

ORDINANCE NO.

AN ORDINANCE OF THE COUNTY OF SANTA BARBARA
ADDING CHAPTER 46 TO THE SANTA BARBARA COUNTY
CODE TO ADD OWNER OCCUPANCY AND ENFORCEMENT
PROVISIONS TO THE COUNTY'S AFFORDABLE HOUSING
PROGRAM.

THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA BARBARA DOES HEREBY
ORDAIN AS FOLLOWS:

SECTION 1

Chapter 46, entitled "Affordable Housing Enforcement", Sections 46-1 through and including
Section 46-11 are hereby added to the Santa Barbara County Code:

- 46-1 Purpose and findings.
- 46-2 Definitions.
- 46-3 Applicability of chapter.
- 46-4 Owner occupancy requirements.
- 46-5 Execution and recordation of affordable housing documents.
- 46-6 Exempt transactions.
- 46-7 Truth of statements and compliance with affordable housing covenants.
- 46-8 Responses to surveys and audits and cooperation with monitoring.
- 46-9 Proof.
- 46-10 Penalties, remedies and enforcement.
- 46-11 Severability.

46-1 Purpose and findings.

The purpose of this chapter is to ensure that for-sale affordable units, built to provide affordable ownership opportunities required by the County of Santa Barbara, continue to be maintained and available as an ownership opportunity resource consistent with the public purposes that required provision of the affordable units.

The Board of Supervisors hereby finds and determines:

1. That some owners of single-family homes and other individual ownership units produced under the County's affordable housing programs have been rented out instead of being sold to a new household when the household that purchased the unit vacated it, thereby depriving other individuals and families of the opportunity to purchase the unit.
2. That California Government Code section 65302(c) and various other state-adopted policies encourage and provide for adoption of local policies designed to provide for the housing needs of all economic segments of the community. The promotion of home ownership, owner occupancy,

and the maintained availability of affordable ownership housing units are recognized as valid purposes of the county's police power.

3. That the protection of a residential environment has long been recognized as a valid purpose of the county's police power, including zoning regulations.

4. That the County of Santa Barbara Housing Element, Housing Element Implementation Guidelines and implementing ordinances and resolutions have established various programs to increase home ownership opportunities for very low, low, moderate and workforce households. These programs include an inclusionary housing program, an affordable housing overlay program and a density bonus program, all of which result in the development of new affordable ownership housing units. The County of Santa Barbara and the Redevelopment Agency of the County of Santa Barbara also increase affordable ownership housing opportunities through the below market rate sale of land to low income housing developers and through loans to low income housing developers. All of these programs produce ownership units at a below-market rate prices, affordable to very low, low, moderate, and middle income households. The public purpose of these programs is to provide ownership housing opportunities for households that would not otherwise be able to live in Santa Barbara County or would be forced to live in sub-standard conditions. These public purposes continue to be served only if the affordable units are owner-occupied and not purchased or owned by investors.

5. That the public purpose that is provided by the county's affordable housing programs shall not unduly profit any household, including through the acceptance of rent for an affordable ownership unit that was purchased at a below-market affordable housing price, through a county affordable housing program.

6. That an occupancy requirement ensures availability of affordable units to income-eligible households at the units' initial and subsequent sales. The county and redevelopment agency's affordable housing programs also provide for affordable rental units that are separate from and in addition to the affordable ownership housing units produced by these program.

7. That in approximately the last ten years there has been a dramatic increase in the price of homes in California, particularly in Coastal areas such as Santa Barbara County, making it one of the least affordable counties in the county to purchase a home in.

8. That the effects referred to above tend to:

Create an incentive for owners of price-restricted affordable ownership units to rent out, rather than sell, their unit when circumstances cause them to relocate.

Detrimentially affect the stock of available residential ownership units within the county in general and, in particular, detrimentally affect the availability of for-sale affordable units to persons of low, moderate, or middle incomes desiring to purchase and occupy such units.

A. Definitions.

For purposes of this chapter, the following words shall have the meanings ascribed by this section:

1. "Affordable ownership unit" shall mean any individual residential ownership unit which is subject to an affordable housing covenant or a judgment pursuant to an action that the county was a party to which imposes affordability and/or price restrictions on the unit. The term also includes new affordable ownership units as defined below. The term "affordable ownership unit" includes units priced to serve very-low, low, moderate, and middle income households, as well as other household groups that the county finds to be underserved by the market or identifies as a public purpose within a specific project.
2. "Affordable housing covenant" refers to a document recorded against the title to an individual residential ownership unit which restricts the price at which the unit may be sold and/or the income level of allowed purchasers of the unit and which may impose additional restrictions relating to the sale and ownership of the unit, as required by the county's affordable housing programs or other county or redevelopment agency imposed conditions restricting the price and/or ownership of the unit.
3. "County affordable housing ownership programs" refers to all county and redevelopment agency programs and projects that require the production of for-sale price restricted units. "County affordable ownership programs" includes but is not limited to the following programs when price restricted ownership units are required: the County inclusionary program, the county affordable housing overlay program, the county density bonus program, developer agreements including disposition and development agreements, and loan programs through which the county and/or the Redevelopment Agency has loaned money for the production of affordable ownership housing in the unincorporated county.
4. "Completion of purchase" and "Completion of sale" refer to the close of escrow and the transfer of title to the purchaser or in the alternative, the date of the first installment payment of the purchase price or interest thereon.
5. "Developer" refers to any person who owns real property within the unincorporated county and who constructs, causes to be constructed, or permits to be constructed on such property one or more individual residential ownership units.
6. "Individual residential ownership unit" shall refer to any residential living unit (including condominiums and split lot units) which may be separately owned, or which is owned by a stock cooperative as defined in section 11003.2 of the Business and Professions Code, or owned as a community apartment project as defined in section 11004 of the Business and Professions Code.
7. "New affordable ownership unit" means a unit identified as a price restricted for-sale affordable unit pursuant to an agreement entered into by a developer and the county, but against which an affordable housing covenant has not yet been recorded.
8. "Occupy" refers to the establishment of a purchased affordable ownership unit as the principal place of residence of the person or persons who qualifies as the owner-occupant(s).

9. "Person" refers to an individual, group of individuals, family, partnership, or any other entity.

10. "Principal place of residence" means that the place where a person or persons reside on a full time basis for a minimum of ten months out of each calendar year, unless otherwise reviewed and exempted by the county.

11. "Purchase" and "Sell" refer to the execution of a binding and enforceable agreement (deposit receipt, contract of sale, agreement of sale, lease with an option to purchase, etc.) to purchase or sell a specific individual residential ownership unit for an agreed price.

12. "Purchaser" refers to any person or persons who acquire title to an individual residential ownership unit.

13. "Redevelopment agency" refers to the Redevelopment Agency of the County of Santa Barbara.

14. "Sale" refers to the sale or transfer of an affordable ownership unit by a developer or an owner of the unit.

46-3 Applicability of chapter.

This chapter is enacted pursuant to the general police power of the county and is for the purpose of ensuring that affordable ownership housing units be provided and maintained as an affordable ownership opportunity resource, in an effort to fulfill the public purpose under which the affordable units were required.

46-4 Owner occupancy requirements.

1. Owner occupancy duration. All original and subsequent owners and purchasers of affordable ownership units, or any other residential unit subject to a county-imposed occupancy restriction, shall occupy his/her or their unit as his/her or their principal place of residence for the entire duration of his/her or their ownership of the unit, unless otherwise approved by the county in writing. Such occupancy must commence within three months following completion of the purchase of the unit.

2. Required occupancy declaration. Each purchaser and owner must execute an affordable housing covenant which includes a declaration of occupancy and subsequent declarations, as required by the county.

3. Vacancy of affordable unit. In instances where an owner or owners of an affordable ownership unit vacates the unit for more than 90 days, without requesting and gaining an approved exemption from the county, the purchaser(s) shall be required to sell the affordable ownership unit upon the county's written direction to do so unless otherwise approved by the County.

4. No trusts or corporate ownership. Affordable units shall not be put into trusts including living trusts. Title to affordable ownership units must be vested in individuals and shall not be held by partnerships or corporations.

46-5 Execution and recordation of affordable housing documents.

1. Covenant requirement for new units. It is unlawful to sell, to purchase, or to act as the real estate agent, escrow agent, or broker for a seller or buyer of a new affordable ownership unit without obtaining and recording at the time of sale, an affordable housing covenant executed by the buyer(s) of the new affordable ownership unit and the County, in a form approved by County Counsel.

2. Requirement for resales. It is unlawful to sell, to purchase, or to act as the real estate agent, escrow agent, or broker for a seller or buyer of an affordable ownership housing unit that is already subject to an affordable housing covenant, without obtaining from the county and having the purchaser execute and record an assumption agreement, new covenant or intent to reside statement as determined appropriate by the county in a form approved by County Counsel.

3. Misrepresentations including false dating of sale documents. It shall be unlawful for any person to: knowingly misrepresent any material fact in; or to date or sign any deposit receipt, sale agreement, contract of sale, lease with an option to purchase, affordable housing covenant or other writing relating to the sale or purchase of an affordable unit so as to indicate that the agreement was executed on a date other than the actual date of acceptance and execution of the sale agreement; or to misrepresent to any person the character of any transaction which would otherwise be subject to this chapter.

46-6 Exempt transactions.

1. Foreclosures. This chapter shall be inapplicable to affordable ownership units that are no longer subject to an affordable housing covenant because a foreclosure or deed in lieu of foreclosure on the affordable unit had the legal effect of nullifying the affordable housing covenant pursuant to the specific terms contained therein. However this chapter shall continue to be applicable to affordable ownership units that are subject to a foreclosure of deed in lieu of foreclosure which does not have the legal effect of nullifying the affordable housing covenant recorded against the unit and to units which are subject to a legally binding judgment that imposes affordability restrictions on a unit.

2. This chapter shall be inapplicable to affordable housing units that are no longer subject to an affordable housing covenant because the term of the affordable housing covenant including any extensions as provided for in the affordable housing covenant has expired.

3. Inheritance or bequest. This chapter shall be inapplicable to acquisition by inheritance or bequest, but shall apply to any purchaser upon sale of said unit.

4. Public purpose. This chapter shall be inapplicable to purchases of affordable ownership units by a public agency, including the county, for public purposes, subject to approval by the county.

5. The requirements for owner occupancy set forth in this chapter shall be inapplicable to any owner of an affordable ownership unit who has been granted a personal hardship exception or other exemption by the County in compliance with the County Housing Element and Housing Element Implementation Guidelines as such may be amended.

46-7 Truth of statements and compliance with affordable housing covenants.

1. It shall be a violation of this chapter for a person applying to the county to purchase an affordable ownership unit to knowingly make any false or misleading statement on any documents submitted to the county as part of their application.

2. It shall be unlawful to sell or hold any affordable ownership unit without compliance with each and every provision contained in the applicable affordable housing covenant recorded against the unit.

46-8 Responses to surveys and audits and cooperation with monitoring.

1. Responses to written requests. It shall be a violation of this chapter for an owner of an affordable unit not to truthfully respond to any written County surveys, audits or other requests for information of within 3 weeks of receipt of such survey, audit or other request.

2. Cooperation with County. It shall be a violation of this chapter for any person to purposefully evade or fail to cooperate with county employees or agents who are conducting surveys, audits, investigating complaints or otherwise monitoring compliance with this chapter and with affordable housing covenants.

3. It shall be a violation of this chapter for a person to knowingly provide false or misleading information to the county in relation to an affordable housing surveyor, audit, monitoring program or complaint investigation or to knowingly assist in the provision of such false or misleading information.

46-9 Proof.

1. Proof: In all actions brought under this chapter, proof of any of the following shall be presumptive evidence that a violation of Section 46-4 has occurred:

Failure of three-month occupancy deadline. Proof that the purchaser or purchasers of an affordable ownership unit failed to take occupancy of the affordable ownership unit within three months of completion of the purchase of the unit.

Vacated affordable ownership unit. Proof that the purchaser or purchasers vacated the affordable unit without selling the unit or requesting a personal hardship exemption from the county.

Leasing affordable ownership unit. Proof that the purchaser or purchasers rented or leased the affordable unit during any time when owner-occupancy is required.

Second ownership unit. Proof that any or all purchaser or purchasers of an affordable ownership unit that is subject to an affordable housing covenant that prohibit ownership of a second dwelling unit, purchased or own a second ownership dwelling unit, without county approval, during any time when owner-occupancy is required.

Not principal place of residence for all owners. Proof that not all of the owners of the affordable ownership unit occupy the unit as their principal place of residence.

The presumptions set forth above may be rebutted by submission and approval by the county of an application for exemption.

46-10 Penalties, remedies and enforcement.

1. Penalties. Persons who do not comply with the requirements of this chapter may be subject to the penalties included below. Persons receiving an exemption from the county, shall not be subject to the penalty or remedies provisions of this chapter.

It shall be a misdemeanor for any person to violate any of the provisions of Sections 46-4, 46-5, 46-7 and 46-8 of this chapter. Each day of noncompliance shall constitute a new violation.

2. Remedies. The county shall have the ability to, but is not required to request the following remedies as part of the enforcement of this chapter.

If any owner or purchaser is found to be out of compliance with any requirement of this chapter and is given a reasonable amount of time to regain compliance, but chooses not to, the County of Santa Barbara shall have the ability to require the owner or purchaser to sell his/her/their affordable unit within 90 days of the county's notice of noncompliance.

As a separate and additional remedy, violations of this chapter which threaten to continue or to be repeated may be subject to abatement by a restraining order or injunction issued by a court of competent jurisdiction, which order may provide that the violator may not thereafter be a purchaser or obtain any interest in an affordable ownership unit.

The remedies provided herein shall not be exclusive and violations of any provisions of this chapter shall be subject to such other or further remedies as may be provided by law including but not limited to all remedies available to the county through the enforcement of provisions and restrictions recorded against affordable ownership units.

3. Enforcement. This chapter may be enforced by the Community Development Department, County Counsel and District Attorney.

46-11 Severability.

If any provision, clause, sentence or paragraph of this chapter, or application thereof to any person or circumstances, be held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or application and to this end, the provisions of this chapter are declared to be severable.

SECTION 2

This Ordinance shall take effect and be in force at the expiration of thirty (30) days from and after its passage, and before the expiration of fifteen (15) days after its passage, it or a summary of it, shall be published once, with the names of the members of the Board of Supervisors voting for and against the same in the Santa Barbara News Press, a newspaper of general circulation published in the County of Santa Barbara.

PASSED, APPROVED, AND ADOPTED this ____ Day of _____, 2006.

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

Signed: _____
Joni Grey
Chair, BOARD OF SUPERVISORS

Attest:
MICHAEL F. BROWN,
Clerk of the Board of Supervisors

By _____
Deputy Clerk

Approved as to form:
STEPHEN SHANE STARK, County Counsel

By _____
Deputy County Counsel

