

**YOLO COUNTY ZONING CODE  
TITLE 8 LAND DEVELOPMENT**

**CHAPTER 8: INCLUSIONARY HOUSING**

**ARTICLE 1: Inclusionary Housing Requirements**

**Sec. 8-8.101 Authority**

This Ordinance is enacted pursuant to the general police powers granted to the County by Article 11, Section 7 of the California State Constitution to protect the public health, safety and welfare.

**Sec. 8-8.102 Purpose**

This Ordinance requires that residential projects within unincorporated Yolo County contain a defined percentage of housing affordable to very low, low and moderate income households as defined herein. To help achieve this goal, this Ordinance also establishes a program of incentives to assist in the production of affordable units. Altogether, this Ordinance is intended to satisfy the Inclusionary Housing Requirement (Program Two: Affordable Housing Requirements for New Residential Development) of the adopted Yolo County Housing Element.

**Sec. 8-8.103 Findings**

The Board of Supervisors, having reviewed and considered Yolo County's Inclusionary Housing Ordinance, finds and determines as follows:

- (a) The State of California requires local governments to plan to meet the housing needs of all income groups. Specifically, "local governments have the responsibility to use their powers to facilitate the improvement and development of housing to meet the housing needs of all economic segments of the community (Government Code Section 65580) and to assist in the development of adequate housing to meet the needs of low and moderate income households (Government Code Section 65583(c)(2))."
- (b) It is a public purpose of the County, as expressed in the Housing Element of the County's General Plan, "to provide for the county's regional share of new housing for all income groups (Yolo County General Plan, Goal One)."
- (c) As documented in the Housing Element of the County's General Plan, there is a housing shortage for very low and low income households in the County and a shortage of ownership housing for moderate income households. Increasingly, very low, low and moderate income persons who work or live within the County are unable to locate suitable housing at prices they can afford and are increasingly excluded from living within the County. Federal and State housing subsidy programs are not sufficient by themselves to satisfy the housing needs of very low, low-income and moderate-income households.
- (d) The County finds that newly constructed housing does not, to any appreciable extent, provide housing affordable to very low, low and moderate income households. New development, which does not include or otherwise provide for affordable housing will

further aggravate the current housing shortage for very low and low income households and the shortage of ownership housing for moderate income households, as it will reduce the supply of developable land and increase land costs, thus making affordable housing prohibitively difficult and expensive to develop.

- (e) This Ordinance implements the adopted Housing Element of the County General Plan and carries out the mandates of State Housing Element law, meeting the regional fair share housing requirements by ensuring that the benefits of economic diversity are available to the residents of the County. It is essential that new residential development contain housing opportunities for all income levels, and that the County provide a regulatory and incentive framework, which ensures development of an adequate supply and mix of new housing to meet the future housing needs of all income segments of the unincorporated Yolo County population.
- (f) The County further finds that the housing shortage for very low and low-income households, and the shortage of ownership housing for moderate income households, is detrimental to the public health, safety and general welfare of the County.

### **Sec. 8-8.104 Provision of affordable housing**

No Building Permit shall be issued for any new residential project unless such construction has been approved in accordance with the standards and procedures provided for by this Ordinance. The location and type of proposed affordable housing in a development shall be disclosed in writing by each seller to each subsequent purchaser of lots or units in the development, until all the affordable housing unit requirements are constructed.

### **Sec. 8-105 Definitions**

The definitions in this section shall govern the provisions of this ordinance.

#### **Affordable Housing**

“Affordable Housing” means affordable for-sale housing or affordable rental housing. Affordable for-sale housing is housing affordable to very low, low, and moderate income households as defined herein. Affordable for-sale housing payments are thirty percent (30%) of gross monthly Household target income as defined in Title 25, Sections 6920 and 6924 of the California Code of Regulations, including maintenance, homeowners association dues, utilities, insurance and property taxes. Affordable rental housing is housing affordable to very low, low, and moderate income households.

#### **Affordability Gap**

“Affordability Gap” means the difference between the cost of constructing a housing unit based on fair market value versus the cost a low-income person can afford for a housing unit, using accepted housing cost calculations as provided in this ordinance.

#### **Affordable Housing Cost**

“Affordable Housing Cost” for a purchaser means the monthly amount that is affordable to a low or moderate-income household. The method for calculating affordable housing costs is as provided in this ordinance.

**Affordable Purchase Price**

“Affordable Purchase Price” means the maximum sale price a qualified purchaser may be required to pay for the affordable unit, as described in accordance with the provisions of this ordinance.

**Annual household income**

“Annual household income” means the combined gross income for all adult persons living in a dwelling unit as calculated pursuant to Title 25, Section 6932 of the California Code of Regulations, as amended, or its successor.

**Board**

“Board” means the Yolo County Board of Supervisors.

**Building permit**

“Building permit” means a permit issued in accordance with the Yolo County Code.

**Construction costs**

“Construction costs” means the estimated cost per square foot of construction, as established by the Uniform Building Code, or its successor, for use in the setting of regulatory fees, multiplied by the total square footage to be constructed.

**Density Bonuses**

“Density Bonuses” entitles a developer to build additional residential units above the maximum number of units permitted by the General Plan, Community Plan, Specific Plan and Zoning designations in accordance with Government Code Section 65915 et. seq. Density bonus units shall be constructed in the same development where affordable housing units are located.

**Developer**

“Developer” means any person, firm, partnership, association, joint venture, corporation, or other entity or combination of entities, which seeks County approval(s) for all or part of a residential development.

**Development**

“Development” means one or more projects or groups of projects of residential units constructed in a contiguous area. A development need not be limited to an area within an individual parcel or subdivision map.

**Discretionary permit**

“Discretionary permit” shall include Variances, Conditional Use Permits, and Site Plan Reviews issued in accordance with the Yolo County Code, and the approval of Tentative Subdivision or Parcel maps pursuant to the Yolo County Code.

**Dwelling unit**

“Dwelling unit” shall mean any building, or portion thereof, containing one or more dwelling units designed or used exclusively as a residence or sleeping place for one or more families, but not including a tent, cabin, boat, trailer, mobile home, dormitory, labor camp, hotel, or motel.

**Extremely Low-Income**

“Extremely Low-Income” are those households with incomes of less than thirty percent (30%) of County median income as defined by the U.S. Department of Housing and Urban Development.

**Family**

“Family” means persons living together as a single, independent and separate housekeeping unit in one dwelling unit and for the purposes of this paragraph, the word “family” includes and shall be deemed to include gratuitous guests and bonafide servants employed as such on the premises containing said dwelling unit.

**Feasible**

“Feasible” means that even after complying with the requirements of this ordinance, the residential project as a whole remains reasonably capable of being financed, built and marketed, given the economic conditions prevailing at the time of approval of a residential project taking into account the incentives and alternatives that may be made available to the developer in accordance with this ordinance. In all cases, feasibility shall be as reviewed and recommended by the Planning Commission subject to approval by the Board of Supervisors.

**For sale-units**

“For sale-units” means housing units which provide an ownership opportunity including, but not limited to, single family dwellings, condominiums, cooperatives and mutual housing associations, except in circumstances where the unit is intended for rental use.

**Household**

“Household” means “Family” as defined herein.

**Limited Equity Housing Cooperative**

“Limited Equity Housing Cooperative” means a housing cooperative organized in accordance with California Health and Safety Code Section 33007.6 and Business and Professional Code Section 11003.4. A limited equity housing cooperative is owned by a non-profit corporation or housing sponsor. Resident-owners own the cooperative as an individual whole, rather than individuals units within a development.

**Low income households**

“Low income households” are those households with incomes from fifty-one percent (51%) to eighty percent (80%) of County median income as defined by the U.S. Department of Housing and Urban Development.

**Market rate units**

“Market rate units” means dwelling units in a residential project, which are not affordable units for very low, low and moderate-income households.

**Median income**

“Median income” means the median income, adjusted for family size, applicable to Yolo County as published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provision) by the U.S. Department of Housing and Urban Development.

**Moderate income households**

“Moderate income households” are those households with incomes from eighty-one percent (81%) and up to one hundred twenty percent (120%) of County median income as defined by the U.S. Department of Housing and Urban Development.

**Monthly owner-occupied housing payment**

“Monthly owner-occupied housing payment” shall be that sum equal to the principal, interest, property taxes, utilities, homeowner’s insurance and homeowner’s association dues paid on an annual basis divided by twelve.

**Notice of Intent to Sell**

“Notice of Intent to Sell” means the notice provided by owners of for-sale units to the County of their intent to offer their unit for sale. The covenants recorded against the property on which the unit is located shall provide that the owner shall provide a Notice of Intent to Sell in the manner prescribed in this ordinance.

**Planning Commission**

“Planning Commission” shall mean the Yolo County Planning Commission.

**Planning Director**

“Planning Director” means the Director of the Yolo County Community Services Department or the designee of said Director.

**Qualified Purchaser**

“Qualified Purchaser” means a person or household approved for ownership of an affordable dwelling unit by the Community Services Director in accordance with the provisions of this ordinance.

**Resident controlled nonprofit housing corporation**

“Resident Controlled Nonprofit Housing Corporation” means a housing corporation established to manage for-sale or rental housing projects designated for low to moderate income households in which the majority of households have formed a nonprofit housing cooperation, which need not have an equity interest in such projects.

**Residential project**

“Residential Project” means a proposed residential development or subdivision of land, including condominium and timeshare projects, or the construction of any dwelling unit located within the boundaries of unincorporated Yolo County for which a tentative map, parcel map, or for a project not processing a map, a building permit or other County approval is received after the effective date of this Ordinance, unless exempt in accordance with Article 11 of this ordinance.

**Section**

“Section” unless otherwise indicated, means a section of the Yolo County Code.

**Self-Help Housing**

“Self-Help Housing” means mutual self help housing constructed for very low, low, and moderate income families in which prospective home buyers provide labor to assist in the construction of the units. The intent of this program is to trade-off hours of labor into equity (“sweat equity”) to reduce the purchase price of the units.

**Targeted income families**

“Targeted income families” means those households that meet the classification as very-low and low-income households as defined in this ordinance.

### **Very low income households**

“Very low income households” are those households with incomes of up to fifty percent (50%) of County median income as defined by the U. S. Department of Housing and Urban Development.

## **Sec 8-8.106 Affordable for-sale housing requirement**

A developer of residential for-sale developments of ten (10) or more units shall provide in each development, twenty percent (20%) of the units for low and moderate income households as follows: Fifty percent (50%) of the required affordable units shall be available at affordable sales prices to low-income households. The remaining fifty-percent (50%) of the affordable units, which are required to be constructed in connection with the construction of market rate units intended for owner-occupancy, shall be available at affordable sales prices to moderate-income households. A plan for the provision of affordable housing within a for-sale housing development shall be submitted concurrently with the application for development of a residential units subject to this ordinance. Projects less than ten (10) units shall be subject to the in-lieu fee option provided in this ordinance.

For sale affordable housing units that are converted into rental units will meet the requirements of this ordinance, pursuant to State law, if the rents meet or do not exceed, the affordable housing standards for rental units set forth in this Ordinance and adopted by the Board of Supervisors.

Each developer shall meet the twenty percent (20%) for sale affordable housing requirement by one or a combination of the following standard for-sale affordable housing requirements contained in this ordinance.

For fractions of affordable units, the developer of the property must either construct the next higher whole number of affordable units or perform an alternative action as specified by this ordinance.

## **Sec. 8-8.107 Multifamily rental development affordable housing requirement**

A developer of multifamily rental developments containing twenty (20) or more units shall provide at least twenty-five percent (25%) of the units affordable to very low-income households and at least ten (10%) percent of the units affordable to low-income households. A developer of multifamily rental developments containing between seven (7) and nineteen (19) units shall provide fifteen percent (15%) of the units to very low-income households and ten percent (10%) to low-income households. Such housing shall be provided by the construction of units on-site. Projects of less than seven (7) units shall be subject to the in-lieu fee option provided by this ordinance.

For fractions of affordable units, the developer of the property must either construct the next higher whole number of affordable units or perform an alternative action as specified in this ordinance.

## **Sec. 8-8.108 Timing and term**

The affordable units shall be constructed on-site concurrently with the related market rate units, unless one alternative action pursuant to this ordinance is performed. In the event that the County approves a phased project, the inclusionary units required by this ordinance shall be constructed in proportion to the number of units within each phase of the residential development.

- (a) For-sale dwelling units shall include a covenant that each dwelling unit shall be affordable for twenty (20) years. This affordability requirement of at least 20 years for affordable for-sale units will be reset at each transfer of title upon re-sale to a qualified buyer for both low-income and moderate-income purchasers.
- (b) Multi-family rental housing shall include a covenant that each dwelling unit shall be permanently affordable.

### **Sec. 8-8.109 Basic design requirements for owner-occupied and rental affordable units**

Affordable units shall be comparable in number of bedrooms, exterior appearance and overall quality of construction to market rate units in the same development. Subject to the approval of the Planning Director, square footage of affordable units and interior features in affordable units need not be the same as or equivalent to those in market rate units in the same residential project, so long as they are of good quality and are consistent with contemporary standards for new housing.

Affordable units shall be dispersed throughout the residential project, or, subject to the approval of the Planning Director, may be clustered within the residential project when this furthers affordable housing opportunities.

The developer shall provide both two and three bedroom affordable units, in a mix approved by the Community Services Director.

Upon application as provided herein, the County may, to the maximum extent appropriate in light of project design elements, allow builders to finish the interior of affordable units with less expensive finishes and appliances than those present in market rate units.

### **Sec. 8-8.110 Equivalency proposals permitted**

Only when it is substantiated by the applicant that the standard inclusionary housing component requirement is infeasible shall equivalency proposals be considered. Projects proposing to meet the minimum requirement for affordability through equivalency shall submit an equivalency proposal to the Planning Commission for recommendation to the Yolo County Board of Supervisors. Such proposals shall show why compliance with this ordinance is not financially or otherwise feasible and how the alternative proposal will further affordable housing opportunities in the County to an equal or greater extent than compliance with the express requirements contained in this ordinance.

### **Sec. 8-8.111 Alternatives to the standard inclusionary housing component**

Only when it is substantiated by the applicant that the standard inclusionary housing component requirement is unfeasible shall alternatives to the standard inclusionary housing component be considered. A proposal for an alternative equivalent action may include, but is not limited to the construction of affordable units on another site, dedication of land, payment of in-lieu fees or combination thereof.

- (a) **Planning Commission Review.** After reviewing the proposal, the Community Services Department will make a recommendation to the Planning Commission subject Board of Supervisors approval. If the off-site proposal, dedication of land, in lieu fees, housing credits, or combination thereof is accepted or accepted as modified by the Planning Commission, the relevant elements of the inclusionary housing plan shall be included in the applicable discretionary and/or legislative approvals for both the residential development generating the requirement for the inclusionary housing component and, if applicable, off-site development project, land dedication, in lieu fees, or combination thereof where all or part of that requirement is proposed to be met. If the off-site proposal, dedication of land, in lieu fees, or rehabilitation project is rejected, the inclusionary housing component shall be applied as provided by this ordinance.
- (b) **Standard for Approval.** The Planning Commission may recommend a proposal submitted under this section only if it is not financially or otherwise feasible to construct the units within the development and the alternative would be superior to on-site development from the perspective of access to transportation, services, public facilities or other applicable residential planning criteria in the applicable General Plan or Specific Plan.
- (c) **Affordable Units Off-Site.** A developer may propose to meet its obligation under this section through new construction of an off-site proposal located within the unincorporated County. The developer may satisfy the requirements of providing inclusionary units as part of the residential development, in whole or part, by constructing a number of units equal to or greater than the required number of inclusionary units at a site different than the site of residential development. A developer may propose another option, when it is demonstrated that another option may be more effective in providing affordable housing. In pursuing another option, a developer shall submit an application to the Community Services Department for recommendation to the Planning Commission.
- (d) **Dedication of Land.** A developer may propose to meet its obligation through an irrevocable offer of dedication to the County or designee of sufficient land to satisfy the affordability requirement pursuant to this ordinance, only if: 1) The developer demonstrates to the Planning Commission that it is not feasible to develop the affordable units on-site as part of the residential project; or 2) In the judgement of the Planning Commission, the developer's proposed land dedication would accomplish the objectives of this ordinance.

Dedicated sites for residential projects shall be a minimum of two (2) acres unless the County agrees to a smaller site based on a special housing need in accordance with the adopted Yolo County Housing Element. The dedicated site shall be economically feasible to develop, of sufficient size to build the required number of affordable units, and physically suitable for development of the required affordable units prior to the dedication of the land. The dedicated site shall also have the appropriate General Plan designation and zoning to accommodate the required units. The site shall be fully improved with infrastructure, frontage improvements (i.e. curb, gutter, planter strip, and walk), paved street access, utility (i.e. water, gas, sewer, and electric) service connections stubbed to the property, including paid connection fees for service connections, and other such off-site improvements as may be necessary for development of the required affordable units or as required by the County.



- (e) **Small Developments; In-Lieu Fee Option.** For developments of less than ten (10) units for single family developments and seven (7) units for multifamily developments, the Inclusionary Housing Provisions may be met by the payment of in-lieu fees pursuant to an adopted fee schedule, rather than compliance with the affordable housing on-site construction requirement as shown in Exhibit "1" attached hereto and incorporated herein as reference. Such fees shall be automatically adjusted on an annual basis based on changes in the building valuation data as published by the International Building Code for single family dwellings, type V-N construction and apartment buildings, type V-1hr construction, standard quality, as locally adjusted. Such fees shall be reviewed annually by the Community Services Director.

All in-lieu fees collected shall be earmarked for Very Low and Extremely Low-Income Households to provide supplemental funding for Affordable Housing Developers.

- (f) **Housing Credits.** After meeting its affordable housing obligation, a market-rate developer may request the Planning Commission to construct excess Inclusionary units to obtain affordable housing credits. Units approved as affordable housing credits shall be subject to the requirements of Section 8-9.304 and may be used by the developer or transferred through private transaction within five (5) years. Affordable housing credits shall only be accepted by the County when the development proposing to use the credit(s) is within three (3) miles of the donating development.

### **Sec. 8-8.112 Inclusionary housing agreements**

An Inclusionary Housing Agreement shall be executed between the applicant and the County. An applicant's proposed discretionary permit, if applicable, will be subject to the conditions of the Inclusionary Housing Agreement. The Inclusionary Housing Agreement shall be completed and signed prior to approval of the applicant's project. The Agreement shall contain all information identified in the Agreement Checklist provided in this article.

The Agreement must include an acknowledgement that the applicant has received a copy of the Affordable Housing Ordinance. The Agreement must also obligate the applicant to provide a copy of the Agreement to anyone to whom the subject residential lots or units are transferred or sold.

The Inclusionary Housing Agreement shall provide assurance satisfactory to the Community Services Director that the proposed inclusionary housing plan, meets the affordable housing obligations set forth in this Ordinance. The Inclusionary Housing Agreement shall be recorded with the Yolo County Recorder's Office prior to building permit issuance.

### **Sec. 8-8.113 Agreement checklist**

The Inclusionary Housing Agreement shall contain the following information:

- (a) Location, zoning designation and ownership of the residential project;
- (b) The number of affordable dwelling units that the applicant is responsible for providing at each income level;
- (c) The exact location of the affordable dwellings units (i.e. identify specific lots for affordable for-sale units and site/parcel for multifamily rental projects);

- (d) The dwelling unit mix and square footage of the affordable dwelling units as compared to dwelling unit mix and square footage of the market-rate units;
- (e) Term of affordability of the affordable dwelling units;
- (f) Scheduling and phasing of construction of affordable dwelling units;
- (g) Identification of applicant-funded subsidy or financial assistance, if any, for affordable for-sale units.
- (h) Affirmative marketing plan that ensures outreach to income-eligible households regarding the availability of affordable housing units. Such affirmative marketing shall at least include advertising in the local newspaper by sending notices to local government and nonprofit agencies that serve very low, low-income, and moderate income persons and families, depending upon the nature of the affordable housing units at issue. The County should maintain an updated list of these agencies.
- (i) Specify if any or all of the affordable dwelling units will be special needs housing for seniors, disabled, homeless persons or other special needs populations and, if so, the unique features or services that are appropriate for that special needs population. The County will participate in securing funding for those projects that provide special needs housing units, if available. The County's special needs housing demand will be addressed as guided by the adopted Yolo County Housing Element, and based on information regarding increased need or demand for special needs housing as it becomes available from the U.S. Census or other data sources.
- (j) Detailed description of for-sale affordable units, if different than market-rate units, including floor plan and list of amenities and features of the unit.

In addition, the Inclusionary Housing Agreement shall include the following terms:

- (k) Assurances, that the affordable dwelling units will be constructed concurrently with, or prior to, market-rate units in the residential project. In phased developments, inclusionary units may be constructed and occupied in proportion to the number of units in each phase of the residential project. If, as approved by the County, the affordable housing obligation is proposed to be satisfied by a separate third party developer (such as a non-profit housing developer) and it is not feasible to develop the affordable units prior to or concurrently with the market rate units, the Agreement must identify the specific residential lots on which the affordable units will be developed. Developers of for-sale residential projects who construct the required affordable units concurrent with their market-rate development may receive fee waivers or deferrals pursuant to this ordinance, subject to Board of Supervisors approval.
- (l) Affordable rental dwelling units shall be dispersed throughout the residential project and shall be indistinguishable from market-rate units within any project, including identical quality and amenities as the market-rate units, unless prior approval by the Planning Commission and/or Board of Supervisors has been granted.
- (m) Inclusionary Housing Agreements for rental projects shall include the requirement that the project will be subject to the County's Affordable Housing Monitoring Program to ensure

ongoing compliance with the affordable housing obligations set forth in this ordinance and the Inclusionary Housing Agreement, including payment of monitoring fees (fee is based on an hourly rate of staff time to review Agreements). The Inclusionary Housing Agreement for a rental residential project shall include the provisions for "Monitoring and Compliance Requirements for Rental Projects."

- (n) Mechanisms for reservation, protection, and disclosure of affordable lots for projects. Description of language in disclosure for use by real estate agents, and visible and prominent signage at residential projects advertising the availability of affordable dwelling units.

### **Sec. 8-8.114 In-lieu fees for small developments**

For small residential projects of less than ten (10) units for single-family developments and seven (7) units for multifamily developments, the Inclusionary Housing Provisions may be met by the payment of in-lieu fees, to be established by separate ordinance pursuant to the County Master Fee Schedule, to satisfy the developer's affordable housing obligation.

### **Sec. 8-8.115 Method of calculating in-lieu fees**

At the time of discretionary approval, if applicable, the County will provide the developer with an estimate of the in-lieu fee for the residential project. Such in-lieu fees shall be established by separate ordinance in a manner consistent with California law. This in-lieu fee calculation at the time of discretionary approval is only an estimate and is subject to revision and verification prior to the issuance of building permits, as the estimated sales price of units in the residential project at the discretionary approval stage may change by the time the project is actually built.

Except as may otherwise be required by California law, the in-lieu fee shall equal a percentage of the estimated cost to construct all the Inclusionary units that would be otherwise required for each residential development pursuant to Section 8-9.301, and the amount of the fee shall be determined as follows:

- (a) The estimated cost to construct a single unit of average size for the residential development shall be determined by multiplying the square footage of the average size unit by the average cost per square foot to construct the appropriate type of dwelling as shown on the most recent edition of the Building Permit Valuation Table in use by the County Community Services Department.
- (b) The estimated cost to construct all Inclusionary units required for the residential development shall be determined by multiplying the number of required Inclusionary units by the estimated cost to construct a single unit of average size for the residential development.
- (c) The required percentage used to calculate the in-lieu fee shall be related to the total number of units in a residential development as specified.
- (d) The estimated cost to construct Inclusionary units shall include consideration of local, regional, State, and Federal subsidy sources available for the development of affordable housing. The fee may be reduced in an amount not to exceed fifty percent (50%), depending upon the availability of subsidy funding.

In-lieu fees shall be paid to the County prior to the issuance of any Building Permits for the construction of any development subject to this Chapter. The Community Services Department shall not issue any Building Permit or Certificate of Occupancy for the construction of such development without first receiving payment of the required impact fees from the applicant.

### **Sec. 8-8.116 Collection and use of in-lieu fees**

Any monies contributed to the County pursuant to the provisions of this ordinance shall be payable to the County of Yolo for the purpose of providing affordable housing. Payment of the fee shall be made in full prior to Filing of the Final Map, issuance of the first Building Permit, or Issuance of a Certificate of Occupancy, whichever occurs first.

- (a) In-lieu fees collected pursuant to this Chapter shall be placed by the Community Services Department in a separate interest bearing account identified as "Affordable Housing Program". All fees collected shall be earmarked to provide supplemental funding for Affordable Housing Developers.
- (b) The Community Services Department shall maintain a register for the Affordable Housing Program indicating the date of payment of each fee, the amount paid, the name of the payer, and the Assessor's Parcel Number.
- (c) The Community Services Department shall prepare an annual accounting of all fees paid into and withdrawn from each account, showing the source and amounts collected, the amounts expended, and the projects for which such expenditures were made.
- (d) Any fees collected and interest accrued pursuant to this Chapter shall be expended or encumbered within five years of receipt, in accordance with Government Code Section 66006 et. seq. unless the Board of Supervisors identifies in written findings the extraordinary and compelling reasons for the County to hold the fees beyond the five-year period. Under such circumstances, the Board of Supervisors shall establish the period of time within which the impact fees shall be expended or encumbered.

### **Sec. 8-8.117 Primary residence certification**

Purchasers must certify by submitting a signed affidavit (on a form provided by the Community Services Department) that the home will be used as their primary residence.

### **Sec. 8-8.118 Affordable housing incentives**

A developer may request that the County provide inclusionary incentives as set forth in this ordinance. The goal of these inclusionary incentives is to apply available incentives to qualifying projects in a manner that, to the extent feasible, offsets the cost of providing the inclusionary housing component. The Planning Director shall respond to any inclusionary housing incentive request and make a determination as to a package of inclusionary incentives under consideration, subject to the approval of the Planning Commission and/or Board of Supervisors.

- (a) **Fee Waivers or Deferrals.** Upon application as provided herein, the County shall make available a program of waiver, reduction, or deferral of development fees, administrative fees, and financing fees for affordable units. Such a program may include a fifty percent

(50%) waiver of development-related application and processing fees for affordable units constructed in connection with such residential project, subject to approval by the Board of Supervisors. In addition, the Board of Supervisors may consider, on a case by case basis, the provision of additional incentives as provided by law or as stated in the adopted Housing Element of the Yolo County General Plan.

- (b) **Modification of Community Services Department Standards.** Upon application as provided herein the County may modify the standards for affordable units, to the extent feasible, in light of the uses, design, and infrastructure needs of the development, standards relating to road widths, curbs, and gutters, parking, lot coverage, and minimum lot sizes.
- (c) **Streamlining and Priority Processing.** The Planning Director shall review and modify, as appropriate, procedures for streamlining and priority processing which relieve affordable units of permit processing requirements to the maximum extent feasible consistent with the public health, safety, and welfare, subject to the final approval by the Board of Supervisors.
- (d) **Density Bonus.** The County shall make available to the developer a density bonus as provided in state density bonus law (Government Code 65915), however, the affordability requirements to qualify for a density bonus shall be those required by this ordinance. Units produced as part of such a density bonus do not give rise to an inclusionary housing requirement.

### **Sec. 8-8.119 Administration of affordability control**

Prior to the approval of any discretionary permit, if applicable, regulatory agreements shall be executed between the County and developer. Prior to Issuance of a Certificate of Occupancy, if the affordable units are owner-occupied, resale restrictions, deeds of trust and/or other documents, all of which must be acceptable to the Community Services Director and consistent with the requirements of this ordinance, shall be recorded against the parcel having such affordable units and shall be effective for at least the period of time required by Government Code Section 65915(c) with respect to each affordable unit, but not less than 20 years.

The resale restrictions shall provide that in the event of the sale of an affordable unit intended for owner occupancy, the County shall have a right of first refusal to purchase such affordable unit at the market price minus the percentage of the “silent second”, subject to the provisions of this ordinance.

No persons shall be permitted to occupy an affordable unit, or purchase an affordable unit for owner-occupancy, unless the County or its designee has approved the household's eligibility, or has failed to make a determination of eligibility within the time or other limits provided by a regulatory agreement or resale restrictions. Households selected to occupy affordable units shall be selected from the list of eligible households maintained by the County to the extent provided in the regulatory agreement or resale restrictions.

### **Sec. 8-8.120 Procedure for sale of affordable units**

Prior to entering into an Inclusionary Housing Agreement, at the request of the developer of a for-sale residential project, the Community Services Director will assist developers in estimating the

calculations of maximum affordable purchase prices based on the assumptions provided in this ordinance. These estimates shall only be for the purpose of projecting the feasibility of the project and shall not be binding, as prevailing conditions in the housing market and fluctuations in interest rates that may affect the final calculations of affordable purchase prices. The timing and procedures for final calculations of affordable purchase prices shall occur pursuant to the provisions of this Ordinance.

### **Sec. 8-8.121 Method for sale of affordable units**

The method for the sale of affordable units is shown below. The Community Services Director shall review these assumptions and procedures annually and make revisions as necessary:

- (a) **Units Appraised at Fair Market Value.** At the time that the unit will be marketed and made available for sale, the fair market value of the unit will be determined. This determination will be made by a qualified appraiser who will be selected by the Community Services Director and paid for by the developer.
- (b) **Calculation of Affordable Maximum First Mortgage.** The sale of affordable units will be implemented by a "silent second" mortgage program by the County by recordation of a note and deed of trust, or other designated document in the County's favor. After the fair market value of the unit has been determined, the developer will calculate the affordable maximum first mortgage amount for a qualified income purchaser of the unit, which shall be approved by the Planning Director. The following procedure will be used for determining the affordable maximum first mortgage amount:
  - (1) Determine the family size appropriate for the unit. For purposes of this calculation, "adjusted for family size appropriate to the unit" means adjusted for a household of one person in the case of a studio unit; two persons in the case of a one-bedroom unit; three persons in the case of a two-bedroom unit; four persons in the case of a three-bedroom unit; five persons in the case of a four-bedroom unit; and, six persons in the case of a five-bedroom unit.
  - (2) Determine the household income available for the affordable maximum first mortgage calculation for a low-income household based on the appropriate household size using the current HUD Area Median Income figures for Yolo County. The calculation of available household income should be based on the Area Median Income for the appropriate household size.
  - (3) Calculate the amount of income available for housing costs by multiplying the income figure by 30 percent. For the purposes of determining the affordable purchase price, the cost of utilities, property taxes, insurance, primary mortgage, insurance, maintenance, and repair costs, and like expenses are not required to be included in the calculation. Homeowner's association dues may be included in the calculation of affordable purchase price if the Community Services Director determines that such costs would place a substantial burden on the low-income homeowners' ability to purchase a home and make monthly mortgage payments.

### **Sec. 8-8.122 Limitation of down payment requirement**

For purposes of this calculation, required down payments for low-income purchasers shall be limited to no more than five percent (5%) of the purchase price. The developer/seller may not require a buyer to make a larger down payment but a buyer may elect to make a larger down

payment in order to reduce the amount of the first mortgage. This limit on the down payment requirement is intended to provide greater flexibility for low-income homebuyers who might find it difficult to provide a higher down payment amount.

### **Sec. 8-8.123 Calculation of "silent second"**

The "silent second" will be the difference between 95% of the purchase price (or purchase price minus down payment amount) and the amount of the affordable maximum first mortgage. A promissory note and deed of trust, or other appropriate document, securing the silent second will be recorded and assigned to the County at the time of sale of each affordable unit. The promissory note and deed of trust, or other designated document, will remain a lien against the property, subordinate to the first mortgage. This note will have a thirty (30) year due date which can be extended at the discretion of the Community Services Director.

### **Sec. 8-8.124 Payoff of the silent second**

The silent second may not be prepaid during its first twenty (20) years, as long as the low-income purchaser occupies the unit as their primary residence during this period. The silent second will be released by the County in thirty (30) years as long as the low-income purchaser occupies the unit as their primary residence for this duration. The amount due to the County at the eventual payoff of the silent second or sale of the affordable unit to a non-qualified purchaser shall be the amount which bears the equal ratio to the fair market value at the time the silent second is paid off as the initial value that the silent second had in relation to the original fair market sales price. For example, if the original sales price was \$250,000 and the "affordability gap" was \$50,000, the original silent second would be \$50,000 (the ratio would be 20%). If the fair market value at the time of payoff was \$400,000, the amount due to the County would be \$80,000, or 20% of \$400,000. In another case, if the property rose in value to \$300,000, the 20% ratio would require the payoff amount to the County to be \$60,000.

### **Sec. 8-8.125 Resale upon close of twenty year occupancy requirement**

The resale restrictions for affordable units shall be removed after a qualified purchaser has occupied the unit as their primary residence for at least twenty (20) years. However, the silent second note will remain with the property secured by the deed of trust or other applicable document for an additional ten (10) years. The silent second will be released by the County in thirty (30) years as long as the low-income purchaser occupies the unit as their primary residence for this duration.

### **Sec. 8-8.126 Subordination policy**

- (a) Subordination requests shall meet County requirements and policies and may include the following considerations:
  - (1) The amount of the new loan may only include the current balance of the senior debt plus debt to pay for all or a portion of the closing costs of the refinance/2<sup>nd</sup> with no cash out.
  - (2) The new loan must not have a balloon or negative amortization feature.
  - (3) The new primary loan (fixed interest rate only) is reduced and/or monthly payment are recorded.

- (4) If the purpose for the new loan to which the County is to be subordinate is for home improvements, educational, medical, or similar purposes, not to exceed ninety (90%) of the appraised value that has been documented by a qualified third party specialist, the borrower may increase the amount of the new loan with these funds being placed in a supervised escrow account and relevant bills are to be paid out of this account.
- (b) The County of Yolo shall not subordinate its deed of trust to an increase risk/less security position, except for exceptional/special circumstances to be determined by the Community Services Director. Exceptions are defined as any action that would depart from policy and procedures stated in the County's policies. Consideration of an exception/special circumstance may be initiated by the County or its agent. A report on the situation will be prepared. This report shall contain a narrative, including the staff's recommended course of action and any written or verbal information supplied by the applicant. The Community Services Director shall make a determination of the exception/special circumstances requested at a regular or special meeting of the Planning Commission.
- (c) If the borrower and the new loan comply with the above requirements, the following information will be provided, if applicable:
  - (1) Borrower's request for subordination, including a statement of the reason for the refinance and supporting documentation of income, hardship, copy of loan application, etc.
  - (2) Copy of the Lender's instructions for escrow purposes, that specifies proposed use of the borrowed funds, etc.
  - (3) Copy of the new loan documents, (i.e. Promissory Note, Deed of Trust, and Loan Disclosure to show the amount of the new loan, rate of interest and terms of the proposed financing).
  - (4) Copy of the current appraisal, credit report, and preliminary title report.
  - (5) A completed Subordination Agreement for County execution will allow the County to finish processing the request in the event the subordination is approved.
  - (6) A Request for Notice of Default or Sale.

### **Sec. 8-8.127 Refinancing policy**

The County may approve a request to subordinate an Inclusionary Housing restriction in order for the owner to refinance the property under the following conditions:

- (a) The lien position of the County loan will remain the same.
- (b) The purpose of the new primary loan (fixed rate only) is to reduce the interest rate being paid and/or reduce the homeowner's home loan payment.
- (c) No equity cash out is being taken.

### **Sec. 8-8.128 Affordable rent determinations**

The Community Services Department will calculate the initial rents which should be affordable to low and very low income households at the time that the units will be marketed and made available



for rent. The developer is to provide information on the utilities that will be included in the rent and the utilities for which the tenants will be responsible (including the specific type of service).

### **Sec. 8-8.129 Buyer screening**

Buyer screening shall be required through a lender certification process or by the developer in a manner approved by the Community Services Director.

Resale. The maximum sales price permitted on resale of an inclusionary unit designated for owner-occupancy shall be the seller's lawful market rate price, minus the ratio in percent of the silent second at the time of initial purchase.

All housing that is subject to this ordinance shall be available to all persons regardless of race, color, ethnicity, national origin, ancestry, familial status, disability, gender, marital status, religion, age, sexual orientation, and source of income. Moreover, no rental units subject to this ordinance shall discriminate against persons who have federal, state, or local subsidized rental assistance, including but not limited to the Section 8 Housing Choice Voucher program.

### **Sec. 8-8.130 Exempted residential projects**

The following residential projects are exempt from this ordinance and generate no obligation to provide an inclusionary housing component:

- (a) Single Family Residential projects proposed to contain nine (9) or fewer residential dwellings at one location may be exempted from the inclusionary requirement provided that in-lieu fees shall be assessed on a unit percentage basis;
- (b) Multifamily Residential projects proposed to contain seven (7) or fewer residential dwellings at one location may be exempted from the inclusionary requirement provided that in lieu fees shall be assessed on a unit percentage basis;
- (c) Individual single family dwellings for which construction costs do not exceed those meeting the low income or below requirements as defined in this ordinance.
- (d) Replacement of a structure with a new structure of the same gross floor area and use at the same site or lot when such replacement occurs within twelve (12) consecutive months of the demolition or destruction of the prior residence.
- (e) Replacement of a structure with a new structure that does not exceed five-hundred (500) square feet.
- (f) Housing constructed in a self-help housing program that serves owner-occupants below 80% of area median income.

### **Sec. 8-8.131 Appeals**

An applicant or any aggrieved person may appeal decisions of the hearing body as provided by Article 13 of the Yolo County Code, as amended.

### **Sec. 8-8.132 Grandfather provisions**

Any Sale/Resale Restriction Agreement executed prior to the adoption of this Inclusionary Housing Ordinance shall conform to the provisions of this ordinance.

### **Sec. 8-8.133 Enforcement**

The County may institute any appropriate legal actions or proceedings to ensure compliance with the provisions of this ordinance, including but not limited to: (a) actions to revoke, deny, or suspend any permit, including a building permit, certificate of occupancy, or discretionary approval; (b) actions to recover from any violator appropriate civil fines, administrative penalties, restitution, and/or enforcement costs, including attorney's fees; (c) eviction or foreclosure; (d) criminal prosecution of any violator; and (e) any other appropriate action for injunctive relief or damages. The failure of the County to fulfill or enforce the requirements of this ordinance shall not excuse any person, owner, or other party from compliance with the requirements of this ordinance.

## **ARTICLE 2: Inclusionary Housing In-Lieu Fee**

### **Sec. 8-8.201 Authority**

This ordinance is adopted pursuant to Article 11, Section 7 of the California Constitution and California Government Code sections 66000 et seq., which establish the County's authority to impose and collect fees for the purpose of mitigating impacts related to development projects.

### **Sec. 8-8.202 Purpose**

The existing Yolo County Inclusionary Housing Requirements (Chapter 9 of Title of the Yolo County Code) require residential projects within unincorporated Yolo County to include a defined percentage of housing affordable to very low, low and moderate income households within each development project. Section 8-9.402 of the existing ordinance allows small projects of less than ten (10) units for single family developments and seven (7) units for multifamily developments to meet the Inclusionary Housing Provisions by the payment of in-lieu fees pursuant to an adopted fee schedule, rather than compliance with the affordable housing on-site construction requirement. Specifically, this ordinance establishes and sets forth regulations relating to the imposition, collection, and use of fees for the provision of affordable housing. A related and companion ordinance makes modifications to the Inclusionary Housing Requirements.

### **Sec. 8-8.203 Findings**

The Board of Supervisors, having reviewed and considered the "Yolo County Inclusionary Housing In Lieu Fee" memoranda dated March 3, 2009 from Economic & Planning Systems (the "In Lieu Fee Analysis"), finds and determines as follows:

- A. The State of California requires local governments to plan to meet the housing needs of all income groups. Specifically, "local governments have the responsibility to use their powers to facilitate the improvement and development of housing to meet the housing needs of all economic segments of the community (Government Code Section 65580) and to assist in the development of adequate housing to meet the needs of low and moderate income households (Government Code Section 65583(c)(2))."
- B. It is a public purpose of the County, as expressed in the Housing Element of the County's General Plan, "to provide for the county's regional share of new housing for all income groups (Yolo County General Plan, Goal One)."
- C. As documented in the Housing Element of the County's General Plan, there is a housing shortage for very low and low income households in the County and a shortage of ownership housing for moderate income households. Increasingly, very low, low and moderate income persons who work or live within the County are unable to locate suitable housing at prices they can afford and are increasingly excluded from living within the County. Federal and State housing subsidy programs are not sufficient by themselves to satisfy the housing needs of very low, low-income and moderate-income households.
- D. The County finds that newly constructed housing does not, to any appreciable extent, provide housing affordable to very low, low and moderate income households. New development, which does not include or otherwise provide for affordable housing will further aggravate the current housing shortage for very low and low income households

and the shortage of ownership housing for moderate income households, as it will reduce the supply of developable land and increase land costs, thus making affordable housing prohibitively difficult and expensive to develop.

- E. This Ordinance implements the adopted Housing Element of the County General Plan and carries out the mandates of State Housing Element law, meeting the regional fair share housing requirements by ensuring that the benefits of economic diversity are available to the residents of the County. It is essential that new residential development contain housing opportunities for all income levels, and that the County provide a regulatory and incentive framework, which ensures development of an adequate supply and mix of new housing to meet the future housing needs of all income segments of the unincorporated Yolo County population.
- F. The County further finds that the housing shortage for very low and low-income households, and the shortage of ownership housing for moderate income households, is detrimental to the public health, safety and general welfare of the County.
- G. This ordinance establishes an Inclusionary Housing In Lieu Fee, consistent with policies and implementation programs of the Housing Element, and with the Inclusionary Housing Requirements.
- H. There is a reasonable relationship between the per unit mitigation fees that will be collected on small development projects that do not include on-site affordable housing in the project pursuant to the Inclusionary Housing Requirements ordinance, and the cost of building affordable housing units.
- I. The fee established by this ordinance is based on Exhibit A hereto (the In Lieu Fee Analysis). The cost estimates set forth in the In Lieu Fee Analysis are reasonable estimates of the costs to construct affordable housing units. Those cost estimates are based on the recent values direct construction costs of product types typical of affordable housing projects in Yolo County.
- J. The cost of providing affordable housing is appropriately borne, in part, by the developers of residential projects that do not include affordable units within the projects. The fees established by this ordinance are reasonable, equitable, and do not unfairly burden new development.

### **Sec. 8-8.204 Inclusionary Housing In-Lieu Fee**

A. Title 8, Chapter 9 of the County Code, as amended by the related and companion ordinance, establishes the Yolo County Inclusionary Housing Requirements. The program requires residential development projects to include affordable housing in proportion to the size of the project or, for small projects, to pay an in lieu fee that would fund construction of affordable housing.

B. The Yolo County Inclusionary Housing Requirements specifies that small projects of less than ten (10) units for single family developments and seven (7) units for multifamily developments shall be required to pay an in-lieu fee, based on a per unit calculation of the affordable construction costs.

C. The formula for determining the amount of the per unit in lieu fee to be paid shall be as follows, consistent with Table 1, and as updated according to section (E), below:

**Table 1**  
**Financing Gap per Affordable Unit**  
**and In-lieu Fee**

Item	<i>Very Low Income</i>	<i>Low Income</i>	<i>Moderate Income</i>	<i>Total<sup>1</sup></i>
<b>Rental Units</b>				
Average Financing Gap per Affordable Unit	\$166,100	\$102,999	n/a	
In-Lieu Fee (no additional subsidy)	\$24,915	\$10,300	n/a	<b>\$35,215</b>
In-Lieu Fee (including 50% additional subsidy)	\$12,457	\$5,150	n/a	<b>\$17,610</b>
<b>For-Sale Units</b>				
Average Financing Gap Per Affordable Unit	n/a	\$1339,248	\$125,105	
In-Lieu Fee (no additional subsidy)	n/a	\$13,325	\$12,511	<b>\$25,835</b>
In-Lieu Fee (Including 50% additional subsidy)	n/a	\$6,662	\$6,255	<b>\$12,920</b>

Notes: 1. Rounded down to nearest \$5.  
Notes to Table 1 (con.)

“N/a” refers to not applicable. There is no inclusionary housing requirement for affordable rental units to be provided for moderate income households. Similarly, there is no inclusionary housing requirement for affordable for-sale units to be provided for very low income households.

**Table 2**

**Inclusionary Housing  
In Lieu Fee Schedule**

<b>Number of Units in Project</b>	<b>Required Percentage of Fee</b>	<b>In Lieu Fee for 1.0 unit</b>	<b>In Lieu Fee to be Paid</b>
1 unit	0.1	\$12,920 (for sale) \$17,610 (rental)	<b>\$1,292 (for sale)</b> <b>\$1,761 (rental)</b>
2 units	0.2	\$12,920 (for sale) \$17,610 (rental)	<b>\$2,584 (for sale)</b> <b>\$3,522 (rental)</b>
3 units	0.3	\$12,920 (for sale) \$17,610 (rental)	<b>\$3,876 (for sale)</b> <b>\$5,283 (rental)</b>
4 units	0.4	\$12,920 (for sale) \$17,610 (rental)	<b>\$5,168 (for sale)</b> <b>\$7,044 (rental)</b>
5 units	0.5	\$12,920 (for sale) \$17,610 (rental)	<b>\$6,460 (for sale)</b> <b>\$8,805 (rental)</b>
6 units	0.6	\$12,920 (for sale) \$17,610 (rental)	<b>\$7,752 (for sale)</b> <b>\$8,805 (rental)</b>
7 units	0.7	\$12,920 (for sale)	<b>\$9,044 (for sale)</b>
8 units	0.8	\$12,920 (for sale)	<b>\$10,336 (for sale)</b>
9 units	0.9	\$12,920 (for sale)	<b>\$11,628 (for sale)</b>

D. The fees collected pursuant to this ordinance shall be used to pay the costs associated with construction of new affordable housing units.

E. The Inclusionary Housing In Lieu Fees shall be updated on a regular basis, no later than every two years, based on the changes measured by two indices: the Office of Federal Housing Enterprise Oversight (OFHEO) housing price index for the Sacramento Metropolitan Statistical Area, which is a proxy for land costs; and the average construction cost per square foot as shown on the most recent edition of the Building Permit Valuation Table in use by the Yolo County Planning and Building Department (or other similar construction cost index for the Yolo County area).

**Sec. 8-8.205 Payment of Fees**

For any development project subject to this ordinance, fees levied hereunder shall be paid to the County of Yolo prior to the acceptance of any final subdivision map, issuance of a conditional use permit or approval of a site plan, or issuance of building permit(s) or certificate(s) of occupancy, whichever occurs first. The Planning and Public Works Department shall not accept any final subdivision map, issue any conditional use permit or approve any site plan, or issue any building permit(s) or certificate(s) of occupancy to any development subject to this ordinance without first receiving payment of the required fees from the applicant.

## **Sec. 8-8.206 Accounting and Register of Payment**

A. The fees collected pursuant to this ordinance shall be placed by the Planning and Public Works Department in a separate interest bearing account for the Inclusionary Housing In Lieu Fee Program, as further described in Section 9, below.

B. The Planning and Public Works Department shall maintain a register for each account indicating the date of payment of each fee, the amount paid, Assessor's Parcel Number and the name of the payor.

C. Pursuant to Government Code section 66006(b)(1), within 180 days after the last day of each fiscal year, the Planning and Public Works Department shall prepare an accounting of all fees paid into and withdrawn from the account during the prior fiscal year. This accounting shall include all of the information required by subdivision (b)(1) of section 66006, including but not limited to the source and amounts collected, the beginning and ending balance of the account, the interest earned during the prior fiscal year, the amounts expended from the account, and the projects for which such expenditures were made.

## **Sec. 8-8.207 Independent Fee Calculations**

A. Following a request made by an affected party, if in the judgment of the Director of the Planning and Public Works Department ("Director") none of the fee amounts set forth in the schedule in Table 1, above, appears to accurately correspond with the impacts resulting from issuance of the requested building permit (or certificate of occupancy if no building permit is required), the applicant shall provide to the Planning and Public Works Department for its review and evaluation an independent fee calculation, prepared by a consultant approved by the Director. The independent fee calculation shall show the basis upon which it was made and shall include, at a minimum, the costs of recent easement transactions in Yolo County. The Director may require, as a condition of the issuance of the requested permit, payment of an alternative impact fee based on this calculation. With the independent fee calculation, the applicant shall pay to the Planning and Public Works Department an administrative processing fee of eight hundred and forty (\$840) dollars per calculation or such amount that may be set in the County's Master Fee Resolution in effect at the time the project is submitted.

B. While there is a presumption that the calculation set forth in the Inclusionary Housing In Lieu Fee study is correct, the Director shall consider the documentation submitted by the applicant. The Director is not required to accept as true the facts contained in such documentation. If the Director reasonably deems the facts in such documentation to be inaccurate or not reliable, he or she may require the applicant to submit additional or different documentation or, alternatively, refuse to accept any further documentation and apply the formula set forth in Section 4, above, to the development at issue. The Director is authorized to adjust the fee on a case-by-case basis based on the independent fee calculations or the specific characteristics of the permit (or certificate of occupancy if no building permit is required), provided the amount of the adjusted fee is consistent with the criteria set forth in Government Code section 66001(a)-(b) and other applicable legal requirements.

## **Sec. 8-8.208 Exemptions**

Residential projects that are exempted from this ordinance and from payment of these in lieu fees are as specific in Sec. 8-9.1101 of the Inclusionary Housing Requirements ordinance (Chapter 9, Title 8 of the Yolo County Code). These exempted residential projects include: individual single family dwellings for which construction costs do not exceed those meeting the low income or below requirements as defined in this ordinance; replacement of a structure with a new structure of the same gross floor area and use at the same site or lot when such replacement occurs within twelve (12) consecutive months of the demolition or destruction of the prior residence; replacement of a structure with a new structure that does not exceed five-hundred (500) square feet; and housing constructed in a self-help housing program that serves owner-occupants below 80% of area median income.

## **Sec. 8-8.209 Establishment of Impact Fee Account**

A. An interest-bearing account has been established for the fees collected pursuant to this ordinance and is entitled "Inclusionary Housing In-Lieu Fee Account". Impact fees shall be earmarked specifically and deposited in this account and shall be prudently invested in a manner consistent with the investment policies of the County. Funds withdrawn from this account shall be used in accordance with the provisions of this ordinance. Interest earned on impact fees shall be retained in the account and expended for the purpose for which the impact fees were collected.

B. On an annual basis, the Director shall provide a report to the Board of Supervisors on the account showing the source and amount of all moneys collected, earned, or received, and system improvements that were financed in whole or in part by impact fees. This report may be identical in format and content with the report or other document prepared pursuant to Section 6.C of this ordinance and Government Code section 66006(b)(1).

C. In accordance with Government Code section 66001(d), for the fifth fiscal year following the first deposit of fees into the account and every five years thereafter, if some or all of the collected fees have not been expended, the Board of Supervisors shall make the findings set forth in Government Code section 66001(d) or take other measures provided in subdivisions (d) and (e) of section 66001, including a refund of any unexpended moneys pursuant to Section 11, below.

## **Sec. 8-8.210 Refunds**

A. Except where the Board of Supervisors has timely made the findings set forth in Government Code section 66001(d), upon application of the property owner made pursuant to subsections C-E of this section, the County shall refund that portion of any impact fee which has been on deposit over five years, whether committed or uncommitted. The refund shall be made to the then-current owner or owners of lots or units of the development project or projects, as reflected on the last equalized assessment roll.

B. The County may refund by direct payment, by offsetting the refund against other impact fees due for development projects by the owner on the same or other property, or otherwise by agreement with the owner. A person who receives a refund under this provision shall not commence construction of the land development for which the refund was made without repaying the required fees.



C. If the County fails to expend the fees within five years of payment, or where appropriate findings have been made, such other time periods pursuant to Section 66000 et seq. of the Government Code, the current owner of the property for which impact fees have been paid may receive a refund of the remaining amount of the fee payment. In determining whether fees have been expended, impact fees shall be considered expended on a first in, first out basis.

D. The County shall notify potential claimants by first class mail deposited with the United States Postal Service at the last known address of such claimants.

E. Property owners seeking a refund of impact fees must submit a written request for a refund of the fees to the Director of Planning and Public Works within one year of the date that the right to claim the refund arises or the date the notice described in subsection D of this Section is given, whichever is later.

F. Any impact fees for which no application for a refund has been made within the one year period shall be retained by the County and expended on the appropriate affordable housing programs.

G. Refunds of impact fees under this ordinance shall include any interest earned on the impact fees by the County.

H. When the County terminates the impact fee program established by this ordinance, all unexpended and unencumbered funds, including interest earned, shall be refunded pursuant to this ordinance. The County shall publish notice of the determination and the availability of refunds in a newspaper of general circulation at least two times and shall notify all potential claimants by first class mail to the last known address of the claimants. All funds available for refund shall be retained for a period of one year after the second publication. At the end of one year, any remaining funds shall be retained by the County, but must be expended for appropriate affordable housing projects or programs. This notice requirement shall not apply if there are not unexpended or unencumbered balances within the account.

I. The County shall also refund the impact fee paid plus interest to the current owner of property for which the impact fee had been paid if the development was never completed or occupied; provided, that if the County expended or encumbered the impact fee in good faith prior to the application for a refund, the Director may decline to provide the refund. If within a period of three years, the same or subsequent owner of the property proceeds with the same or substantially similar development, the owner can petition the Director for an offset against the fees previously paid to, and expended or encumbered by, the County. The petitioner shall provide receipts of impact fees previously paid for a development of the same or substantially similar nature on the same property or some portion thereof.

### **Sec. 8-8.211 Use of Funds**

A. The fees collected pursuant to this ordinance may be spent for the construction or creation of affordable housing in Yolo County, including any related administrative, planning, monitoring, and legal costs.

B. It is the intent of the County to transfer most, if not all, of the fees that are collected to a qualifying entity, that will construct or create affordable housing in Yolo County.

C. In lieu fees may be used to recoup costs for affordable housing projects previously incurred by the County, provided the costs recouped by the County were incurred in connection with the Inclusionary Housing program.

C. In the event that bonds or similar debt instruments are or have been issued for the advanced construction of affordable housing, in lieu fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the use of the bonds is consistent with the Inclusionary Housing program and this ordinance.

### **Sec. 8-8.212 Protests and Appeals**

Protests shall be filed in accordance with Sections 66020 and 66021 of the Government Code. At the time any fees are imposed pursuant to this ordinance, County staff shall provide the project applicant written notice of the imposition of the fees, a statement of the amount of the fees, and notification of the commencement of the ninety (90) day period for filing a protest under Government Code section 66020(d)(1).