

**ORDINANCE NO. 2009-250**

**ORDINANCE OF THE TOWN COUNCIL OF THE  
TOWN OF WINDSOR  
AMENDING THE TOWN'S ZONING ORDINANCE  
CHAPTER 27.23 INCLUSIONARY HOUSING REQUIREMENTS**

**THE TOWN COUNCIL OF THE TOWN OF WINDSOR DOES HEREBY ORDAIN AS FOLLOWS:**

**The Zoning Code shall be amended as follows:**

**SECTION 1:** To implement the Town's Housing Element regarding inclusionary housing, Chapter 27.23 is amended in its entirety and Chapter 27.60.020 is amended in part as set forth in Exhibits A and B respectively.

**SECTION 2:** The Environmental Impacts of this project were analyzed under the Negative Declaration completed for the Housing Element update.

**SECTION 3:** On September 23, 2008 the Town entered into a contract with a consulting firm David Paul Rosen and Associates (DRA) to prepare an Inclusionary Ordinance in-lieu fee study based on housing affordability gap.

**SECTION 4:** The fee study completed by DRA found that, under current market conditions, prototypical single-family and ownership residential development would not be feasible without an inclusionary requirement.

**SECTION 5:** On January 6, 2008, and September 3, 2008 the Town held two public hearings with members of the public and Town Council. Based on the direction from those hearings DRA prepared a gap analysis that revealed a large disparity between Windsor home prices and the mortgages available Lower income Windsor Residents. DRC also completed a draft fee schedule which sets criteria for minimum affordability requirements for both ownership and rental residential projects, establishes incentives, and provides measures for alternative compliance with the ordinance.

**SECTION 6:** The proposed Inclusionary Ordinance is compatible with uses and regulations of the land use districts for the residential and commercial (i.e. mixed use) districts for which it is proposed. The Inclusionary Ordinance, while it require development of affordable housing in conjunction with new residential development and would allow some flexibility in development regulations, would not supersede the permitted land uses and maximum densities adopted for the respective zoning districts within which the development would occur; specifically, new residential development must still conform to the allowable uses, density ranges and density bonus standards of the base district regulations as indentified in the Town's Zoning Ordinance. Where dedication of land would be permitted by the Inclusionary Ordinance, the ordinance would still require that the dedicated land be appropriately zoned with adequate density to accommodate regional affordable housing units.

**SECTION 7:** the Inclusionary Ordinance would be in conformity with the public convenience, general welfare and good zoning practice. The ordinance would ensure the development of affordable housing necessary for the Town to meet its quantified housing objectives for all income levels, and would ensure that housing is developed to accommodate the high percentage of households in the Town that have income levels at or below Moderate level. The ordinance would also ensure that affordable housing is created and distributed throughout the Town on appropriately-zoned sites and, for rental and Very Low income units, on properties that are accessible to and within reasonable distance of public facilities and services.

**SECTION 8:** The amendment to the text of the Zoning Ordinance to add a requirement for inclusionary housing is consistent with the General Plan. The ordinance would implement Land Use, Downtown and Housing Element goals in support of diversity in the density, type and affordability of residential units in the Town, and implements Housing Element goals and policies that commit the Town to increasing its supply of housing affordable to Extremely Low, Very Low, Low Moderate income Households. As an incentive to developers, the ordinance supports development of affordable units at low densities; offers reductions to minimum parking requirements of the Zoning Ordinance; promotes creation of a variety of densities, infill and Low and Very-Low income units that are accessible to public facilities, transit and services.

**SECTION 9: Effective Date.** This ordinance shall take effect and be in force thirty (30) days following its adoption.

**SECTION 10: Posting.** The Town Clerk of the Town of Windsor shall cause this Ordinance to be published or to be posted in at least three (3) public places in the Town of Windsor in accordance with Section 36933 of the Government Code of the State of California.

**PASSED, APPROVED AND ADOPTED, this 7<sup>th</sup> day of January 2009, by the following vote:**

**AYES: COUNCILMEMBERS ALLEN, FUDGE, SALMON, SCHOLAR AND  
MAYOR GOBLE**

**NOES: NONE**

**ABSTAIN: NONE**

**ABSENT: NONE**

  
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**ROBIN R. GOBLE, MAYOR**

**ATTEST:**

  
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**MARIA DE LA O, TOWN CLERK**

**Attachments:**

Exhibit "A" – Section 27.23 Inclusionary Housing Requirements

Exhibit "B"- Chapter 27.60.020- Definitions of Specialized Terms and Phrases (add to existing definitions-  
Definitions related to inclusionary housing requirements.

## **Chapter 27.23- Inclusionary Housing Requirements**

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### **Sections:**

- 27.23.010 Purpose and Intent**
- 27.23.020 Applicability**
- 27.23.030 Inclusionary Requirements**
- 27.23.040 Pricing Requirements for Inclusionary Units**
- 27.23.050 Eligibility Requirements**
- 27.23.060 In-Lieu Fees for Fractional Remainders**
- 27.23.070 Deed Restrictions**
- 27.23.080 Monitoring of Inclusionary Units**
- 27.23.090 Developer Incentives**
- 27.23.100 Inclusionary Housing Submittal Requirements**
- 27.23.110 Modification of Requirements, Hardship.**
- 27.23.120 Appeals and Enforcement**
- 27.23.130 In Lieu Fee Schedule**

### **27.23.010- Purpose and Intent**

The Town of Windsor recognizes the importance of achieving a diverse and balanced community with housing available for households of all income levels. Economic and social diversity cultivates a healthy social fabric that is beneficial to all residents of Windsor. The Town is experiencing an increasing shortage of housing affordable to very low, low and moderate-income households. New residential development does not provide housing opportunities for this segment of society. As a result, very low, low and moderate -income households are excluded from new housing, creating economic stratification in the Town that is detrimental to the public health, safety, and welfare.

The purpose of this chapter is to establish an inclusionary requirement on residential development projects. This Chapter will mitigate the impacts caused by these development projects for the additional demand for more affordable housing and rising land prices for limited supply of available residential land. The inclusionary requirements required by this chapter do not replace other regulatory requirements and processing fees or exactions, funding required pursuant to a development agreement or reimbursement agreement; assessment charged pursuant to special assessments or benefit assessments districts proceedings, etc, unless so specified.

### **27.23.020- Applicability**

- (a) **Threshold.** The provisions of this Chapter shall apply to all new Residential Developments of five (5) or more parcels or dwelling units intended and designed for permanent occupancy, including but not limited to single-family dwellings,

multi-family residential projects which receive subdivision, Use Permit, or Design Review approval after the effective date of this Chapter.

(b) Exemptions. The following shall not be subject to the provisions of this Chapter:

1. Residential dwelling for which a building permit has been issued by the Town prior to the effective date of this Chapter.
2. Residential and mixed-use development projects that the Town Council has determined have a vested right to proceed without complying with the provisions herein.
3. Existing residences, which are altered, improved, restored, expanded, or extended, provided that the number of units is not increased to five or more.
4. Second dwelling units constructed pursuant to Section 27.34.180 of the Zoning Ordinance.
5. Dwelling units, which are offered and restricted for sale, lease or rent solely to individuals or households of very-low, low, or moderate-incomes as defined by this Chapter, and for the minimum terms set forth by this Chapter.
6. Replacement of any dwelling unit or residential development which is damaged or destroyed by fire or other catastrophe provided the number of units and the use of the building remain the same.

#### **27.23.030- Inclusionary Requirements**

- (a) Percentage requirement. In projects of five (5) or more dwelling units, a twenty percent (20%) inclusionary requirement applies if the inclusionary units are constructed for moderate-income households, a fifteen percent (15%) requirement if the inclusionary units are constructed for low-income households, and a ten percent (10%) requirement if the inclusionary units are constructed for very low income households. If, in the application of the requirements of this Chapter, a decimal fraction unit requirement is obtained, an in-lieu fee shall be provided equal to the applicable decimal fraction cost of a full housing unit. Council Resolution shall establish said fee.
- (b) Payment of an in-lieu fee for all units. The Town shall establish an in-lieu fee schedule, as defined in Section 27.23.130. Any fee required by this chapter shall be paid in full prior to the issuance of a Building Permit for the project. In multi-phase projects, the entire in-lieu fees required for the project, inclusive of all phases, shall be paid prior to issuance of any building permits for the first phase.
- (c) Land Donation. Dedicate with cost to the Town, a lot or lots within, contiguous to or elsewhere in Town sufficient to accommodate at least the required number of affordable units for the residential project. An election to dedicate land in lieu of compliance with other provisions of this chapter shall be allowed only if:

1. The appraised value, of the lot or lots to be dedicated, net of demolition and environmental remediation costs, is equal to at least 150 percent of the project's in lieu fee obligation and financing or a viable financing plan is in place for at least the required number of affordable units and;
  2. The lot or lots are suitable for the construction of affordable housing at a feasible cost, defined by the Town Manager, are zoned appropriately for affordable housing development, served by utilities, streets and other infrastructure and there are no hazardous materials or other material constraints on the development of affordable housing.
- (d) Off site construction. Construct, or make possible construction by another developer, of units not physically contiguous to the market-rate units or units that are physically contiguous to the market-rate units if the Town determines that this will provide greater public benefit and if the inclusionary housing regulatory agreement is acceptable to the Town Manager or the Manager's designee.
- (e) Construction of Inclusionary units. The inclusionary units shall be provided at the same time as the other units. Both the inclusionary and market rate housing units shall be completed at the same time.
- (f) Distribution of Inclusionary units. Inclusionary units are encouraged to be distributed throughout the development. Distribution of units may take into account the number of required inclusionary units in the project, as well as consideration of environmental and aesthetic factors.
- (g) Appearance of Inclusionary units. The inclusionary units are encouraged to be substantially the same as the market rate units or buildings in exterior materials and finish. The developer may provide less expensive interior amenities for the inclusionary unit as long as there are not significant differences visible from the exterior. All units must conform to the requirements of the Building and Housing Codes, and subject to the approval of the Town Manager, or his/her designee.
- (h) Bedroom Count of Inclusionary Units. Inclusionary units shall be comparable in bedroom count distribution to the market rate units.

#### **27.23.040- Pricing Requirements for Inclusionary Units.**

Allowable rents and sales prices. Inclusionary units shall be made available at affordable rents or purchase prices and occupied by qualified income-eligible households, adjusted for household size and occupancy standards appropriate for the unit. The Planning Department shall set maximum allowable rents and maximum allowable purchase price for inclusionary units, adjusted by the household size appropriate for the unit. Such maximum allowable rents and maximum allowable purchase prices shall be set as rates such that qualified occupants pay no more than the affordable housing expense, as defined below:

For renters, affordable housing expense shall include rent plus a Utility Allowance and shall not exceed:

- Very low income: 30% of 50% AMI, adjusted for household size
- Low income: 30% of 60% of AMI, adjusted for household size
- Moderate Income: 30% of 110% of AMI, adjusted for household size

For owners, affordable housing expense shall include principal, interest, PMI, property taxes, insurance, homeowner's association dues, property maintenance, repair and a Utility Allowance and shall not exceed:

- Very low income: 30% of 50% AMI, adjusted for household size
- Low income: 30% of 70% of AMI, adjusted for household size
- Moderate Income: 35% of 110% of AMI, adjusted for household size
- Moderate Income: 38% of 110% of AMI, adjusted for household size with no Town subsidy or concession

Household size adjustments shall be made using the Occupancy Standard defined in Exhibit "B," Chapter 27.60.020.

#### **27.23.050 - Eligibility Requirements.**

- (a) Qualified households. Only qualified households shall be eligible to occupy or own and occupy the inclusionary units. Developers shall utilize an entity such as a non-profit housing cooperation or a public Housing Authority to obtain qualified occupants. Developers shall select only qualified households to occupy or own and occupy inclusionary units. Inclusionary for-sale units must be owner-occupied by a qualified household, with an exception granted in the case of an owner's absence required by military service.
- (b) Excluded persons. The following individual, by virtue of their position or relationship, are ineligible to occupy an inclusionary unit.
  - (1) The immediate relative of the project developer or owner.

#### **27.23.060- In-Fractional Remainders and In- lieu Fees**

- (a) Eligibility for fee payment. When the calculation of inclusionary requirements yields a fractional number, or if a developer wishes to pay the in-lieu fee to satisfy the requirements of this ordinance a fee in-lieu of providing a full unit shall be paid to the Town,

(1) Amount of fee. For purposes of this section, the fractional remainder and in-lieu inclusionary fee shall be as defined in Section 27.23.130 of this Chapter.

(2) Payment of fee. Any fee required by this chapter shall be paid in full prior to the issuance of a Building Permit for the project. In multi-phase projects, the entire in-lieu fees required for the project shall be paid prior to issuance of any building permits.

(3) Use of funds. Any funds received from in-lieu fee payments shall be placed in a reserve account used for the exclusive purpose of providing housing affordable to very-low, low and moderate-income households in the Town of Windsor.

### **27.23.070 - Deed Restrictions**

When inclusionary units are required, a deed restriction shall be recorded setting forth the applicable restrictions in this Chapter. The minimum period of affordability for inclusionary units shall be set forth below:

(a) **Affordability Period.** Except as may be otherwise provided in Section 27.22.040, inclusionary units which are built without a public subsidy, or density bonus or other concession granted pursuant to Government Code Section 65915, shall be required to maintain affordability in perpetuity for rental units and for the longest feasible time, but not less than forty-five (45) years, for owner units, or for a different period when required by the Town of Windsor or State law. At the resale of an affordable owner unit, the affordability period of not less than forty-five (45) years shall be renewed. A program to assure affordability for these units for this period of time shall be administered by the Town or by a non-profit housing agency approved by the Town. The developer shall enter into an agreement with the Town or its designee to provide monitoring and to assure affordability of the inclusionary units in perpetuity for rental units and for the longest feasible time, but not less than forty-five (45) years, for owner units from the effective date of first occupancy or resale of an affordable owner unit. The Town Manager shall be authorized to enter into such agreement on behalf of the Town. The approved agreement shall be recorded with the Sonoma County Recorder prior to issuance of a building permit for the project.

(1) All buyers of "for sale" inclusionary units shall enter into a Resale Agreement with the Town or its designee prior to the close of escrow for such inclusionary unit. The Resale Agreement shall specify the required affordability term, shall provide for an option for the Town or its designee to designate an eligible purchaser and shall provide the Town or its designee with first right of refusal to purchase the unit, and shall provide for a calculation of future equity assignment upon sale of the unit. Such agreement shall be recorded against each lot or unit.

(2) Conversion of an inclusionary rental unit to a "for sale" unit, if otherwise permitted, shall not void any provisions of applicable inclusionary housing agreements or requirements.

### **27.23.080 - Monitoring of Inclusionary Units**

Each owner of any rental inclusionary units shall submit an annual report to the Planning Department, no later than March 1, for the previous calendar year, identifying monthly rental rates, vacancy status of each inclusionary unit, income status for resident and any other related data deemed necessary by the Town while ensuring privacy for all occupants. The deed restriction for ownership units shall require a comparable conformance report to the Town upon sale of ownership of inclusionary units.

### **27.23.090- Developer Incentives**

When a developer proposes a housing project that is subject to the inclusionary requirements of this Chapter, the Town shall provide the developer a density bonus compliant with State density bonus law, as defined in California Government Code section 65915 et seq, as revised periodically. Subject to the approval of the Town Manager or the Town Manager's designee, the Town may also provide other incentives, including, but not limited to: reduction in site development standards, modification of architectural design requirements, or other similar incentives that assist in making the project economically feasible. Subject to the approval of the Town Manager or the Town Manager's designee, other incentives may be offered for the production of very low, or low income housing units, include fee deferrals, fast track permitting, shared equity programs and exceptions from zoning ordinance requirements i.e. parking, setbacks and others.

### **27.23.100 - Inclusionary Housing Submittal Requirements**

As part of any submittal to the Town of Windsor for the construction of five (5) or more new dwelling units, or for the subdivision of land into five (5) or more lots for residential use, each developer shall include information as to the total number of housing units included within the application; the number of inclusionary units; proposed sale or rental prices of the inclusionary units; identification of the agency which will monitor occupancy and continued affordability of the inclusionary units for the amount of time specified by this chapter; and any other information deemed necessary by the Town. It shall be the responsibility of the developer to negotiate any needed agreement with the monitoring agency to comply with Section 27.40.070 "Deed Restrictions".

### **27.23.110- Modification of Requirements, Hardship, Exception.**

a) Notwithstanding any other provision of this chapter, the requirements of this chapter shall be waived, adjusted or reduced if the applicant shows, by the presentation of substantial evidence, that there is no reasonable relationship between the impact of a proposed residential project and the requirements of this chapter, or that applying the requirements of this chapter would take property in violation of the U.S. or California Constitution. To receive a waiver, adjustment or reduction under this subsection (c), the applicant must make a showing under this subsection when applying for a first approval for the residential project, and/or as part of any appeal which the City provides as part of the process for the first approval.



### **27.23.120- Appeals and Enforcement**

- (a) Application of requirements. The provisions of this chapter shall apply to all agents, successors and assignees of the developer. No planning permit shall be issued after the effective date of this Chapter for any project which does not meet the requirements of this Chapter.
- (b) Violations. Any person, firm or corporation, whether as principal, agent, employee or otherwise, violating or causing the violation of any provision of this chapter, shall be guilty of a separate offense during each and every day during any portion of which any violation of this chapter is commenced, continued, or permitted by such person, firm or cooperation.
- (c) Appeal to Planning Commission. Any person aggrieved by any action involving denial, suspension or revocation of a building permit or denial, suspension or revocation of any development approval related to compliance with this chapter may appeal such determination to the Planning Commission, with further appeal possible to the Town Council, upon payment of the applicable appeal fee.
- (d) Appeal to the Town Council. Any developer or other person who contends that his or her interests are adversely affected by a determination or requirement of the Town or its designee in regard to this chapter and is not satisfied with the decision of the Planning Commission may appeal to the Town Council upon payment of the applicable fee. The appeal shall set forth specifically wherein in action of the Town or its designee fails to conform to the provisions of this chapter thereby adversely affecting the developer's or other person's interests. The Town Council may reverse or modify any determination or requirement of the Town or its designee if it finds that the action under appeal does not conform to the provisions of this Chapter.

### **27.23.130 – In Lieu Fee Schedule**

- (a) Per square foot in lieu fee amount. The in lieu fee shall be calculated on a per square foot basis, based on the square footage of the market rate units, as follows:

A minimum per unit in lieu fee of \$4,000 shall apply for units up to 1,000 square feet;

For units of 1,000 square feet, the fee shall be \$4.00 per square foot;

For larger units, the per square foot fee shall increase by \$0.03 per 50 square feet, or fraction thereof.

- (b) Adjustments to the in lieu fee. The in lieu fee shall be adjusted annually by an inflation factor equal to the percent increase in the median home sales price in the Town over the previous three (3) years. In years when the percent change in rolling three year average of median home sales price is negative, the in lieu fee shall remain unchanged.

- (c) In lieu fee schedule. The in lieu fee schedule for 2009 is as follows:

<b>Unit Square Footage</b>	<b>Per Square Foot Fee</b>	<b>Total Per Unit Fee</b>	<b>Unit Square Footage</b>	<b>Per Square Foot Fee</b>	<b>Total Per Unit Fee</b>
1,000	\$4.00	\$4,000	2,550	\$4.93	\$12,572
1,050	\$4.03	\$4,232	2,600	\$4.96	\$12,896
1,100	\$4.06	\$4,466	2,650	\$4.99	\$13,224
1,150	\$4.09	\$4,704	2,700	\$5.02	\$13,554
1,200	\$4.12	\$4,944	2,750	\$5.05	\$13,888
1,250	\$4.15	\$5,188	2,800	\$5.08	\$14,224
1,300	\$4.18	\$5,434	2,850	\$5.11	\$14,564
1,350	\$4.21	\$5,684	2,900	\$5.14	\$14,906
1,400	\$4.24	\$5,936	2,950	\$5.17	\$15,252
1,450	\$4.27	\$6,192	3,000	\$5.20	\$15,600
1,500	\$4.30	\$6,450	3,050	\$5.23	\$15,952
1,550	\$4.33	\$6,712	3,100	\$5.26	\$16,306
1,600	\$4.36	\$6,976	3,150	\$5.29	\$16,664
1,650	\$4.39	\$7,244	3,200	\$5.32	\$17,024
1,700	\$4.42	\$7,514	3,250	\$5.35	\$17,388
1,750	\$4.45	\$7,788	3,300	\$5.38	\$17,754
1,800	\$4.48	\$8,064	3,350	\$5.41	\$18,124
1,850	\$4.51	\$8,344	3,400	\$5.44	\$18,496
1,900	\$4.54	\$8,626	3,450	\$5.47	\$18,872
1,950	\$4.57	\$8,912	3,500	\$5.50	\$19,250
2,000	\$4.60	\$9,200	3,550	\$5.53	\$19,632
2,050	\$4.63	\$9,492	3,600	\$5.56	\$20,016
2,100	\$4.66	\$9,786	3,650	\$5.59	\$20,404
2,150	\$4.69	\$10,084	3,700	\$5.62	\$20,794
2,200	\$4.72	\$10,384	3,750	\$5.65	\$21,188
2,250	\$4.75	\$10,688	3,800	\$5.68	\$21,584
2,300	\$4.78	\$10,994	3,850	\$5.71	\$21,984
2,350	\$4.81	\$11,304	3,900	\$5.74	\$22,386
2,400	\$4.84	\$11,616	3,950	\$5.77	\$22,792
2,450	\$4.87	\$11,932	4,000	\$5.80	\$23,200
2,500	\$4.90	\$12,250			

**EXHIBIT “B”**

**Chapter 27.60.020- Definitions of Specialized Terms and Phrases (add to existing definitions- Definitions related to inclusionary housing requirements.**

As used in this chapter:

“Affordable” shall mean dwelling units (both rental and ownership) that are affordable to qualified households making 120 percent or less of the county median income, adjusted for household size appropriate for the unit, with monthly housing payments calculated per affordable housing expense not to exceed the following:

For renters, affordable housing expense shall include rent plus a Utility Allowance and shall not exceed:

Very low income: 30% of 50% AMI, adjusted for household size

Low income: 30% of 60% of AMI, adjusted for household size

Moderate Income: 30% of 110% of AMI, adjusted for household size

For owners, affordable housing expense shall include principal, interest, PMI, property taxes, insurance, homeowner’s association dues, property maintenance and a Utility Allowance and shall not exceed:

Very low income: 30% of 50% AMI, adjusted for household size

Low income: 30% of 70% of AMI, adjusted for household size

Moderate Income: 35% of 110% of AMI, adjusted for household size

Moderate Income: 38% of 110% of AMI, adjusted for household size with no Town subsidy or concession

"AMI" shall mean the Area Median Income, adjusted for family size, applicable to Sonoma County as published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 (or successor statutes) by the United States Department of Housing and Urban Development or its successor in accordance with California Health and Safety Code Sections 50079.5, 50105 and 50093 or successor statutes.

“Developer” shall mean a person, firm, corporation, partnership, or agency who proposes to divide, subdivide, or construct improvements on real property for oneself or others.

“Inclusionary Unit” means an ownership or rental housing unit, as required and defined by this Chapter, that is affordable to very low, low, or moderate income households.

“Low income” or “Lower income household” shall mean a person or household whose gross annual income is greater than 50% and up to 80% of the Sonoma County AMI, adjusted for

family size, as defined by California Department of Housing and Community Development (HCD) or its successor.

“Market Units” or “Market Rate Units” means either an ownership or rental dwelling unit which is not restricted to those prices or rents affordable to very low, low, or moderate income households, as defined by this Chapter.

“Moderate income” or “Moderate income household” shall mean a person or household whose gross annual income is greater than 80% and up to 120% of the Sonoma County AMI, adjusted for family size, as defined by HCD.

“Non-profit housing agency” shall mean a not-for-profit agency engaged in the provision and/or management of housing for households with very low to moderate income.

“Occupancy Standard” shall mean one person per studio unit and one person per bedroom plus one for larger units.

“Qualified household” shall mean a household meeting the income restrictions established in this inclusionary program.

“Residential Development” shall mean any dwelling units entitled under the same General Plan amendment, Specific Plan, or subdivision approval, on contiguous parcels or otherwise, developed by the same entity or affiliates of the same entity.

“Town” means the Town of Windsor.

“Utility Allowance” shall mean a utility allowance for renters or owners, calculated per utility allowance schedules published by the Sonoma County Housing Authority, a successor index, or an alternative index allowed by the California Tax Credit Allocation Committee.

“Very low income” or “Very low income household” shall mean a person or household whose gross income is 50% or less of the Sonoma County AMI, adjusted for family size, as defined by HCD.