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JUNIOR UNIVERSITY

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COUNTY OF SANTA CLARA and
SANTA CLARA COUNTY BOARD OF
SUPERVISORS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

BOARD OF TRUSTEES OF LELAND
STANFORD JUNIOR UNIVERSITY,

Plaintiff,

v.

COUNTY OF SANTA CLARA;
SANTA CLARA COUNTY BOARD OF
SUPERVISORS,

Defendants.

Case No. 5:18-cv-07650-BLF

**STIPULATION OF DISMISSAL
PURSUANT TO RULE 41(a)(1)(A)(ii)**

Hearing: None Scheduled

RECITALS

1
2 1. On December 20, 2018, Plaintiff Board of Trustees of Leland Stanford Junior
3 University filed two lawsuits against Defendants County of Santa Clara and Santa Clara County
4 Board of Supervisors in the United States District Court for the Northern District of California
5 (Case No. 5:18-cv-07650-BLF) and in Santa Clara County Superior Court (Case No. 18-
6 CV339813). The lawsuits challenged the County's adoption of Ordinance No. NS-1200.368,
7 codified in the Santa Clara County Ordinance Code, at Title C, Appendix I (Zoning), Article 4,
8 Chapter 4.20, Section 4.20.130 ("Inclusionary Housing Ordinance"). Plaintiff contended that the
9 Inclusionary Housing Ordinance's application solely to the Stanford Community Plan Area, and
10 not to other areas of the unincorporated County, violated Plaintiff's right to equal protection
11 under the federal and state constitutions.

12 2. Defendants removed the state court case to this Court on January 4, 2019, and, on
13 January 25, 2019, the Court ordered the two cases consolidated as Case No. 5:18-cv-07650-BLF.
14 ECF Doc. No. 20 (the "Action").

15 3. On October 10, 2019, the Court granted in part the County's Motion to Dismiss
16 Plaintiff's First Amended Complaint and dismissed all claims with leave to amend. ECF Doc.
17 No. 56.

18 4. On October 31, 2019, Plaintiff filed its Second Amended Complaint. ECF Doc.
19 No. 58.

20 5. On December 9, 2019, the parties stipulated that a stay of the Action was
21 warranted to provide an opportunity for the parties to evaluate ongoing developments, including
22 the possible consideration by the County Board of Supervisors of a countywide inclusionary
23 housing ordinance. ECF 63.

24 6. On December 10, 2019, the Court issued a stay of this litigation until July 1, 2020
25 (ECF 64), which the Court subsequently extended to January 24, 2021. ECF 67.

26 7. On October 6, 2020, the County Board of Supervisors adopted Ordinance No. NS-
27 1200.375, which amended the Inclusionary Housing Ordinance to extend its coverage to
28 unincorporated areas of the County outside of the Stanford Community Plan Area. Ordinance No.

1 NS-1200.375 became effective on November 5, 2020. A copy of Ordinance No. NS-1200.375 is
2 attached hereto as Exhibit A.

3 8. The Parties agree that, upon the effective date of Ordinance No. NS-1200.375, the
4 claims in the Action became moot because Ordinance No. NS-1200.375 applies a 16%
5 inclusionary housing requirement for residential development of three or more units in
6 unincorporated lands throughout Santa Clara County.

7 **STIPULATION**

8 NOW, THEREFORE, the parties hereby stipulate and agree pursuant to Federal Rule of
9 Civil Procedure 41(a)(1)(A)(ii) that the Action shall be dismissed without prejudice, with each
10 party bearing its own attorney's fees and costs.

11 DATED: December 18, 2020

JAMES R. WILLIAMS

12
13 By: /s/ Tony LoPresti
Tony LoPresti, Assistant County Counsel

14 Attorneys for Defendants
15 COUNTY OF SANTA CLARA and SANTA
16 CLARA COUNTY BOARD OF
SUPERVISORS

17 **GEOFFREY ROBINSON**

18
19 By: /s/ Geoffrey Robinson
Geoffrey Robinson

20 Attorneys for Plaintiff
21 BOARD OF TRUSTEES OF LELAND
22 STANFORD JUNIOR UNIVERSITY

23
24
25 Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that concurrence in the filing this document has
26 been obtained from each of the other signatories.

27 By: /s/ Geoffrey L. Robinson
Geoffrey L. Robinson

EXHIBIT A

TO STIPULATION OF DISMISSAL

ORDINANCE NO. NS-1200.375

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE
COUNTY OF SANTA CLARA AMENDING SECTION 4.20.130 OF
TITLE C, APPENDIX I, ZONING, OF THE COUNTY OF SANTA
CLARA ORDINANCE CODE RELATING TO INCLUSIONARY
HOUSING FOR THE UNINCORPORATED AREAS OF THE
COUNTY OF SANTA CLARA**

Summary

This Ordinance amends the Zoning Ordinance of the County of Santa Clara by amending Section 4.20.130 to ensure the inclusion of affordable housing units within the unincorporated areas of the County when three or more market rate housing units are constructed.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA
FINDS AS FOLLOWS:**

- A. California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis is hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives. In California, the crisis has grown so acute that supply, demand, and affordability fundamentals are characterized in the negative: underserved demands, constrained supply, and protracted unaffordability.
- (i) According to reports and data, California has accumulated an unmet housing backlog of nearly 2,000,000 units and must provide for at least 180,000 new units annually to keep pace with growth through 2025.¹
 - (ii) California's overall homeownership rate is at its lowest level since the 1940s. The state ranks 49th out of the 50 states in homeownership rates as well as in the supply of housing per capita.² Only one-half of California's

¹ Cal. Govt. Code § 65589.5(a)(2)(D).

² *Id.* § 65589.5(a)(2)(E).

households are able to afford the cost of housing in their local regions. Lack of supply and rising costs are compounding inequality and limiting advancement opportunities for many Californians.³

- (iii) The majority of California renters, more than 3,000,000 households, pay more than 30 percent of their income toward rent and nearly one-third, more than 1,500,000 households, pay more than 50 percent of their income toward rent.⁴
- (iv) When Californians have access to safe and affordable housing, they have more money for food and health care; they are less likely to become homeless and in need of government-subsidized services; their children do better in school; and businesses have an easier time recruiting and retaining employees.⁵
- (v) An additional consequence of the state's cumulative housing shortage is a significant increase in greenhouse gas emissions caused by the displacement and redirection of populations to states with greater housing opportunities, particularly working- and middle-class households. These problems are faced statewide and locally.⁶

B. There is a severe shortage of housing in Santa Clara County that is affordable to Extremely Low Income, Very Low, Low, and Moderate Income Households.⁷

- (i) From 2010 to 2020, the population of Santa Clara County increased 9.2% (from 1,781,642 to 1,961,969), but the number of housing units only increased 4.7% (from 631,920 to 674,558).⁸

³ *Id.* § 65589.5(a)(2)(F).

⁴ *Id.* § 65589.5(a)(2)(G).

⁵ *Id.* § 65589.5(a)(2)(H).

⁶ *Id.* § 65589.5(a)(2)(I).

⁷ See generally County of Santa Clara, *County of Santa Clara Housing Element Update 2015-2022* (June 10, 2014), available at: https://www.sccgov.org/sites/dpd/docs/forms/documents/healthelement_2015_adopted_final.pdf; Association of Bay Area Governments, Planning and Research Department, *Regional Forecast for Plan Bay Area 2040* (Feb. 2016), http://reports.abag.ca.gov/other/Regional_Forecast_for_Plan_Bay_Area_2040_F_030116.pdf.

⁸ State of California, Department of Finance, *E-5 Population and Housing Estimates for Cities, Counties, and the State, 2011-2020 with 2010 Census Benchmark* (June 2020), <http://www.dof.ca.gov/Forecasting/Demographics/Estimates/E-5/>.

- (ii) According to the 2015-2023 Regional Housing Needs Allocation (RHNA) determined by the Association of Bay Area Governments, Santa Clara County had a total housing need of 58,836 units through 2023, which included the need to add 10,636 new Moderate Income, 9,542 new Low Income units, and 16,158 Very Low-Income units within Santa Clara County.⁹
- (iii) Because of the shortage of affordable housing units in Santa Clara County, many households overpay for housing. The Harvard Joint Center for Housing Studies compared 2015 home prices and household incomes across 100 metropolitan areas and found that only 22.3 percent of all households in the San Jose-Sunnyvale-Santa Clara metropolitan area could afford the typical monthly payments for a median-priced home, and that only 12 percent of renters earn sufficient income to afford payments for a median-priced home in the area—the second lowest proportions of households in each category of the 100 metropolitan areas examined.¹⁰
- (iv) According to the National Low-Income Housing Coalition's *Out of Reach 2019* study, the San Jose-Sunnyvale-Santa Clara HUD Metropolitan Fair Market Rent Area is the second most expensive metropolitan area in the country to rent.¹¹ In the 2018 and the 2017 reports, this metropolitan area was, respectively, the second¹² and third¹³ most expensive area of the nation in which to rent.

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⁹ Association of Bay Area Governments, Final Regional Housing Need Allocation (2015-2023), p. 26 (July 18, 2013), <https://abag.ca.gov/our-work/housing/rhna-regional-housing-needs-allocation/2015%E2%80%932023-regional-housing-need-allocation>.

¹⁰ Joint Center for Housing Studies of Harvard University, *Who Can Afford the Median-Priced Home In Their Metro?*, <https://www.jchs.harvard.edu/son2017-housing-affordability-table>.

¹¹ National Low Income Housing Coalition, *Out of Reach 2019*, p. 15 (2019), https://reports.nlihc.org/sites/default/files/or/OOR_2019.pdf.

¹² National Low Income Housing Coalition, *Out of Reach 2018*, p. 14 (2018), https://reports.nlihc.org/sites/default/files/or/OOR_2018.pdf.

¹³ National Low Income Housing Coalition, *Out of Reach 2017*, p. 11 (2017), https://reports.nlihc.org/sites/default/files/or/OOR_2017.pdf.

- (v) The San Jose-Sunnyvale-Santa Clara metropolitan area had the highest median sales price of existing single-family homes in the nation in 2020 according to data from the National Association of Realtors, with a median price for a single-family detached home of \$1.35 million and a year-over-year price gain of 10.7 percent.¹⁴
 - (vi) According to the 2019 Santa Clara County Homeless Census and Survey, the number of homeless persons in the County is now estimated to be 9,706,¹⁵ an increase of 31 percent from 2017 estimates.
- C. Jobs/housing imbalances in various portions of Santa Clara County and throughout the San Francisco Bay Area significantly impact housing availability and affordability and contribute to the severe traffic congestion and greenhouse gas emissions in Santa Clara County.¹⁶
- (i) One measure of housing imbalance in a region is the ratio of jobs to housing units in the area. The County's General Plan has identified the imbalances between job and housing growth as an important regional issue since the 1960s and with the adoption of the 1980 General Plan. The County of Santa Clara Housing Element Update for 2015-2022 reported that, although there have been fluctuations in the jobs-to-housing ratio as economic conditions changed, an overall imbalance persists.¹⁷
 - (ii) According to data from the State of California's Employment Development Department and Department of Finance, from 2010 through 2019 the number of jobs in Santa Clara County increased by 19.2% (from 830,100 to 1,027,500),¹⁸ but the number of housing units only increased

¹⁴ National Association of Realtors, Median Sales Price of Existing Single-Family Homes for Metropolitan Areas, 1st Quarter 2020, p.1, <https://www.nar.realtor/sites/default/files/documents/metro-home-prices-q1-2020-ranked-median-single-family-2020-05-12.pdf>.

¹⁵ Santa Clara County Homeless Census & Survey Comprehensive Report, p. 8 (2019), <https://www.sccgov.org/sites/osh/ContinuumofCare/ReportsandPublications/Pages/HomelessnessCensusandSurvey.aspx>.

¹⁶ See, e.g., County of Santa Clara, *supra* note 7, at pp. 65-67.

¹⁷ County of Santa Clara, *supra* note 1, at pp. 65-66 (citing Santa Clara County job/housing ratios of 1.5 in 1991, 1.8 in 2001, and 1.3 in 2011).

¹⁸ State of California, Employment Development Department, <https://www.labormarketinfo.edd.ca.gov/>.

by 5.9% (from 631,920 to 671,439).¹⁹ This reflects an increase from 1.31 jobs per housing unit in 2010 to 1.53 jobs per housing unit in 2019. A jobs-housing ratio over 1.5 indicates that the region is likely to experience traffic congestion associated with people coming to jobs from outside the areas, as well as pressure on the cost of available housing in the region.²⁰

(iii) Data from the U.S. Census Bureau in the American Community Survey (ACS) indicates that in 2013, significant number of people who work in Santa Clara County live outside of the County, including but not limited to: 68,380 from Alameda County; 52,988 from San Mateo County; 19,087 from San Francisco County; 17,280 from Santa Cruz County; 12,870 from Contra Costa County; 8,415 from San Benito County; 4,650 from Monterey County; 3,649 from Merced County; and 1,598 from Sacramento County.²¹

D. Due to the shortage of affordable housing units in Santa Clara County, many households are forced to spend a disproportionate share of their income on housing, thereby restricting the funds available to meet their other basic needs and reducing their spending on other vital goods and services.²²

E. Given the shortage of affordable housing units in Santa Clara County, there is an urgent need to encourage the construction of housing that is affordable to families and individuals, and to otherwise increase the affordable housing supply in Santa Clara County.²³

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¹⁹ State of California, *supra* note 8, <http://www.dof.ca.gov/Forecasting/Demographics/Estimates/E-5/>.

²⁰ U.S. Environmental Protection Agency, EnviroAtlas, Fact Sheet: Employment to Housing Ratio (Nov. 2014), <https://enviroatlas.epa.gov/enviroatlas/DataFactSheets/pdf/Supplemental/EmploymentHousingRatio.pdf>.

²¹ State of California, Employment Development Department, Santa Clara County-to-County Commuting Estimates (U.S. Census Bureau), <https://www.labormarketinfo.edd.ca.gov/file/commute-maps/santaclara2013.pdf>.

²² Legislative Analyst's Office, *California's High Housing Costs Causes and Consequences* (March 17, 2015), pp. 24-26, <https://lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf>.

²³ All materials supporting these findings and cited herein are on file with the Clerk of the Board, County of Santa Clara.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA
ORDAINS AS FOLLOWS:**

SECTION 1. Section 4.20.130 of Chapter 4.20 of Appendix I, Zoning, of Title C, is hereby amended to be titled and to read in full as follows:

4.20.130. Inclusionary Housing for the Unincorporated Areas of the County of Santa Clara

A. *Purpose and intent.* The purpose and intent of this Section are as follows:

1. It is the policy of the County that this Section be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, affordable housing.
2. Construction of affordable units as well as market-rate units within the unincorporated areas of the County of Santa Clara is consistent with the County's Housing Element goals of protecting the public welfare by fostering a sufficient supply of housing for persons at all economic levels. Requiring the development of affordable housing units in new market rate residential development in the unincorporated areas of the County of Santa Clara will provide affordable housing, which will relieve the burden placed on the housing market throughout the County. Provision of additional housing will also help the County reach its regional share of housing needs and implement the goals and objectives of the General Plan, Housing Element, and the Stanford Community Plan. This ordinance is being adopted as part of incremental steps taken by the County of Santa Clara to require the construction of affordable units when market rate units are constructed.
3. The adoption of an inclusionary housing program for unincorporated areas in the County will also assist in alleviating constraints on availability of land for affordable housing caused by use of residential land primarily for development of market rate housing because it will require new housing developments to include affordable housing, and will assist in alleviating the impacts of the service needs of market rate households in the County.
4. Requiring the development of affordable housing units in new market rate residential development in the County of Santa Clara, both outside of and within the Stanford Community Plan Area, recognizes the broad need to provide affordable housing across the County. This ordinance is tailored to

provide affordable housing requirements for unincorporated areas of the County that reflects the predominately rural and less intense development patterns of most unincorporated areas in the County. Residential development activity consists primarily of single-family developments within rural areas of the County.

5. This ordinance also recognizes the unique development characteristics within the Stanford Community Plan Area, which is urban and much higher in density than other unincorporated parts of the County. Construction of affordable units as well as market-rate units within the Stanford Community Plan Area is consistent with the County's Housing Element goals of protecting the public welfare by fostering an adequate supply of housing for persons at all economic levels. Requiring the development of affordable housing units in new market rate residential development in the Stanford Community Plan Area will provide affordable housing, which will relieve the burden placed on the housing market in the surrounding area. Flexibility to build units outside of the Stanford Community Plan Area will provide additional housing units to lower income households in the community, further relieving the burden on the housing market. Provision of additional deed-restricted affordable housing within the Stanford Community Plan will also help the County reach its regional share of housing needs and implement the goals and objectives of the General Plan, Housing Element, and the Stanford Community Plan.
 6. The County desires to provide the residential development community with alternatives to construction of the inclusionary units on the same site as the market rate residential development. Therefore, subsection H (Compliance Options) of this Section includes a menu of options from which a developer may select an alternative to the construction of inclusionary units on the same site as the market rate residential development as required by subsection E (On-Site Inclusionary Housing Requirement) of this Section.
 7. This Section 4.20.130 is adopted pursuant to the County's police power authority to protect the public health, safety, and welfare, and as authorized by paragraph (g) of Government Code Section 65850.
- B. **Definitions.** In addition to the definitions in Chapter 1 of Division A1 of this Code, the following definitions shall apply and shall supersede the definitions in Section 1.30.030 of this Zoning Ordinance where they conflict:

1. ***Affordable Housing Cost:*** The housing cost for dwelling units as defined by California Health and Safety Code Section 50052.5 for owner-occupied housing and the affordable rent for rental units as defined by California Health and Safety Code Section 50053, as applicable.
2. ***Affordable Housing Plan:*** The plan for meeting the inclusionary housing requirements of this Section that is submitted as part of an application for a Planning Permit for a Residential Development and further described in subsection K (Affordable Housing Plan and Inclusionary Housing Agreement).
3. ***Applicant:*** One or more person(s) or entity(ies) that applies for a Residential Development in the County, regardless of whether the person(s) or entity(ies) have an ownership or leasehold interest in the property on which the development is proposed.
4. ***Area Median Income or AMI:*** The annual median income for Santa Clara County, adjusted for household size, as published periodically in the California Code of Regulations, Title 25, Section 6932, or its successor provision.
5. ***Building Permit:*** The full structural building permits or partial permits (i.e., foundation-only permits).
6. ***Certificate of Occupancy:*** The final inspection approval of the Building Inspection Office on the building permit inspection card for a complete building or structure.
7. ***Dwelling Unit:*** A building or portion thereof that is designed, intended or used for dwelling purposes for one household.
8. ***Extremely Low-Income Household:*** A household as defined in California Health and Safety Code section 50106.
9. ***For Sale:*** Any Dwelling Unit, including a condominium, stock cooperative, community apartment, or attached or detached single-family home, for which a parcel or tentative and final map is required for the lawful subdivision of the parcel upon which the Dwelling Unit is located or for the creation of a unit in accordance with the Subdivision Map Act (California Government Code section 66410 et seq.) or any Residential Development that includes such a For Sale Dwelling Unit.

10. *Inclusionary Housing Fund*: A fund or account designated by the County to maintain and account for all monies received pursuant to this Section, as authorized by subsection O (Inclusionary Housing Fund).
11. *Inclusionary Housing Guidelines*: The requirements for implementation and administration of this Section adopted by the Planning Commission, applicable to the subject area as identified in this Section.
12. *Inclusionary Unit*: A Dwelling Unit required by this Section to be affordable to Extremely Low, Very Low, Lower, or Moderate-Income Households.
13. *Lower Income Households*: Households as defined in California Health and Safety Code section 50079.5.
14. *Market Rate Unit*: A new Dwelling Unit in a Residential Development that is not an Inclusionary Unit as defined by this Section, or a Dwelling Unit subject to a long-term affordability agreement, regulatory agreement or deed restriction ensuring affordability, that will expire within one year.
15. *Moderate Income Household*: A household as defined in California Health and Safety Code section 50093(b).
16. *Operative Date*: The operative date of this Section shall be as follows:
 - a. For areas within the Stanford Community Plan Area, the Operative Date shall be July 1, 2019.
 - b. For areas outside the Stanford Community Plan Area, the Operative Date shall be June 1, 2021.
17. *Planning Permit*: A land use permit or approval including but not limited to a tentative map, parcel map, use permit, architecture and site approval, cluster development permit, development agreement, special use permit, or any other discretionary permit. Does not include General Plan and specific plan amendments, zoning ordinances and amendments, area development policies, or the General Use Permit as described in the Stanford Community Plan.

18. *Rental*: A Dwelling Unit that is not a For Sale Dwelling Unit. Does not include any Dwelling Unit, whether offered for rental or for sale, that may be sold individually as the result of the lawful subdivision of the parcel upon which the Dwelling Unit is located in accordance with the Subdivision Map Act.
 19. *Residential Development*: Any development that would create three or more new, or additional Dwelling Units by any of the following means or combination thereof:
 - a. The construction of new Dwelling Units, including additions to existing multifamily structures;
 - b. The conversion of a use to a residential use from another use;
 - c. The conversion of a use to For Sale residential from a Rental residential use; or
 - d. The subdivision of land that would allow residential Dwelling Units.
 20. *Student*: A matriculated undergraduate or graduate student, but shall not include postdoctoral fellows.
 21. *Student Housing*: Housing provided solely to Students, including, but not limited to, dormitories, apartments, family student housing, graduate student housing, and other housing provided to matriculated students, but shall not include any housing provided for postdoctoral fellows.
 22. *Very Low Income Household*: A household earning no more than the amount defined by California Health and Safety Code section 50105.
- C. ***Applicability***. The provisions of this Section shall apply to all Residential Development in the unincorporated areas of the County, except for any Residential Development exempt under subsection D (Exemptions) or as otherwise noted in this Section.
- D. ***Exemptions***. This Section shall not apply to any of the following:
1. Projects that are not Residential Developments.
 2. Projects that create less than three Dwelling Units.

3. Any Residential Development project with an application that was deemed complete pursuant to Section 5.20.080 of this Code prior to the Operative Date of this Section.
4. Reconstruction of Residential Development that was destroyed by fire, flood, earthquake, or other act of nature, within 2 years of such an event so long as the number of units does not exceed the number of units before the loss.
5. Accessory dwelling units, as defined by Section 2.10.030 of the County Code.
6. Agricultural employee housing, as defined by Section 2.10.030 of the County Code.
7. Expanded residential community care facilities, as defined by Section 2.10.040 of the County Code.
8. Student Housing.

E. *On-Site Inclusionary Housing Requirement.*

1. All new Residential Development of three or more units, not within the Stanford Community Plan Area, shall include Inclusionary Units, as follows:
 - a. Rental Residential Development. Sixteen percent (16%) of the total Dwelling Units in any Rental Residential Development shall be Inclusionary Units made available for rent at an Affordable Housing Cost to lower, very low, or extremely low income households earning no more than eighty percent (80%) of the Area Median Income.
 - b. For Sale Residential Development. Sixteen percent (16%) of the total Dwelling Units in the For Sale Residential Development shall be Inclusionary Units made available for purchase at an Affordable Housing Cost to moderate, lower, very low, or extremely low income households earning no more than one hundred twenty percent (120%) of the Area Median Income.

- c. Where the calculation of required Inclusionary Units results in a fraction, any decimal fraction above a whole number of Dwelling Units shall either be paid as an in lieu fee pursuant to paragraph 1.c of subsection H (Compliance Options) herein or rounded up to require the provision of an additional Inclusionary Unit.
 - d. A developer of a Residential Development project shall not avoid the requirements of this Section by submitting a piecemeal project application. At the time of the application for a Planning Permit, the developer shall identify all contiguous property under common ownership or control and identify the maximum potential residential dwelling units, except for such units listed in paragraphs (3) to (8) of subsection (D) (Exemptions). If the maximum potential residential dwelling units total three or more, an Inclusionary Housing Agreement, as specified in the Guidelines, shall be recorded against the project and all contiguous property under common ownership or control. The Inclusionary Housing Agreement shall require compliance with this Section upon development of each contiguous property when a total of three or more such residential dwelling units are proposed, or as otherwise specified in the Inclusionary Housing Agreement.
- 2. All new Residential Development within the Stanford Community Plan Area of three or more units shall include Inclusionary Units, as follows:
 - a. Rental Residential Development. Sixteen percent (16%) of the total Dwelling Units in any Rental Residential Development shall be Inclusionary Units made available for rent at an Affordable Housing Cost. Of the total number of Inclusionary Units provided, 15% shall be affordable to Extremely Low or Very Low Income Households, 45% shall be affordable to Low Income Households, and 40% shall be affordable to Moderate Income Households.
 - b. For Sale Residential Development. Sixteen percent (16%) of the total Dwelling Units in the For Sale Residential Development shall be Inclusionary Units made affordable using one of the following methods:
 - (i) Inclusionary Units in a For Sale Residential Development may be made available for purchase at an Affordable Housing Cost to those households earning no more than one hundred twenty percent (120%) of the Area Median Income; or

- (ii) Required Inclusionary Units in a For Sale Residential Development may be banked and developed as Rental Inclusionary Units pursuant to the Inclusionary Housing Guidelines.
 - c. Where the calculation of required Inclusionary Units results in a fraction, the on-site requirements shall be the number of Inclusionary Units required, rounded down to the nearest whole number and any decimal fraction above a whole number of Inclusionary Units shall accrue as provided in the Inclusionary Housing Guidelines.
- F. ***Timing of Construction of Inclusionary Units.*** All required Inclusionary Units shall be made available for occupancy concurrently with the first Market Rate Units in the Residential Development. The County shall not issue Building Permits for Market Rate Units except where Building Permits for Inclusionary Units are included in the application. A Certificate of Occupancy shall not be issued for Market Rate Units except where a Certificate of Occupancy for Inclusionary Units are issued concurrently in the required inclusionary proportion specified in subsection E (On-Site Inclusionary Housing Requirement).
- G. ***Additional Standards for Inclusionary Units.*** Inclusionary Units shall be similar in quality and design to the Market Rate Units in the Residential Development and shall meet all site, design and construction standards in this Code and the Inclusionary Housing Guidelines.
- H. ***Compliance Options.*** The compliance options herein may apply as alternatives to providing Inclusionary Units on-site as required by subsection E (On-Site Inclusionary Housing Requirement).
 - 1. For Residential Development not within the Stanford Community Plan Area, the following options apply:
 - a. ***On-Site.*** An Applicant may construct on-site Inclusionary Units in the Residential Development as described in paragraph 1 of subsection E (On-Site Inclusionary Housing Requirement).
 - b. ***Off-Site.*** As an alternative to providing Inclusionary Units on-site, the Applicant may develop Inclusionary Units at another location within the County, subject to requirements outlined in the Inclusionary Housing Guidelines. If the Applicant constructs the

Inclusionary Units off-site, the number of Inclusionary Units required shall be at least 16 percent (16%) of the combined number of market-rate Dwelling Units in the on-site Residential Development plus the off-site Inclusionary Units. The required off-site Inclusionary Units shall not be used to satisfy inclusionary requirements of any separate market rate or mixed income development (double counting).

- c. *In Lieu Fee.* For fractional Inclusionary Unit requirements as provided in paragraph 1 of subsection E (On-Site Inclusionary Housing Requirement), or for Residential Developments of less than seven Dwelling Units as an alternative to providing Inclusionary Units, the Applicant may satisfy the inclusionary housing requirement by the payment of a fee to the County in lieu of constructing the affordable units within the Residential Development, provided that such fee is received by the County pursuant to paragraph (ii) herein and that all conditions listed below are satisfied. The in lieu fees satisfying the inclusionary housing requirement shall be as follows:
 - i. The amount of in lieu fees shall be established by resolution of the County Board of Supervisors. The amount of the in lieu fee may be updated periodically, as necessary, by the Board of Supervisors.
 - ii. *Timing of In Lieu Fee Payment to the County:*
 - (I) For Residential Developments consisting of Single-Family or Two-Family Residential units, as defined by Section 2.10.030 of the County Code, payment of the in lieu fee must be made in full to the County prior to the recordation of a final map or parcel map or prior to recordation of a certificate of compliance if such certificate is required pursuant to Section C12-12 of the County Code.
 - (II) For Multifamily Residential Developments, as defined by Section 2.10.030 of the County Code, and all other Developments not subject to paragraph (i) above, payment of the in lieu fee must be made in full to the County prior to the issuance of the Building Permit for

the first market rate unit in the Residential Development.

- iii. All in lieu fees collected shall be deposited in the County of Santa Clara Inclusionary Housing Fund established pursuant to subsection O (Inclusionary Housing Fund).
- d. *Conversion of Existing Units.* The inclusionary housing requirement may be satisfied by the conversion of existing Market Rate Units, whether currently owned by the Applicant or proposed to be acquired, to units affordable to Very Low or Lower Income Households only, if all of the following criteria are met:
 - i. Two converted units must be provided for each required Inclusionary Unit in the Residential Development. These units shall be in addition to any Inclusionary Units required by another jurisdiction as a result of rehabilitating the existing units.
 - ii. The converted Inclusionary Units shall comply with the site, design, and construction standards provided in the Inclusionary Housing Guidelines, and Applicant shall comply with the notice and relocation requirements in the Inclusionary Housing Guidelines before commencing rehabilitation.
 - iii. The conversion of the Dwelling Units shall be completed prior to or concurrently with the Market Rate Residential Development pursuant to subsection F (Timing of Construction of Inclusionary Units).
- 2. For Residential Development within the Stanford Community Plan Area, the following options apply as alternatives to providing Inclusionary Units on-site as required by paragraph 2 of subsection E (On-Site Inclusionary Housing Requirement).
 - a. *On-Site.* An Applicant may construct on-site Inclusionary Units in the Residential Development as described in paragraph 2 of subsection E (On-Site Inclusionary Housing Requirement).

- b. *Transfers within the Stanford Community Plan Area.* Subject to notification to the County Office of Supportive Housing Director and the Department of Planning and Development Director, an Applicant may transfer required Inclusionary Units to another Residential Development within the Stanford Community Plan Area.
- c. *Off-Site.* As an alternative to providing Inclusionary Units within the Stanford Community Plan Area, the Applicant may develop Inclusionary Units at another location within a six-mile radius of the Stanford Community Plan Area. If the Applicant constructs the Inclusionary Units off-site, the number of Inclusionary Units required shall be at least 16 percent (16%) of the combined number of market-rate Dwelling Units in the on-site Residential Development plus the off-site Inclusionary Units. These units shall be in addition to any Inclusionary Units required or agreed to by Applicant in another jurisdiction.
- d. *Conversion of Existing Units.* The inclusionary housing requirement may be satisfied by the conversion of existing Market Rate Units, whether currently owned by the Applicant or proposed to be acquired, to units affordable to Very Low or Lower Income Households only, if all of the following criteria are met:
 - i. Two converted units must be provided for each required Inclusionary Unit in the Residential Development. These units shall be in addition to any Inclusionary Units required by another jurisdiction as a result of rehabilitating the existing units.
 - ii. The converted Inclusionary Units shall comply with the site, design, and construction standards provided in the Inclusionary Housing Guidelines, and Applicant shall comply with the notice and relocation requirements in the Inclusionary Housing Guidelines before commencing rehabilitation.
 - iii. The conversion of the Dwelling Units shall be completed prior to or concurrently with the Market Rate Residential Development pursuant to subsection F (Timing of Construction of Inclusionary Units).

- I. ***Combination of Methods to Provide Inclusionary Housing.*** The Applicant for a Residential Development must construct Inclusionary Units subject to subsection E (On-Site Inclusionary Housing Requirement) or may propose any combination of basic inclusionary compliance options available to such development in that area pursuant to subsection H (Compliance Options) of this Section. Such proposals shall be made in the Affordable Housing Plan, which is reviewed and approved concurrently with the Planning Permit as provided in subsection K (Affordable Housing Plan and Inclusionary Housing Agreement), and shall be considered by the County in accordance with this Ordinance and the Inclusionary Housing Guidelines. The County may approve the Affordable Housing Plan with the Planning Permit if the combined methods of compliance provide substantially the same or greater level of affordability and the total amount and type of affordable housing provided is the same or greater than that required by this Section.

- J. ***Continuing Affordability and Occupancy.*** Inclusionary Units shall be subject to an agreement with the County to ensure the long-term affordability of the Dwelling Units pursuant to the Inclusionary Housing Guidelines. Inclusionary Units shall remain affordable to the targeted income group for no less than fifty-five (55) years. A longer term of affordability may be required if the Residential Development receives a subsidy pursuant to a subsidy program that requires a longer term of affordability. Households occupying an Inclusionary Unit shall be screened for income-eligibility pursuant to the Inclusionary Housing Guidelines, and shall be subject to the occupancy requirements therein.

- K. ***Affordable Housing Plan and Inclusionary Housing Agreement.*** An Affordable Housing Plan and appropriate fee shall be submitted as part of the application for a Planning Permit for a Residential Development or as otherwise specified in the Planning Permit. The Affordable Housing Plan shall provide any information required by the Inclusionary Housing Guidelines. The Affordable Housing Plan shall conform to the provisions of this Section and the Inclusionary Housing Guidelines.

- L. ***Monitoring of Compliance.*** The Inclusionary Housing Guidelines shall include provisions for the monitoring by the County of Inclusionary Units for compliance with the terms of this Section and the Inclusionary Housing Guidelines applicable to the area. The Board may adopt fees for the costs of monitoring and compliance by the County.

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M. *Waiver.*

1. Notwithstanding any other provision of this Section, one or more of the requirements of this Section may be waived, adjusted, or reduced if an Applicant shows, based on substantial evidence, that the application of such requirement(s) would effect a taking of property under the United States or California constitution or otherwise violate any other federal or state law.
2. Any request for a waiver, adjustment or reduction of one or more of the requirement(s) of this Section shall be submitted to the County concurrently with the Affordable Housing Plan required by subsection K (Affordable Housing Plan and Inclusionary Housing Agreement) of this Section. The request for a waiver, adjustment, or reduction shall set forth in detail the factual and legal basis for the claim.
3. 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 is considered.
4. In making a determination on an application for waiver, adjustment, or reduction, the Applicant shall bear the burden of establishing that the waiver, adjustment, or reduction is necessary to avoid a taking of property or violation of federal or state law.
5. The waiver, adjustment, or reduction may be approved concurrently with the Planning Permit only to the extent necessary to avoid an unconstitutional or unlawful result, and after adoption of written findings, based on substantial evidence, supporting the determinations required by this Section.

N. *Implementation and Enforcement.*

1. The Planning Commission shall adopt Inclusionary Housing Guidelines to assist in the implementation and administration of all aspects of this Section. The Planning Commission's action to adopt the Inclusionary Housing Guidelines shall be a final action.
2. The County Executive shall periodically evaluate the effectiveness of the ordinance codified in this Section, for review by the Planning Commission and the Board of Supervisors.

3. The County Counsel shall be authorized to enforce the provisions of this Section and any agreements entered into pursuant to this Section, by civil action or any other proceeding or method permitted by law. The County Counsel, in his or her discretion, may take such enforcement action as is authorized under this Code and/or take any other action authorized by law or any agreement, covenant, restriction, condition, or regulatory document executed pursuant to this Section.
4. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the County from pursuing or obtaining any other remedy or relief to which it would otherwise be entitled under law or equity.

O. *Inclusionary Housing Fund.*

1. Unless otherwise required by law, all in lieu fees, fees, promissory note repayments, shared appreciation payments, or other funds collected under this Section shall be deposited into a separate account to be designated as the County of Santa Clara Inclusionary Housing Fund.
2. The moneys in the Inclusionary Housing Fund and all earnings from investment of the moneys in the Inclusionary Housing Fund shall be expended to provide housing affordable to extremely low income, very low income, lower income, and moderate income households in the County of Santa Clara.

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SECTION 2. If any sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases are declared unconstitutional, invalid, or ineffective. To this end, the provisions of this Ordinance are declared to be severable.

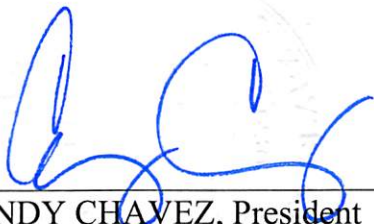
PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, on OCT 06 2020 by the following vote:

AYES: ~~CHAVEZ, CORTESE, ELLENBERG~~
SIMITIAN, WASSERMAN

NOES: CORTESE


ABSENT: NONE

ABSTAIN: NONE



CINDY CHAVEZ, President
Board of Supervisors

~~Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.~~

ATTEST:


MEGAN DOYLE
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:


FOR ELIZABETH G. PIANCA
ELIZABETH G. PIANCA
Lead Deputy County Counsel

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