ORDINANCE NO.

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA BARBARA AMENDING TITLE 28 OF THE MUNICIPAL CODE TO REVISE CHAPTER 28.43 WITH RESPECT TO EXPANDED INCLUSIONARY HOUSING REQUIREMENTS FOR SMALLER RESIDENTIAL PROJECTS APPROVED FOR CONSTRUCTION WITHIN THE CITY.

THE CITY COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS FOLLOWS:

Section One: Chapter 28.43 of Title 28 of the Santa Barbara Municipal Code is hereby amended to read as follows:

28.43.010 Purposes and Intent.

A. Statement of Intent. The purposes and intent of this Chapter, which shall be known as the "City of Santa Barbara Inclusionary Housing Ordinance," are the following:

1. To encourage the development and availability of housing affordable to a broad range of Households with varying income levels within the City;

2. To promote the City's goal to add affordable housing units to the City's housing stock;

3. To increase the availability of housing opportunities for Middle Income and Upper-Middle Income households within the City limits in order to protect the economic diversity of the City's housing stock, reduce traffic, commuting and related air quality impacts, and reduce the demands placed on transportation infrastructure in the region; and

4. To implement policies of the Housing Element of the General Plan which include: a. adopting an inclusionary housing program to meet the housing needs of those not currently served by City Housing and Redevelopment Agency programs; and b. encouraging the development of housing for first time home buyers, including moderate and Middle Income households. (Ord. 5310, 2004.)

28.43.020 Definitions.

As used in this Chapter, the following terms shall have the meaning and usage indicated below:

A. **AFFORDABLE HOUSING POLICIES AND PROCEDURES.** The City's Affordable Housing Policies and Procedures as adopted by the City Council of the City of Santa Barbara and amended from time to time.

B. **AFFORDABLE HOUSING INCLUSIONARY FUND.** That special fund of the City established by the City as provided in Section 28.43.130.

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C. **AREA MEDIAN INCOME.** The median household income as provided in Section 50093(c) of the California Government Code, as it is currently enacted or hereinafter amended.

D. **APPLICANT.** Any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities, which seeks City approvals for all or part of a Residential Development.

E. **HOUSEHOLD.** One person living alone or two or more persons sharing residency whose income is considered for housing payments.

F. **INCLUSIONARY HOUSING PLAN.** A plan for a residential development submitted by an Applicant as provided by Section 28.43.090(b).

G. **INCLUSIONARY UNIT.** An Ownership Unit that must be offered to eligible purchasers (in accordance with eligibility requirements set by the City) at a City-approved affordable sale price according to the requirements herein.

H. **MARKET-RATE UNIT.** An Ownership Unit in a Residential Development that is not an Inclusionary Unit.

I. **MIDDLE INCOME HOUSEHOLD.** A Household whose income is between one hundred twenty percent (120%) and one hundred sixty percent (160%) of the Area Median Income, adjusted for household size.

J. **OFF-SITE INCLUSIONARY UNIT.** An Inclusionary Unit that will be built separately or at a different location than the main development.

K. **ON-SITE INCLUSIONARY UNIT.** An Inclusionary Unit that will be built as part of the main development.

L. **OWNERSHIP UNIT.** A dwelling unit that may be sold separately under the requirements of the State Subdivision Map Act. For purposes of this Chapter, a dwelling unit may be designated as an Ownership Unit whether or not it is rented by the owner thereof. The following shall be considered to be a single Ownership Unit: 1. a dwelling unit together with an attached Secondary Dwelling Unit approved under Chapter 28.94, or 2. a dwelling unit together with an additional dwelling unit on the same lot approved under Chapter 28.93 of the City's Municipal Code.

M. **RESIDENTIAL DEVELOPMENT.** The proposed development of any single family, duplex, or condominium Dwelling Units in residential or mixed-use developments requiring a tentative subdivision map under the City's Subdivision Ordinance. Residential Development shall include the conversion of rental housing to condominiums or similar uses as described in Chapter 28.88 of this Municipal Code.

N. **RESIDENTIAL LAND SUBDIVISION.** The subdivision of land into individual parcels where the application to the City for the subdivision approval does not include a concurrent request for City design approval of the residential dwelling units or homes to be constructed upon on such parcels.

O. **TARGET INCOME.** A number, expressed as a percentage of Area Median Income, used in calculating the maximum sale price of an affordable housing unit. It is the household income to which the unit is targeted to be affordable.

P. **UNIT SIZE.** All of the usable floor area within the perimeter walls of a dwelling unit, exclusive of open porches, decks, balconies, garages, basements, cellars that extend no more than two (2) feet above finished grade, and attics that do not exceed a floor-to-ceiling height of five (5) feet.

Q. **UPPER-MIDDLE INCOME HOUSEHOLD.** A Household whose income is between one hundred sixty percent (160%) and two hundred percent (200%) of the Area Median Income, adjusted for household size.

28.43.030 Inclusionary Requirements.

A. **GENERAL REQUIREMENTS.**

1. Developments of Ten (10) or More Units. For all Residential Developments of ten (10) or more dwelling units, at least fifteen percent (15%) of the total units must be constructed and offered for sale as Inclusionary Units restricted for owner-occupancy by Middle Income Households or, in the case of Residential Land Subdivisions and the construction of single family homes, for owner-occupancy by Upper-Middle Income Households as specified herein.

2. **Developments of Less Than Ten (10) Units But More Than One Unit - Payment of an In-Lieu Fee.** For all Residential Developments of less than ten units and more than one unit, the Applicant shall, at the Applicant's election, either provide at least one unit as an owner-occupied Middle Income restricted Unit, or pay to the City an in-lieu fee equal to five percent (5%) of the in-lieu fee specified by Section 28.43.070B herein, multiplied by the total number of dwelling units of the Project; provided, however, that for those Residential Developments which are not a condominium conversion project (as defined by SBMC Chapter 28.88) and which propose to construct two (2) to four (4) dwelling units, the required in-lieu fee shall be calculated by multiplying the amount of the fee specified in Section 28.43.070B hereof by the number of units in the Development which exceed one dwelling unit.

B. **GENERAL REQUIREMENTS - RESIDENTIAL LAND SUBDIVISIONS.**

1. Subdivision of Ten or More Parcels. For all Residential Land Subdivisions where the real property parcels to be approved would permit the eventual development of ten (10) or more Dwelling Units, the Applicant shall pay an in-lieu fee corresponding to fifteen percent (15%) of the number of Dwelling Units that might eventually be built as part of the subdivision. At the option of the Applicant, the Applicant may propose an alternative means of compliance with this Chapter pursuant to Section 28.43.080 below.

2. Subdivisions of Less than Ten Parcels. For all Residential Land Subdivisions where the real property parcels to be approved would result in the eventual development of less than ten (10) but more than one (1) Dwelling Unit, the Applicant shall, at the Applicant's election, either provide that one Dwelling Unit will be constructed as an owner-occupied Middle Income Household restricted Unit, or pay an in-lieu fee corresponding to five percent (5%) of the in-lieu fee specified by Section 28.43.070B multiplied by the number of Dwelling

Units that might eventually be built as part of the subdivision. At the option of the Applicant, the Applicant may propose an alternative means of compliance with this Chapter pursuant to Section 28.43.080 below.

28.43.040. Exemptions.

A. **PROJECTS EXEMPTED FROM INCLUSIONARY REQUIREMENTS.** The requirements of this Chapter shall not apply to the following types of development projects:

1. **Rental Units.** A project constructing Dwelling Units which may not be separately owned, transferred, or conveyed under the state Subdivision Map Act.

2. **Casualty Reconstruction Projects.** The reconstruction of any residential units or structures which have been destroyed by fire, flood, earthquake or other act of nature, which are being reconstructed in a manner consistent with the requirements of Santa Barbara Municipal Code Section 28.87.038.

3. Voluntarily Affordable Projects. Residential Developments which propose that not less than thirty percent (30%) of the units of the development will be deed restricted for owner-occupancy by Low, Moderate, Middle, or Upper Middle Income Households pursuant to and in accordance with the City's Affordable Housing Policies and Procedures.

28.43.050 Incentives for On-Site Housing.

A. **PROVIDING UNITS ON-SITE.** An Applicant for a Residential Development of ten or more units who elects to satisfy the inclusionary housing requirements of this Chapter by producing owner-occupied Inclusionary Housing units on the site of a Residential Development shall be entitled to a density bonus for the number of Inclusionary Units to be provided on-site, in accordance with the City's density bonus program for owner-occupied units as described in the City's Affordable Housing Policies and Procedures without the need for the Applicant to apply separately for such a modification.

B. **USE OF ZONING ORDINANCE MODIFICATIONS.** The City may provide modifications in zoning requirements that will facilitate increased density for the purpose of accomplishing the goals of this Chapter, including modifications to parking, setback, yard area, open space and solar access requirements as specified in Section 28.92.110 of this Municipal Code.

28.43.060 Affordable Housing Standards.

A. **CONSTRUCTION STANDARDS FOR INCLUSIONARY UNITS.** Inclusionary Units built under this Chapter must conform to the following standards:

1. **Design.** Except as otherwise provided in this Chapter, Inclusionary Units must be dispersed evenly throughout a Residential Development and must be comparable in construction quality and exterior design to the Market-Rate Units constructed as part of the Development. Inclusionary Units may be smaller in aggregate size and may have different interior

finishes and features than Market-Rate Units so long as the interior features are durable, of good quality and consistent with contemporary standards for new housing.

2. **Size.** The average number of bedrooms in the Inclusionary Units must equal or exceed the average number of bedrooms in the Market-Rate Units of the Development. Absent a waiver from the Community Development Director, two-bedroom Inclusionary Units shall generally have at least one and one-half bathrooms, and three-bedroom Inclusionary Units shall generally have at least two bathrooms. However, the required number of bathrooms shall not be greater than the number of bathrooms in the Market-Rate Units. The minimum Unit Size of each Inclusionary Unit shall be in conformance with the City's Affordable Housing Policies and Procedures.

3. **Timing of Construction.** All Inclusionary Units must be constructed and occupied concurrently with or prior to the construction and occupancy of Market-Rate Units of the Development. In phased developments, Inclusionary Units may be constructed and occupied in proportion to the number of units in each phase of the Residential Development.

4. **Duration of Affordability Requirement.** Inclusionary Units produced under this Chapter must be legally restricted to occupancy by Households of the income levels for which the units were designated pursuant to and in conformance with the City's Affordable Housing Policies and Procedures.

28.43.070 In-Lieu Fees.

A. **PAYMENT OF IN-LIEU FEE TO CITY**. The requirements of this Chapter may also be satisfied by paying an in-lieu fee to the City for deposit into the City's Affordable Housing Inclusionary Fund as such fund is provided for in Section 28.43.130.

B. **CALCULATION OF IN-LIEU FEE**. The in-lieu fee for each required Inclusionary Unit that is not constructed on-site will be calculated as of the date of Planning Commission final approval in a manner sufficient to make up the monetary difference between the following: 1. the Estimated Production Cost of a two-bedroom condominium unit in the City as defined in this Section, and 2. the price of a two-bedroom dwelling unit affordable to a Moderate Household calculated according to the procedure specified in the City's Affordable Housing Policies and Procedures for a two-bedroom unit. The target income for this calculation shall be one hundred percent (100%) of Area Median Income, and the housing-cost-to-income ratio for this calculation shall be thirty five percent (35%). The Estimated Production Cost shall be deemed to be the median sale price of two-bedroom condominium units in the City less a fifteen percent (15%) adjustment to reflect an Applicant/Developer's anticipated profit. The median sale price of two-bedroom condominium units in the City shall be established by the City Council, based on data provided by the Santa Barbara Association of Realtors or other source selected by the City Council, for sales during the four most recent calendar quarters prior to the calculation.

The City Council may annually review the median sale price of two-bedroom condominium units in the City, and may, based on that review, adjust the in-lieu fee amount.

C. **PRORATING.** If the calculation for the required number of Inclusionary Units as provided in Section 28.43.030 results in a fraction of a unit, the amount of in-lieu fee for such fractional unit shall be prorated.

D. **REDUCTION OF IN-LIEU FEE FOR SMALLER UNITS.** For Residential Developments, the amount of the in-lieu fee shall be reduced where the average Unit Size of the Market-Rate Units is less than 1700 square feet, according to the following:

1. If the average Unit Size of the Market-Rate Units is between 1,400 and 1,699 square feet, the in-lieu fee shall be reduced by fifteen percent (15%).

2. If the average Unit Size of the Market-Rate Units is between 1,100 and 1,399 square feet, the in-lieu fee shall be reduced by twenty percent (20%).

3. If the average Unit Size of the Market-Rate Units is between 800 and 1,099 square feet, the in-lieu fee shall be reduced by twenty-five percent (25%).

4. If the average Unit Size of the Market-Rate Units is below 800 square feet, the in-lieu fee shall be reduced by thirty percent (30%).

E. **TIMING OF PAYMENT OF IN-LIEU FEE.** The timing of payment of the in-lieu fee varies according to the type of development and the number of units to be developed, as follows:

1. **New Construction of Five or More Units**. For new construction of five or more dwelling units, the in-lieu fee shall be paid prior to the issuance of a building permit for the Development; for phased-construction developments, payment of the applicable in-lieu fees shall be made for each portion of the Development prior to the issuance of a building permit for that phase of the Development. In the event that the Applicant/Developer intends to pay the in-lieu fee from proceeds of a bank construction loan, and such bank requires the issuance of a building permit prior to funding the construction loan, the Applicant/Developer may request that the Community Development Director issue the building permit prior to payment of the fee. The Community Development Director may approve such request provided the Applicant/Developer agrees in writing that the fee will be paid within ten (10) days after the issuance of the building permit, and further agrees that the building permit will be deemed revoked by the City and work undertaken pursuant to the building permit stopped if the in-lieu fee is not paid within such ten-day period.

2. **Condominium Conversions.** For condominium conversions, payment of the in-lieu fee shall be made prior to recordation of the Final Subdivision Map.

3. **Residential Lot Subdivisions.** For Residential Lot Subdivisions, payment of the in-lieu fee shall be made prior to recordation of the Final Subdivision Map.

4. Residential Development Projects of Four Units or Less. For Residential Developments of fours units or less which are subject this chapter and which elect to pay an in-lieu fee under the

requirements of this Chapter, the in-lieu fees shall be paid to the City prior to the issuance of a Certificate of Occupancy by the Chief Building Official of the City.

F. **DELAYED PAYMENT.** When payment is delayed, in the event of default, or for any other reason, the amount of the in-lieu fee payable under this Section will be based upon the greater of the fee schedule in effect at the time the fee is paid or the fee schedule in effect at the time of Planning Commission approval.

28.43.080 Alternative Methods of Compliance.

A. **ALTERNATIVE METHODS OF COMPLIANCE - APPLICANT PROPOSALS.** An Applicant, at the Applicant's option, may propose an alternative means of compliance with this Chapter by submitting to the City an Inclusionary Housing Plan prepared in accordance with the following alternative compliance provisions:

1. **Off-Site Construction.** All or some of the required Inclusionary Units may be constructed off-site if the Planning Commission (or the City Council on appeal) finds that the combination of location, unit size, unit type, pricing, and timing of availability of the proposed off-site Inclusionary Units would provide equivalent or greater benefit than would result from providing those Inclusionary Units on-site as might otherwise be required by this Chapter. Prior to the recordation of the Final Subdivision Map for the Residential Development subject to the inclusionary requirements of this Chapter, the Applicant shall post a bond, bank letter of credit, or other security acceptable to the Community Development Director, in the amount of the in-lieu fee per Section 28.43.070, which the City may call and may deposit in the Affordable Housing Inclusionary Fund and may spend in accordance with the terms of that Fund in the event that the off-site inclusionary units are not completed (as evidenced by the issuance of a certificate of occupancy for such units) according to the schedule stated in the Inclusionary Housing Plan submitted by the Applicant and prior to the completion and occupancy of the Residential Development.

2. **Dedication of Land For Affordable Housing Purposes.** In lieu of building Inclusionary Units on or off-site or the payment of in-lieu fees, an Applicant may choose to dedicate land to the City [or a City-designated non-profit housing developer] under circumstances where the land is suitable for the construction of Inclusionary Units and under circumstances which the Planning Commission (or the City Council on appeal) reasonably has determined to be of equivalent or greater value than would be produced by applying the City's current in-lieu fee to the Applicant's inclusionary housing obligation.

3. **Combination of Approaches.** The Planning Commission (or the City Council on appeal) may accept any combination of on-site construction, off-site construction, in-lieu fees and land dedication which, in the Planning Commission's or City Council's determination, would provide equivalent or greater benefit than that which might result from providing Inclusionary Units on-site.

B. **DISCRETION OF PLANNING COMMISSION OR CITY COUNCIL.** The Planning Commission (or the City Council on appeal) may approve, conditionally approve or reject any alternative proposed by an Applicant as part of an Affordable Housing Plan. Any approval or conditional approval must be based on a finding that the purposes of this Chapter would be better served by implementation of the proposed alternative. In determining whether the purposes of this Chapter would be better served under the proposed alternative, the Planning Commission (or the City Council on appeal) should consider the extent to which other factors affect the feasibility of prompt construction of the Inclusionary Housing Units, such as site design, zoning, infrastructure, clear title, grading and environmental review.

28.43.090 Inclusionary Housing Plan Processing.

A. **GENERALLY.** The submittal of an Inclusionary Housing Plan and recordation of an approved City affordability control covenant shall be a pre-condition on the City approval of any Final Subdivision Map, and no building permit shall be issued for any Development to which this Chapter applies without full compliance with the provision of this Section. This Section shall not apply to exempt projects or to projects where the requirements of the Chapter are satisfied by payment of an in-lieu fee under Section 28.43.070.

B. **INCLUSIONARY HOUSING PLAN.** Every residential development to which this Chapter applies shall include an Inclusionary Housing Plan as part of the application submittal for either development plan approval or subdivision approval. No application for a tentative map, subdivision map, or building permit for a development to which this Chapter applies may be deemed complete until an Inclusionary Housing Plan is submitted to and approved by the Community Development Director as being complete. At any time during the formal development review process, the Community Development Director may require from the Applicant additional information reasonably necessary to clarify and supplement the application or determine the consistency of the Project's proposed Inclusionary Housing Plan with the requirements of this Chapter.

C. **REQUIRED PLAN ELEMENTS.** An Inclusionary Housing Plan must include the following elements or submittal requirements:

1. The number, location, structure (attached, semi-attached, or detached), and size of the proposed Market-Rate and Inclusionary Units and the basis for calculating the number of Inclusionary Units;

2. A floor or site plan depicting the location of the Inclusionary Units and the Market-Rate Units;

3. The income levels to which each Inclusionary Unit will be made affordable;

4. The methods to be used to advertise the availability of the Inclusionary Units and select the eligible purchasers, including preference to be given, if any, to applicants who live or work in the City in conformance with the City's Affordable Housing Policies and Procedures;

5. For phased Development, a phasing plan that provides for the timely development of the number of Inclusionary Units proportionate to each proposed phase of development as required by Section 28.43.060.A.3 of this Chapter;

6. A description of any modifications as listed in Section 28.92.110 that are requested of the City;

7. Any alternative means designated in Section 28.43.080.A proposed for the Development along with information necessary to support the findings required by Section 28.43.080.B for approval of such alternatives; and

8. Any other information reasonably requested by the Community Development Director to assist with evaluation of the Plan under the standards of this Chapter.

D. **AFFORDABILITY CONTROL COVENANTS.** Prior to issuance of a grading permit or building permit, whichever is requested first, a standard City affordability control covenant must be approved and executed by the Community Development Director, executed by the Applicant/Owners, and recorded against the title of each Inclusionary Unit. If subdivision into individual property parcels has not been finalized at the time of issuance of a grading permit or building permit, an overall interim affordability control covenant shall be recorded against the Residential Development, and shall be replaced by separate recorded affordability control covenants for each unit prior to issuance of a Certificate of Occupancy by the City for such units.

28.43.100 Eligibility for Inclusionary Units.

A. **GENERAL ELIGIBILITY FOR INCLUSIONARY UNITS.** No Household may purchase or occupy an Inclusionary Unit unless the City has approved the Household's eligibility, and the Household and City have executed and recorded an affordability control covenant in the chain of title of the Inclusionary Unit. Such affordability control covenant is in addition to the covenant required in Section 28.43.090 above. The eligibility of the purchasing household shall be established in accordance with the City's Affordable Housing Policies and Procedures and any additional eligibility requirements agreed upon in writing by the Applicant and the City.

B. **OWNER OCCUPANCY.** A Household which purchases an Inclusionary Unit must occupy that unit as a principal residence, as that term is defined for federal tax purposes by the United States Internal Revenue Code.

28.43.110 Owner-Occupied Units; Sales Price; Long-Term Restriction.

A. **INITIAL SALES PRICE.** The initial sales price of an Inclusionary Unit must be set in accordance with the City's Affordable Housing Policies and Procedures, using the Target Income requirements specified in this Chapter.

B. **TRANSFERS AND CONVEYANCES.** A renewal of the affordability controls covenant will be entered into upon each change of ownership of an Inclusionary Unit and upon any transfer or conveyance (whether voluntarily or by operation of law) of an owner-occupied Inclusionary

Unit as such covenants are required in accordance with the City's Affordable Housing Policies and Procedures.

C. **RESALE PRICE.** The maximum sales price and qualifications of purchasers permitted on resale of an Inclusionary Unit shall be specified in the affordability control covenant and shall be in conformance with the City's then approved and applicable Affordable Housing Policies and Procedures.

28.43.120 Adjustments and Waivers.

A. **ADJUSTMENTS AND WAIVERS.** The requirements of this Chapter may be adjusted to propose an alternative method of compliance with this Chapter in accordance with Section 28.43.080 or waived (in whole or in part) by the City if the Applicant demonstrates to the Planning Commission (or the City Council on appeal) that applying the requirement of this Chapter would be contrary to the requirements of the laws of the United States or California or the Constitutions thereof.

B. **TIMING OF WAIVER REQUEST.** To receive an adjustment or waiver, the Applicant must make an initial request of the Planning Commission for such an adjustment or waiver and an appropriate demonstration of the appropriateness of the adjustment or waiver when first applying to the Planning Commission for the review and approval of the proposed Residential Development plan or subdivision review as such review and approval is required by either Title 28 or Title 27 of the Santa Barbara Municipal Code.

C. **WAIVER AND ADJUSTMENT CONSIDERATIONS.** In making a determination on an application to adjust or waive the requirements of this Chapter, the Planning Commission (or the City Council on appeal) may assume each of the following when applicable: (i) that the Applicant is subject to the inclusionary housing requirement or in-lieu fee; (ii) the extent to which the Applicant will benefit from inclusionary incentives under Section 28.43.050; and (iii) that the Applicant will be obligated to provide the most economical Inclusionary Units feasible in terms of construction, design, location and tenure.

D. **WRITTEN DECISION.** The Planning Commission (or the City Council on appeal) will determine the application and issue written findings and a decision within sixty (60) days of the public hearing on the Adjustment/Waiver Request.

E. **APPEAL TO THE CITY COUNCIL.** Upon a decision by the Planning Commission on the proposed overall residential development plan, any action taken by the Commission made pursuant to a request for an adjustment for an alternative method of compliance under Section 28.43.080, or for a waiver pursuant to this Section, may be appealed to the City Council in accordance with the appeal procedures of Santa Barbara Municipal Code Section 1.30.050.

28.43.130 Affordable Housing Inclusionary Fund.

A. **INCLUSIONARY FUND.** There is hereby established a separate City Affordable Housing Inclusionary Fund ("Fund") maintained by the City Finance Director. This Fund shall receive all fees contributed under Sections 28.43.070 and 28.43.080 and may, at the discretion of the City Administrator, also receive monies from other sources.

B. **PURPOSE AND LIMITATIONS.** Monies deposited in the Fund must be used to increase and improve the supply of housing affordable to Upper Middle, Middle, Moderate-, Low-, and Very Low-Income Households in the City and to ensure compliance of such Households with the City's Affordable Housing Policies and Procedures. Monies may also be used to cover reasonable administrative or related expenses associated with the administration of this Section, including but not limited to, the City's purchase and resale of affordable housing units that are in default of the affordable control covenant recorded against that property, provided that the City shall, at all times, comply with the applicable provisions and requirements of the state Mitigation Fee Act, Govt. Code Sections 66000 - 66025.

C. **ADMINISTRATION.** The Fund shall be administered by the Community Development Director, who may develop procedures to implement the purposes of the Fund consistent with the requirements of this Chapter and any adopted budget of the City.

D. **EXPENDITURES.** Fund monies shall be used in accordance with the City's Housing Element, Redevelopment Plan, the City's Affordable Housing Policies and Procedures, or subsequent plan adopted by the City Council to construct, rehabilitate or subsidize affordable housing or assist other governmental entities, private organizations or individuals to do so. Permissible uses include, but are not limited to, assistance to housing development corporations, equity participation loans, grants, pre-home ownership co-investment, pre-development loan funds, participation leases or other public-private partnership arrangements. The Fund may be used for the benefit of both rental and owner-occupied housing in accordance with the applicable requirements of the state Mitigation Fee Act, Govt. Code Sections 66000 - 66025.

E. **COMMUNITY DEVELOPMENT DIRECTOR'S ANNUAL REPORT.** The Community Development Director, with the assistance of the City Finance Director, shall report annually to the City Council on the status of activities undertaken with the Fund. The report shall include a statement of income, expenses, disbursements and other uses of the Fund. The report should also state the number and type of Inclusionary Units constructed during that year.

SECTION TWO: Section 28.92.110 of Chapter 28.92 of Title 28 is hereby amended to read as follows:

28.92.110 Modifications.

Modifications may be granted by the Planning Commission or Staff Hearing Officer as follows:

A. **BY THE PLANNING COMMISSION.** The Planning Commission may permit the following:

1. **Parking.** A modification or waiver of the parking or loading requirements where, in the particular instance, the modification will not be inconsistent with the purposes and intent of this Title and will not cause an increase in the demand for parking space or loading space in the immediate area.

2. **Yards, Lot Area, and Floor Area.** A modification of yard, lot, building separation, and floor area requirements where the modification is consistent with the purposes and intent of this Title, and is necessary to (i) secure an appropriate improvement on a lot, (ii) prevent unreasonable hardship, (iii) promote uniformity of improvement, or (iv) the modification is necessary to construct a housing development containing affordable dwelling units or owned and occupied in the manner provided for in the City's Affordable Housing Policies and Procedures as defined in subsection (A) of Section 28.43.020 of this Code.

3. **Fences, Screens, Walls, and Hedges.** A modification of fence, screen, wall and hedge regulations where the modification is necessary to secure an appropriate improvement on a lot and is consistent with the purposes and intent of this Title.

4. **Solar Access.** A modification of height limitations imposed by Section 28.11.020 to protect and enhance solar access where the modification is necessary to prevent an unreasonable restriction. The Rules and Regulations approved pursuant to Section 28.11.040 shall contain criteria for use in making a finding of unreasonable restriction.

5. **Building Height.** A modification of building height limitations for existing buildings or structures that exceed the current building height limit, to allow the exterior of the portion of the building or structure that exceeds the building height limit to be improved or upgraded, provided that the improvements increase neither the height nor the floor area of any portion of the building or structure that exceeds the building height limit, except as otherwise allowed in the Code.

6. **Net Floor Area (Floor to Lot Area Ratio).** A modification of the net floor area standard imposed by Section 28.15.083 to allow a development that would otherwise be precluded by operation of Subsection 28.15.083.D where the Planning Commission makes all of the following findings:

a. Not less than five (5) members of the Single Family Design Board or six (6) members of the Historic Landmarks Commission (on projects referred to the Commission pursuant to Section 22.69.030) have voted in support of the modification following a concept review of the project;

b. The subject lot has a physical condition (such as the location, surroundings, topography, or the size of the lot relative to other lots in the neighborhood) that does not generally exist on other lots in the neighborhood; and

c. The physical condition of the lot allows the project to be compatible with existing development within the neighborhood that complies with the net floor area standard.

SECTION THREE: The amendments to Santa Barbara Municipal Code Chapter 28.43 enacted by the adoption of this Ordinance shall only apply to Residential Development projects or Residential Parcel Subdivisions approved by the City Planning Commission subsequent to the date of the adoption of this Ordinance.

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October 1, 2008
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