

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPITOLA AMENDING CHAPTER 18.02 “AFFORDABLE (INCLUSIONARY) HOUSING”

WHEREAS, the City of Capitola (“City”)’s Inclusionary Housing Ordinance, set forth in Chapter 18.02 of the City of Capitola Municipal Code, establishes affordable housing regulations to advance and protect the general health and welfare of the City’s residents, workers and economy, and facilitate the supply of affordable housing; and

WHEREAS, the City Council of the City of Capitola (“City Council”) has identified certain necessary amendments to the Inclusionary Housing Ordinance to clarify eligibility and processing procedures to reflect current practices; and

WHEREAS, the City Council desires to amend the Inclusionary Housing Ordinance to define “primary residence,” amend the definition of “qualified retirement plan,” amend the sales procedures for mobile home parcels to reflect current practices, and amend eligibility requirements.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CAPITOLA DOES ORDAIN AS FOLLOWS:

Section 1: Amending Chapter 18.02 of the Capitola Municipal Code. Chapter 18.02 of Title 18 of the Capitola Municipal Code titled “Affordable (Inclusionary) Housing” is hereby amended in its entirety as shown in Attachment A. Additions are shown as double underline and deletions are shown with ~~strikethrough~~.

Section 2: CEQA. The City Council hereby finds that the action to adopt this Ordinance is exempt from the requirements of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) pursuant to Guidelines Section 15061(b)(3), where it can be seen with certainty that the proposed action will have no significant effect on the environment.

Section 3: Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

Section 4: Effective Date. This Ordinance of the City of Capitola shall take effect and be in force 30 days after the date of its passage.

Section 5: Publication. Within fifteen (15) days of its passage, this Ordinance shall be published at least once in a newspaper of general circulation published and circulated in the City of Capitola, along with the names of the members of the City Council voting for and against its passage.

This Ordinance was introduced at a regular meeting of the Capitola City Council on the ___ day of _____ 2023, and was adopted at a regular meeting of the Capitola City Council on the ___ day of _____ 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Margaux Keiser, Mayor

ATTEST:

Julia Moss, City Clerk

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ATTACHMENT A

Chapter 18.02 AFFORDABLE (INCLUSIONARY) HOUSING

Sections:

- 18.02.010 Findings.
- 18.02.020 Words and phrases.
- 18.02.030 Affordable housing requirements.
- 18.02.040 Provision of affordable housing units.
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- 18.02.150 Reductions, Adjustments, or Waivers
- 18.02.160 Appeal.

18.02.010 Findings.

In enacting this chapter of the Capitola Municipal Code pertaining to the provision and protection of affordable housing in the city of Capitola, the city council finds:

A. A decent home and suitable living environment for all Capitola residents and workers is a priority of the highest order. To this end, the housing element of the Capitola general plan discusses and analyzes the need to provide housing for senior citizens, disabled persons, single parent families, homeless persons and homeless families, and families of very low, low and moderate income levels. Similarly, the general plan housing element outlines the extremely high cost of housing both regionally and within the city. With respect to affordable housing in the city, the housing element articulates, among others, Policies 3.4, 3.5 and 3.6 intended to advance the general plan goal to “Encourage New Affordable Housing Opportunities Through Construction Of New Units.” These policies encourage the adoption of an inclusionary housing ordinance, which provides for protection of existing affordable housing, construction of affordable housing units in connection with private market rate for-sale residential development or alternative compliance mechanisms, and further encourages the establishment of a housing trust fund to be used to facilitate the development of new affordable housing in the city.

B. In addition, Housing Element law (Government Code section 65580 et seq.) and the Mello Act (Government Code section 65590 et seq.) articulate policies and goals, and impose legal obligations upon California cities,– and counties relative to the creation, protection, and ongoing provision of affordable housing by communities throughout the state, including the city of Capitola. Accordingly, a paramount goal of the city is to provide and to create a regulatory environment conducive to the development and preservation of both rental and for-sale housing available to all economic sectors of the community with priority given to very low, low and moderate income households currently residing or working within the city.

C. There is currently an inadequate supply of housing in the city which is affordable to very low, low and moderate income households. Federal and state financial assistance and subsidy programs are not sufficient in themselves to close the gap between the cost of most housing in the city and the ability of very low, low and moderate income households to pay those housing costs.

D. The city, given current zoning regulations and very limited vacant residentially zoned property, is nearly “built out” for purposes of future residential development within the city. The inventory of land available for residential development in the city is at a premium and the inventory of land which can be used for the development of housing for very low, low and moderate income households becomes even more depleted with the development and/or improvement of each market rate housing unit in the city. Accordingly, housing opportunities for very low, low and moderate income households are diminished incrementally with the development of each new market rate housing unit which is constructed, rebuilt or substantially improved in the city.

E. According to the city’s most recent Housing Element Update, adopted November 25, 2015, fifty-eight percent of the households living in the city have incomes below eighty percent of Santa Cruz County’s median income and are therefore classified as low income households. However, the median home value in the city is higher than in neighboring Santa Cruz County communities, which places a cost burden on many Capitola households and may put home ownership out of reach for a majority of the population. Accordingly, the lowest income households in the city are frequently cost-burdened by housing, and lower income rental households are much more likely to pay more than thirty percent of their incomes for housing than higher-income home owners. The same holds true for moderate-income homeowners in the city; sixty-one percent of all moderate income households that own housing pay more than thirty percent of their incomes for housing costs. This indicates a need both for more housing affordable to the City’s moderate- and lower-income households and also to protect and maintain the affordability of existing affordable housing in the city.

F. If very low, low and moderate income workers cannot find or maintain housing in the city, employers will have difficulty in securing a labor force and employees will be forced to commute. Automobile commuting increases air pollution, unnecessarily creates traffic congestion and develops a population which is separate and distinct from full-time residents, thereby resulting in diverse and often contrasting demands on limited city resources.

G. Protection of existing affordable housing units and construction of residential housing projects which contribute to the city’s very low, low and moderate income housing stock serve to augment the city’s housing mix, increase the supply of housing for all economic sectors of the community and thereby assist in providing for a balanced community which is deemed to be in the public interest.

H. In order to allocate the scarce resource of existing affordable housing units to households that need assistance affording housing in the city, an asset limitation must operate alongside an income restriction. This is especially true for units reserved for seniors (55+), who may no longer receive income from a current job, but may possess significant assets. Without an asset limitation, the city’s existing affordable housing stock could be transferred to households that are not in need of assistance.

I. Increasing the supply of housing affordable to very low, low and moderate income families through the assistance and cooperation of private residential developers can be achieved only if the provision of such housing by private residential developers becomes more feasible. It is

therefore necessary to provide flexibility in the manner and method by which private residential development contributes its fair share to the city's affordable housing stock.

J. Affordable housing is best integrated into the community when that housing is distributed throughout all areas of the city rather than concentrated in a single area.

K. The purpose of this chapter is to enhance the public welfare by establishing policies to maintain and increase the production of housing units affordable to persons and households of very low, low, and moderate-income. These requirements implement the Housing Element of the General Plan through assisting in meeting the city's regional housing obligations, providing funding for the city's affordable housing programs, and affirmatively furthering fair housing by ensuring that affordable housing is maintained and constructed in all parts of the city.

L. The city council desires to provide and maintain affordable housing opportunities in the community through its inclusionary housing program. Therefore, it is the city council's intent that this chapter apply to all affordable housing units in the city, regardless of the date of construction or conversion to an affordable housing unit. The city council finds that such application is necessary to best effectuate the goal of protecting new and existing affordable housing units.

18.02.020 Words and phrases.

For purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

"Affordable housing cost" means the maximum purchase price that will cause a household to pay no more than thirty-five percent of its income for housing costs. The affordable housing cost shall include a ten percent down payment, and monthly housing payments (including interest, principal, mortgage insurance, property taxes, homeowner's insurance, homeowner's association dues, and a reasonable allowance for property maintenance, repairs, and utilities), all as determined by the City.

"Affordable housing unit" means any housing unit subject to a recorded document, unrecorded agreement, or land use requirement applicable to a unit that, for a specified term, requires sale or rent of the unit at an affordable housing cost or affordable rent and/or requires sale or rent of the unit to very low, low, or moderate income households.

"Affordable rent" means the maximum monthly rent, including an allowance for tenant paid utilities, calculated at the specified income level in accordance with the Health and Safety Code Section 50053.

"Household" means all those persons, related or unrelated, who occupy a single housing unit.

"Housing development project" means any development project requiring a land use permit or approval from the city for: the construction of one or more housing units including single-family residences, condominiums, townhouses and apartments; the division of land into one or more residential parcels; the subdivision of mobile home parks; or the conversion of one or more apartments to one or more condominiums.

"Low income household" means a household whose income, with adjustment for household size, is between fifty percent and eighty percent of the Santa Cruz County areawide median income.

“Moderate income household” means a household whose income, with adjustment for household size, is between eighty percent and one hundred twenty percent of the Santa Cruz County areawide median income.

“Primary residence” means a dwelling unit a person physically occupies and lives in at least ten months of the calendar year. Exception: After residing in the unit as a Primary Residence for a minimum of one year, under unique temporary circumstances that require the owner to temporarily vacate the unit, the owner may rent out the unit with the prior written approval of the Community Development Director for a period of up to one year and still qualify as a Primary Residence.

“Qualified retirement plan” means a retirement plan recognized by the Internal Revenue Service (IRS) where investment income accumulates ~~tax deferred~~. Common examples include individual retirement accounts (IRAs), pension plans and Keogh plans.

“Senior citizen” means a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development.

“Senior citizen housing development” means a senior citizen housing development as defined in California Civil Code Sections 51.3 and 51.12, that is developed, substantially rehabilitated, or substantially renovated for senior citizens. A senior citizen housing development must include at least 35 dwelling units or mobile home spaces.

“Unit” means a single-family home, condominium, apartment, mobile home parcel, or residential parcel.

“Very low income household” means a household whose income, with adjustments for household size, is less than fifty percent of the Santa Cruz County areawide median income.

18.02.030 Affordable housing requirements.

A. Subject to the exceptions set forth elsewhere in this chapter, each proposed housing development project creating seven or more for-sale housing units, residential parcels, mobile home parcels, or converted condominium units shall be required to reserve and restrict fifteen percent of the housing units, residential parcels or converted condominium units for sale to moderate, low or very low income households in accordance with the requirements of Section 18.02.040.

B. The following housing development projects are exempt from Sections 18.02.030 through 18.02.050; however, they may be subject to Affordable Housing Impact Fees under Chapter 18.05:

1. Rental housing units.
2. The development of six or less for-sale housing units, residential parcels or converted condominiums, or mobile home parcels.
3. Redevelopment of existing housing development projects that do not result in the creation of seven or more residential units.
4. Developments exempted by state law or by final judgment by a court of competent jurisdiction.

18.02.040 Provision of affordable housing units.

When a housing development project is required to construct or provide affordable housing units pursuant to this chapter, the housing development project shall comply with the following requirements:

A. In determining the number of affordable housing units required, developments which require fractional contribution pursuant to the requirements of this chapter shall pay affordable housing in-lieu fees for the fractional contribution in an amount prescribed by the affordable housing in-lieu fee schedule adopted, and from time to time revised, by city council resolution.

B. All affordable housing units shall remain affordable for fifty-five years or the natural life of the unit, whichever is greater, unless a longer period is required by a construction or mortgage financing program, mortgage insurance program, state law, or housing grant, loan or subsidy program. The required period of affordability shall run concurrently with any period of affordability required by any other agency; provided, however, that the affordability period shall not be less than fifty-five years or the natural life of the unit, whichever is greater.

C. The housing development project permit application submitted to the city shall specify the number, type, location, size and construction scheduling of all housing units which are part of the project, including the affordable housing units, and shall indicate which housing units are designated as affordable housing units for purposes of complying with this chapter. If an alternative compliance option under Section 18.02.050 is requested, the proposed method of compliance shall be included with the initial application. If a reduction, adjustment, or waiver under Section 18.02.150 is requested, the application shall set forth the basis for the request in accordance with the criteria set forth in that section.

D. Unless otherwise approved by the city planning commission or city council, affordable housing units shall be reasonably dispersed throughout the housing development project and shall be compatible with the design and use of the remaining housing units in the housing development project in terms of appearance, materials and finish quality.

E. The housing development project developer shall have the option of reducing the interior amenity level of affordable housing units provided that all affordable housing units conform to the requirements of the city building and housing codes and further provided that all affordable housing units, at a minimum, shall have interior painting or other finish wall covering, floor covering, a stove, a dishwasher, an oven, built-in kitchen cabinets, washer and dryer hookups, a bath/shower, a toilet, a kitchen sink and a bathroom sink.

F. All affordable housing units in a housing development project shall be constructed concurrently with, or prior to, the construction of the housing development project's market rate housing units and shall be sold concurrently with, or prior to, sale of the market rate housing units.

G. Prior to recordation of the final subdivision map or issuance of building permits for the housing development project, the housing development project developer shall enter into a participation agreement with the city in a form suitable for recordation so as to assure compliance with the provisions of this chapter.

H. A housing development project developer who is a subdivider may propose to comply with the requirements of this chapter by dedicating affordable lots to the city. The city council, at its sole

discretion may grant, conditionally grant or deny the request. If the housing development project subdivider's proposal to dedicate affordable lots to the city is approved, the offer of dedication shall be made concurrently with the filing of the final subdivision map.

I. Where the city provides financial assistance to a housing development project in the form of a grant, subsidy, loan, fee waiver or any other action which confers a fiscal benefit on the housing development project developer, the city may condition the financial assistance with a requirement that the housing development project reserve or restrict more than fifteen percent of the housing development project's housing units, residential parcels or converted condominium units for sale to moderate, low or very low income households.

18.02.050 In-lieu housing fees and alternative compliance options.

A. When a housing development project is subject to this chapter, the housing development project developer may elect to pay affordable housing in-lieu fees rather than produce the required inclusionary units onsite in accordance with the following requirements:

1. The housing development project developer shall pay affordable housing in-lieu fees in an amount prescribed by the affordable housing in-lieu fee schedule adopted, and from time to time revised, by city council resolution.

2. The housing development project developer shall pay the in-lieu fee amount applicable to each unit prior to issuance of a building permit for that unit by the building department. Upon request of the housing development project developer, the city council may consider and approve a deferred payment until issuance of a certificate of occupancy based on a finding that the deferred fee payment contributes to the project's economic feasibility. The approval of a deferred fee shall be conditioned upon receipt of adequate security for the obligation from the housing development project developer, which may include a lien against the property or an alternative form of security approved by the Community Development Director and the City Attorney.

3. Affordable housing in-lieu fees shall be deposited into the city's housing trust fund and all such fees shall be used, at the earliest time feasible, to assist in the construction of new low or very low income housing units with a minimum of fifty-five-year term affordability restrictions, the rehabilitation of low or very low income housing units which, upon rehabilitation, will have fifty-five-year term affordability restrictions, or to assist low or very low income households in purchasing or renting housing units, and for administration and compliance monitoring of the affordable housing program, as approved by the city council.

B. Alternative Compliance Options.

1. The housing development project developer, or an entity controlled by the developer, or another entity that has entered into an agreement with the developer to provide affordable housing units, may propose to construct the affordable housing units required by Section 18.02.030 on another site in the city. Two or more developers may also jointly propose off-site construction of affordable housing units on a single site in the city. The city may grant a credit for off-site construction if the proposal meets all of the following conditions:

a. Financing or a viable financing plan, which may include public funding, shall be in place for the off-site affordable housing units;

b. The off-site location is suitable for the proposed affordable housing units, consistent with any adopted guidelines and the Housing Element, will not tend to cause residential segregation or concentrations of poverty, and is located within one mile of the market rate housing development project with appropriate infrastructure and services; and

c. Construction of the off-site affordable housing units may not have commenced prior to the first approval of the market rate housing development project.

Final inspections for occupancy of the market-rate units in the housing development project will be granted only after final inspections are completed for the off-site affordable housing units related to those market-rate units. However, the timing requirements set forth in this subsection may be modified by the city council. The city may require that completion of off-site affordable housing units be further secured by the housing development project developer's agreement to pay in-lieu fees in the event the off-site units are not timely completed.

2. The housing development project developer may propose to meet the requirements of Section 18.02.030 by dedicating property to the city in-lieu of constructing inclusionary units within the housing development project. The city may approve property dedication under this subsection only if the proposal meets all of the following conditions:

a. The number of affordable housing units to be constructed on the dedicated property shall be at least 10 percent greater than the number of affordable housing units otherwise required;

b. Financing or a viable financing plan, which may include public funding, shall be in place for construction of the affordable housing units on the dedicated property; and

c. The property to be dedicated is suitable for the proposed affordable housing units, consistent with any adopted guidelines and the Housing Element, will not tend to cause residential segregation or concentrations of poverty, and is located within one mile of the market-rate housing development project with appropriate infrastructure and services.

The property shall be dedicated to the city prior to issuance of any building permit for the market rate housing development project.

18.02.060 For-sale housing units – Sales price and procedures.

When an affordable housing unit is sold or re-sold, the following requirements shall apply:

A. In calculating the maximum allowable sales price for housing units which, pursuant to this chapter, are deed restricted as affordable to very low, low or moderate income households, the city or the city's designee shall employ the following formula:

1. Single-Family Residences. Sales prices shall be set to equal the price affordable to a household earning the area median income adjusted for household size, with a household size equal to the number of bedrooms in the unit plus one, and a housing cost ratio equal to thirty-five percent of gross monthly household income, and a ten percent down payment.

2. Condominiums/Townhouses. Sales prices shall be set to equal the price affordable to median income household earning the area median income adjusted for household size, where household size is equal to the number of bedrooms in the unit plus one, and a housing cost ratio equal to thirty-five percent of gross monthly household income, and a ten percent down payment.

3. Mobile Home Parcels. No sale or resale price will be set for the inclusionary parcels created. Inclusionary parcels in a mobile home park will have initial and subsequent resales restricted to sale to a ~~median~~ low to moderate income household adjusted by household size.

4. If the maximum allowable sales price is less than the original purchase price the homeowner paid for the affordable housing unit, the homeowner shall be permitted to sell the affordable housing unit at a price equal to their original purchase price.

B. The re-sale purchase price of any affordable housing unit may be increased by the value of any substantial structural or permanent fixed improvements, subject to the following conditions:

1. The improvements must be incapable of being removed without substantial damage to the premises or substantial or total loss of value of the improvements.

2. The cost of the improvements at the time they were made or installed must equal more than one percent of the original purchase price the homeowner paid for the affordable housing unit, as verified by invoices, receipts, or similar forms of documentation.

3. The improvements must have conformed to applicable building codes at the time of installation, as evidenced by a building permit or a valid building permit waiver issued by the City.

4. The maximum allowable sales price shall be increased by the present value of qualifying improvements as determined by an appraiser designated by the city up to a maximum value equal to ten percent of the original purchase price the homeowner paid for the affordable housing unit.

5. The limits shall reset upon each transfer to a new homeowner, and each subsequent homeowner shall have the opportunity to benefit from an upward adjustment to the maximum allowable sales price caused by qualifying improvements.

C. If the city finds that the owner, through neglect, abuse or lack of adequate maintenance, has damaged an affordable housing unit, the city may require repairs be made at the owner's expense and be financed prior to sale or through the escrow account.

D. In cases where the owner or housing developer has made a good faith effort to sell an affordable housing unit at the allowable sales price established by the city, and has failed to sell that unit after two hundred forty days, the seller may request to make a monetary contribution to the affordable housing trust fund in exchange for the city's agreement to release the affordability deed restriction on that unit. The amount of the contribution would be determined by the city council, taking into consideration the then-current cost of developing similar affordable housing units and the remaining amount of time the subject unit was deed restricted for sale to very low, low or moderate income households. The city council in its sole discretion may grant, conditionally grant or deny the request. If the request is granted or conditionally granted, upon the city's receipt of the prescribed housing trust fund contribution, the subject affordable housing deed restriction shall be released and the seller shall be allowed to sell, rent or otherwise use the subject affordable housing unit for residential purposes as the seller deems appropriate.

For purposes of this section, a good faith effort to sell a deed restricted affordable housing unit will, at a minimum, include listing the property in the pertinent multiple listing service for a minimum of two hundred forty days, actively marketing and showing the property in a manner that would

be deemed professionally prudent by a full-time real estate agent or broker employed in the Santa Cruz County housing market.

E. Calculations made in accordance with the requirements of this Section shall remain valid for ninety days after the city provides the result of the calculations in writing. After ninety days, an affordable housing unit purchaser or homeowner shall be required to obtain new calculations from the city and may be required to pay additional fees in accordance with Section 18.02.110. An affordable housing unit purchaser or homeowner may not request an updated calculation prior to the ninety-day period passing.

F. The city council authorizes the community development director to adopt guidelines that are consistent with this Section to provide more specific information about how sales prices shall be calculated.

18.02.070 Eligibility for affordable housing units.

A. Only households which qualify as very low, low, median or moderate income households, and who meet the asset limit, shall be eligible to purchase affordable housing units developed pursuant to this chapter.

B. To be eligible to purchase affordable housing units created pursuant to this chapter that are not in a senior citizen housing development or a mobile home park, the total assets of a household shall be less than one and one-half times the annual household income limit for that unit. The following assets are excluded from the eligibility calculation:

1. Assets to be used to purchase the affordable housing unit.

2. Assets in a qualified retirement plan up to five hundred thousand dollars, which amount shall be increased on ~~January 1, 2023 and every January 1st~~ the first day of the month following the annual release of Official State Income Limits by the California Department of Housing and Community Development, and every year thereafter by a percentage equal to the percentage increase in the Consumer Price Index over the same time period.

C. To be eligible to purchase affordable housing units that are in a senior citizen housing development and that are not in a mobile home park, the total assets of a household shall be less than three times the annual household income limit for that unit. The following assets are excluded from the eligibility calculation:

1. Assets to be used to purchase the affordable housing unit.

2. Assets up to one million dollars, which amount shall be increased on ~~April 1, 2021 and every April 1st~~ the first day of the month following the annual release of Official State Income Limits by the California Department of Housing and Community Development, and every year thereafter by a percentage equal to the percentage increase in the Consumer Price Index over the same time period.

C. Income eligibility to purchase affordable housing units created pursuant to this chapter shall be determined at the time of sale of the affordable housing unit by the city or the city's designee.

D. Applicants may appeal the city's income and asset eligibility determinations within thirty days of the date of their income eligibility letter. Appeals of the city's income and asset eligibility

determinations shall first be made to a committee comprised of the city manager, mayor, community development director, and city attorney. Appeals shall be in the form of a letter addressed to the city manager, and should document the reason the applicant believes an exception should be made. Appeals may be granted by the committee upon a finding, based upon documentary evidence produced by the appellant which clearly demonstrates that the subject household's future earning capacity will be significantly impaired in the immediately foreseeable future. The committee's decision may be appealed as set forth in Section 18.02.150.

E. The purchaser of an affordable ownership unit shall occupy the unit as ~~his or her primary place of residence~~their Primary Residence. If the unit ceases to function as a ~~primary residence~~Primary Residence, it shall be sold according to the requirements of this chapter.

18.02.080 Marketing of affordable housing units for sale.

A. Any marketing communication advertising an affordable housing unit for sale shall fully disclose the affordable housing sale price and eligibility restrictions contained in this chapter.

B. Marketing of a for-sale affordable housing unit shall be performed by the owner or owner's agent, with preference given to households who live or work in Capitola, who shall market the affordable housing unit for no more than the maximum sale price established by the city (excluding closing costs in sales transactions).

C. The purchaser of an affordable housing unit shall not pay more in closing costs than that which is reasonable and customary in Santa Cruz County.

D. The seller of an affordable housing unit shall pay any real estate sales commission associated with the sales transaction.

E. The owner of an affordable housing unit shall not use the unit as collateral for an amount exceeding ninety-five percent of the maximum sales price allowed by this chapter unless specifically allowed in writing beforehand by the city. All second mortgages shall require the prior written approval of the city.

18.02.090 Secondary dwelling units – Non-applicability.

This chapter shall not apply to secondary dwelling units developed pursuant to Capitola Municipal Code Chapter 17.99.

18.02.100 Pre-approved projects – Non-applicability.

Sections 18.02.30 through 18.02.50 of this chapter shall not apply to projects for which a development permit was issued by the city prior to the effective date of the ordinance codified in this chapter or to the projects for which an approved tentative map or vesting tentative map existed as of the effective date of said ordinance.

18.02.110 Fees.

Upon resale, application for an equity line of credit, or refinance of an affordable housing unit, the owner or landlord shall pay a fee to the city to cover the city's costs in determining the maximum sales price and any other monitoring and document preparation processes as may be required of the city. The fee shall be established by city council resolution and shall be calculated so as to

allow the city to recover the staff costs and administrative overhead incurred by the city in providing these services and preparing these documents. In addition, the city may similarly charge each prospective purchaser of an existing affordable housing unit a fee for determining eligibility.

18.02.120 Default/foreclosure.

A. Option to Purchase. In the event a default notice is recorded against an affordable housing unit, the city or its designee shall have the option to purchase the unit by paying the minimum amount that the owner would have received on the date of the foreclosure sale. Out of this sum, any lien holders shall be paid the amount of funds due them and the owner shall be paid the remaining balance.

B. In the event the city or its designee does not exercise its option to purchase the affordable housing unit prior to the trustee's sale or judicial foreclosure and the owner does not redeem the property by curing the default prior to sale or foreclosure, the unit shall thereafter be free from the restrictions of this chapter and the new owner may occupy, sell or rent the unit without restriction.

C. Notwithstanding subsection B of this section, single-family units that have never been sold to individual owner-occupants and multiple-family dwelling units shall not be released from the restrictions of this chapter through a trustee's sale or judicial foreclosure. In addition, affordable housing units shall not be released under the following circumstances:

1. The city has not been provided a copy of the notice of default within ten days of its service upon the owner;
2. The owner does not allow the city to exercise its option to purchase; or
3. A lender has over-encumbered the property and refuses to release its interest in the property for the maximum allowable sales price.

18.02.130 Conflicts of interest.

The following individuals are ineligible to purchase an affordable housing unit as their residence:

- A. The city manager, city attorney, community development director and members of the planning commission and city council;
- B. The owner or developer of an affordable housing project or affordable housing unit; and
- C. The immediate relatives of persons identified in subsections A and B of this section.

18.02.140 Violations.

It is unlawful and a violation of this chapter for an applicant or owner of an affordable housing unit or any employee or agent of an applicant or owner to:

- A. Sell an affordable housing unit to anyone who has not first been qualified as eligible;
- B. Sell an affordable housing unit to any person who has a conflict of interest as defined by this chapter;

C. Sell an affordable housing unit for an amount exceeding the maximum sales price;

D. Solicit, require or accept in connection with the sale of an affordable housing unit any payment or other contribution of cash, property or services from a purchaser or tenant the value of which, when added to the purchase price paid for an affordable housing unit, would exceed the maximum sales price or maximum rental prescribed by this chapter;

E. Willfully and knowingly make a false statement or representation, or knowingly fail to disclose a material fact for the purpose of qualifying as eligible to purchase or rent an affordable housing unit under this chapter; or

F. Violate any other provision of this chapter. The city may prosecute any violation of this chapter criminally, civilly or administratively in accordance with Title 4 of this code.

18.02.150 Reductions, Adjustments, or Waivers.

A. Any request for a waiver, adjustment, or reduction under this chapter shall be submitted to the city concurrently with an application for a first approval for a housing development project based upon a showing that applying the requirements of this chapter would result in an unconstitutional taking of property or would result in any other unconstitutional result. The request for a waiver, adjustment, or reduction shall set forth in detail the factual and legal basis for the claim.

B. The request for a waiver, adjustment, or reduction shall be processed concurrently with all other permits required for the housing development project. The body with the authority to approve the housing development project shall have the authority to act on the request for a waiver, adjustment, or reduction, subject to any appeals otherwise authorized for the housing development project.

C. The waiver or modification may be approved only to the extent necessary to avoid an unconstitutional result, based upon legal advice provided by or at the behest of the City Attorney, after adoption of written findings, based on legal analysis and substantial evidence. If a waiver or modification is granted, any change in the project shall invalidate the waiver or modification, and a new application shall be required for a waiver or modification under this section.

18.02.160 Appeal.

Any applicant or other person whose interests are adversely affected by a determination under Section 18.02.070 may appeal in accordance with the provisions of that section. Any applicant or other person whose interests are adversely affected by any other determination in regard to the requirements of this chapter may appeal to the city council in accordance with the provisions of Chapter 2.52.