

ORDINANCE NO. 709

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALISTOGA RESCINDING AND REPLACING CHAPTER 17.08, AFFORDABLE HOUSING (ZOA 2014-3)

WHEREAS, Calistoga Municipal Code (CMC) Chapter 17.08, Affordable Housing, includes various provisions targeted at increasing the supply of affordable housing in Calistoga; and

WHEREAS, the 2014 Housing Element Update identified amendments that are needed to the Chapter's inclusionary housing requirements in light of recent court decisions; and

WHEREAS, the Update also recommends re-evaluating the feasibility of providing inclusionary units in smaller projects; and

WHEREAS, incentives are needed to encourage the provision of inclusionary units targeted to low-income households; and

WHEREAS, administrative procedures are needed for the review and approval of applications for density bonuses and other incentives per state law to promote affordable and special needs housing in Calistoga; and

WHEREAS, the Planning Commission reviewed the proposed Code amendment at a public hearing on January 14, 2015, and after considering the public record, including the staff report and findings, adopted PC Resolution 2015-1 forwarding a recommendation that the City Council approve the amendment to rescind and replace CMC Chapter 17.08, Affordable Housing; and

WHEREAS, the proposed amendments are not subject to the California Environmental Quality Act (CEQA) under Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility that they may have a significant effect on the environment.

WHEREAS, the City Council of the City of Calistoga reviewed and considered this ordinance at a public hearing on February 17, 2015, noticed in accordance with state and local law, and which included the written and oral staff report, the Planning Commission's recommendation and comments received from the general public and interested agencies and parties.

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

CMC Chapter 17.08, Affordable Housing, is hereby rescinded and replaced in its entirety as follows:

Chapter 17.08 AFFORDABLE HOUSING

Sections:

- 17.08.010 Purpose
- 17.08.020 Affordable housing requirements - residential development
- 17.08.030 Affordable housing incentives
- 17.08.040 Affordable housing requirements - nonresidential development
- 17.08.050 Affordable Housing Fund

17.08.010 Purpose.

The City recognizes the importance of working towards a balance of jobs and housing in the community, promoting housing affordable to low- and moderate-income households and addressing the special housing needs of such groups as seniors, farmworkers and the disabled. Because of the high cost of land and financing, the private market has difficulty addressing these needs. Therefore, the City establishes the following regulations and incentives, along with the Affordable Housing Fund to promote the development of affordable and special needs housing in Calistoga.

17.08.020 Affordable housing requirements - residential development.

- A. Purpose. It is the intent of the City to partially off-set 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. The provisions of this section shall apply to residential subdivisions of five or more parcels or condominiums, with the exception of the following:
 - 1. 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.
 - 2. Projects that received subdivision map approval prior to the effective date of the ordinance adopting these regulations.

- C. Projects with between five (5) and nineteen (19) dwelling units shall meet their inclusionary housing requirement through the payment of an in-lieu fee, as provided in Section (D)(4)(a), for each unit in the project.
- D. Projects with twenty (20) or more dwelling units shall provide inclusionary housing units as follows:
 - 1. Inclusionary requirement
 - a. At least twenty (20) percent of the project's total dwelling units shall be sold at prices affordable to moderate-income households and shall be restricted to their purchase and occupancy by such households ("inclusionary units").
 - b. Alternatively, at least ten (10) percent of the project's total dwelling units shall be sold at prices affordable to low-income households and shall be restricted to their purchase and occupancy by such households ("inclusionary units")
 - 2. 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.
 - 3. 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 (4)(a) below in an amount equivalent to the remaining fractional portion of the inclusionary unit requirement.
4. Alternatives. Upon a finding by the Planning Commission or City Council, as appropriate, that the on-site 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.
- E. 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.
- F. 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 a project's inclusionary requirement.
 - 4. For those residential development projects that are required to provide 10 or more inclusionary units, at least ten (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 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 not be denied access to common open spaces or recreational amenities.
 9. Second dwelling units shall not be counted toward inclusionary housing requirements.
- G. 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 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 Section (D)(4), 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.
- H. 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).
 - d. The term of affordability.
 - 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 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 units for the purposes of providing affordable housing.
 - i. If an off-site alternative is approved pursuant to subsection (D)(4)(c), 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.
- I. 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.
- J. Monitoring of inclusionary units. Inclusionary units shall be monitored by the City or its designee to ensure that they are continuously owner-occupied by an income-qualified household.

17.08.030 Affordable housing incentives.

- A. This section is intended to implement state law regarding the granting of density bonuses and other incentives to promote the construction of affordable and special needs housing within Calistoga.
- B. Regulatory concessions and incentives
 - 1. When a project meets any of the criteria specified in Government Code Section 65915, the developer may request a density bonus and one or more concessions or incentives as defined in, and subject to the requirements of Government Code Section 65915. Any inclusionary units provided in accordance with CMC 17.08.020 shall be included when determining whether a project qualifies for an affordable housing density bonus.
 - 2. Neither this subsection nor state law limits or requires the provision of direct financial incentives from the City for a qualifying project, including the provision of publicly-owned land by the City or the waiver of City fees or dedication requirements.
 - 3. In addition to those concessions and incentives provided by state law:
 - a. The City may grant an additional density bonus.
 - b. The City Council may grant financial incentives or concessions that result in identifiable cost reductions needed to make a qualifying project economically feasible, such as City subsidies for infrastructure improvements or development fees, and/or City sponsorship of mortgage bond financing.
- C. Application for and review of density bonuses, concessions and incentives
 - 1. An application for a density bonus and any additional concession(s) or incentive(s) shall be filed with the application for the related residential development project and shall include the following information:
 - a. The provisions of Government Code Section 65915 under which the density bonus is sought and the size of the density bonus requested, expressed as a percentage of the maximum number of units allowed by the zoning district and General Plan land use designation within which the project is located.
 - b. Identification of the requested regulatory concession(s) or incentive(s).
 - c. Specific information and data concerning the proposed development which establishes that the regulatory concession(s) or incentive(s) sought by the applicant is/are

necessary to make the affordable housing units economically feasible.

- d. Evidence of consultation with the City Manager regarding any proposed concession or incentive requiring expenditure of City funds or provision of publicly-owned land.
- e. An offer to enter into a contractual agreement to guarantee the reservation of the affordable units.

2. Planning Commission review

- a. The Planning Commission shall hold a public hearing on an application for a density bonus and any additional concession(s) or incentive(s). Such hearing shall be held concurrently with any other entitlements for the proposed housing development that require City approval. At the public hearing, the Planning Commission shall review the application, statements and plans submitted therewith and shall receive pertinent evidence concerning the application.
- b. The Planning Commission shall, by resolution, approve or conditionally approve an application for a density bonus and any additional concession(s) or incentive(s), or recommend approval or conditional approval to the City Council, as appropriate, unless, on the basis of the application and the evidence submitted, the Commission makes written findings of fact establishing either of the following:
 - i. The concession or incentive is not required in order to provide for affordable housing costs, as defined in Health and Safety Code Section 50052.5, or for rents for the targeted units to be set as specified in Government Code Section 65915.
 - ii. The concession or incentive would have a specific adverse impact, as defined in Government Code Section 65589.5(d)(2), upon public health and safety, the physical environment or any real property that is listed in the California Register of Historical Resources; for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to targeted households.
- c. The Planning Commission shall have the authority, as part of its review and decision process, to waive or modify development and zoning standards that would otherwise inhibit the utilization of the density bonus on specific sites, including but not limited to such items as minimum lot size and side yard setbacks, and maximum lot coverage and building height.

- d. In the case of a requested concession or incentive involving the expenditure of City funds, the provision of publicly-owned land, the approval of mixed-use zoning, or modifications to Public Works requirements, the Planning Commission shall make a recommendation to the City Council as to whether such concession or incentive should be approved as requested, modified in a manner consistent with this section and applicable state law, or denied.
3. City Council review
 - a. Following a recommendation by the Planning Commission, the City Council shall hold a public hearing on an application that requests a concession or incentive involving the expenditure of City funds, the provision of publicly-owned land, the approval of mixed-use zoning, or modifications to Public Works requirements. Such hearing shall be held concurrently with any other entitlements for the proposed housing development that require City Council approval.
 - b. The City Council may approve, conditionally approve, or deny such an application by resolution, provided that a resolution denying the application shall include one or both of the findings required by CMC 17.08.030 (C)(2)(b).
 - D. Contractual agreements and reservation of units. The developer of a housing development for which a density bonus, concession(s) and/or incentive(s) are granted shall enter into a development agreement pursuant to Government Code Section 65865 et seq. or other recorded contractual agreement satisfactory to the City which guarantees that the targeted units will be provided by the developer and will remain available to the targeted persons or households for the applicable period deemed appropriate by the City Council in conformance with state law. The agreement shall identify the means by which such continued availability will be secured and the procedures under which the targeted units will be rented and/or sold during such period, and may contain other terms and provisions, not inconsistent with Government Code Section 65915, that the City may require.

17.08.040 Affordable housing requirements - nonresidential development.

- A. Housing linkage fee. All new construction or additions to gross floor area greater than 10 percent shall contribute a housing linkage fee to help address the “affordability gap” between the cost of housing and what many workers employed by new nonresidential development are able to pay.

- B. Calculation and payment of linkage fees. Linkage fees shall be calculated and paid in the same manner as provided in CMC Section 3.28.050. Linkage fees shall be assessed in the amount established by resolution of the City Council.
- C. Exemptions, credits and adjustments. Exemptions, credits and adjustments may be made to linkage fees shall be in the same manner as provided in CMC Section 3.28.060.
- D. Refund of development impact fees. Linkage fees may be refunded in the same manner as provided in CMC Section 3.28.070.
- E. Annual findings and reporting. The City Council shall make the annual findings and the City's Administrative Services Department shall annually report on the linkage fees in the same manner as provided in CMC Section 3.28.080.
- F. Fee monitoring and update. The City shall annually monitor the linkage fee and conduct a comprehensive review in the same manner as provided in CMC Section 3.28.090.
- G. Use of linkage fee revenue. Linkage fee revenue shall be deposited in the Calistoga Affordable Housing Fund.

17.08.050 Affordable Housing Fund.

- A. There is hereby established the City of Calistoga Affordable Housing Fund ("Housing Fund"). Separate accounts within the fund may be created from time to time as deemed appropriate to further the purposes of the Housing Fund.
- B. Monies deposited into the Housing Fund shall be used to construct and preserve housing affordable to very low-, low- and moderate-income households.
- C. The programs and distribution of monies within the Housing Fund shall be reviewed annually by the Council.

SECTION THREE

The reference in Chapter 3.28, Development Impact Fees, Section 3.28.020(B) to "Section 17.08.025(A) (Nonresidential housing linkage fee)", is hereby replaced with "Section 17.08.040 Affordable housing requirements - nonresidential development."

SECTION FOUR

City Council Resolution No. 89-26, Adopting an Inclusionary Housing Program and In-Lieu Fee Schedule to Implement Certain Policies of the Housing Element of the City's General Plan, is hereby rescinded in its entirety.

SECTION FIVE

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 therefore exempt from CEQA under the general rule.

SECTION SIX

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 SEVEN

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 **17th day of February, 2015**, and was passed and adopted at a regular meeting of the Calistoga City Council on the **3rd day of March, 2015**, by the following vote:

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



Chris Canning, Mayor

ATTEST:



Kathy Flamson, City Clerk