight percent of new housing in Salinas should be affordable to very low, lower, and moderate income families. Federal and state government programs do not provide nearly enough affordable housing or subsidies to provide the required percentage of moderate, lower, or very low income households.

- c) Goal H-1 in the city's housing element is to provide a variety of affordability levels to address existing and projected housing needs in Salinas. It is the city's policy to enhance the public welfare by encouraging a variety of housing types to give households of all types and income levels the opportunity to find suitable housing. (Policy H-1.1) It is also the city's policy to encourage the geographic dispersal of affordable housing throughout the city. (Policy H-1.6) The housing element further encourages the development of affordable housing with a focus on the needs of the local workforce (Policy H-3.1), through inclusionary housing (Policy H-3.7), and through collaborative partnerships with market-rate housing developers (Policy H-3.8). The city can achieve its goals of providing more affordable housing and achieving an economically balanced community only if part of the new housing built in the city is affordable to households with limited incomes.
- d) Action H-8, "Inclusionary Housing" in the city's housing element states that the city will continue to implement its inclusionary housing program and is in the process of updating the inclusionary ordinance, including reviewing the in-lieu fee. The city intends to review and update if necessary its inclusionary ordinance every five years. The proposed amendments to the inclusionary ordinance are intended to implement housing element action H-8. In particular, to ensure economic feasibility, the proposed amendments reduce the amount of affordable housing required in for-sale projects to 15 to 20 percent (compared with 20 to 35 percent in the city's existing ordinance), allow developers to pay an in-lieu fee as an alternative to providing the required on-site affordable units, and provide additional options that a developer may elect to meet its affordable housing requirements.
- e) The amended inclusionary ordinance codified in this article will substantially advance the city's legitimate interest in providing additional housing affordable to all income levels and dispersed in residential developments in the city because all inclusionary units required by the ordinance codified in this article, including both rental and ownership units, must be affordable to very low, lower, median, moderate, and workforce income households.
- f) New market-rate rental residential developments will create local-serving jobs, of whom a quantifiable number will have very low, low, or moderate incomes, and so will increase the demand for and exacerbate the shortage of housing available for households at these income levels, as demonstrated in the Housing Impact Fee Nexus Study prepared by Vernazza Wolfe Associates, Inc. in January 2016. An additional residential rental housing feasibility study was conducted by Vernazza Wolfe Associates, Inc. in March 2017. The amendments included in this ordinance allow the city to adopt a rental housing impact fee.
- g) Based on the findings above, the city desires to further the public health, safety, and welfare by adopting the requirements contained in this article. Affordable units provided within a development further the community's housing element goals of maintaining both economic diversity and geographically dispersed affordable housing. Requiring builders of new market rate housing to include some housing affordable to very low, lower, median, moderate, and workforce income households is also reasonably related to the impacts of their projects, as demonstrated in the Nexus Study. Providing additional alternatives to for-sale developers, including payment of an in-lieu fee, ensures that developers can construct economically viable projects without public subsidies while incorporating affordable housing into their projects or assisting in providing affordable housing elsewhere in the city.

SECTION TWO: Article 3 (Housing) of Chapter 17 (Housing) of the Salinas Municipal Code is amended to read as follows:

17-6. Purpose

The purpose of this article is to:

- a) Enhance the public welfare by establishing policies which require the development of housing affordable to households of very low, lower, median, moderate, and workforce incomes.
- b) Assist in meeting the city's share of regional housing needs as mandated by State law.

- c) Offset the demand for affordable housing that is created by new market-rate housing development.
- d) Implement the housing element's goals and objectives.

17-7. Definitions

Unless specifically defined in this section, words or phrases used in this article shall be interpreted so as to give this article its most reasonable application.

- a) "Affordable housing plan" means a plan submitted in conformance with Section 17-16 specifying the manner in which inclusionary units will be provided in conformance with this article and consistent with the Salinas General Plan and Chapter 37 of the Salinas Municipal Code.
- b) "Affordable ownership cost" means a reasonable down payment and an average monthly housing cost during the first calendar year of occupancy, including mortgage loan principal and interest, mortgage insurance, property taxes and property assessments, homeowners insurance, homeowners association dues, if any, and all other dues and fees assessed as a condition of property ownership, which does not exceed: (1) 30 percent of 50 percent of area median income for very low income households; (2) 30 percent of 70 percent of area median income for lower income households; (3) 30 percent of 90 percent of area median income for median income households; (4) 30 percent of 110 percent of area median income for moderate-income households; (5) 30 percent of 150 percent of area median income for workforce income households. Area median income shall be adjusted for assumed household size based on unit size as follows: one person in a studio unit, two persons in a one-bedroom unit, three persons in a two-bedroom unit, four persons in a three-bedroom unit, five persons in a four-bedroom unit, and six persons in a five-bedroom unit. The inclusionary housing guidelines may incorporate procedures for determining affordable ownership cost in accordance with this section.
- c) "Affordable rent" means monthly rent, including a reasonable utility allowance and all mandatory fees charged for use of the property, which does not exceed: (1) 30 percent of 50 percent of area median income for very low income households; and (2) 30 percent of 60 percent of area median income for lower income households. Area median income shall be adjusted for assumed household size based on unit size as follows: one person in a studio unit, two persons in a one-bedroom unit, three persons in a two-bedroom unit, four persons in a three-bedroom unit, and five persons in a four-bedroom unit. The inclusionary housing guidelines may incorporate procedures for determining affordable rent in accordance with this section.
- d) "Applicant" or "developer" means a person, persons, or entity that applies for a residential development and also includes the owner or owners of the property if the applicant does not own the property on which the development is proposed.
- e) "Area median income" means the annual median income for Monterey County, adjusted for household size, as published periodically in the California Code of Regulations, Title 25, Section 6932, or its successor provision.
- f) "Attached Development" means townhomes, condominiums or unit(s) in which the physical connection of two structures share any part of a common wall or roof with no more than one hundred and twenty units.
- g) "Building permit" includes full structural building permits as well as partial permits such as foundation-only permits.
- h) "City Manager" means the city manager of the city or his or her designee.
- i) "Common ownership or control" refers to property owned or controlled (including by an option to purchase or a purchase agreement) by the same person, persons, or entity, or by separate entities in

which any shareholder, partner, member, or family member of an investor of the entity owns ten percent (10%) or more of the interest in the property.

- j) "Contiguous property" means any parcel of land that is: (1) touching another parcel at any point; (2) separated from another parcel at any point only by a public right of way, private street or way, or public or private utility, service, or access easement; or (3) separated from another parcel only by other real property under common ownership or control of the applicant.
- k) "Density bonus units" means dwelling units approved in a residential development under California Government Code section 65915 et seq. that are in excess of the maximum residential density otherwise permitted by the Salinas General Plan or zoning ordinance.
- l) "Downtown Area" means the area within the boundaries of the Central City Overlay District as defined per Zoning Code 37-40.300.
- m) "First approval" means the first of the following approvals to occur with respect to a residential development: development agreement, general plan amendment, specific or area plan adoption or amendment, zoning, rezoning, pre-zoning, planned development permit, tentative map, parcel map, conditional use permit, special use permit, or building permit.
- n) "For-sale residential development" means any residential development or portion of a residential development that involves the creation of one or more additional dwelling units or lots that may lawfully be sold individually. A for-sale residential development also includes a condominium conversion as described in Article VII of Chapter 31.
- o) "Future Growth Area" is that incorporated area designated by the 2002 General Plan, located north of Boronda Road, and bounded by San Juan Grade Road to the west, Williams Road to the east, and Rogge Road and the future extensions of Russell Road and Old Stage Road to the north.
- p) "Inclusionary housing agreement" means an agreement in conformance with Section 17.16 of this article between the city and an applicant, governing how the residential development shall comply with this article.
- q) "Inclusionary housing guidelines" means the requirements for implementation and administration of this article adopted by city council.
- r) "Inclusionary unit" means a dwelling unit required by this article to be affordable to very low, lower, median, moderate, or workforce income households.
- s) "Lower income households" means those households whose annual income, adjusted for household size, does not exceed the low income limits, adjusted for household size, applicable to Monterey County as defined in California Health and Safety Code Section 50079.5 and published annually in Title 25 of the California Code of Regulations, Section 6932 (or its successor provision).
- t) "Market rate unit" means a new dwelling unit in a residential development that is not an inclusionary unit.
- u) "Median income households" means households whose annual income, adjusted for household size, does not exceed area median income.
- v) "Moderate income households" means households whose annual income, adjusted for household size, does not exceed the moderate income limits applicable to Monterey County as defined in California Health and Safety Code Section 50093 and published annually in Title 25 of the California Code of Regulations, Section 6932 (or its successor provision).

- w) "Planning permit" means any discretionary approval of a residential development, including but not limited to a development agreement, general plan amendment, specific or area plan adoption or amendment, zoning, rezoning, pre-zoning, planned development permit, tentative map, parcel map, conditional use permit, or special use permit.
- x) "Rental residential development" means any residential development or portion of a residential development that creates one or more additional dwelling units that cannot lawfully be sold individually.
- y) "Residential development" means any development project requiring a planning permit or a building permit, if no planning permit is needed, for which an application has been submitted to the city, and where the residential development would either (1) create ten or more additional dwelling units or lots; (2) convert ten or more existing rental dwelling units to condominiums; or (3) is contiguous to property under common ownership or control of the applicant where the combined residential capacity of all of the applicant's property under the General Plan designation or zoning is ten or more additional residential units or lots.
- z) "Surplus inclusionary unit" means any inclusionary unit constructed as part of a residential development without city funds or nine percent low income housing tax credits, and which is excess of the numerical requirement for inclusionary units for that residential development. "City funds" include both money which originates directly from the city, such as general fund monies, and that which originates from other sources, such federal and state funds, but that the city allocates. "City funds" also include any waiver of city fees.
- aa) "Unit type" means detached single-family home, duplex, triplex, townhome, or multifamily construction.
- bb) "Very low-income households" means households whose annual income, adjusted for household size, does not exceed the very low income limits applicable to Monterey County as defined in California Health and Safety Code Section 50105 and published annually in Title 25 of the California Code of Regulations, Section 6932 (or its successor provision).
- cc) "Workforce income households" means households whose annual income, adjusted for household size, does not exceed 160 percent of area median income.

17-8. Exemptions

This article shall not apply to any of the following:

- a) Projects that are not residential developments as defined in Section 17-7(x), including but not limited to those residential developments creating fewer than ten additional dwelling units or lots.
- b) Residential developments which are developed pursuant to the terms of a development agreement executed prior to the effective date of this ordinance or which have otherwise received a vested right to proceed without conforming to this article under state law, provided that such residential developments shall comply with any affordable housing requirements consistent with the development agreement.
- c) Residential developments exempted by Government Code section 66474.2 or 66498.1, provided that such residential developments shall comply with any predecessor ordinance in effect on the date the application for the development was deemed complete.
- d) Residential developments located in the Downtown Area, unless the city council by resolution determines that, based on market conditions, the provisions of this article will be applied in the Downtown Area.

- e) Residential developments that have submitted a complete planning or building permit application along with full payment of required application fees to the city prior to the effective date of this ordinance, provided that such residential developments shall comply with any approved affordable housing plan and any predecessor ordinance applicable to the development.
- f) One-hundred percent affordable low-income housing projects with either a recorded deed restriction, restrictive covenant or regulatory agreement of no less than thirty years.

17-9. Basic Inclusionary Housing Options – For-Sale Residential Developments

An applicant for a for-sale residential development may elect to provide one of the basic options described in this section or elect to propose one of the options described in Section 17-13. The requirements of this section are minimum requirements and do not preclude a residential development from providing additional affordable units or affordable units with lower rents or sales prices than required by this section.

Calculations of the number of required inclusionary units shall exclude any density bonus units that are part of the residential development. Fractions of one-half or greater shall be rounded up to the next highest whole number, and fractions of less than one-half shall be rounded down to the next lowest whole number.

- a) **On-Site For-Sale Inclusionary Units.** An applicant for a for-sale residential development may elect to provide on-site for-sale inclusionary units at affordable ownership cost as follows:
 - (1) Option One: A minimum of four percent of the dwelling units in the residential development shall be affordable to very low income households, eight percent shall be affordable to lower income households, four percent shall be affordable to moderate income households, and four percent shall be affordable to workforce income households, for a minimum twenty percent inclusionary units total.
 - (2) Option Two: A minimum of six percent of the dwelling units in the residential development shall be affordable to median income households, six percent to moderate income households, and three percent to workforce income households, for a minimum fifteen percent inclusionary units total.
- b) **On-Site Rental Inclusionary Units.** An applicant for a for-sale residential development may elect to provide on-site rental inclusionary units at affordable rent as follows:
 - (1) Option One: A minimum of eight percent of the dwelling units in the residential development shall be affordable to very low income households and four percent shall be affordable to lower income households, for a minimum twelve percent inclusionary units total.
 - (2) Option Two: If an applicant elects Option One under Section 17-9(a) above, the applicant may elect to provide the very low income units and the lower income units as rental units rather than for-sale unit, so that a minimum of four percent of the dwelling units in the residential development shall be available to very low income households at affordable rent, eight percent shall be available to lower income households at affordable rent, four percent shall be available to moderate income households at affordable ownership cost, and four percent shall be affordable to workforce income households at affordable ownership cost, for a minimum twenty percent inclusionary units total. Under this option, an applicant may elect to pay rental housing impact fees in order to satisfy the rental obligation.
 - (3) To ensure compliance with the Costa-Hawkins Residential Rent Control Act (Civil Code Section 1954.50 *et seq.*), the city may approve on-site rental inclusionary units only if the applicant agrees in a rent regulatory agreement with the city to limit rents in consideration for a direct financial contribution or a form of assistance specified in Density Bonus Law (Government Code Section 65915 *et seq.*).

- (4) Any rent regulatory agreement for rental units in a for-sale residential development shall include provisions for sale of the inclusionary units and relocation benefits for tenants of the inclusionary units if the owner of the residential development later determines to offer the inclusionary units in the residential development for sale at affordable ownership cost.
- c) **Payment of In-Lieu Fees.** An applicant for a for-sale residential development may elect to pay in-lieu fees as described in Section 17-14 and adopted from time to time by resolution of the city council.

17-10. Basic Inclusionary Housing Options – Rental Residential Developments

An applicant for a rental residential development may elect to provide one of the basic options described in this section or elect to propose one of the options described in Section 17-13. The requirements of this section are minimum requirements and do not preclude a residential development from providing additional affordable units or affordable units with lower rents or sales prices than required by this section.

- a) **Payment of Rental Housing Impact Fees.** An applicant for a rental residential development may elect to pay rental housing impact fees as described in Section 17-14 and adopted from time to time by resolution of the city council. If an applicant chooses to pay rental housing impact fees, the applicant will also make twelve percent of the units within the development available to section 8 housing choice voucher program participants so long as the section 8 housing choice voucher program is in effect.
- b) **On-Site Rental Inclusionary Units.** An applicant for a rental residential development may elect to provide on-site rental inclusionary units at affordable rent as follows:
 - (1) A minimum of eight percent of the dwelling units in the residential development shall be affordable to very low income households and four percent shall be affordable to lower income households, for a minimum twelve percent inclusionary units total.
 - (2) Calculations of the required number of inclusionary units shall exclude any density bonus units that are part of the residential development. Fractions of one-half or greater shall be rounded up to the next highest whole number, and fractions of less than one-half shall be rounded down to the next lowest whole number.
 - (3) To ensure compliance with the Costa-Hawkins Act (Chapter 2.7 of Title 5 of Part 4 of Division 3 of the Civil Code), the city may approve on-site rental inclusionary units only if the applicant agrees in a rent regulatory agreement with the city to limit rents in consideration for a direct financial contribution or a form of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.
 - (4) An applicant may submit a request to provide different on-site rental percentages and affordability levels in order to comply and satisfy the requirements of the California tax credit allocation committee 4% or 9% low-income housing tax credit programs. Submittal of such request must be reviewed and approved by the city.
- c) The city may require on-site rental inclusionary units at such time as current appellate case law in *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles* (2nd Dist. 2009) 175 Cal.App.4th 1396, is overturned, disapproved, or depublished by a court of competent jurisdiction or modified by the state legislature to authorize control of rents of inclusionary units

17-11. Timing of Construction of Inclusionary Units

- a) The city may issue building permits for seventy percent of the market rate units within a residential development before issuing building permits for any inclusionary units. Following issuance of seventy percent of building permits for the market rate units, the inclusionary units shall be constructed in proportion to construction of the market rate units. No building permit shall be issued for any additional

market rate unit unless a proportional number of building permits have been issued for inclusionary units, and no certificates of occupancy or final inspections shall be issued for any additional market rate units unless a proportional number of certificates of occupancy or final inspections have been issued for inclusionary units. For example, if inclusionary units constitute twenty percent of the remaining units to be built in the development after seventy percent of the market-rate units are issued building permits, inclusionary units must constitute twenty percent of the remaining building permits issued.

- b) Notwithstanding Section 17-11 (a), the city, at its sole discretion, may issue building permits for 100 percent of market rate units within a residential development before issuing building permits for any inclusionary units if the developer is partnering with an experienced non-profit affordable housing provider. If the applicant elects to propose one of the alternatives described in Section 17-13, the applicant shall propose a phasing plan for construction of inclusionary and market rate units as part of the affordable housing plan.
- c) Specific proposed timing of construction of inclusionary and market rate units shall be included in all affordable housing plans.

17-12. Standards for Inclusionary Units

- a) Inclusionary units shall be dispersed throughout the residential development, with the same unit types as the market rate units, except for the following:
 - (1) Inclusionary units affordable to workforce income households may have smaller lots than market rate units.
 - (2) Inclusionary units affordable to moderate and median income households may be built in attached developments. However, at least fifty percent of the units in the attached development must be market rate units.
 - (3) Rental inclusionary units may be clustered as needed in multifamily or other housing types to provide eligibility for state and federal funding, including housing tax credits, if the affordable housing plan includes a management plan satisfactory to the city, and if approved by the city council.
- b) At a minimum, the inclusionary units shall have the same proportion of units with each number of bedrooms as the market rate units (the same proportion of one-bedroom units, of two-bedroom units, etc.). This does not preclude a developer from providing inclusionary units with more bedrooms than is required by this ordinance.
- c) Inclusionary units must meet the following minimum standards:
 - (1) Single Room Occupancy: 250 sq. ft., ¾ bath
 - (2) Studio: 500 sq. ft., 1 bath
 - (3) 1 bedroom: 650 sq. ft., 1 bath
 - (4) 2 bedroom: 900 sq. ft., 1 bath
 - (5) 3 bedroom: 1100 sq. ft., 1.75 baths
 - (6) 4 bedroom: 1275 sq. ft., 1.75 baths

A full bathroom includes sink, toilet, and tub with shower. A 0.75 bath includes a sink, toilet, and tub or shower.

- d) The quality of exterior design and overall quality of construction of the inclusionary units shall be consistent with the exterior design of the market rate units in the residential development and shall meet all site, design, and construction standards included in Title 17 (Buildings and Construction), Title 19 (Subdivisions), and Title 20 (Zoning) of this Code, including but not limited to compliance with all design guidelines included in applicable specific plans or otherwise adopted by the city council, and the inclusionary housing guidelines.
- e) Inclusionary units may have different interior finishes and features than market rate units in the same residential development, as long as the finishes and features are functionally equivalent to the market rate units and are durable and of good quality and comply with the inclusionary housing guidelines. The city may adopt more detailed interior finish or construction standards in the inclusionary housing guidelines.
- f) The inclusionary units shall have the same access to and enjoyment of common open space and facilities in the residential development as the market rate units.

17-13. Developers' Compliance Options

As an alternative to the basic inclusionary housing options described in Sections 17-9 and 17-10 of this article, a developer may elect to propose one of the options included in this section. The city at its sole discretion may offer additional incentives or subsidies to achieve more inclusionary units, greater affordability, or more rental units. All options included in this section must be approved by the city council.

- a) **Off-Site Construction.** For residential developments within the Future Growth Area, the inclusionary housing requirements of this article may be satisfied by the construction of inclusionary units on a site different from the site of the residential development if the proposal meets all of the following criteria:
 - (1) The inclusionary units must be built within the Future Growth Area.
 - (2) The off-site location will not tend to cause racial segregation.
 - (3) Access to public transportation shall be equal to or better than that available to the residential development.
 - (4) The proposed site has a General Plan and zoning designation that authorizes residential uses and is zoned at a density to accommodate at least the required number of inclusionary units.
 - (5) The proposed site is suitable for development of the inclusionary units in regard to configuration, physical characteristics, location, access, adjacent uses, and other relevant planning and development criteria.
 - (6) Any hazardous materials and geological hazards shall be mitigated to the satisfaction of the city. The site shall not be located in a 100-year flood plain. If federal or state funds are proposed to finance the off-site development, the site must meet all required federal or state, as applicable, environmental standards.
 - (7) The construction schedule for the off-site inclusionary units shall be included in the affordable housing plan and the inclusionary housing agreement. The off-site inclusionary units shall be constructed prior to or concurrently with the market rate units in the residential development consistent with the proposed construction schedule.
- b) **Partnership.** An applicant may elect to contract with another developer with experience in building and managing affordable housing to construct all or some of the required inclusionary units. The inclusionary housing agreement shall contain specific assurances guaranteeing the timely completion of the required inclusionary units, including satisfactory assurances that construction and permanent

financing will be secured for the construction of the units within the schedule shown in the affordable housing plan.

- c) **Dedication of Land.** The inclusionary housing requirements of this article may be satisfied by the dedication of land in lieu of constructing inclusionary units within the residential development if the proposal meets all of the following criteria:

- (1) Marketable title to the site is transferred to the city, or an affordable housing developer approved by the city, prior to the commencement of construction of the residential development.
- (2) The location will not tend to cause racial segregation.
- (3) Access to public transportation shall be equal to or better than that available to the residential development.
- (4) The proposed site has a General Plan and zoning designation that authorizes residential uses and is zoned at a density to accommodate at least the required number of inclusionary units.
- (5) The proposed site is suitable for development of the inclusionary units in regard to configuration, physical characteristics, location, access, adjacent uses, and other relevant planning and development criteria, including, but not limited to, the cost of construction arising from the nature, condition, or location of the site.
- (6) Any hazardous materials have been mitigated to the satisfaction of the city prior to transfer of title. The site is not located in a 100-year flood plain. The site meets all required federal and state environmental standards.
- (7) Infrastructure to serve the dedicated site, including but not limited to streets and public utilities, is available at the property line and has adequate capacity to serve the maximum allowable residential development.
- (8) If the property is to be transferred to the city, the deed transferring title does not require the city to construct affordable housing on the site, but allows the city to sell, transfer, lease, or otherwise dispose of the dedicated site at the city's sole discretion. Any funds collected as the result of a sale, transfer, lease, or other disposition of sites dedicated to the city shall be deposited into the inclusionary housing trust fund described in Section 17-17. However generally, it is the city's policy to use the dedicated land for affordable housing.
- (9) If the site is to be transferred to an affordable housing developer, the construction schedule for the inclusionary units shall be included in the affordable housing plan and the inclusionary housing agreement.

- d) **Transfers of Surplus Inclusionary Units.** For residential developments within the Future Growth Area, the inclusionary housing requirement of this article may be satisfied by the use of surplus inclusionary units if the proposal meets all of the following criteria:

- (1) A developer who completes construction and makes available one or more surplus inclusionary units at an affordable rent or affordable ownership cost may utilize those surplus inclusionary units to satisfy the developer's future inclusionary housing requirements within the Future Growth Area for a period of five years after approval of occupancy for the surplus inclusionary unit. During the last year of the first five-year period, developers may apply for one five-year extension, which may be granted at the sole discretion of the city council.
- (2) A developer who completes construction and makes available one or more surplus inclusionary units at an affordable rent or affordable ownership cost may alternatively sell or otherwise transfer

the surplus inclusionary credit to another developer within the Future Growth Area in order to satisfy, or partially satisfy, the transferee's inclusionary housing requirements.

- (3) Any surplus inclusionary unit proposed to meet the inclusionary housing requirements of another residential development must have the same tenure (rental or ownership) and at least as many bedrooms as the required inclusionary unit and otherwise meets all requirements of Section 17-12.
- (4) The city may develop more detailed implementation standards and requirements for credits and transfers as part of the inclusionary housing guidelines.
- e) **Other Options.** A developer may propose an option not listed above to comply with inclusionary housing requirements. Such proposals shall be made in the affordable housing plan, shall be considered by the city in accordance with this article and the inclusionary housing guidelines, and may be approved by the city if the alternative method of compliance either provides substantially the same or greater level of affordability or the amount of affordable housing as would be required by the basic options listed in Sections 17-9 and 17-10, or provides fewer units with deeper affordability.

17-14. In-Lieu Fees and Rental Housing Impact Fees

- a) The city council may from time to time adopt by resolution housing in-lieu fees for for-sale residential developments and rental housing impact fees for rental residential developments.
- b) Payment of in-lieu fees and rental housing impact fees shall be due at the issuance of building permits for the residential development. The fees shall be calculated based on the fee schedule in effect at the time the building permit is issued.
- c) All in-lieu fees and rental housing impact fees shall be deposited in the inclusionary housing trust fund.

17-15. Continuing Affordability and Initial Occupancy

- a) The city council, by resolution, shall approve standard documents to ensure the continued affordability of the inclusionary units approved in each residential development. Prior to approval of the final or parcel map for any residential development, or issuance of any building permit, the inclusionary housing agreement shall be recorded.
- b) Rental regulatory agreements shall be recorded against all rental inclusionary units prior to occupancy. For for-sale inclusionary units, shared appreciation documents or other documents approved by the city council shall be recorded against each inclusionary unit prior to sale. However, if the price of the market rate units in that phase of the residential development is equal to or below the affordable ownership cost for a median, moderate, or workforce income household, then no documents need be recorded against the inclusionary units in the relevant income category.
- c) The term of affordability for all inclusionary units shall be thirty years. A longer term of affordability may be required if the residential development receives a subsidy of any type, including but not limited to loan, grant, mortgage financing, mortgage insurance, or rental subsidy, and the subsidy program requires a longer term of affordability.
- d) All promissory note repayments, shared appreciation payments, or other payments collected under this section shall be deposited in the city's inclusionary housing trust fund.
- e) Any household that occupies an inclusionary unit must occupy that unit as its principal residence.
- f) No household may begin occupancy of an inclusionary unit until the household has been determined to be eligible to occupy that unit. The city council, by resolution, may establish guidelines for determining

household income, affordable ownership cost, affordable rent, provisions for continued monitoring of tenant eligibility, and other eligibility criteria.

- g) Any person who is a member of the city council or the planning commission, and their immediate family members, and any person having any equity interest in the residential development, including but not limited to a developer, partner, investor, or applicant, and their immediate family members, is ineligible to rent, lease, occupy, or purchase an inclusionary unit. The city council, by resolution, may establish guidelines for determination of "immediate family members."

17-16. Affordable Housing Plan Submittal and Inclusionary Housing Agreement.

- a) An affordable housing plan shall be submitted as part of the application for first approval of any residential development. No application for a first approval for a residential development may be deemed complete unless a complete affordable housing plan is submitted. If the residential development includes fewer than 10 units, the affordable housing plan shall include all contiguous property under common ownership and control. However, the applicant shall not be required to construct any dwelling units upon the contiguous property until an application is proposed for that property. No affordable housing plan shall be required if the applicant proposes to pay in-lieu fees or rental housing impact fees to satisfy the requirements of this article.
- b) For each construction phase, the affordable housing plan shall specify, at the same level of detail as the application for the residential development: the inclusionary housing option selected, the number, unit type, tenure, number of bedrooms and baths, approximate location, construction and completion schedule of all inclusionary units, and phasing of inclusionary units in relation to market rate units. If an option listed in Section 17-13 is selected, additional information shall be submitted to verify that the proposal meets the requirements of that section.
- c) The affordable housing plan shall be reviewed as part of the first approval of any residential development. The affordable housing plan shall be approved if it conforms to the provisions of this article. A condition shall be attached to the first approval of any residential development to require recordation of the inclusionary housing agreement described in subsection (e) of this section prior to the approval of any final or parcel map or building permit for the residential development.
- d) A minor modification of an approved affordable housing plan may be granted by the city manager if the modification is substantially in compliance with the original affordable housing plan and conditions of approval. Other modifications to the affordable housing plan shall be processed in the same manner as the original plan.
- e) Following the first approval of a residential development, the city shall prepare an inclusionary housing agreement providing for implementation of the affordable housing plan and consistent with the inclusionary housing guidelines. Prior to the approval of any final or parcel map or issuance of any building permit for a residential development subject to this article, the inclusionary housing agreement shall be executed by the city and the applicant and recorded against the entire residential development property to ensure that the agreement will be enforceable upon any successor in interest. If the affordable housing plan included contiguous property under common ownership or control, and affordable housing will be required on the property under common ownership or control when that contiguous property is developed, the inclusionary housing agreement shall also be recorded against that contiguous property under common ownership or control and shall require compliance with this article upon development of that contiguous property at such time as there are planning permit applications that would authorize a total of ten or more residential units for the residential development and the contiguous property under common ownership or control.
- f) The city council, by resolution, may establish fees for the ongoing administration and monitoring of the inclusionary units, which fees may be updated periodically, as required.

17-17. Inclusionary Housing Trust Fund.

- a) All in-lieu fees, rental housing impact fees, monitoring and other fees, promissory note repayments, shared appreciation payments, or other funds collected under this article shall be deposited into a separate account to be designated as the inclusionary housing trust fund.
- b) The monies in the inclusionary housing trust fund and all earnings from investment of the monies in the inclusionary housing trust fund shall be expended exclusively to provide housing affordable to very low income, lower income, median income, moderate income, and workforce income households in the city of Salinas.

17-18. Waiver

- a) Notwithstanding any other provision of this article, the requirements of this article may be waived, adjusted, or reduced if an applicant shows, based on substantial evidence, that applying the requirements of this article to the proposed residential development would take property in violation of the United States or California Constitutions.
- b) Any request for a waiver, adjustment, or reduction under this section shall be submitted to the city concurrently with the affordable housing plan. The request for a waiver, adjustment, or reduction shall set forth in detail the factual and legal basis for the claim.
- c) The request for a waiver, adjustment, or reduction shall be reviewed and considered in the same manner and at the same time as the affordable housing plan. In making a determination on an application for waiver, adjustment, or reduction, the applicant shall bear the burden of presenting substantial evidence to support the claim. The city may assume each of the following when applicable:
 - (1) That the applicant will provide the most economical inclusionary units feasible, meeting the requirements of this article and the inclusionary housing guidelines.
 - (2) That the applicant is likely to obtain housing subsidies when such funds are reasonably available.
- d) The waiver, adjustment or reduction may be approved only to the extent necessary to avoid an unconstitutional result, after adoption of written findings based upon the advice of the city attorney and based on substantial evidence.

17-19. Implementation and Enforcement

- a) The city council may adopt inclusionary housing guidelines, by resolution, to assist in the implementation of all aspects of this article.
- b) The city attorney shall be authorized to enforce the provisions of this article and all inclusionary housing agreements, regulatory agreements, covenants, resale restrictions, promissory notes, deed of trust, and other requirements placed on inclusionary units by civil action and any other proceeding or method permitted by law. The city may, at its discretion, take such enforcement action as is authorized under this code and/or any other action authorized by law or by any regulatory document, restriction, or agreement executed under this article.
- c) Failure of any official or agency to fulfill the requirements of this article shall not excuse any applicant or owner from the requirements of this article. No permit, license, map, or other approval or entitlement for a residential development shall be issued, including without limitation a final inspection or certificate of occupancy, until all applicable requirements of this article have been satisfied.
- d) The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the city from any other remedy or relief to which it otherwise would be entitled under law or equity.

SECTION THREE: SEVERABILITY

If any clause, sentence, section, or part of this article, or any fee or requirement imposed upon any person or entity, is found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, section or part, or such person or entity, and shall not affect or impair any of the remaining provisions, clauses, sentences, sections, or parts or the effect of this article on other persons or entities. It is hereby declared to be the intention of the city council that this article would have been adopted had such unconstitutional, illegal, or invalid clause, sentence, section, or part not been included herein, or had such person or entity been expressly exempted from the application from the application of this article.

SECTION FOUR: EFFECTIVE DATE.

This ordinance shall take effect and be in force thirty (30) days after its adoption by the city council.

SECTION FIVE: PUBLICATION.

The Clerk of the City of Salinas published a notice in The Californian, a newspaper of general circulation printed and published in Monterey County and published and circulated in the City of Salinas, within ten (10) days from its adoption.

The foregoing ordinance was duly introduced and read before the City Council of the City of Salinas, County of Monterey, at the regular meeting of the City Council held on _____, day of _____, 2017, and adopted at a regular meeting of said Council held on the _____, day of _____, 2017, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Joe Gunter, Mayor

ATTEST:

APPROVED AS TO FORM:

Patricia M. Barajas, City Clerk

Christopher A. Callihan, City Attorney