

ORDINANCE NO. 2022-07

AMENDING THE COUNTY'S INCLUSIONARY HOUSING ORDINANCE

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 amends Chapter 822-4 of the County Ordinance Code, the County's Inclusionary Housing Ordinance, to be consistent with changes in the State's definitions of extremely low, very low, lower, and moderate income households and their respective qualifying income limits. This ordinance also exempts community care facilities from the County's affordable housing requirements.

**SECTION II.** Section 822-4.206 of the County Ordinance Code is amended to read:

**822-4.206 Definitions.** For purposes of this chapter, the following terms have the following meanings:

- (a) "Affordable rent" means a rent, including a reasonable utility allowance as determined by the Conservation and Development Director or designee, for a rental inclusionary unit that does not exceed the following calculations pursuant to Health and Safety Code Section 50053:
  - (1) For extremely low income households, the product of 30 percent times 30 percent of the area median income adjusted for family size appropriate for the unit.
  - (2) For very low income households, the product of 30 percent times 50 percent of the area median income adjusted for family size appropriate for the unit.
  - (3) For lower income households with gross incomes that exceed the maximum income for very low income households, the product of 30 percent times 60 percent of the area median income adjusted for family size appropriate for the unit.
  - (4) For moderate income households, the product of 30 percent times 110 percent of the area median income adjusted for family size appropriate for the unit.
- (b) "Affordable sales price" means a sales price at which very low, lower, or moderate income households can afford to purchase an inclusionary unit. An affordable sales price is determined using the housing affordability calculator published annually by the State Department of Housing and Community Development. An affordable sales price includes a reasonable down payment and results in an affordable housing cost, as

described in California Code of Regulations, Title 25, Section 6920, that does not exceed the following calculations pursuant to Health and Safety Code Section 50052.5:

- (1) For extremely low income households, the product of 30 percent times 30 percent of the area median income adjusted for family size appropriate for the unit.
  - (2) For very low income households, the product of 30 percent times 50 percent of the area median income adjusted for family size appropriate for the unit.
  - (3) For lower income households with gross incomes that exceed the maximum income for very low income households, the product of 30 percent times 70 percent of the area median income adjusted for family size appropriate for the unit.
  - (4) For moderate income households, the product of 35 percent times 110 percent of the area median income adjusted for family size appropriate for the unit.
- (c) “Area median income” means the median gross yearly income, adjusted for household size, for households in Contra Costa County as published and periodically updated by the State Department of Housing and Community Development 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 or combination of persons that seeks county approvals for all or part of a residential development.
- (f) “Dwelling unit” means a building or portion thereof that is designed, intended, or used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household. For purposes of this chapter, “dwelling unit” does not include an accessory dwelling unit.
- (g) “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.
- (h) “For-sale unit” means a single-family detached dwelling unit or a dwelling unit in a multifamily residential development that will be offered for sale, not for rent.

- (i) “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.
- (j) “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.
- (k) “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.
- (l) “Market rate unit” means a dwelling unit whose sales price or rent is not restricted under this chapter.
- (m) “Moderate income household” means a household 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.
- (n) “Rental unit” means a single-family detached dwelling unit or a dwelling unit in a multifamily residential development that will be offered for rent, not for sale.
- (o) “Residential development” means any development project that includes the construction of one or more dwelling units, including but not limited to exclusively residential projects and mixed-use projects. “Residential development” also includes any condominium conversion pursuant to Division 926 of this code.
- (p) “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. (Ords. 2022-07 § 2, 2006-43 § 2.)

**SECTION III.** Section 822-4.404 of the County Ordinance Code is amended to read:

**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 by the board of supervisors in the Department of Conservation and Development's fee schedule.

- (b) Fee amounts in the fee schedule for for-sale units will be calculated as 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.
- (c) Fee amounts in the fee schedule for rental units will be calculated as the difference over a 55-year period between the average annual 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.
- (d) Fee amounts in the fee schedule will be calculated annually.
- (e) 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.
- (f) 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.
- (g) In-lieu fees are non-refundable and shall be paid before the first building permit is issued for any portion of the residential development. (Ords. 2022-07 § 3, 2006-43 § 2.)

**SECTION IV.** Section 822-4.408 of the County Ordinance Code is amended to read:

**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 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 November 23, 2006:
    - (A) A discretionary approval.
    - (B) A building permit.
  - (4) A community care facility as defined in Health and Safety Code Section 1502.

- (5) 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 the ordinance codified in this chapter, 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 the ordinance codified in this chapter.
- (b) A residential development that is located in or proposed for a former county redevelopment area is exempt from the provisions of this chapter, if the development is subject to a Successor 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 if the development is subject to a condition of approval requiring affordable housing to be provided in the former county redevelopment area. (Ords. 2022-07 § 4, 2006-43 § 2.)

**SECTION V.** Section 822-4.410 of the County Ordinance Code is amended to read:

**822-4.410 Restrictions.**

- (a) Rental Inclusionary Unit Restriction. The monthly rent for a rental inclusionary unit shall remain reserved for the targeted households at the applicable affordable rent for a period of fifty-five 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 all of the following:
    - (A) The household’s annual income does not exceed the maximum income limits applicable to the targeted household for the inclusionary unit.
    - (B) The household has not owned a residence within the previous three years.
    - (C) 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.
- (4) All recaptured amounts under subsection (3) will be deposited in a restricted fund established pursuant to Section 822-4.404. (Ords. 2022-07 § 5, 2006-43 § 2.)

**SECTION VI.** Section 822-4.412 of the County Ordinance Code is amended to read:

**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, an inclusionary unit may:
  - (1) Be smaller in size by up to 10 percent when compared to the average size of market rate units in the development that have the same number of bedrooms as the inclusionary unit.
  - (2) Be developed on smaller lots of up to 10 percent when compared to the average lot size of market rate units in the development that have the same number of bedrooms as the inclusionary unit.
  - (3) Have alternative interior finishes that reduce interior construction costs by up to five percent when compared to the average interior construction cost of market rate units in the development that have the same number of bedrooms as the inclusionary unit.

- (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. (Ords. 2022-07 § 6, 2006-43 § 2.)

**SECTION VII.** Section 822-4.414 of the County Ordinance Code is amended to read:

**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 Department of Conservation and Development an inclusionary housing plan for review.
- (b) An inclusionary housing plan must include all of 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 must be provided.
  - (3) The targeted 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) Any proposed density bonus and 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 Department of Conservation and Development will accept as complete or reject as incomplete the inclusionary housing plan within 30 days of receiving the proposed inclusionary housing plan.
- (d) 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 accepted as complete. Preliminary approval of the inclusionary housing plan is required prior to any discretionary approval of the residential development.
- (e) The Conservation and Development Director will approve the inclusionary housing plan if the plan complies with the requirements of this chapter. If the Director denies the inclusionary housing plan, the Director will notify the developer in writing of the reasons for denial. Approval of the inclusionary housing plan is required prior to any discretionary approval of the residential development. (Ords. 2022-07 § 7, 2006-43 § 2.)

**SECTION VIII.** Section 822-4.416 of the County Ordinance Code is amended to read:

**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 must be in a form provided by the Department of Conservation and Development.
- (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) Provisions for determining 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 Section 822-4.412(d). 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.
  - (9) Provisions requiring annual compliance reporting to the Department of Conservation and Development during the term of the inclusionary housing agreement.
- (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. (Ords. 2022-07 § 8, 2006-43 § 2.)

**SECTION IX. 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 East Bay Times, a newspaper published in this County.

PASSED on \_\_\_\_\_, by the following vote:

AYES:  
 NOES:  
 ABSENT:  
 ABSTAIN:

ATTEST: MONICA NINO,  
 Clerk of the Board of Supervisors  
 and County Administrator

\_\_\_\_\_  
 Board Chair

By: \_\_\_\_\_  
 Deputy

[SEAL]

KCK:  
 H:\Client Matters\2022\DCD\Ordinance No. 2022-07 Inclusionary Housing.wpd