

**Mill Valley, Ca Municipal Code: Affordable and Inclusionary Housing**

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**Title 20 Zoning**

**Chapter 20.80 Inclusionary Housing Requirements**

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**20.80.010 Findings.**

The City finds that Mill Valley is experiencing a housing shortage for low and moderate income households. A goal of the City is to achieve a balanced community with housing available for households of a range of income levels. Increasingly, persons with low and moderate incomes who work and/or live within the City are unable to locate housing at prices they can afford and are increasingly excluded from living in the City. The City finds that the high cost of newly constructed housing does not, to any appreciable extent, provide housing affordable by low and moderate households, and that continued new development which does not include nor contribute toward lower cost housing will serve to further aggravate the current housing problems by reducing the supply of developable land. The City further finds that the housing shortage for persons of low and moderate incomes is detrimental to the public health, safety and welfare, and further that it is a public purpose of the City, and a public policy of the State of California as mandated by the requirements for a Housing Element of the City's General Plan to make available an adequate supply of housing for persons of all economic segments of the community. (Ord. 1077, Sec. 1; April 18, 1988.)

**20.80.020 Purpose.**

The purpose of this Chapter is to enhance the public welfare and assure that new housing developments which include two or more residential dwelling units or lots contribute to the attainment of the City's housing goals by increasing the production of units affordable by households of low and moderate income, and additionally stimulating funds for development of low and moderate income housing. (Ord. 1077, Sec. 1; April 19, 1988.)

### **20.80.030 Definitions.**

For the purposes of this chapter, certain words and phrases shall be interpreted as set forth in this section unless it is apparent from the context that a different meaning is intended. (Ord. 1077, Sec. 1; April 18, 1988.)

A. "Affordable by" means housing available at a sales price or rent which a certain size household can afford to pay for housing, as established by the Housing Authority.

B. "Applicant" means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks City permits and approvals.

C. "At one location" means all adjacent land owned or controlled by the applicant, the property lines of which are contiguous at any point, or the property lines of which are separated only by a public or private street, road, or other public or private right-of-way.

D. "Dwelling unit" means a dwelling designed for occupancy by one household. For purposes of this Chapter, a dwelling unit shall not include a residential second unit approved and constructed under the provisions of Chapter 20.90. (Ord. 1077, Sec. 3; April 19, 1988).

E. "Housing Authority" means housing authority of the County of Marin, a non-profit public corporation.

F. "Housing costs" means the monthly mortgage principal and interest, property taxes, homeowners insurance, and condominium fees, where applicable, for ownership units; and the monthly rent for rental units.

G. "HUD" means the United States Department of Housing and Urban Development or its successor.

H. "Inclusionary unit" means an ownership or rental housing unit as required by this chapter, which is affordable by households with low or moderate income.

I. "Income eligibility" means the gross annual household income considering household size and number of dependents, income of all wage earners, elderly or disabled family members and all other sources of household income.

J. "In-lieu participation fee" means a fee paid to the City housing fund to facilitate the construction of low and moderate income housing elsewhere in the community. (Ord. 1077, Sec. 4; April 18, 1988.)

K. "Moderate, low and very low income levels" means those determined periodically by the U. S. Department of Housing and Urban Development based on the San Francisco-Oakland Standard Metropolitan Statistical Area (SMSA) median income levels by family size:

1. Moderate income, eighty percent to one hundred twenty percent of the SMSA median.
2. Low income, fifty percent to eighty percent of the SMSA median.

3. Very low income, under fifty percent of the SMSA median. L. "Project" means a housing development at one location including all units or lots for which discretionary approvals have been applied for or granted within a 12-month period. M. "Resale controls" means legal restrictions by which the price of inclusionary units will be controlled to insure that the unit is affordable by low or moderate income households over time.

**20.80.040 General requirements for new residential developments of two or more units or lots.**

A. Any discretionary approval for a new residential development project of two or more dwelling units or lots including, but not limited to, single family dwellings, apartments, condominium developments, townhouse developments, or land subdivisions shall have conditions attached which will assure compliance with the provisions of this chapter. Such conditions shall specify the timing of in-lieu fees and/or the construction of the inclusionary units, the number of inclusionary units at appropriate price levels, provision for income certification and screening of potential purchasers and/or renters of inclusionary units and a resale control mechanism. In addition, the conditions shall require a written agreement to indicate the number, type, location, approximate size and construction scheduling of all inclusionary dwelling units and such reasonable information as shall be required by the City for the purpose of determining the applicant's compliance with this chapter.

B. All inclusionary units in a project and phases of a project should be constructed concurrently with or prior to the construction of non-inclusionary units, unless the City finds that extenuating circumstances exist.

C. All inclusionary units shall be sold or rented to moderate, low or very low income households as certified by the Housing Authority.

D. Unless the City finds compelling reasons to the contrary, the inclusionary units shall be reasonably dispersed throughout the development, shall contain on average the same number of bedrooms as the non-inclusionary units in the development, and shall be compatible with the design of the market rate units in terms of appearance, materials, and finished quality.

E. With City approval, the applicant shall have the option of reducing the interior amenity level of the inclusionary units below that of the market rate units provided such units conform to the requirements of applicable building and housing codes.

F. With City approval, the applicant shall have the option of reducing the square footage of the inclusionary units below that of the market rate units provided all units conform to the requirements of applicable building and housing codes.

G. If the City finds that the construction of the required inclusionary units or that the payment of in-lieu fees is not feasible or appropriate as part of a development project, the applicant shall have the option to construct the inclusionary units on a site or sites within the incorporated area of the City not contiguous with the development.

H. If the City finds that the construction of the required inclusionary units or that the payment of in-lieu fees is not feasible or appropriate as part of a development project, the applicant shall have the option of donating land on-site or off-site as an alternative to providing the inclusionary units on-site.

I. Prior to City approval of the options set forth in Sections 20.08.040 (g) and (h), the City must also find that the particular option will result in at least equivalent contribution toward, and is consistent with, City goals.

J. With City approval, the applicant shall have the option, in a homeownership project, of providing rental units in a number sufficient to meet the inclusionary requirements of this chapter. These rental units shall be subject to Section 20.80.050. The City will assist the applicant in obtaining available financing and/or subsidies for such a project.

K. The City will consider requests to reduce the total number of required moderate income inclusionary units within a project, or increase the number of market rate units or lots, if some or all of the units are sold or rented at prices affordable to low income households.

L. The City will consider requests for additional market rate units or lots for moderate income units provided in excess of the number of moderate income units required to be developed.

M. Prior to City approval of the options set forth in Sections 20.80.040 (k) and (l), the City must find that the request provides at least equivalent contribution toward City goals and is consistent with the environmental constraints of the site. (Ord. 1077, Sec. 5; April 19, 1988.)

**20.80.050 Inclusionary unit requirements for rental residential developments of ten or more dwelling units.**

A. In rental projects of ten or more dwelling units with a gross density of less than seven units per acre, ten percent of the units shall be inclusionary rental units affordable by moderate income households. In rental projects of ten or more dwelling units with a gross density of seven or more units per acre, 15 percent of the units shall be inclusionary rental units affordable by moderate income households. The inclusionary rental units shall be offered at rent levels not exceeding the maximum housing unit rental price affordable by moderate income households at thirty percent of gross income. If housing assistance rental subsidies are available, units should be made available to lower income households. (Ord. 1077, Sec. 6; April 19, 1988.)

B. The City shall contract with the Housing Authority or other City designated agency to screen applicants for the inclusionary rental units, and to refer eligible households to the developer or owner. The developer or owner shall retain final discretion in the selection of the eligible households; provided, that the same rental terms and conditions (except rent levels and income) are applied to tenants of inclusionary units as are applied to all other tenants, except as required to comply with government subsidy programs.

C. The Housing Authority or other City designated agency shall have the authority on behalf of the City to require guarantees, to enter into recorded agreements with developers, and to take other appropriate steps necessary to assure that the required moderate income rental dwelling units are provided and that they are rented to moderate, low, or very low income households. When this has been assured to the satisfaction of the Housing Authority, or city designee, the Housing Authority or city designee, shall prepare a certification indicating that the developer has complied with the requirements of this section, and shall transmit this certification to the City.

**20.80.060 Inclusionary unit requirements for ownership residential developments of ten or more dwelling units or lots and with a gross density of greater than one unit per acre.**

A. In ownership residential projects of ten or more dwelling units or lots with a gross density greater than one and less than seven units or lots per acre, ten percent of the units shall be inclusionary units sold at prices affordable by moderate income households. In ownership residential projects of ten or more units with a gross density of seven or more units per acre, 15 percent of the units shall be inclusionary units sold at prices affordable by moderate income households. (Ord. 1077, Sec. 7, April 19, 1988)

B. The inclusionary units required by this section are to be made available for purchase by moderate-income households by action of the City of Mill Valley in accordance with the inclusionary housing policies of the Housing Element of the 1984 Mill Valley General Plan. This represents an affordable housing program in which the Housing Authority of the County of Marin is designated to act as the implementing agent for the City.

C. The applicant shall be required to offer to the Housing Authority all such inclusionary units as are required by this section for sale to eligible purchasers for a period of not less than ninety (90) days from the date of the City's permission to occupy. Sale restrictions are removed in the event the Housing Authority does not complete the sale to an eligible purchaser (purchase contingent on a one percent of sales price refundable cash deposit and initiation of escrow within thirty days of submission of cash deposit) within ninety days from the date of project completion. The Housing Authority shall advise all prospective purchasers of the resale restriction applicable to ownership inclusionary units as specified in Section 20.80.080.

D. The Housing Authority shall review the assets and income of prospective purchasers of the ownership inclusionary units on a project-by-project basis. The Housing Authority shall advertise the inclusionary units to the general public. Upon notification of the availability of ownership units by the developer, the Housing Authority shall seek and screen qualified purchasers through a process involving applications and interviews. Where necessary, the Housing Authority shall hold a lottery to select purchasers. In general, the selection process shall be designed to give preference first to employees of the City of Mill Valley and the Mill Valley School District, then to current residents of Mill Valley and then to people employed in Mill Valley.

E. The Housing Authority shall be given the responsibility to monitor the occupancy of each inclusionary unit in a discrete fashion to guard against potential program abuses and violations of the deed restrictions. Any irregularities or suspected abuses will be reported to the City in writing for any action it deems appropriate.

**20.80.070 Eligibility requirements.**

A. In establishing moderate household income, the Housing Authority shall consider, among other things, the median household income data provided periodically by HUD, household size and number of dependents, and all sources of family income and assets.

B. Every purchaser of an inclusionary dwelling unit shall certify by a form acceptable to the City that the unit is being purchased for the purchaser's primary place of

residence and that the purchaser does not own another residence. The Housing Authority staff shall verify this certification. Failure, by the purchaser, to maintain eligibility for homeowners property tax exemption shall be construed to mean that the inclusionary unit is not the primary place of residence of the purchaser.

C. The policies governing the selection of home buyers for certification by the Housing Authority under the provisions of this Chapter shall be established by the City. These shall include, but not be limited to, maximum income and asset limits, order of preference and policy on first-time home buyers. The most recently established criteria shall be used by the Authority in structuring the lottery. The City shall notify the Housing Authority in writing of any additions or modifications to its selection policies.

#### **20.80.080 Control of resale.**

A. In order to maintain the availability of the housing units constructed pursuant to the requirements of this chapter, the City shall impose the following resale conditions. The price received by the seller of an inclusionary unit shall be limited to the purchase price plus an increase based on: the Bay Area Consumer Price Index; an amount consistent with the increase, since the date of purchase in the Marin County median income established by the Housing Authority; or the fair market value, whichever is least.

B. Ownership inclusionary units constructed under the requirements of this chapter which are subsequently offered for sale or sold shall be offered to the Housing Authority or its assignee at the price stipulated in Section 20.80.080 (a) for a period of ninety days from the date a notification of intent to sell is given by the first purchaser or subsequent purchaser(s). Homeownership inclusionary units shall resold only to moderate income households as determined to be eligible for inclusionary units by the Housing Authority according to the requirements of this chapter. The seller shall not levy or change any additional fees nor shall any "finders fee" or other monetary consideration be allowed other than real estate commissions and closing costs.

C. The following procedure shall be followed in the event of the resale of an inclusionary unit:

1. The Housing Authority shall notify the City in writing within five (5) working days of receipt of Notice of Intent to Sell or Notice of Default. In so doing, the Authority shall also advise the City of its proposed schedule and methodology for selecting qualified buyers (conforming to the City's most recently established criteria for eligibility and selection); indicate the re-sale price set pursuant to the formula in the applicable deed restriction; specify the dates by which the Housing Authority is required under the provisions of that deed restriction to exercise its option to purchase and to close escrow. If, in the determination of the Housing Authority, the re-sale price generated from the formula in the deed restriction would result in a price not affordable to families earning less than 120% of median income as published by HUD, the Housing Authority will advise the City of this fact so that the City may consider using an alternate basis for establishing the maximum income limits for eligibility.

2. Within sixty (60) calendar days of receipt of the Notice of Intent to Sell, the Housing Authority shall conduct a lottery from an active and current list of interested applicants.

3. Within five (5) working days after the lottery the Housing Authority shall advise the City in writing of progress in finding an eligible and qualified buyer. Such advisory notice shall offer a determination on the feasibility of selling the unit to an eligible buyer within the time prescribed.

4. Within ten (10) days prior to the date established in the deed restriction requiring the Housing Authority to exercise its option to purchase, the Housing Authority and City will consult to jointly determine how to proceed and whether or not the Housing Authority (or the City) should exercise the option to purchase. The City shall confirm such understanding with the Housing Authority in writing. Such correspondence would indicate, for example, that the Housing Authority or City will exercise the option; or that the option is not to be exercised.

5. If the Housing Authority and City determine that the option to purchase should be exercised, the Housing Authority will designate either the prospective eligible buyer from the lottery and/or the City as assignee and proceed according to instructions in the deed restrictions to exercise this option and open escrow.

6. After the first thirty (30) days of the option period, the Housing Authority shall submit a status report to the City and assist in exploring alternatives to purchase if appropriate. At sixty (60) days into the option period, or upon sale to an eligible buyer, whichever is earlier, the Housing Authority shall again notify the City of the status of the re-sale.

7. If it becomes necessary, for whatever reason, for the Housing Authority and City to purchase a unit, then the Authority and City shall immediately meet to determine the most expeditious course of action to take, so that the unit can be re-sold. At such time, the parties shall consider how closing costs, loss of interest, and other unrecoverable expenditures, shall be handled.

D. The Housing Authority may, during the re-sale process, make recommendations to the City that a more current form of the deed restrictions be substituted at the time of re-sale. This might, for example, adjust the time frames or the re-sale formula.

E. If the Housing Authority, its assignee or the City elects not to exercise its option to purchase the unit, the original developer of the unit or the City shall have the exclusive right to repurchase the unit for the price specified in Section 20.80.080 (a) for a period of 30 days from the date of the decision by the Housing Authority. F. The owners of any inclusionary unit shall attach and legally reference in the grant deed conveying title of any such inclusionary ownership unit a declaration of restrictions provided by the Housing Authority, stating the restrictions imposed pursuant to this chapter. The grant deed shall afford the grantor and the City the right to enforce the attached declaration of restrictions. The declaration of restrictions shall include all applicable resale controls, occupancy restrictions, and prohibitions as required by this chapter.

**20.80.090 In-lieu participation fee requirement for residential developments of two to nine dwelling units or lots or those with a gross density of less than one unit per acre.**

A. Projects of two to nine residential dwelling units or lots or those with a gross density of less than one unit per acre shall contribute an in-lieu participation fee to the City housing fund. These in-lieu fees shall be used by the City or its designee such as a

non-profit housing development corporation for the purpose of developing affordable housing for low or moderate income households elsewhere in the City. Inclusionary units and in-lieu fees are not considered to be mutually exclusive.

B. In-lieu participation fee for the second residential unit or lot and each residential unit or lot thereafter shall be calculated as follows:

1. Residential second units approved and constructed under the provisions of Chapter 20.90 and other residential dwelling units with a gross enclosed floor area of 700 square feet or less: Exempt from in-lieu fee.

2. Residential dwelling units with a gross enclosed floor area of 701 to 1,000 square feet; 5% of the current inclusionary subsidy differential established by the City.

3. Residential dwelling units with a gross enclosed floor area of 1,001 to 1,500 sq. ft. 8% of the current inclusionary subsidy differential established by the City. 4. Residential dwelling units with a gross enclosed floor area greater than 1,500 square feet or new residential lots; 11% of the current inclusionary subsidy differential established by the City. The inclusionary subsidy differential is the difference between what a moderate income family (earning one hundred percent of median income) can afford to pay for housing and the estimated total cost of a new unit for appropriate size, as determined by the City. The inclusionary subsidy differential shall be calculated and adjusted annually by the Director of Planning and Building. (Ord. 1077, Sec 8; April 19, 1988.)

C. The in-lieu participation fees shall be due prior to occupancy of the first unit or recording of the Final Subdivision Map. At the option of the developer, in-lieu participation fees may be paid as proceeds from sales are received; in which case, the in-lieu fees shall constitute a lien on the property, which shall be recorded as a separate agreement concurrent with the recordation of the final subdivision map. The in-lieu fee shall be due within twenty-four months from the date of the recordation of the final subdivision map for the development, regardless. The lien on each unit shall be released when its proportionate share is paid out of escrow. The lien shall include a provision for foreclosure under power of sale on any unsold units or lots if the in-lieu payment is not made within twenty-four months from the recordation of the lien, regardless of whether or not all of the individual units or lots have been sold.

#### **20.80.100 Availability of government subsidies.**

It is the intent of this chapter that the requirements for inclusionary units affordable by moderate income families shall not be determined by the availability of government subsidies. This is not to preclude the use of such programs or subsidies, if available.

#### **20.80.110 Fee waiver for inclusionary units.**

In the attempt to avoid any undue burden on developers who are required to provide moderate income inclusionary units under the provisions of this chapter, the City may waive or reduce park dedication, and other City fees applicable to the inclusionary units of a proposed housing development.

#### **20.80.120 Technical assistance.**

In order to emphasize the importance of securing low and very low income housing as a part of this program, the City staff, other agencies, and/or designated consultants shall provide advice on financial subsidy programs to applicants. The City may recommend that this be a part of the environmental review process. During individual project review, consideration shall be given to an economic analysis which will indicate the most suitable methods for the terms of this chapter to be implemented. This is to be done for the purpose of increasing the feasibility and lowering the cost of units affordable to moderate, low and very low income families.

**20.80.130 Enforcement.**

A. The provisions of this chapter shall apply to all agents, successors and assignees of an applicant once only for development of the site. No building permit or occupancy permit shall be issued, nor any development approval granted, after the effective date of this ordinance, for any project which does not meet the requirements of this chapter.

B. In addition to, or in lieu of, the provisions of subsection (a) of this section, the City shall institute appropriate legal actions or proceedings including but not limited to equitable relief for the enforcement of this chapter.

C. Any person, firm or corporation, whether as principal, agent, employee or otherwise, violating or causing the violation of any of the provisions of this chapter, shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable for each offense by a fine of not more than five hundred dollars, or by imprisonment in the County Jail for a term not exceeding six months, or by both fine and imprisonment. Such person, firm, or corporation shall be deemed to be guilty of a separate offense for each and every day during any portion of which any violation of this chapter is commenced, continued, or permitted by such person, firm, corporation, and shall be punishable as herein provided.

**20.80.140 Appeals.**

A. Any person aggrieved by any action involving denial, suspension or revocation of a building or occupancy permit or denial, suspension or revocation of any development approval may appeal such action or determination to the Planning Commission, with further appeal possible to the City Council.

B. Any applicant or other person who contends that his (her) interests are adversely affected by a determination or requirement of the Housing Authority staff in regard to this chapter may appeal to the City Council. The appeal shall set forth specifically wherein the action of the Housing Authority staff fails to conform to the provisions of this chapter thereby adversely affecting the applicant's interests. The City Council, may reverse or modify any determination or requirement of the Housing Authority if it finds that the action under appeal does not conform with the provisions of this chapter or to the contract between the Housing Authority and the City. (Ord. 1034, Sec. 1; May 20, 1985.)