

ORDINANCE NO. \_\_\_\_\_

ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA ROSA AMENDING TITLE 21 OF THE SANTA ROSA CITY CODE – UPDATING CHAPTER 21-02, HOUSING ALLOCATION PLAN, TO MODIFY THE REQUIREMENTS FOR PROVIDING ON-SITE INCLUSIONARY HOUSING UNITS, AND TO ESTABLISH A COMMERCIAL LINKAGE FEE – FILE NUMBER PRJ19-036

WHEREAS, the Santa Rosa City Code Chapter 21-02, Housing Allocation Plan (HAP), was enacted in 1992 and updated in 2012 and 2014, with a purpose of meeting the Santa Rosa General Plan goals to expand the supply of housing available to lower income households; and

WHEREAS, in October 2016, the City Council accepted the Housing Action Plan, which includes a variety of programs aimed at addressing the City’s ongoing unmet housing needs. Program 1 of the Plan is to “increase inclusionary housing”, which directed the consideration of the following policy options: (1) seek inclusionary units in for-sale housing projects, (2) require a minimum of 15 percent of the for-sale projects total units be affordable to a mix of low and moderate income households, (3) specify additional regulatory and financial incentives and alternative compliance measures as may be needed to maximize production of affordable housing units, and (4) encourage innovation in achieving increased inclusionary housing; and

THE PEOPLE OF THE CITY OF SANTA ROSA DO ENACT AS FOLLOWS:

Section 1. Amend the Santa Rosa City Code Chapter 21-02, Housing Allocation Plan, by replacing the provisions of this chapter in its entirety with the following new provisions to read and provide as follows:

“Chapter 21-02 INCLUSIONARY HOUSING

- 21-02.010 Determinations.
- 21-02.020 Purpose.
- 21-02.030 Definitions.
- 21-02.040 Applicability.
- 21-02.050 Inclusionary Requirements.
- 21-02.060 Relationship to Density Bonus Provisions.
- 21-02.070 Alternative Compliance.
- 21-02.080 Exemptions.
- 21-02.090 Establishment, Payment, and Use of the Housing Impact and Commercial Linkage Fee.
- 21-02.100 Inclusionary Unit Development Standards.
- 21-02.110 Affordable Housing Incentives.
- 21-02.120 Affordability Agreement and Terms.
- 21-02.130 Administration.
- 21-02.140 Annual Review.

**21-02.010 Determinations.**

The City of Santa Rosa declares that the provision of housing in a suitable living environment for all residents is a priority of the highest order and is consistent with State, regional and national policies. The goal of the City is to achieve a balanced community with housing available for persons of all income levels. There exists within the City a shortage of housing that is affordable to households of lower and moderate incomes. Federal and State housing finance subsidy programs are not sufficient by themselves to satisfy these income housing needs. The City finds that the housing shortage for households of lower and moderate income is detrimental to the public health, safety and welfare and, further, that it is a public purpose of the City to seek assistance and cooperation from the private sector in making available an adequate supply of housing for persons of all economic segments of the community.

**21-02.020 Purpose.**

The purpose of this chapter is to enhance the public welfare and assure the compatibility between future housing development and the housing element of the Santa Rosa general plan through increasing the production of housing units affordable to households of lower and moderate incomes. It is the purpose of this chapter to meet Santa Rosa general plan goals to expand the supply of housing available to lower and moderate-income households.

**21-02.030 Definitions.**

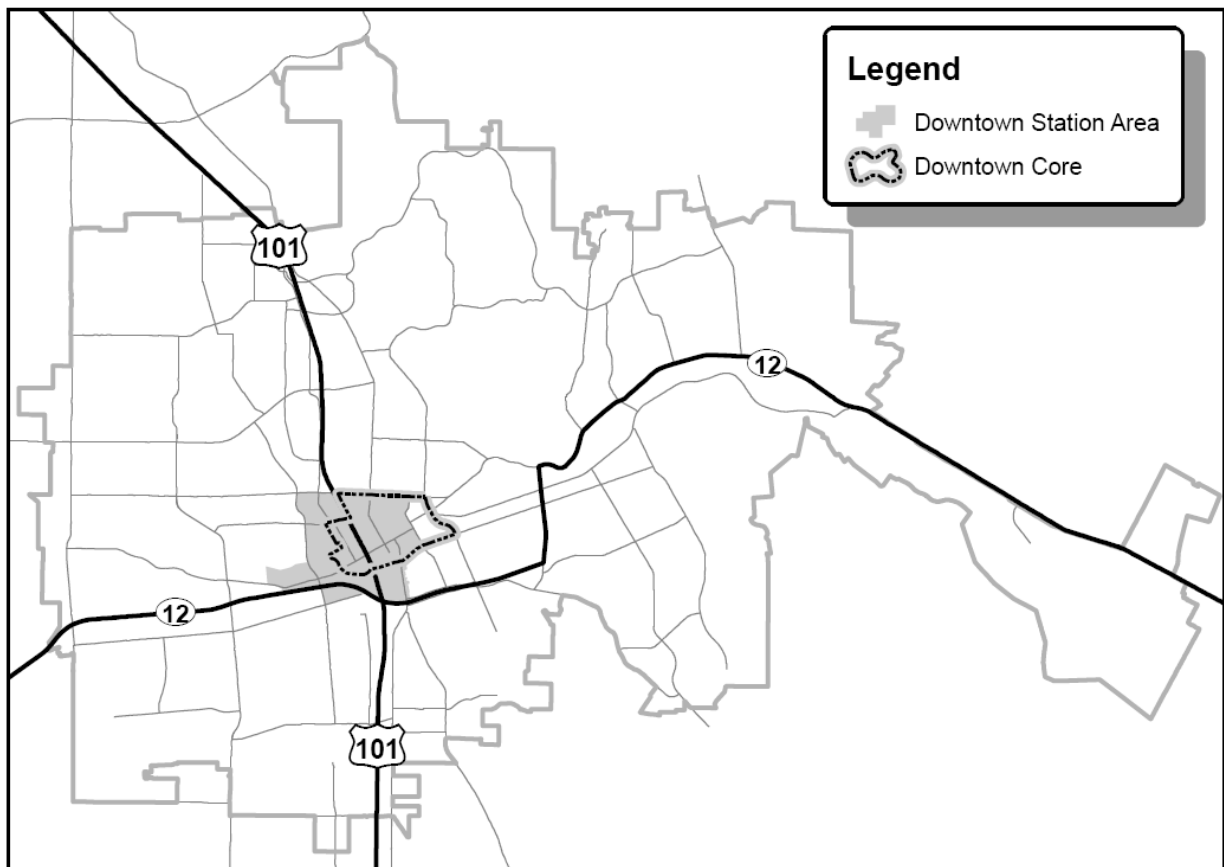
- A. “Affordability agreement” means a legally binding agreement between an applicant and the Housing Authority to ensure continued affordability of allocated units is maintained in accordance with this chapter.
  
- B. “Affordable rent” means the maximum monthly rent an owner may charge for an allocated unit in accordance with Section 50053.b of the California Health and Safety Code, less the appropriate allowance for utilities.
  
- C. “Allocated (inclusionary) unit” means a newly constructed “for-rent” or “for-sale” dwelling unit which is: (1) provided by a developer under the provisions of this chapter; (2) to be made available and occupied by a household of lower or moderate income, as required under the provisions of this chapter; (3) subject to occupancy and affordable rent or sales price controls for a period of not less than 55 years; (4) compatible with the design of other units in the residential housing development of which it is part in terms of exterior appearance, materials and quality finish; and (5) a similar unit type and bedroom mix to the overall residential development.
  
- D. “Commercial development” means all new development projects and expansion of gross square footage to existing building that is not residential development as defined in this section.
  
- E. “Commercial linkage fee” means the fee assessed on commercial development to

help off-set the impact of the additional demand for affordable housing caused by such activity.

F. “Community care facility” means a facility, place or building which is maintained and operated, subject to licensing by the California Department of Social Services, to provide nonmedical residential care, which may include home finding and other services, for children and/or adults, including: the physically handicapped; mentally impaired, mentally disordered, or incompetent; developmentally disabled; court wards and dependents; neglected or emotionally disturbed children; the addicted; the aged. Community care facility includes a continuing care and retirement community.

G. “Development standard” means a site or construction condition, including, but not limited to, height limits, required setbacks, maximum floor area ratio, onsite open-space requirement, or required parking that applies to a residential development pursuant to any ordinance, General Plan, Specific Plan, charter, or other local condition, law, policy, resolution, or regulation.

H. “Downtown” means the area encompassed by the Downtown Station Area Specific Plan and the Downtown Core as identified by the Santa Rosa General Plan (see Figure 1-1).



**Figure 1-1: Downtown Station Area Specific Plan Boundaries (College Avenue to the**

**north, E Street to the east, Sebastopol Road and Highway 12 to the south, and Dutton Avenue and Imwalle Gardens to the west), and Downtown Core Boundaries (College Avenue to the north, Brookwood Avenue to the east, the properties on the west side of the railroad tracks to the west, and Sonoma Avenue to the south)**

I. “Health care facility” means a facility, place or building other than a hospital which is maintained and operated as a residence for patients and to provide long-term medical care. Includes nursing homes, intermediate care facilities, extended care facilities, hospice homes, and similar facilities which are licensed by the California State Department of Health Services, and defined in [Health and Safety Code](#), Section 1200, et seq. May include a lab, radiology, pharmacy, rehabilitation, and other similar services as accessory uses.

J. “Housing Authority of the City of Santa Rosa” or “Housing Authority” means the not-for-profit public entity, responsible for ensuring adequate, decent, safe and sanitary housing for qualified people with limited income within Santa Rosa consistent with federal, state and local laws and which is involved in administering programs designed to develop affordable housing, provide federal rental subsidy, and various other programs to benefit Santa Rosa residents with limited income.

K. “Housing impact fee” means a fee paid as an alternative to providing an allocated unit or a fraction of an allocated unit.

L. “Income (household), low” means a household whose gross income does not exceed 80 percent of the area median income for the Santa Rosa Metropolitan Area, adjusted for family size, as published and periodically updated by the State Department of Housing and Community Development pursuant to Section 50079.5 of the California Health and Safety Code.

M. “Income (household), very low” means a household whose gross income does not exceed 50 percent of the area median income for the Santa Rosa Metropolitan Area, adjusted for family size, as published and periodically updated by the State Department of Housing and Community Development pursuant to Section 50105 of the California Health and Safety Code.

N. “Lower income household” is a general term which refers to households whose gross income falls under the categories of very low or low income as those terms are defined in this Section.

O. “Moderate income household” means a household whose gross income does not exceed 120 percent of the area median income for the Santa Rosa Metropolitan Area, adjusted for family size, as published and periodically updated by the State Department of Housing and Community Development pursuant to Sections 50079.5 and 50052.5 of the California Health and Safety Code.

P. “Owner/builder” means an individual who obtains a building permit to construct a single dwelling unit on a single lot as his or her residence and who may not be issued another

residential building permit as an “owner/builder” for a period of five years following the issuance of such a permit and the completion of construction of the dwelling unit authorized thereunder.

Q. “Residential development” means a project containing at least one residential unit, including mixed use developments. For the purposes of this chapter, “residential development” also includes projects defined in California Government Code Section 65915(i), including a subdivision or Common Interest Development, as defined in Section 4100 of the California Civil Code, approved by a City and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of California Government Code Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units.

R. “Review authority” means the individual or official City body (Planning and Economic Development Director, Housing and Community Services Director, Zoning Administrator, Design Review Board, Planning Commission, City Council) which has the responsibility and authority to review, and approve or disapprove, applications for land use entitlements.

S. “Single room occupancy facility” is a residential building including units with living space with a minimum floor area of 150 square feet and a maximum of 400 square feet restricted to occupancy by no more than two persons. Kitchen and bathroom facilities may be wholly or partially included in each living space or may be fully shared.

#### **21-02.040 Applicability.**

A. The inclusionary requirements of this chapter apply to all residential developments within the City, including the residential component of mixed-use developments.

B. The commercial linkage fee of this chapter applies to all commercial development projects as defined in 21-02.030.D, unless listed as exempt under 21-02.080.B.

#### **21-02.050 Inclusionary Requirements.**

A. Except those development projects complying with this chapter in an alternative manner consistent with Section 21-02.070, all residential or mixed use development projects shall pay a housing impact fee, per Section 21-02.090, or construct on-site allocated units as follows:

1. For-rent residential development projects shall provide at least 8% of the total number of new dwelling units as affordable to low income households or at least 5% of the total number of new dwelling units as affordable to very low income households.
2. For-sale residential development projects shall provide at least 10% of the total

number of new dwelling units as affordable to moderate income households.

B. Notwithstanding the inclusionary requirements of subsection 21-02.050.A, all residential or mixed use development projects located in the Downtown shall pay a housing impact fee, per Section 21-02.090, or construct on-site allocated units as follows:

1. For-rent residential development projects shall provide at least 4% of the total number of new dwelling units as affordable to low income households or at least 3% of the total number of new dwelling units as affordable to very low income households.
2. For-sale residential development projects shall provide at least 5% of the total number of new dwelling units as affordable to moderate income households.

C. Each allocated unit shall be subject to a recorded affordability agreement at the targeted income level for a term of at least 55 years. The Director of the Department of Housing and Community Services or a designee is authorized to make the calculation, in each instance, of the affordable rent or housing cost.

D. Fractional units that may result from the application of these requirements will be addressed as follows:

1. For a fractional unit requirement of less than 0.5, the applicant will pay a fractional housing impact fee.
2. For a fractional unit requirement of 0.5 and above, the fraction will be rounded up to the next larger integer and treated as a whole unit.

E. If a proposed residential development project would result in the elimination of existing deed restricted affordable housing units, the affordable units must be replaced on a one-for-one basis with equally affordable deed restricted units.

#### **21-02.060 Relationship to Density Bonus Provisions.**

A residential applicant proposing allocated units consistent with Section 21-02.050C which also applies for a density bonus consistent with Chapter 20-31 of this code, may count units affordable to lower or moderate-income households toward both requirements. Additional units allowed by the density bonus shall not be included in the total project units when determining the proportion of required allocated units in a residential development.

#### **21-02.070 Alternative Compliance.**

Alternatives to provision of on-site allocated units or payment of the housing impact fee in accordance with Section 21-02.050 include provision of allocated units off-site, dedication or conveyance of land, conversion of market rate units to affordable, preservation of at-risk housing, use of inclusionary credits, or other innovative approaches. All alternative compliance

measures must produce at least the same number and affordability of units that would have been provided on-site, and are subject to review and approval by the Director of Planning and Economic Development.

A. Allocated Units Provided Off-Site. A residential applicant may provide allocated units off-site (“off-site units”).

1. Allocated units provided off-site must be located in the same quadrant of the City as the unallocated units of the development, unless the Director of Planning and Economic Development makes a determination that locating the off-site units in a different quadrant would better serve the General Plan Housing goals of the City. The quadrants of the City are formed by the intersection of Highway 101 and Santa Rosa Creek.

2. As part of the application submittal materials, the applicant shall submit evidence that the applicant owns, or has an irrevocable option to purchase, the site where the off-site allocated units are proposed to be located.

3. Allocated units provided off-site may not be the recipient of any City or Housing Authority financing or subsidy.

B. Land Dedication or Conveyance Alternative. A residential applicant may offer to dedicate or convey land to the City, situated on-site or off-site.

1. Land offered under this section must be within the City’s boundaries and must be designated for a general plan land use which allows multifamily units.

2. The applicant shall provide an analysis which demonstrates that the land offered is suitable for affordable housing development in terms of size; location; general plan land use designation; availability of sewer, water and transit services; absence of toxics; absence of environmental constraints; site characteristics and surroundings. Staff will recommend to the review authority whether the dedication should be accepted.

3. The applicant shall also submit evidence that the applicant owns, or has an irrevocable option to purchase, the site proposed for dedication or conveyance.

4. Land conveyed under this section shall be used for the development of affordable housing for households of lower income.

5. Land shall be identified and offered for dedication or conveyance at the time of development application submittal. If the offer is accepted by the review authority, the land must be donated to the City no later than the date of approval of the final subdivision map, parcel map or housing development application, and must have all the permits and approvals, other than building permits, necessary for development with the required number of affordable units.

C. **Impaction Determination.** Each site proposed to be dedicated or conveyed to the City for construction of affordable units or proposed for one or more off-site allocated units shall be evaluated as to whether the placement of such units will overly impact an area with lower income units. If the site is within 1,000 feet of one or more existing or approved developments in which more than 50 percent of the units are, or will be, restricted to occupancy by households of lower incomes, impaction shall be found, unless the existing or approved development is located Downtown. The review authority may override a determination of impaction by making findings that local schools, services and adjacent uses will not be negatively impacted by the construction of allocated or affordable units at the proposed site.

D. **Conversion of Market Rate Units to Affordable.** A residential applicant may propose to convert existing market rate units to affordable units in an amount equal to or greater than the required on-site inclusionary housing requirement, including any needed rehabilitation to ensure compliance with building, health and safety standards.

E. **Preservation of At-Risk Housing.** A residential applicant may offer to purchase long term affordability covenants on an existing deed restricted affordable housing project at imminent risk of contract termination and conversion to market rate housing.

F. **Credit for Additional Affordable Units.** If an applicant completes construction on a site of a greater number of affordable units than required by this chapter, the additional units may be credited towards meeting the requirements of this chapter for a future project. The applicant may use credits in a future project or transfer the credits in writing to another developer. Credits will only be counted toward required affordable units with the same bedroom count, the same tenure (rental or ownership), and required affordability targets. The credits must be used within 10 years of issuance. Projects which have received a density bonus or which receive a government subsidy in any form, financial or other, shall not be eligible for credits.

G. **Innovation Encouraged.** Innovative alternatives to providing affordable housing not outlined in this chapter shall be evaluated by staff and considered on a case-by-case basis. Substitute programs shall be permitted providing, at the recommendation of staff and determination of the review authority that the objectives of the inclusionary housing ordinance are being met with the alternate proposal.

**21-02.080 Exemptions.**

A. The following residential developments are exempt from the inclusionary requirements (Section 21-02.050) of this chapter:



1. The construction of a dwelling unit to replace a previously existing dwelling unit situated on the same lot if the previous dwelling was demolished or destroyed within five years of the date the building permit application for the replacement unit is submitted to the Department of Planning and Economic Development.
2. The construction of homeless shelters, community care and health care facilities, single room occupancy units and units which, under agreement with the City or a City agency, are only available for occupancy by lower or moderate income households at affordable rents or affordable sales prices for a period of not less than 55 years.
3. The construction of accessory dwelling units.
4. A unit constructed under a building permit issued to an owner/builder.

B. The following commercial developments are exempt from the Commercial Linkage fee requirements (Sections 21-02.090.B) of this chapter:

1. Mixed-use projects consisting of two stories or more of residential over commercial space.
2. Any commercial development project being constructed by or on behalf of a government or public institution such as a school, museum or other such community use projects.
3. The construction of homeless shelters, community care and health care facilities, single room occupancy units and units which, under agreement with the City or a City agency, are only available for occupancy by lower or moderate income households at affordable rents or affordable sales prices for a period of not less than 55 years.
4. Public and private childcare facilities.
5. Churches.
6. Reconstruction of any building that was destroyed by fire, flood, earthquake or other act of nature, so long as the square footage does not exceed the square footage before the loss.
7. Replacement for commercial use gross floor area previously on the site but demolished within one year prior to the filing of a complete application for the new construction.

**21-02.090 Establishment, Payment, and Use of the Housing Impact and Commercial Linkage Fees.**

A. Housing Impact Fee

1. Residential development projects shall be assessed a housing impact fee as an alternative to provision of on-site allocated units in accordance with Section 21-02.050.
2. The City Council, by resolution, shall establish the amounts and calculation of the housing impact fee. The fee for a for-rent unit shall be paid no later than prior to the final inspection for each unit in a residential project; payment for a for-sale unit shall be no later than the close of escrow or one-year following the final inspection, whichever is sooner. The fee for rental and for-sale units shall be adjusted annually in July based on the percentage change in the Bureau of Labor Statistics San Francisco/Oakland/San Jose Consumer Price Index – All Urban Consumers (CPI-U).
3. All housing impact fees paid under this chapter shall be paid to the City and shall be used by the City’s Housing Authority only for the development of housing situated within the City limits that is affordable to households of lower and moderate incomes, including, but not limited to, the acquisition of property, costs of construction, including costs associated with planning, administration and design, as well as actual building or installation costs, and program administration. Housing assisted with housing impact fees shall be subject to a minimum 55-year affordability agreement with the Housing Authority.
4. Housing impact fees paid by projects located Downtown shall be utilized for development of housing affordable to households of lower and moderate incomes and proposed to be located Downtown, as possible. If no such developments are proposed by July 1<sup>st</sup> of the second year after the date these funds are paid to the Housing Authority, the fees may be utilized for the development of lower income units outside of Downtown.

B. Commercial Linkage Fee

1. Commercial development shall be assessed a commercial linkage fee to mitigate the impact of the additional demand for affordable housing caused by such activity.
2. The City Council, by resolution, shall establish the amounts and calculation of the commercial linkage fee that shall be assessed on new commercial development, as required by this subsection. The fee shall be based on the rate in effect at the time the building permit application is submitted, and the fee is due at or before building permit issuance. If a building permit is not required, the fee shall be based on the rate in effect at the time of Business Tax Certificate application. Fees are due at or before certificate issuance. The fee shall be adjusted annually in July based on the percentage change in the Bureau of Labor Statistics San Francisco/Oakland/San Jose Consumer Price Index – All Urban Consumers (CPI-U).

3. All commercial linkage fees paid under this chapter shall be paid to the City and shall be used by the City's Housing Authority only for the development of housing situated within the City limits that is affordable to households of lower and moderate incomes, including, but not limited to, the acquisition of property, costs of construction, including costs associated with planning, administration and design, as well as actual building or installation costs, and program administration. Housing assisted with commercial linkage fees shall be subject to a minimum 55-year affordability agreement with the Housing Authority.
4. The developer of any project subject to the fee requirements may apply to receive a credit against the total amount of fees due, or a portion thereof, if said developer provides affordable housing through some other means for review and approval by the Director of the Department of Planning and Economic Development.

#### **21-02.100 Inclusionary Unit Development Standards.**

- A. Allocated units shall be constructed concurrent with or before construction of unallocated units, whether provided on- or off-site. For phased projects, allocated units shall be provided in the first phase or with each phase of the project in proportion to the project.
- B. Allocated units shall be distributed throughout the residential project. Exceptions may be granted by the Director of Planning and Economic Development in instances where site dispersion is constrained by affordable housing funding sources which require clustering of subsidized units.
- C. Allocated units shall be comparable in number of bedrooms, exterior appearance and overall quality of construction to market rate units in the residential project as a whole. While the square footage of allocated units and interior features may not be equivalent to those in the project's market rate units, all features shall be of good quality and consistent with contemporary standards for new housing.
- D. Accessory dwelling units shall not be counted towards meeting a project's inclusionary requirements.

#### **21-02.110 Affordable Housing Incentives.**

An applicant may request the City provide regulatory, procedural or financial incentives, including but not limited to a density bonus or modified development standards, in exchange for providing on-site inclusionary units as required by this chapter. The request for incentives shall be included as part of the project application materials, and shall be subject to review and approval by the Director of Planning and Economic Development.

#### **21-02.120 Affordability Agreement and Terms.**

- A. For developments providing allocated units, an affordability agreement must be executed prior to recording any final map for the residential development or prior to the issuance

of any building permit for the residential development, whichever comes first. The affordability agreement shall be binding on all future owners and successors of interests of the residential development.

B. Once the residential development including allocated units has received its final discretionary approval, the applicant shall file an application, including payment of any processing and monitoring fees, with the Housing Authority for approval and finalization of the affordability agreement.

C. The affordability agreement shall:

1. Identify the type, size and location of each allocated unit provided.
2. Identify the term of the agreement, which would define the term of affordability of the allocated units.
3. Require that the allocated units be constructed and completed by the applicant as specified in this chapter.
4. Require that each allocated unit be kept available only to members of the identified income group at the maximum affordable rent or housing cost during the term of the agreement.
5. Identify the means by which such continued availability shall be secured and enforced and the procedures under which the allocated units shall be leased and shall contain such other terms and provisions the Housing Authority may require. The agreement, in its form and manner of execution, shall be in a form able to be recorded with the Sonoma County Recorder.
6. The affordability agreement shall be reviewed and approved by the Executive Director of the City's Housing Authority and the affordability of the allocated units shall be monitored for compliance by the Housing Authority staff. The Housing Authority is hereby expressly authorized to act as the City's agent to enter into the affordability agreement for the purpose of enforcing the terms of the agreement consistent with this chapter.

D. A project providing allocated units consistent with this chapter and affordable units consistent with the provisions of the density bonus and other developer incentives chapter of this code may enter into a single affordability agreement.

#### **21-02.130 Administration.**

A. The City Council, by resolution, may from time to time adopt procedures, policies, rules and requirements, including the adoption of processing and administrative fees, to implement, administer, and/or enforce the provisions of this chapter.

B. The Director of the Department of Planning and Economic Development or designee is authorized to determine the number of dwelling units contained within a particular residential development, if a determination is needed to resolve a disagreement. When a question arises regarding the meaning, or requires an interpretation of any provision of this chapter to any specific circumstances or situation, the Director of Planning and Economic Development is authorized to render a decision thereon in writing.

C. The Director of the Department of Planning and Economic Development or designee is authorized to determine the classification of a commercial land use. Commercial land uses shall be divided into three (3) classifications: commercial, retail, and industrial. When necessary, the Director shall determine the land use classification that most accurately describes the commercial development, or in the case of Mixed-use developments, the portion thereof, for the purposes of determining the fee to be imposed

D. The City's Department of Housing and Community Services shall keep on file and available for public review a copy of the current income schedules and utility allowances.

**21-02.140 Annual Review.**

A. At least once each calendar year, the Department of Planning and Economic Development shall prepare a report on the effectiveness of the inclusionary housing ordinance, both citywide and Downtown, which shall include the following:

1. The number of allocated units, both on- and off-site, issued building permits during the time period covered by the report.
2. The number of qualifying units, owner/builder units, accessory dwelling units, very low, low or moderate income units and mixed use units issued building permits during the time period covered by the report.
3. The amount of housing impact fees collected.
4. The amount of acreage by land use category dedicated to the City.
5. A listing of any staff recommendations, with regard to changes or revisions to the adopted program to improve its effectiveness and/or administration.

B. The staff report shall be submitted to the Planning Commission and City Council as an agenda item at a joint or individual regular meeting.”

Section 2. Environmental Determination. The Council finds that the proposed Housing Allocation Plan Ordinance Update is exempt from the provisions of the California Environmental Quality Act (CEQA) under section 15061(b)(3) and 15378 in that there is no possibility that the implementation of this ordinance may have significant effects on the environment, and that no further environmental review is required.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 4. Effective Date. This ordinance shall take effect on the 31st day following its adoption.

This ordinance was introduced by the Council of the City of Santa Rosa on October 1, 2019.

IN COUNCIL DULY PASSED AND ADOPTED this 22nd day of October, 2019.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: \_\_\_\_\_ APPROVED: \_\_\_\_\_  
Acting City Clerk Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney