

ORDINANCE NO. 733

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALISTOGA AMENDING CHAPTER 17.08, AFFORDABLE HOUSING, OF TITLE 17, ZONING, TO RE-INSTATE THE INCLUSIONARY HOUSING REQUIREMENT FOR RENTAL HOUSING PROJECTS (ZOA 2017-4)

WHEREAS, in the interest of facilitating the development of housing that is affordable to lower- and moderate- income households, the City requires residential ownership projects of 5 or more dwelling units to include affordable units, known as “inclusionary housing”; and

WHEREAS, prior to 2015, the City’s inclusionary requirement also applied to rental housing projects; and

WHEREAS, following the *Palmer/Sixth Street Properties L.P. v. City of Los Angeles* decision, which interpreted the limitation on rents charged for inclusionary apartments to be a form of rent control, the Zoning Code was amended to exempt rental projects from the inclusionary requirement; and

WHEREAS, Assembly Bill No. 1505, which was recently signed by the Governor, declares the California Legislature’s intent to supersede this court decision to the extent that it conflicts with a local jurisdiction’s authority to impose an inclusionary requirement on rental projects; and

WHEREAS, the City continues to have a strong desire to facilitate the development of affordable housing; and

WHEREAS, a comprehensive re-organization of the R Zoning Districts in 2014 (Ordinance 699) inadvertently prescribed a minimum required street side yard for a reverse corner lot in the R-3 Zoning District of 20 feet instead of the correct 15 feet, and this error needs to be fixed; and

WHEREAS, the Planning Commission reviewed the proposed amendments at a public hearing on November 8, 2017 and adopted PC Resolution 2017-17 recommending their approval to the City Council; and

WHEREAS, during its review, the City Council considered the public record, including the staff report, findings, and any written materials and testimony presented by the public during the hearing.

NOW, THEREFORE, THE CALISTOGA CITY COUNCIL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION ONE

Findings. The above recitals are incorporated herein as if set forth herein in full and each is relied upon independently by the City Council for its adoption of this ordinance.

SECTION TWO

Calistoga Municipal Code Section 17.08.020 is hereby amended pursuant to the revisions shown in Exhibit A, attached hereto.

SECTION THREE

CMC Section 17.19.040(F)(2)(d.) is hereby replaced with the following:

- d. The side yard for a reverse corner lot (CMC 17.38.040, Exhibit A) shall be not less than 15 feet.

SECTION FOUR

Environmental Review. This action has been reviewed in accordance with the California Environmental Quality Act, CEQA Guidelines Section 15061(b)(3), the "general rule" exemption. The City has determined that because it can be seen with certainty that there is no possibility that the proposed amendments will have an impact on the environment, this ordinance is exempt from CEQA under the general rule.

SECTION FIVE

Severability. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or ineffective.

SECTION SIX

Effective Date. This Ordinance shall take effect thirty (30) days after its passage and before the expiration of fifteen (15) days after its passage, shall be published in accordance with law, in a newspaper of general circulation published and circulated in the City of Calistoga.

THIS ORDINANCE was introduced with the first reading waived at the City of Calistoga City of Council meeting of the **20th day of February, 2018**, and was passed and adopted at a regular meeting of the Calistoga City Council on the **6th day of March, 2018**, by the following vote:

AYES: Vice Mayor Dunsford, Councilmembers Lopez-Ortega, Barnes and Kraus and Mayor Canning
NOES: None
ABSENT: None
ABSTAIN: None



Chris Canning, Mayor

ATTEST:

Kathy Flanson, City Clerk

Exhibit A

Amendments to CMC Section 17.08.020

Additions shown with underlining; deletions shown with ~~strikethrough~~

17.08.020 Affordable housing requirements – Residential development.

- A. Purpose. It is the intent of the City to partially offset the impacts of market-rate residential development on the potential development of affordable housing in the community because the development of market-rate housing reduces the inventory of developable sites within the City limits and increases the demand for services that generally employ lower-wage workers. Therefore, market-rate projects shall support the development of affordable housing by meeting the requirements of this section.
- B. Applicability.
1. The provisions of this section shall apply to residential subdivisions of 5 or more parcels or condominiums, and to rental projects of 5 or more units, with the exception of the following:
 - ~~1a.~~ Projects that are to be developed pursuant to the terms of a development agreement or vesting subdivision map executed prior to the effective date of the ordinance adopting these regulations.
 - 2b. Projects that received subdivision map approval prior to the effective date of the ordinance adopting these regulations.
- C4. Inclusionary Requirements.
- 1C. Ownership pProjects with between 5 and 19 dwelling units shall meet their inclusionary housing requirement through the payment of an in-lieu fee, as provided in subsection (D)(~~54~~)(a) of this section, for each unit in the project.
 - 2D. Ownership pProjects with 20 or more dwelling units and rental projects of 5 or more units shall provide inclusionary housing units as follows:
 - a. At least 20 percent of the project's total dwelling units shall be sold or rented at prices or rents affordable to moderate-income households and shall be restricted to their purchase or rental and occupancy by such households ("inclusionary units").
 - b. Alternatively, at least 10 percent of the project's total dwelling units shall be sold or rented at prices or rents affordable to low-income households and shall be restricted to their purchase or rental and occupancy by such households ("inclusionary units").
 32. Target Household and Affordability Definitions. For the purposes of this section:
 - a. "Moderate-income household" shall mean a household whose annual gross income does not exceed 120 percent of median income adjusted by actual household size for households in the County of Napa, California, as published from time to time by the State of California.

- b. "Low-income household" shall mean a household whose annual gross income does not exceed 80 percent of median income adjusted by actual household size for households in the County of Napa, California, as published from time to time by the State of California.
 - c. A unit is "affordable" if it meets the requirements for affordable housing costs for moderate-income or low-income households, as applicable, established by Health and Safety Code Section 50052.5 and regulations adopted by the California Department of Housing and Community Development (California Code of Regulations Title 25, Sections 6910 through 6924) determining affordability of residential housing units based upon family size and income levels. Housing costs shall include homeowner association fees, if applicable.
43. Fractional Units. In determining the number of inclusionary units required, fractional units that may result from the application of these requirements shall be satisfied by one of the two following methods, at the discretion of the applicant:
- a. Fractional numbers of inclusionary units may be "rounded up" to the nearest whole integer and treated as a whole inclusionary unit.
 - b. Payment of a portion of the in-lieu fee allowed pursuant to subsection (D)(~~54~~)(a) of this section in an amount equivalent to the remaining fractional portion of the inclusionary unit requirement.
54. Alternatives. Upon a finding by the Planning Commission or City Council, as appropriate, that the on-site provision construction of the required inclusionary units is not feasible or appropriate, the applicant shall meet the inclusionary requirement through one or more of the following alternatives:
- a. In-Lieu Fee Payment.
 - i. The inclusionary housing requirement may be satisfied through the payment of an affordable housing in-lieu fee for each unit in the project.
 - ii. The amount of the in-lieu fee shall be set by resolution of the City Council and may be periodically updated to reflect changing housing conditions within the community, including the actual costs of providing affordable housing.
 - iii. In-lieu fees shall be deposited by the City into the Affordable Housing Fund.
 - iv. In-lieu fees shall be payable at the time of building permit issuance.
 - b. In-Lieu Land Dedication.
 - i. The inclusionary housing requirement may be satisfied by an irrevocable offer of land dedication within the City limits that would accommodate the construction of at least the number of inclusionary units required for the project. Identification of the land to be dedicated shall be accomplished prior to approval of the discretionary permit for the residential development project.

- ii. In addition to any other findings required by the Calistoga Municipal Code, any project approval for an in-lieu land dedication shall include a finding that the land to be dedicated is not subject to liens, is served or proposed to be served by municipal services, including water, sewer, roads, electricity, telephone and other similar customary services, and contains no unusual planning or development constraints.
 - iii. In-lieu land shall be dedicated to the City or for-profit or non-profit affordable housing developer. The City Council may approve, conditionally approve or reject such offer of dedication. If the City Council rejects such offer of dedication, the applicant or developer shall be required to meet the inclusionary housing requirement by other means set forth in this section.
 - c. Off-Site Inclusionary Units.
 - i. Some or all of the inclusionary units required for a project may be constructed on another site or sites within the City limits. The resultant linked project sites shall be reviewed concurrently by the City. Inclusionary housing units not built on the site of the proposed original project shall be constructed simultaneously with market-rate dwellings constructed on the original site unless alternative arrangements are approved as part of the project approval.
 - ii. Where inclusionary units are approved off-site, such units do not count as affordable units for the purposes of the receiving site qualifying for a density bonus.
 - d. Equivalent methods that meet the intent of the housing element as deemed acceptable by the final decision-making body for the project.
- DE. The City Council may waive or reduce a project's inclusionary housing obligation based on economic hardship or other factors that make it infeasible for the project to fulfill its obligation.
- EF. Inclusionary Dwelling Unit Standards. In addition to other development standards and requirements set forth in this title, the following standards shall apply to inclusionary units:
 - 1. Required inclusionary units shall be constructed concurrently with the construction of a project's market-rate units unless an alternative schedule based on extenuating circumstances is adopted as part of project approval.
 - 2. Inclusionary units shall be distributed throughout the residential project site to the fullest extent practicable.
 - 3. Rental housing that is subject to the same affordable housing restrictions may be used to fulfill an ownership project's inclusionary requirement.
 - 4. For those residential development projects that are required to provide 10 or more inclusionary units, at least 10 percent of the inclusionary units shall have three or more bedrooms. Fractional units shall be rounded down to a whole unit.

5. The size (i.e., square footage) and amenities of inclusionary units may be reduced from the overall size and quality of the market-rate units, ~~except that the owners of such units shall have access to all common amenities available to other property owners within the project, such as recreational facilities.~~
6. The lot size of inclusionary units may be smaller than that of the market-rate units in a subdivision, subject to compliance with the applicable zoning district development regulations.
7. The exterior design of the inclusionary units shall be reasonably consistent and compatible with the total project design in terms of appearance, materials and finished quality, as determined through the design review process.
8. Residents of inclusionary units shall have the same ~~not be denied~~ access to common open spaces and/or recreational amenities as residents of non-inclusionary units.
9. Accessory Second dwelling units shall not be counted toward inclusionary housing requirements.

FG. Affordable Housing Plan. An affordable housing plan shall be submitted as part of the first approval of any residential project subject to this chapter and shall be processed, reviewed, and approved, conditionally approved or denied concurrently with all other applications required for the residential project. The affordable housing plan shall include the following, as applicable:

1. Number, unit types, numbers of bedrooms, locations, sizes, design and tentative sales prices or rents of the project's inclusionary units.
2. Construction schedule and phasing of inclusionary units in relation to unrestricted units.
3. Any requested alternative pursuant to subsection (~~CD~~)(54) of this section, including information as to why the project's inclusionary requirement cannot be met on site.
4. Such additional information as may be required by the Planning and Building Director to ensure conformance of the project with this chapter.

GH. Affordable Housing Agreement. Concurrent with recordation of the final map for the residential project, an affordable housing agreement (or memorandum thereof) between the developer and the City shall be recorded against the property included in the project.

1. The affordable housing agreement shall be binding on all future owners and successors in interest.
2. The affordable housing agreement and other required agreements shall be prepared by the City at the developer's expense.
3. The affordable housing agreement shall include, but not be limited to, the following:
 - a. The total number of affordable units.
 - b. The location, unit size (square feet), and number of bedrooms of the affordable units.

- c. A description of the household income group(s) to be targeted for purchase of the inclusionary units, and the standards for determining the corresponding affordable sales price(s) or rents.
 - d. The term of affordability, which shall be a minimum of 55 years.
 - e. A schedule for completion of the affordable units and phasing of development in relation to construction of unrestricted units.
 - f. A description of remedies for breach of the agreement by either party (the City may identify qualified purchasers as third party beneficiaries under the agreement).
 - g. Conditions governing the initial sale and resale, or rental, of affordable units to eligible households to ensure continued compliance with the restrictions of this chapter; and a condition requiring disclosure by the developer to the buyer of affordable units of the existence of the deed restrictions affecting the resale of the property.
 - h. Conditions providing the City or its designee an option to subsequently buy any of the affordable ownership units for the purposes of providing affordable housing.
 - i. If an off-site alternative is approved pursuant to subsection (D)(4)(c) of this section, provisions to ensure that the affordable housing is provided off site. Additional restrictions or agreements may be required to be recorded against the off-site property.
 - j. Other provisions needed to ensure implementation and compliance with this chapter, to ensure continued affordability of the units, and to comply with State or Federal law.
- H. City Assistance. The City may assist a developer in meeting their inclusionary housing obligation through subsidies, design flexibility and/or other means, when deemed appropriate and feasible by the City Council.
- I. Monitoring of Inclusionary Units. Inclusionary units shall be monitored by the City or its designee to ensure that they are continuously occupied, or in the case of ownership units, owner-occupied, by an income-qualified household.

