

ORDINANCE NO. XXX

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

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

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

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

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

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

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

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

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

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

30 **SECTION ONE**

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

35 **SECTION TWO**

36 CMC Chapter 17.08, Affordable Housing, is hereby rescinded and replaced in its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

38 **Chapter 17.08**
39 **AFFORDABLE HOUSING**

40 Sections:

- 41 17.08.010 Purpose
- 42 17.08.020 Affordable housing requirements - residential development
- 43 17.08.030 Affordable housing incentives
- 44 17.08.040 Affordable housing requirements - nonresidential development
- 45 17.08.050 Affordable Housing Fund

46 **17.08.010 Purpose.**

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

56 **17.08.020 Affordable housing requirements - residential**
57 **development.**

58 A. Purpose. It is the intent of the City to partially off-set the impacts of
59 market-rate residential development on the potential development of
60 affordable housing in the community because the development of
61 market-rate housing reduces the inventory of developable sites within
62 the city limits and increases the demand for services that generally
63 employ lower-wage workers. Therefore, market-rate projects shall
64 support the development of affordable housing by meeting the
65 requirements of this section.

66 B. Applicability. The provisions of this section shall apply to residential
67 subdivisions of five or more parcels or condominiums, with the
68 exception of the following:

- 69 1. Projects that are to be developed pursuant to the terms of a
70 development agreement or vesting subdivision map executed prior
71 to the effective date of the ordinance adopting these regulations.
- 72 2. Projects that received subdivision map approval prior to the
73 effective date of the ordinance adopting these regulations.

- 74 C. Projects with between five (5) and nineteen (19) dwelling units shall
75 meet their inclusionary housing requirement through the payment of an
76 in-lieu fee, as provided in Section (D)(4)(a), for each unit in the project.
- 77 D. Projects with twenty (20) or more dwelling units shall provide
78 inclusionary housing units as follows:
- 79 1. Inclusionary requirement
- 80 a. At least twenty (20) percent of the project's total dwelling units
81 shall be sold at prices affordable to moderate-income
82 households and shall be restricted to their purchase and
83 occupancy by such households ("inclusionary units").
- 84 b. Alternatively, at least ten (10) percent of the project's total
85 dwelling units shall be sold at prices affordable to low-income
86 households and shall be restricted to their purchase and
87 occupancy by such households ("inclusionary units")
- 88 2. Target household and affordability definitions. For the purposes of
89 this Section:
- 90 a. "Moderate-income household" shall mean a household whose
91 annual gross income does not exceed 120 percent of median
92 income adjusted by actual household size for households in the
93 County of Napa, California, as published from time to time by
94 the State of California.
- 95 b. "Low-income household" shall mean a household whose annual
96 gross income does not exceed 80 percent of median income
97 adjusted by actual household size for households in the County
98 of Napa, California, as published from time to time by the State
99 of California.
- 100 c. A unit is "affordable" if it meets the requirements for affordable
101 housing costs for moderate-income or low-income households,
102 as applicable, established by Health and Safety Code Section
103 50052.5 and regulations adopted by the California Department
104 of Housing and Community Development (California Code of
105 Regulations Title 25, Sections 6910 through 6924) determining
106 affordability of residential housing units based upon family size
107 and income levels. Housing costs shall include homeowner
108 association fees, if applicable.
- 109 3. Fractional units. In determining the number of inclusionary units
110 required, fractional units that may result from the application of
111 these requirements shall be satisfied by one of the two following
112 methods, at the discretion of the applicant:

- 113 a. Fractional numbers of inclusionary units may be “rounded up” to
114 the nearest whole integer and treated as a whole inclusionary
115 unit.
- 116 b. Payment of a portion of the in-lieu fee allowed pursuant to
117 subsection (4)(a) below in an amount equivalent to the
118 remaining fractional portion of the inclusionary unit requirement.
- 119 4. Alternatives. Upon a finding by the Planning Commission or City
120 Council, as appropriate, that the on-site construction of the required
121 inclusionary units is not feasible or appropriate, the applicant shall
122 meet the inclusionary requirement through one or more of the
123 following alternatives:
- 124 a. In-lieu fee payment
- 125 i. The inclusionary housing requirement may be satisfied
126 through the payment of an affordable housing in-lieu fee for
127 each unit in the project.
- 128 ii. The amount of the in-lieu fee shall be set by resolution of the
129 City Council and may be periodically updated to reflect
130 changing housing conditions within the community, including
131 the actual costs of providing affordable housing.
- 132 iii. In-lieu fees shall be deposited by the City into the Affordable
133 Housing Fund.
- 134 iv. In-lieu fees shall be payable at the time of building permit
135 issuance.
- 136 b. In-lieu land dedication
- 137 i. The inclusionary housing requirement may be satisfied by an
138 irrevocable offer of land dedication within the city limits that
139 would accommodate the construction of at least the number
140 of inclusionary units required for the project. Identification of
141 the land to be dedicated shall be accomplished prior to
142 approval of the discretionary permit for the residential
143 development project.
- 144 ii. In addition to any other findings required by the Calistoga
145 Municipal Code, any project approval for an in-lieu land
146 dedication shall include a finding that the land to be
147 dedicated is not subject to liens, is served or proposed to be
148 served by municipal services, including water, sewer, roads,
149 electricity, telephone and other similar customary services,
150 and contains no unusual planning or development
151 constraints.

- 152 iii. In-lieu land shall be dedicated to the City or for-profit or non-
153 profit affordable housing developer. The City Council may
154 approve, conditionally approve or reject such offer of
155 dedication. If the City Council rejects such offer of
156 dedication, the applicant or developer shall be required to
157 meet the inclusionary housing requirement by other means
158 set forth in this section.
- 159 c. Off-site inclusionary units
- 160 i. Some or all of the inclusionary units required for a project
161 may be constructed on another site or sites within the city
162 limits. The resultant linked project sites shall be reviewed
163 concurrently by the City. Inclusionary housing units not built
164 on the site of the proposed original project shall be
165 constructed simultaneously with market-rate dwellings
166 constructed on the original site unless alternative
167 arrangements are approved as part of the project approval.
- 168 ii. Where inclusionary units are approved off-site, such units do
169 not count as affordable units for the purposes of the
170 receiving site qualifying for a density bonus.
- 171 d. Equivalent methods that meet the intent of the Housing Element
172 as deemed acceptable by the final decision-making body for the
173 project.
- 174 E. The City Council may waive or reduce a project's inclusionary housing
175 obligation based on economic hardship or other factors that make it
176 infeasible for the project to fulfill its obligation.
- 177 F. Inclusionary dwelling unit standards. In addition to other development
178 standards and requirements set forth in this Title, the following
179 standards shall apply to inclusionary units:
- 180 1. Required inclusionary units shall be constructed concurrently with
181 the construction of a project's market-rate units unless an
182 alternative schedule based on extenuating circumstances is
183 adopted as part of project approval.
- 184 2. Inclusionary units shall be distributed throughout the residential
185 project site to the fullest extent practicable.
- 186 3. Rental housing that is subject to the same affordable housing
187 restrictions may be used to fulfill a project's inclusionary
188 requirement.
- 189 4. For those residential development projects that are required to
190 provide 10 or more inclusionary units, at least ten (10) percent of
191 the inclusionary units shall have three or more bedrooms.
192 Fractional units shall be rounded down to a whole unit.

- 193 5. The size (i.e., square footage) and amenities of inclusionary units
194 may be reduced from the overall quality of the market-rate units,
195 except that the owners of such units shall have access to all
196 common amenities available to other property owners within the
197 project, such as recreational facilities.
- 198 6. The lot size of inclusionary units may be smaller than that of the
199 market-rate units in a subdivision, subject to compliance with the
200 applicable zoning district development regulations.
- 201 7. The exterior design of the inclusionary units shall be reasonably
202 consistent and compatible with the total project design in terms of
203 appearance, materials and finished quality, as determined through
204 the design review process.
- 205 8. Residents of inclusionary units shall not be denied access to
206 common open spaces or recreational amenities.
- 207 9. Second dwelling units shall not be counted toward inclusionary
208 housing requirements.
- 209 G. Affordable housing plan. An affordable housing plan shall be
210 submitted as part of the first approval of any residential project subject
211 to this Chapter and shall be processed, reviewed, and approved,
212 conditionally approved or denied concurrently with all other
213 applications required for the residential project. The affordable housing
214 plan shall include the following, as applicable:
- 215 1. Number, unit types, numbers of bedrooms, locations, sizes, design
216 and tentative sales prices of the project's inclusionary units.
- 217 2. Construction schedule and phasing of inclusionary units in relation
218 to unrestricted units.
- 219 3. Any requested alternative pursuant to Section (D)(4), including
220 information as to why the project's inclusionary requirement cannot
221 be met on-site.
- 222 4. Such additional information as may be required by the Planning
223 and Building Director to ensure conformance of the project with this
224 Chapter.
- 225 H. Affordable housing agreement. Concurrent with recordation of the final
226 map for the residential project, an affordable housing agreement (or
227 memorandum thereof) between the developer and the City shall be
228 recorded against the property included in the project.
- 229 1. The affordable housing agreement shall be binding on all future
230 owners and successors in interest.
- 231 2. The affordable housing agreement and other required agreements
232 shall be prepared by the City at the developer's expense.

- 233 3. The affordable housing agreement shall include, but not be limited to, the following:
234
- 235 a. The total number of affordable units.
236 b. The location, unit size (square feet), and number of bedrooms of
237 the affordable units.
238 c. A description of the household income group(s) to be targeted
239 for purchase of the inclusionary units, and the standards for
240 determining the corresponding affordable sales price(s).
241 d. The term of affordability.
242 e. A schedule for completion of the affordable units and phasing of
243 development in relation to construction of unrestricted units.
244 f. A description of remedies for breach of the agreement by either
245 party (the City may identify qualified purchasers as third party
246 beneficiaries under the agreement).
247 g. Conditions governing the initial sale and resale of affordable
248 units to eligible households to ensure continued compliance with
249 the restrictions of this Chapter; and a condition requiring
250 disclosure by the developer to the buyer of affordable units of
251 the existence of the deed restrictions affecting the resale of the
252 property.
253 h. Conditions providing the City or its designee an option to
254 subsequently buy any of the affordable units for the purposes of
255 providing affordable housing.
256 i. If an off-site alternative is approved pursuant to subsection
257 (D)(4)(c), provisions to ensure that the affordable housing is
258 provided off-site. Additional restrictions or agreements may be
259 required to be recorded against the off-site property.
260 j. Other provisions needed to ensure implementation and
261 compliance with this Chapter, to ensure continued affordability
262 of the units, and to comply with state or federal law.
- 263 I. City assistance. The City may assist a developer in meeting their
264 inclusionary housing obligation through subsidies, design flexibility
265 and/or other means, when deemed appropriate and feasible by the
266 City Council.
- 267 J. Monitoring of inclusionary units. Inclusionary units shall be monitored
268 by the City or its designee to ensure that they are continuously owner-
269 occupied by an income-qualified household.

271 **17.08.030 Affordable housing incentives.**

272 A. This section is intended to implement state law regarding the granting
273 of density bonuses and other incentives to promote the construction of
274 affordable and special needs housing within Calistoga.

275 B. Regulatory concessions and incentives

276 1. When a project meets any of the criteria specified in Government
277 Code Section 65915, the developer may request a density bonus
278 and one or more concessions or incentives as defined in, and
279 subject to the requirements of Government Code Section 65915.
280 Any inclusionary units provided in accordance with CMC 17.08.020
281 shall be included when determining whether a project qualifies for
282 an affordable housing density bonus.

283 2. Neither this subsection nor state law limits or requires the provision
284 of direct financial incentives from the City for a qualifying project,
285 including the provision of publicly-owned land by the City or the
286 waiver of City fees or dedication requirements.

287 3. In addition to those concessions and incentives provided by state
288 law:

289 a. The City may grant an additional density bonus.

290 b. The City Council may grant financial incentives or concessions
291 that result in identifiable cost reductions needed to make a
292 qualifying project economically feasible, such as City subsidies
293 for infrastructure improvements or development fees, and/or
294 City sponsorship of mortgage bond financing.

295 C. Application for and review of density bonuses, concessions and
296 incentives

297 1. An application for a density bonus and any additional concession(s)
298 or incentive(s) shall be filed with the application for the related
299 residential development project and shall include the following
300 information:

301 a. The provisions of Government Code Section 65915 under which
302 the density bonus is sought and the size of the density bonus
303 requested, expressed as a percentage of the maximum number
304 of units allowed by the zoning district and General Plan land use
305 designation within which the project is located.

306 b. Identification of the requested regulatory concession(s) or
307 incentive(s).

308 c. Specific information and data concerning the proposed
309 development which establishes that the regulatory
310 concession(s) or incentive(s) sought by the applicant is/are

311 necessary to make the affordable housing units economically
312 feasible.

313 d. Evidence of consultation with the City Manager regarding any
314 proposed concession or incentive requiring expenditure of City
315 funds or provision of publicly-owned land.

316 e. An offer to enter into a contractual agreement to guarantee the
317 reservation of the affordable units.

318 2. Planning Commission review

319 a. The Planning Commission shall hold a public hearing on an
320 application for a density bonus and any additional concession(s)
321 or incentive(s). Such hearing shall be held concurrently with any
322 other entitlements for the proposed housing development that
323 require City approval. At the public hearing, the Planning
324 Commission shall review the application, statements and plans
325 submitted therewith and shall receive pertinent evidence
326 concerning the application.

327 b. The Planning Commission shall, by resolution, approve or
328 conditionally approve an application for a density bonus and any
329 additional concession(s) or incentive(s), or recommend approval
330 or conditional approval to the City Council, as appropriate,
331 unless, on the basis of the application and the evidence
332 submitted, the Commission makes written findings of fact
333 establishing either of the following:

334 i. The concession or incentive is not required in order to
335 provide for affordable housing costs, as defined in Health
336 and Safety Code Section 50052.5, or for rents for the
337 targeted units to be set as specified in Government Code
338 Section 65915.

339 ii. The concession or incentive would have a specific adverse
340 impact, as defined in Government Code Section
341 65589.5(d)(2), upon public health and safety, the physical
342 environment or any real property that is listed in the
343 California Register of Historical Resources; for which there is
344 no feasible method to satisfactorily mitigate or avoid the
345 specific adverse impact without rendering the development
346 unaffordable to targeted households.

347 c. The Planning Commission shall have the authority, as part of its
348 review and decision process, to waive or modify development
349 and zoning standards that would otherwise inhibit the utilization
350 of the density bonus on specific sites, including but not limited to
351 such items as minimum lot size and side yard setbacks, and
352 maximum lot coverage and building height.

353 d. In the case of a requested concession or incentive involving the
354 expenditure of City funds, the provision of publicly-owned land,
355 the approval of mixed-use zoning, or modifications to Public
356 Works requirements, the Planning Commission shall make a
357 recommendation to the City Council as to whether such
358 concession or incentive should be approved as requested,
359 modified in a manner consistent with this section and applicable
360 state law, or denied.

361 3. City Council review

362 a. Following a recommendation by the Planning Commission, the
363 City Council shall hold a public hearing on an application that
364 requests a concession or incentive involving the expenditure of
365 City funds, the provision of publicly-owned land, the approval of
366 mixed-use zoning, or modifications to Public Works
367 requirements. Such hearing shall be held concurrently with any
368 other entitlements for the proposed housing development that
369 require City Council approval.

370 b. The City Council may approve, conditionally approve, or deny
371 such an application by resolution, provided that a resolution
372 denying the application shall include one or both of the findings
373 required by CMC 17.08.030 (C)(2)(b).

374 D. Contractual agreements and reservation of units. The developer of a
375 housing development for which a density bonus, concession(s) and/or
376 incentive(s) are granted shall enter into a development agreement
377 pursuant to Government Code Section 65865 et seq. or other recorded
378 contractual agreement satisfactory to the City which guarantees that
379 the targeted units will be provided by the developer and will remain
380 available to the targeted persons or households for the applicable
381 period deemed appropriate by the City Council in conformance with
382 state law. The agreement shall identify the means by which such
383 continued availability will be secured and the procedures under which
384 the targeted units will be rented and/or sold during such period, and
385 may contain other terms and provisions, not inconsistent with
386 Government Code Section 65915, that the City may require.

387 **17.08.040 Affordable housing requirements - nonresidential**
388 **development.**

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

- 394 B. Calculation and payment of linkage fees. Linkage fees shall be
395 calculated and paid in the same manner as provided in CMC Section
396 3.28.050. Linkage fees shall be assessed in the amount established by
397 resolution of the City Council.
- 398 C. Exemptions, credits and adjustments. Exemptions, credits and
399 adjustments may be made to linkage fees shall be in the same manner
400 as provided in CMC Section 3.28.060.
- 401 D. Refund of development impact fees. Linkage fees may be refunded in
402 the same manner as provided in CMC Section 3.28.070.
- 403 E. Annual findings and reporting. The City Council shall make the annual
404 findings and the City's Administrative Services Department shall
405 annually report on the linkage fees in the same manner as provided in
406 CMC Section 3.28.080.
- 407 F. Fee monitoring and update. The City shall annually monitor the
408 linkage fee and conduct a comprehensive review in the same manner
409 as provided in CMC Section 3.28.090.
- 410 G. Use of linkage fee revenue. Linkage fee revenue shall be deposited in
411 the Calistoga Affordable Housing Fund.

412 **17.08.050 Affordable Housing Fund.**

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

422 **SECTION THREE**

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

426 **SECTION FOUR**

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

431 **SECTION FIVE**

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

438 **SECTION SIX**

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

448 **SECTION SEVEN**

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

453 THIS ORDINANCE was introduced with the first reading waived at the City of
454 Calistoga City of Council meeting of the **17th day of February, 2015**, and was passed
455 and adopted at a regular meeting of the Calistoga City Council **on the __ day of __,**
456 **2015**, by the following vote:

457 **AYES:**
458 **NOES:**
459 **ABSENT:**
460 **ABSTAIN:**

461 _____
462 **Chris Canning, Mayor**

463 **ATTEST:**

464 _____
465 **Kathy Flamson, City Clerk**
466