

ORDINANCE NO. 2006-43

INCLUSIONARY HOUSING

The Contra Costa County Board of Supervisors ordains as follows (omitting the parenthetical footnotes from the official text of the enacted or amended provisions of the County Ordinance Code):

**SECTION I. SUMMARY.** This ordinance requires new residential developments to include a minimum percentage of dwelling units that are affordable to very low, lower, and moderate income households. In residential developments of five through 125 dwelling units, 15 percent of the dwelling units must be affordable, or a fee may be paid in lieu of providing some or all of the required units. In residential developments of 126 or more dwelling units, 15 percent of the dwelling units must be affordable. This ordinance also specifies alternatives for complying with the requirements of this chapter. This ordinance also establishes rental and sale restrictions on inclusionary units that are enforced by a recorded agreement between the County and the developer.

**SECTION II.** Chapter 822-4 is added to the County Ordinance Code, to read:

**Chapter 822-4  
INCLUSIONARY HOUSING**

**Article 822-4.2  
General**

**822-4.202 Title.** This chapter is known and may be cited as the Contra Costa County Inclusionary Housing Ordinance. (Ord. 2006-43 § 2.)

**822-4.204 Purpose and Intent.** The purpose of this chapter is to facilitate the development and availability of housing affordable to a broad range of households with varying income levels within the County. It is intended in part to implement State policy declaring that local governments have a responsibility to exercise their powers to facilitate the development of housing necessary to adequately provide for the housing needs of all economic segments of the community. The goal of this chapter is to ensure that affordable housing units are added to the County's housing stock in proportion to the increase in new housing units in the County, in accordance with Goal 3 of the Housing Element of the County General Plan. (Ord. 2006-43 § 2.)

**822-4.206 Definitions.** As used in this chapter, the following terms have the following meanings:

- (a) "Affordable rent" means a rent, including a reasonable utility allowance as determined by the community development director, for rental inclusionary units that does not exceed the following calculations pursuant to Health and Safety Code section 50053:

- (1) Very low income: 50 percent of the area median income for Contra Costa County, adjusted for assumed household size, multiplied by 30 percent and divided by 12.
  - (2) Lower income: 60 percent of the area median income for Contra Costa County, adjusted for assumed household size, multiplied by 30 percent and divided by 12.
- (b) “Affordable sales price” means a sales price at which very low, lower, or moderate income households can afford to purchase an inclusionary unit, calculated using the affordable housing cost formula set forth in Health and Safety Code section 33334.22(b), and taking into account reasonable down payment, assumed household size, and other ownership housing costs described in California Code of Regulations, title 25, section 6920. Under Health and Safety Code section 33334.22(b), the affordable housing cost is calculated using the following standards: for very low income households, a standard of 40 percent of 50 percent of the area median income; for lower income households, a standard of 40 percent of 70 percent of area median income; and for moderate income households, a standard of 40 percent of 110 percent of area median income.
- (c) “Area median income” means the median income, adjusted for household size, in the Oakland Metropolitan Statistical Area (which includes Contra Costa County), established pursuant to Health and Safety Code Section 50093(c).
- (d) “Assumed household size” means a household of one person in a studio apartment, two persons in a one bedroom unit, three persons in a two bedroom unit, and one additional person for each additional bedroom thereafter.
- (e) “Developer” means any person as defined in Ordinance Code section 16-4.026, or combination of persons, that seeks County approvals for all or part of a residential development.
- (f) “Extremely low income household” means a household whose income does not exceed the extremely low income limits applicable to Contra Costa County, adjusted for household size, as published and periodically updated by the State Department of Housing and Community Development pursuant to Health and Safety Code Section 50106.
- (g) “For-sale unit” means a single-family detached dwelling unit or a dwelling unit in a multi-family residential development that will be offered for sale, not for rent.
- (h) “Inclusionary housing agreement” means a legally binding agreement between a developer and the County setting forth the provisions necessary to ensure that the requirements of this chapter are satisfied.

- (i) “Inclusionary unit” means a rental unit that is required to be rented at an affordable rent or a for-sale unit that is required to be sold at an affordable sales price to the households specified in Section 822-4.402.
- (j) “Lower income household” means a household whose income does not exceed the lower income limits applicable to Contra Costa County, adjusted for household size, as published and periodically updated by the State Department of Housing and Community Development pursuant to Health and Safety Code Section 50079.5.
- (k) “Market rate unit” means a dwelling unit whose sales price or rent is not restricted under this chapter.
- (l) “Moderate income household” means persons and families whose income does not exceed the moderate income limits applicable to Contra Costa County, adjusted for household size, as published and periodically updated by the State Department of Housing and Community Development pursuant to Health and Safety Code Section 50093. The income limit for moderate income households in Contra Costa County is 120 percent of the area median income.
- (m) “Rental unit” means a single-family detached dwelling unit or a dwelling unit in a multi-family residential development that will be offered for rent, not for sale.
- (n) “Residential development” means any development project that includes the construction of one or more dwelling units, including exclusively residential and mixed-use projects. “Residential development” also includes any condominium conversion pursuant to Division 926 of this code.
- (o) “Very low income household” means a household whose income does not exceed the very low income limits applicable to Contra Costa County adjusted for household size, as published and periodically updated by the State Department of Housing and Community Development pursuant to Health and Safety Code section 50105. (Ord. 2006-43 § 2.)

**822-4.208 Applicability.** This chapter applies to all residential developments in the unincorporated area of the County, except those that are exempt under Section 822-4.408. (Ord. 2006-43 § 2.)

**Article 822-4.4  
Requirements**

**822-4.402 Inclusionary Unit Requirement.**

- (a) In a residential development of five through 125 rental units, at least 15 percent of the rental

units shall be developed and rented as inclusionary units under the terms and conditions of Section 822-4.410(a). At least 20 percent of the inclusionary units shall be rented at an affordable rent to very low income households, and the remaining inclusionary units shall be rented at an affordable rent to lower income households. As an alternative to providing some or all of the inclusionary units required by this subsection, an in-lieu fee may be paid pursuant to Section 822-4.404.

- (b) In a residential development of five through 125 for-sale units, at least 15 percent of the for-sale units shall be developed and sold as inclusionary units under the terms and conditions of Section 822-4.410(b). At least 20 percent of the inclusionary units shall be sold at an affordable sales price to lower income households, and the remaining inclusionary units shall be sold at an affordable sales price to moderate income households. As an alternative to providing some or all of the inclusionary units required by this subsection, an in-lieu fee may be paid pursuant to Section 822-4.404.
- (c) In a residential development of 126 or more rental units, at least 15 percent of the rental units shall be developed and rented as inclusionary units under the terms and conditions of Section 822-4.410(a). At least 20 percent of the inclusionary units shall be rented at an affordable rent to very low income households, and the remaining inclusionary units shall be rented at an affordable rent to lower income households.
- (d) In a residential development of 126 or more for-sale units, at least 15 percent of the for-sale units shall be developed and sold as inclusionary units under the terms and conditions of Section 822-4.410(b). At least 20 percent of the inclusionary units shall be sold at an affordable sales price to lower income households, and the remaining inclusionary units shall be sold at an affordable sales price to moderate income households.
- (e) Affordable rents will be determined annually by the County. Affordable sales prices will be estimated annually by the County. The County will provide a developer with the exact affordable sales price at least 90 days before the developer markets the unit.
- (f) If the calculation of the required number of inclusionary units results in a fraction of a whole number, a partial in-lieu fee shall be paid in accordance with Section 822-4.404 for the fraction of the unit. The amount of the partial in-lieu fee shall be a percentage of the in-lieu fee for a single unit, with the percentage equal to the fraction of the whole number.
- (g) The calculation of the number of inclusionary units required by this chapter shall be made without including as part of the calculation any housing units authorized by a density bonus granted pursuant to this chapter or Chapter 822-2. (Ord. 2006- 43 § 2.)

**822-4.404 In-Lieu Fee.**

- (a) The amount of a fee that is paid in lieu of some or all inclusionary units will be established in the community development department's fee schedule adopted by the board of supervisors.
- (b) Fee amounts in the fee schedule for for-sale units will be calculated to be equivalent to the difference between the affordable sales price for a targeted household and the median price, as determined by the County, of all single-family home sales in the County within the previous 12 months. Fee amounts in the fee schedule for rental units will be calculated to be equivalent to the difference over a 55-year period between the average rent, as determined by the County, of a two-bedroom, one-and-a-half-bathroom apartment in the County and the annual affordable rent for a targeted household. Fee amounts will be calculated annually.
- (c) All fee revenues will be deposited in a restricted fund earmarked to provide housing opportunities for extremely low, very low, lower, and moderate income households.
- (d) Funds will be appropriated for expenditures authorized by law that make housing units affordable to extremely low, very low, lower, and moderate income households and for costs associated with administering the restricted fund.
- (e) In-lieu fees shall be paid before the first building permit is issued for any portion of the residential development. (Ord. 2006-43 § 2.)

**822-4.406 Alternative Methods of Compliance.** A developer may submit a proposal for complying with this chapter by proposing one or more of the following compliance alternatives:

- (a) **Off-Site Development.** Some or all of the required inclusionary units may be constructed off-site, or an existing off-site development may be acquired and rehabilitated to provide some or all of the required inclusionary units, if the County determines that the combination of location, unit size, unit type, pricing, and timing of availability of the proposed off-site inclusionary units would provide equivalent or greater benefit than would result from providing those inclusionary units on-site, or if the County determines that on-site construction of those inclusionary units would be infeasible. Any off-site inclusionary units must be constructed or rehabilitated prior to or concurrently with construction of the on-site residential development. The off-site development location must be appropriately zoned and all required entitlements issued for the off-site development alternative before building permits are issued for the on-site residential development. The off-site development location should be within a reasonable geographic distance of the on-site residential development, such as within the same school district or identified community, unless otherwise directed by the board of supervisors.

- (b) Land Conveyance. The developer may convey title to land in fee simple absolute to an affordable housing developer if all of the following requirements have been met:
- (1) The affordable housing developer has been approved by the County.
  - (2) The land is at a location in the County where the County permits residential use at a density that will result in the same or greater number of inclusionary units than would be produced by providing the units on site.
  - (3) The land is suitable for construction of inclusionary units in a manner that complies with this ordinance. The land must be suitable from the perspective of size, configuration, physical characteristics, physical and environmental constraints, access, location, adjacent use, and other relevant planning criteria.
  - (4) The land is served with the infrastructure necessary for residential development at that location, including sewer, utilities, water, streets and sidewalks.
  - (5) The developer must submit a Phase I environmental report before the land can be considered for conveyance.
- (c) The County may accept any combination of on-site construction, off-site construction, in-lieu fees and land conveyance, or any other feasible alternative, that in the County's determination would provide equivalent or greater benefit than that which would result from providing on-site inclusionary units.
- (d) Two or more developers of separate residential developments required to comply with this chapter may propose to meet their combined then-existing obligations under this chapter by doing any of the following:
- (1) Providing the total number of inclusionary units required of all developers at one residential development.
  - (2) Crediting inclusionary units in excess of the number required at one residential development toward the number of inclusionary units required at another residential development.
  - (3) Jointly providing a combination of feasible alternatives consistent with subsection (c) of this section.

Two or more developers may proceed under this subsection (d) only if the County determines

the proposal would result in equivalent or greater benefit than the benefit resulting from providing on-site inclusionary units at separate residential developments. When two or more developers propose to proceed under this subsection (d), each developer must submit an inclusionary housing plan pursuant to section 822-4.414 and enter into or amend an inclusionary housing agreement pursuant to section 822-4.416. (Ord. 2006-43 § 2.)

#### **822-4.408 Exemptions.**

- (a) The following residential developments are exempt from the requirements of this chapter:
  - (1) Residential developments of one through four dwelling units.
  - (2) The reconstruction of any dwelling units that were destroyed by a fire, flood, earthquake, or other act of nature, provided the square footage, number of units, and use of the units remain the same and the use is resumed within six months of the interruption.
  - (3) Residential developments that obtain one of the following before the effective date of this ordinance:
    - (A) A discretionary approval.
    - (B) A building permit.
  - (4) Residential developments that are exempt from the requirements of this chapter pursuant to state law, including but not limited to the following:
    - (A) Residential developments that obtain a vesting tentative map before the effective date of this ordinance, provided the vesting tentative map has not expired
    - (B) Residential developments where the application for a tentative map has been deemed complete by the County before the effective date of this ordinance.
- (b) A residential development that is located in or proposed for a County redevelopment area is exempt from the provisions of this chapter, provided the development is subject to a Redevelopment Agency disposition and development agreement, owner participation agreement, acquisition agreement or other written agreement that requires affordable housing to be produced in the development, or is subject to a condition of approval requiring the provision of affordable housing in the County redevelopment area. (Ord. 2006-43 § 2.)

## 822-4.410 Restrictions.

- (a) Rental Inclusionary Unit Restriction. The monthly rent for a rental inclusionary unit shall remain reserved for the target income level group at the applicable affordable rent for a period of 55 years.
- (b) For-Sale Inclusionary Unit Restrictions.
  - (1) The initial sale of a for-sale inclusionary unit shall occur only to a household that meets the following criteria:
    - (A) The household has not owned a residence within the previous three years; and
    - (B) The household has no more than \$250,000 in assets. This amount excludes assets reserved for a down payment and closing costs, assets in retirement savings accounts, and assets in medical savings accounts.
  - (2) The initial purchaser of a for-sale inclusionary unit must agree to occupy the dwelling unit as the principal residence for at least three years, unless an emergency requires the earlier sale of the unit.
  - (3) A for-sale inclusionary unit may be sold after the initial sale to an above-moderate income purchaser and at a market price, provided that the sale results in a recapture by the County of a financial interest in the unit equal to the sum of:
    - (A) The difference between the initial affordable sales price and the appraised market value of the unit at the time of the initial sale; and
    - (B) The County's proportionate share of any appreciation since the time of the initial sale. Appreciation is the difference between the resale price to the above-moderate income purchaser and the appraised market value at the time of the initial sale. The County's proportionate share of appreciation is equal to the percentage by which the initial affordable sales price was less than the appraised market value at the time of the initial sale.

The recaptured amount will be deposited in a restricted fund established pursuant to Section 822-4.404. (Ord. 2006-43 § 2.)



**822-4.412 Standards.**

- (a) Inclusionary units must be dispersed throughout the residential development and have access to all on-site amenities that are available to market rate units.
- (b) The construction quality and exterior design of inclusionary units must be comparable to the market rate units. However, inclusionary units may be smaller in size, developed on smaller lots, and have alternative interior finishes.
- (c) The average number of bedrooms for all inclusionary units must be equivalent to the average number of bedrooms for market rate units within the same residential development.
- (d) All inclusionary units must be constructed and occupied prior to or concurrently with the market rate units within the same residential development. For phased residential developments, the inclusionary units may be constructed and occupied in proportion to the number of dwelling units in each phase of the project. (Ord. 2006-43 § 2.)

**822-4.414 Review.**

- (a) Concurrently with a developer's first application for a discretionary approval for a residential development, the developer shall submit to the community development director an inclusionary housing plan for review.
- (b) An inclusionary housing plan shall include the following information:
  - (1) A brief description of the residential development, including the number of market rate units and inclusionary units proposed, and the basis for the calculation of the number of units.
  - (2) The unit mix, location, structure type, and size (including number of bedrooms) of the market rate and inclusionary units. A site plan depicting the location of the inclusionary units shall be provided.
  - (3) The household income levels of the inclusionary units.
  - (4) For a phased project, a phasing plan that provides for the timely development of the inclusionary units as the residential development is built out.
  - (5) A description of any incentives requested of the County.

- (6) If the developer intends to satisfy the inclusionary unit requirement by payment of an in-lieu fee, a statement to that effect, and a calculation of the total in-lieu fee payment required.
  - (7) If an alternative compliance method is proposed, information sufficient to allow the County to determine either that on-site construction of inclusionary units is infeasible or that an alternative method of compliance could provide equivalent or greater benefit than would result from providing those inclusionary units on site.
- (c) The community development director will preliminarily approve or reject the inclusionary housing plan within 45 days of receiving the proposed inclusionary housing plan.
  - (d) An application for a discretionary approval of the residential development must include an inclusionary housing plan. An application for a discretionary approval of the residential development will not be deemed complete for processing until after the inclusionary housing plan has been preliminarily approved. Preliminary approval of the inclusionary housing plan is required prior to any discretionary approval of the residential development. (Ord. 2006-43 § 2.)

#### **822-4.416 Inclusionary Housing Agreements.**

- (a) All developers whose projects are not exempt under Section 822-4.408 shall enter into an inclusionary housing agreement with the County, except where the requirements of this chapter are satisfied by payment of an in-lieu fee. The agreement shall be in a form provided by the community development director.
- (b) All inclusionary housing agreements will include, at a minimum, the following information:
  - (1) The number of for-sale units and rental units.
  - (2) The number, size, location, and square footage of inclusionary units.
  - (3) The market value and sales price or rental price of the inclusionary units.
  - (4) Incentives, if any.
  - (5) Provisions and documents for enforcing the restrictions established by Section 822-4.410, including deed restrictions in a form acceptable to the County.

- (6) Provisions for determining income eligibility and monitoring the ongoing affordability of inclusionary units.
  - (7) Provisions for enforcing the construction and occupancy standards specified in subsection (d) of section 822-4.412. These provisions may include withholding approval of permits for any structure or property located within the residential development.
  - (8) If an alternative compliance method has been proposed, provisions for implementation and enforcement of that method, consistent with section 822-4.406.
- (c) The inclusionary housing agreement must be executed before the approval of the final map or the issuance of the first building permit for any portion of the residential development, whichever occurs first. Following execution, the agreement will be recorded as a covenant running with the land against the real property of the residential development. (Ord. 2006-43 § 2.)

#### **822-4.418 Incentives.**

- (a) A developer may request a density bonus of 15 percent for any project that complies with the requirements of this chapter. A developer may request a density bonus under Chapter 822-2, and incentives or concessions under Chapter 822-2, for a project that includes moderate income, lower income, very low income, or senior housing units at levels beyond those required by this chapter.
- (b) The County may grant one or more of the following affordable housing development incentives in order to mitigate the financial impact of this chapter's requirements on a particular residential development:
  - (1) Fee deferrals or waivers.
  - (2) Provision of housing set-aside funds, tax exempt financing, or other financial assistance.
  - (3) Modification of zoning or development standards. (Ord. 2006-43 § 2.)

#### **822-4.420 Compliance Monitoring Fee.**

- (a) The County may establish a compliance monitoring fee to recover the County's reasonable costs incurred for ongoing implementation of this chapter. The fee will be an amount established by the board of supervisors in the community development department's fee

schedule.

- (b) For for-sale inclusionary units, the fee shall be payable by the developer at the time of the first sale. For rental inclusionary units, the property owner shall pay an annual fee each year during the term of the applicable inclusionary housing agreement. (Ord. 2006-43 § 2.)

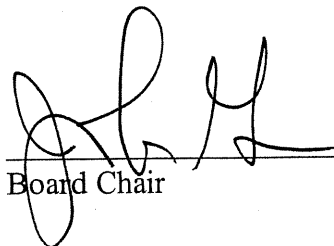
**822-4.422 Taking Determination.** The County may adjust or waive the requirements of this chapter if the applicant for approval of a residential development demonstrates the absence of any reasonable relationship or nexus between the impact of the development and either the amount of the fee charged or the inclusionary requirement, thereby effecting a taking of private property without just compensation or otherwise constituting a violation of the United States Constitution, California Constitution, or other applicable Federal or State laws. Any person requesting a waiver or adjustment must submit a written request not later than 15 days before the first public hearing on any discretionary approval for the residential development, accompanied by economic information and other evidence necessary for the County to make a determination regarding the request. If no discretionary approval is required or the action complained of occurs after the first public hearing on such approval, then the request shall be filed within 10 days after the challenged action. Authority to act on a request for a waiver or adjustment rests with the board of supervisors. (Ord. 2006-43 § 2.)

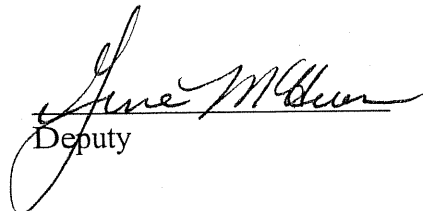
**SECTION III. EFFECTIVE DATE.** This ordinance becomes effective 30 days after passage, and within 15 days after passage shall be published once with the names of supervisors voting for or against it in the Contra Costa Times, a newspaper published in this County.

PASSED on October 24 2006, by the following vote:

- ✓ AYES: Uilkema, Piepho, DeSaulnier, Glover and Gioia
- ✓ NOES: None
- ✓ ABSENT: None
- ✓ ABSTAIN: None

ATTEST: JOHN CULLEN,  
Clerk of the Board of Supervisors  
and County Administrator

  
Board Chair

By:   
Deputy

[SEAL]

TLG:  
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