

City of Calistoga

Staff Report

TO Honorable Mayor and City Council
FROM Lynn Goldberg, Planning and Building Director
DATE March 6, 2018
SUBJECT Second Reading of Ordinance No. 733

APPROVAL FOR FORWARDING:



Dylan Feik, City Manager

ISSUE: Zoning Code Amendment to reinstate the inclusionary housing requirement for rental housing projects (ZOA 2017-4)

RECOMMENDATION: Adopt Ordinance No. 733 as submitted

BACKGROUND: On February 20, 2018, following a public hearing, the City Council introduced and waived the first reading of the attached ordinance.

ATTACHMENT

1. Ordinance No. 733

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)

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

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

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

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

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

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

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

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

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

29 **SECTION ONE**

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

33 **SECTION TWO**

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

37 **SECTION THREE**

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

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

41 **SECTION FOUR**

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

47 **SECTION FIVE**

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

57 **SECTION SIX**

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

62 THIS ORDINANCE was introduced with the first reading waived at the City of
63 Calistoga City of Council meeting of the **20th day of February, 2018**, and was passed
64 and adopted at a regular meeting of the Calistoga City Council on the ___ day of ___,
65 **2018**, by the following vote:

66 **AYES:**

67 **NOES:**

68 **ABSENT:**

69 **ABSTAIN:**

70
71 _____
Chris Canning, Mayor

72 **ATTEST:**

73
74 _____
75 **Kathy Flamson, 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.

76 B. Applicability.

77 1. The provisions of this section shall apply to residential subdivisions of 5 or
78 more parcels or condominiums, and to rental projects of 5 or more units, with
79 the exception of the following:

80 4a. Projects that are to be developed pursuant to the terms of a
81 development agreement or vesting subdivision map executed prior to the
82 effective date of the ordinance adopting these regulations.

83 2b. Projects that received subdivision map approval prior to the effective
84 date of the ordinance adopting these regulations.

85 C4. Inclusionary Requirements.

86 1G. Ownership pProjects with between 5 and 19 dwelling units shall meet their
87 inclusionary housing requirement through the payment of an in-lieu fee, as
88 provided in subsection (D)(~~54~~)(a) of this section, for each unit in the project.

89 2D. Ownership pProjects with 20 or more dwelling units and rental projects of 5 or
90 more units shall provide inclusionary housing units as follows:

91 a. At least 20 percent of the project's total dwelling units shall be sold or
92 rented at prices or rents affordable to moderate-income households and
93 shall be restricted to their purchase or rental and occupancy by such
94 households ("inclusionary units").

95 b. Alternatively, at least 10 percent of the project's total dwelling units shall
96 be sold or rented at prices or rents affordable to low-income households
97 and shall be restricted to their purchase or rental and occupancy by such
98 households ("inclusionary units").

99 32. Target Household and Affordability Definitions. For the purposes of this
100 section:

101 a. "Moderate-income household" shall mean a household whose annual
102 gross income does not exceed 120 percent of median income adjusted
103 by actual household size for households in the County of Napa,
104 California, as published from time to time by the State of California.

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

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

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

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

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

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

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

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