

Draft Inclusionary Ordinance County Council, Housing Taskforce, and Housing Provider's Joint Version

The following version has been prepared to incorporate the initial comments of County Council, the Housing Providers Stakeholder's Group and the Housing Task Force. Areas where there was agreement are highlighted as well areas that need more discussion. Where different wording has been proposed by the separate groups, each group's comments appear in a different color. County Council's comments have been incorporated as a matter of course.

A joint meeting with both Stakeholder groups will be scheduled to discuss further wording in the hope a consensus can be reached. The resulting version is scheduled to go to the BOS in September.

Key to Colors:

Text in red---suggested by Housing Taskforce

Text in blue—suggested by Housing Providers

Turquoise highlighting---Text agreed to by both groups

Yellow highlighting---needs further joint discussion by the groups

Magenta highlighting--- needs revision/review and/or rewording

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 20.008 TO ADD DEFINITIONS FOR AFFORDABLE HOUSING, AFFORDABLE HOUSING UNIT, INCLUSIONARY UNIT, VERY LOW-INCOME HOUSEHOLD, LOW-INCOME HOUSEHOLD, MODERATE-INCOME HOUSEHOLD; ADDING A NEW CHAPTER 20.238 TO ESTABLISH REQUIREMENTS FOR NEW RESIDENTIAL DEVELOPMENT TO CONTRIBUTE TO THE PROVISION OF AFFORDABLE HOUSING UNITS; ESTABLISH INCENTIVES FOR THE PROVISION OF AFFORDABLE HOUSING, AND AMENDING TITLE _____ TO WAIVE THE DEVELOPMENT APPLICATION FEE FOR INCLUSIONARY UNITS.

SECTION 1: Section **20.008.020** of the Mendocino County Code shall be amended to include the following additional definitions, to read as follows:

(M) “Affordable Housing” means housing capable of being purchased or rented by a household with very low-, low-, or moderate-income based on a household’s ability to make payments necessary to obtain housing. Housing is considered affordable when a household pays less than 35% of its gross monthly income for housing.

(N) “Affordable Housing Unit” means a dwelling unit which meets the standards in **Section 20.238** of this code and is affordable to households having very low-, low- or moderate-income.

(O) “Household” means all the persons related, or unrelated, who occupy a single dwelling unit. Persons not living in households are classified as living in group quarters.

(P) “Inclusionary Unit” means an affordable housing unit required to be provided by the developer of a residential housing project pursuant to the requirements of **Section 20.238** of this code.

(Q) “**Extremely low income**” means a household with an annual income less than 30 percent of area mean income

(R) “Very Low-income Household” means a household with an annual income no greater than 50% of the County median income, adjusted by household size, as determined by the California State Department of Housing and Community Development.

(S) “Low-income Household” means a household with an annual income of at least 50% of the County median income, but less than 80% of the County median income, adjusted by household size, as determined by the California State Department of Housing and Community Development.

(T) “Moderate-income Household” means a household with an annual income of at least 80% of the County median income but less than 120% of the County median income, adjusted by household size, as determined by the California State Department of Housing and Community Development.

SECTION 2: A new Chapter is added to the Mendocino County Code to read as follows:

**Chapter 20.238
INCLUSIONARY HOUSING**

Sections:

20.238.005	Purpose
20.238.010	Applicability
20.238.015	Inclusionary Unit Requirement
20.238.020	Affordable Housing Fees
20.238.025	Affordable Housing Standards
20.238.030	Alternatives
20.238.035	Incentives
20.238.040	Inclusionary Housing Credit
20.238.045	Density Bonus
20.238.050	Compliance Procedures
20.238.055	Eligibility
20.238.060	Owner-occupied Units
20.238.065	Renter-occupied Units
20.238.070	Affordable Housing Trust Fund
20.238.075	Adjustments, Modifications, or Waivers

The Board of Supervisors of the County of Mendocino ordains as follows:

The County finds and determines:

(A) The State of California is suffering from a housing crisis which has adverse effects on the County of Mendocino. The County is suffering from a shortage of housing for its citizens of moderate-, low- and very low-incomes. This is due in part to a substantial and continuing rise in the costs associated with land, permitting, labor and materials that affect the median home price and the costs to build rental units within the County.

(B) In order to meet its fair share obligation under the Regional Housing Needs Allocation, the County is responsible for the provision of 281 units per year of affordable housing to very low-, low-, or moderate-income households within its unincorporated area.

(C) In 2007, 126 building permits were issued for units affordable to very low, low, or moderate level households; a figure equal to 44% of the yearly responsibility.

(D) Based on recent trends of the construction of affordable units, Mendocino County has not met its fair share of the regional housing need.

(E) Affordable housing units constructed pursuant to the inclusionary housing ordinance would serve to satisfy the needs of qualifying very low-, low-, and moderate-income households. Fees collected in lieu of constructing affordable units would serve to advance provision of affordable housing through various mechanisms including leveraging grant funds by providing local matching funds, funding first time buyer programs, or acquiring land or buildings for the provision of affordable housing.

(F) Development of the County's remaining developable residential land without the ability to permit and construct housing at a reasonable density and at a price affordable to persons of all income levels works in opposition to the County's housing policies. Land available for the provision of housing affordable to low-, very low- and moderate-income households will be developed and these households will be unable to obtain adequate housing.

(G) The lack of affordable housing adversely affects the local workforce and the ability to attract new businesses to the County.

(H) After considering all factors, including the significant need for affordable housing, the County has decided that the community's interests are served, in part, by the adoption of an inclusionary housing ordinance.

(I) The inclusionary housing ordinance includes an option to pay a fee as an alternative in lieu of constructing affordable units. In order to approve payment of an in-lieu fee as an alternative to constructing affordable units, the decision-making body must make a finding that the alternative meets or furthers the purpose of this inclusionary housing ordinance and that the purpose would be better served by the proposed alternative.

(J) The inclusionary housing ordinance also requires payment of an in-lieu fee where the inclusionary requirement calculation in section 20.238.015 results in a fractional unit.

Section 20.238.005. Purpose.

The purpose of this Chapter is to:

(A) Provide one component of a County-wide effort to encourage the permitting, development, and availability of housing affordable to a broad range of income levels within Mendocino County.

(B) Assist the County in complying with State Law which requires each local jurisdiction to develop a comprehensive, long-term General Plan, establishing policies for future development, including housing. As specified in the Government Code, the plan must "encourage the development of a variety of housing types for all income levels,

including multifamily rental housing” and “assist in the in the development of adequate housing to meet the needs of low- and moderate-income households.”

- C. Implement Action Item 3.11 of the Housing Element of the General Plan which directs the County to develop and adopt an Inclusionary Housing Ordinance that requires market-rate residential development to supply on-site affordable housing or alternatives to make housing available to low-, very low-, and moderate-income households.
- D. Promote the planning, permitting, and dispersal of affordable units throughout the County, each Community, and residential development approved by the County, consistent with the provisions of this Chapter.

Section 20.238.010. Applicability.

A. This Chapter shall apply to [residential development of ten units or greater] (all residential development)

B. Exemptions:

- Residential development that is restricted to extremely low, very low-, or low-income households {very low-, low-, or moderate-income households}
- Residential development that voluntarily complies with State Density Bonus Law shall be exempt from this Chapter.
- Reconstruction of any structure destroyed by fire, flood, earthquake or other acts of Nature is exempt from these requirements, provided that such reconstruction does not increase the number of residential units within the structure.
- Changes to existing housing developments that do not add additional residential units.
- Construction of secondary single-family residences on parcels zoned for that purpose.
- Housing constructed by government agencies.
- Housing constructed by academic institutions for use by employees of the school and/or students.
- Housing constructed by places of worship to house persons in need and not intended for sale.
- Housing constructed by employers for use by their employees who meet the criteria for affordable housing.

Developers want these deleted.

Section 20.238.015. Inclusionary Unit Requirement.

Newly constructed residential development consisting of 10 dwelling units or more shall be required to construct units affordable to **extremely low**, very low-, low-, or moderate-income households in the following proportion:

- 10 -50 units = 10%
- 51-75 units = 15%
- 76 or more = 20%

5% decrease if inclusionary units are located within or near the Coastal Zone as defined by the Guidelines.

- A. If the percentage calculation provided in this Section results in fractional dwelling units, a proportional share of the in-lieu fee referenced in Section 20.238.020 shall be paid for any fractional dwelling unit. The proportional share of the in-lieu fee shall be calculated by multiplying the in-lieu fee by the fraction of dwelling unit. In-lieu fees for fractional units must be paid into the Housing Trust Fund prior to issuance of a **request for a notice of final occupancy.**
- B. Secondary single-family dwellings, either attached to the primary dwelling, or on the same parcel as the primary single-family dwelling, are allowed consistent with Section 20.164.015 **and would not count toward the density of the development**
- C. **Because of interest rates and cost factors that are outside the control of the developer, the developer may pay an in-lieu fee to the Affordable Housing Trust Fund as an alternative to building an inclusionary unit if approved by the Board of Supervisors. The Board of Supervisors shall approve acceptable alternatives prior to the issuance of any building permits for applicable primary dwelling units in the development.**
- D. **Payment of the in-lieu fee shall be at the discretion of the developer.**

CoCo says C + D are contradictory. We need to decide if the BOS will approve a list of alternatives that developers then choose from and if so we need to delete “if approved by the Board...”

Language suggested by developers.

Taskforce was negotiable on this point, but would like the formula.

Section 20.238.020. Affordable Housing Fees.

The in-lieu fee shall be **10% of the County-wide median sales price of a single-family residence of the same size in Mendocino County** $\{125\% \times [(cost\ of\ constructing\ the\ affordable\ unit + the\ cost\ of\ the\ land) - (the\ amount\ an\ income-qualified\ household\ can\ pay)] + admin\ fee\}$. The median sales price shall be determined annually by the County Assessor prior to March 1, for use in the following year.

Section 20.238.025. Affordable Housing Standards.

- A. Inclusionary units should be dispersed throughout appropriate areas of a residential development. Inclusionary units may, however, be clustered within the development when this furthers affordable opportunities as determined by the decision-making body.

- B. Inclusionary units shall be **comparable** to market rate units in quality of construction and exterior appearance. Inclusionary units may be smaller and have different interior and exterior amenities, such as one-car garages, carports, or open parking, than market rate units. The minimum size of the living area of an inclusionary unit shall be as follows:

Developers would like chart to be based on bedrooms, and footage decreased.

Type of Unit	Size (square feet)	
Owner-occupied detached dwelling	4-persons or larger	1000
	2- or 3 persons	800
	1 person household	600
Owner-occupied attached dwelling	800	
Renter-occupied dwelling	600	

Developers would like this language removed

- C. Inclusionary units shall be constructed concurrently with market-rate units in the development consistent with the Inclusionary Housing Plan as provided in Section 20.238.050. Inclusionary units shall not be required to be constructed until 30% of the market-rate units in the development have been constructed and the final building inspection for those units has been completed. **All inclusionary units shall be completed and offered for sale or rent by the time 80% of the market-rate units have been constructed.** For phased developments, the inclusionary units required by this Chapter shall be proportionally provided with each phase of the residential development. after the 30% threshold has been met (remove).

Needs more discussion.

- D. If required by Section 20.238.060, equity sharing, as described in this subdivision, shall be applied to each owner-occupied inclusionary unit for a period of 15 years from the date of first transfer of title at an affordable price determined pursuant to Section 20.238.020. At the date of transfer of ownership to a subsequent owner at market rate, the initial owner's equity share of the unit's increase in value shall be calculated by adding the months of ownership, dividing by the lesser of 180 or the number of months remaining in the 15 period since the last sale at an affordable price, and multiplied by the increase in value. Partial months shall be calculated proportionally. Increase in value shall mean a positive number resulting from subtracting the owner's initial purchase price from the sale price, less the book value of any capital improvements made by the initial owner, **or by use of a formula required by any State or Federal funding program used to finance the initial project.** In addition to the equity share, the initial owner shall be entitled to recover the book value of any capital improvements. The owner shall not be entitled to recover any maintenance costs. If there is no increase in value, the County is not responsible for any portion of any loss. If the property is sold before the 15-year period expires, the difference between the owner's equity share and the increase in value shall be paid to the County and deposited into the Housing Trust Fund established by this Chapter. At least 20 days prior to transfer of title to a subsequent owner, the initial owner shall provide to the County or a designated County agency an equity sharing report. The report shall disclose the original purchase price, the current purchase price, the proposed date of transfer of title, the name of the title company and number of any

escrow, a description of and book value of any capital improvements made to the unit during the owner's ownership.

- E. Equity sharing provisions of subdivision D shall also apply to a transfer of an inclusionary unit by a gift, unless the person receiving the gift is qualified to own the inclusionary unit, or if the owner defaults on any loan secured by the inclusionary unit and a foreclosure transfer, or conveyance in-lieu of foreclosure occurs, and the new owner does not meet the criteria for household income established by the approved Inclusionary Housing Plan. In order to establish the market value of the inclusionary unit at the time of transfer, the County shall utilize the Assessor's estimate of the value of the inclusionary unit at the time of transfer of the title.
- F. If the owner of an inclusionary unit defaults on any loan secured by the inclusionary unit and the equity sharing provisions of subdivision D do not survive the foreclosure, the unit may be sold by the mortgage holder at market rate and the provisions of this Chapter will no longer apply to that unit.
- G. If the inclusionary unit is offered for sale at other than an affordable price as determined pursuant to Section 20.238.060, during the 15-years from the date of the first transfer of title at an affordable price, the County or its designee shall have the right to acquire the unit; the price agreed upon by the seller and a qualified purchaser under the terms of that contract of sale. This right of first refusal shall be exercised by written notice to the seller within 15 days of the written notice of pending sale to the County's designee. The County or its designee may apply its share of the equity to the purchase of the unit, notwithstanding the trust fund deposit requirements of subdivision D.
- H. Each inclusionary rental unit shall remain affordable for a minimum period of 20 years from the date of the first transfer of title at an affordable price determined pursuant to Section 20.238.065. Each affordable housing unit constructed under a government subsidized program shall adhere to the term of affordability of that program.
- I. An equity sharing agreement shall be executed by the initial owner, and an inclusionary housing agreement shall be executed by an owner of residential developments containing renter-occupied inclusionary units prior to transfer of title. The agreement shall contain deeds of trust, terms of affordability, applicable resale restrictions, equity sharing conditions, rights of first refusal, and other provisions required by the County or its designee, and recorded against the property.

Section 20.238.030. Alternatives.

In lieu of providing affordable inclusionary housing on-site, a developer may propose an alternative means of compliance in an inclusionary housing plan. The decision-making body may approve, conditionally approve, or reject any alternative proposed by a developer as part of an Inclusionary Housing Plan. Any approval or conditional approval

must be based on a finding that the alternative meets or furthers the purpose of this Chapter and the purpose would be better served by implementation of the proposed alternative. Any off-site location offered by a developer to meet her/his inclusionary requirement must:

- be suitable for use; including location, size, characteristics required to qualify for funding programs, zoning, environmental clearances, essential services, discretionary approvals issued, and infrastructure extended to the site;
- be sited in a location that does not result in an over-concentration of very low- or low-income units;
- be in proximity to services, employment and transportation; and
- avoid environmental and health hazards.

Developers suggest removing these as unnecessary.

Section 20.238.035. Incentives.

A. The County shall provide the following incentives to the developer who complies with the requirements of this Chapter as follows:

- 10– 50 units 1 incentive
- 51-75 units 2 incentives
- 76 or more units 2 incentives

Additional incentives may be allowed “by right” if the project does not include the density bonus allowed under Section 20.238.045 as follows:

- 10– 50 units 1 additional
- 51– 75 units 2 additional
- 76 or more units 2 additional

Number of incentives should change by % of extremely low, very low, low in project

B. Incentives allowed will be negotiated by Planning and Building Services with the developer from the following list of acceptable incentives:

1. Concurrent processing, where projects require multiple permits or environmental review.
2. Construction, by the County, of public improvements appurtenant to the proposed housing development, which may include, but shall not be limited to, streets, sewers and sidewalks.
3. Utilization of Federal or State grant monies or local revenues to provide the land on which the housing development will be constructed at a reduced cost.
4. Exemption of the development from County codes, (such as building, housing, zoning, subdivision, etc.) which may cause an indirect increase in the cost of the housing units to be developed. This may include lot size, height, parking, yards, design review, etc. Each exemption from one requirement will be counted as one concession (e.g., reduced parking).

5. Exemption of the development from the requirements of Subdivision Map Act, Section 66477, park and recreation fees and dedications, if under control of the County or pursuant to agreement with applicable entity.
6. Waiver of the filing or processing fees on permits and applications: County building and General Plan maintenance fees are waived on inclusionary units.
7. Deferment of filing or processing fees on building permit fees: 50% of fees on market rate units may be deferred to the final occupancy permit.
8. Waiver of the requirements of Subdivision Map Act Sections 66483-66484.5, fees for drainage facilities, bridges or groundwater recharge if under control of the County or pursuant to agreement with applicable entity.
9. Financial assistance, if available, may be provided to offset costs.
10. Market-rate builders may pool resources to satisfy their inclusionary requirement(s) through one affordable housing project.
11. Market-rate builders that build more affordable units than required may sell the additional built units as credits to other builders in the same area.
12. Nonprofit entities may acquire and rehabilitate existing market-rate units, limit occupancy to low- or very low-income, and sell units as credits to other developers in the same area.
13. Increased floor area ratio (FAR) for housing units.

Section 20.238.40. Inclusionary Housing Credit.

A developer shall receive affordable housing credit for affordable units constructed in excess of those required by this Chapter if included in the Inclusionary Housing Plan approved by the decision-making body. Inclusionary housing credit may be used to satisfy the inclusionary requirements for other developments as set forth in an approved Inclusionary Housing Plan under Section 20.238.050. Development credits may be transferred from one developer to another. The developer using the affordable housing credit must submit documentation of transfer of the credit with the Inclusionary Housing Plan referenced in Section 20.238.050.

Section 20.238.045. Density Bonus.

- A. The County shall grant a density bonus for the provision of affordable housing as follows:
- 10 – 50 units or lots: 20%
 - 51 – 75 units or lots: 25%
 - 76 or more units or lots: 25%

Increased density may be allowed for voluntary provision of more inclusionary units than required at a rate of 1% increased affordable units = an additional 1.5% density increase up to a maximum density increase of 35%.

Section 20.238.50. Compliance Procedures.

An Inclusionary Housing Plan must be provided for every residential development project subject to this Chapter which will be submitted to the Planning and Building Services Department as part of the land development application.

- A. The Inclusionary Housing Plan will include the following:
 - the basis used to for calculate the number of inclusionary units;
 - a description of how the project will comply with the requirements;
 - a site plan or floorplan depicting the location, type (detached, attached), occupation style (owner-occupied, renter-occupied), and size of proposed market rate and inclusionary units;
 - the household income level to which the inclusionary unit will be made affordable: very-low, low, moderate, and the size of household for which each inclusionary unit would be constructed;
 - the mechanisms that will be used to assure that the inclusionary units remain affordable for the term required;
 - a plan that demonstrates the timely provision of inclusionary units; a description of any incentives requested by the developer; and
 - any additional information requested by the Planning and Building Services Department to assist in the evaluation of the Inclusionary Housing Plan.
- B. If the Inclusionary Housing Plan is determined to be incomplete by the Planning and Building Services Department, it shall be returned to the developer within 30 days along with a list of deficiencies and required information. No application, to which this Chapter applies, shall be considered complete until an Inclusionary Housing Plan meeting the requirements of this Section has been submitted to the Planning and Building Services Department.
- C. Implementation of the Inclusionary Housing Plan shall be made a condition of the entitlement issued for the land development project and shall be approved by the decision-making body. Development and operation of the project shall comply at all times with the approved Inclusionary Housing Plan.
- D. A notice of action (NOA) shall be recorded by the County for all property included in an approved Inclusionary Housing Plan.

Section 20.238.055. Eligibility.

- A. No person in a household may occupy an inclusionary unit unless the County or its designee has approved the household's eligibility for income limits specified in the Inclusionary Housing Plan.

- B. If the County or its designee fails to approve a household as an eligible buyer for the inclusionary unit that is intended for owner occupancy within 60 days following the [date a notice of intension to sell is filed](#), the owner may sell the unit at a market price, and pay a fee calculated as follows:

$$10\% \times [(the\ gross\ selling\ price\ of\ the\ residence) - (normal\ closing\ costs\ and\ sales\ commission)]$$

Section 20.238.060. Owner-occupied Units.

The following provisions apply to the sale, use and resale of each owner-occupied inclusionary unit:

- A. The initial sales price of each inclusionary unit shall be set so that an eligible household of the target income group will pay an affordable cost resulting in payments equal to no more than 35% of their monthly income.
- B. Selection of purchasers of inclusionary units shall be the responsibility of [\(a County designated organization\)](#). Selection of purchasers shall preferably be from a list of eligible households maintained by the County or its designee. The County or its designee shall verify that the purchase price being charged for each inclusionary unit is consistent with the approved Inclusionary Housing Plan and that the purchaser meets the income qualifications for the unit as specified in the approved Inclusionary Housing Plan at the time of sale and shall verify that the purchaser is a County resident or employed by a business located within the County wherever possible.
- C. The initial or subsequent owner may sell the unit without restriction at an affordable price as determined and verified pursuant to subdivision B and retain any equity. The last owner to acquire the unit at an affordable price shall be deemed the initial owner for purposes of equity sharing. The initial owner may sell the unit at a market price, subject to the equity sharing requirements of Section 20.238.025 and the agreement therein provided.
- D. After sale at other than an affordable price, or at the end of **10 15** years after the date of the first transfer of the title at an affordable price determined pursuant to Section 20.238.025, whichever is earlier, the unit will no longer be subject to this Chapter or any agreement referred to in Section 20.238.025.
- E. If an inclusionary unit is offered for rent by the initial owner at any time during the first **15** years, the inclusionary unit will be offered only to income eligible households pursuant to the Inclusionary Housing Plan.

Section 20.238.065. Renter-occupied Units.

The following provisions apply to the rental of each inclusionary unit.

- A. Every unit shall be rented to an income-eligible household at an affordable rent pursuant to subdivision B for a period of 15 years, commencing with the date the first unit is occupied.
- B. Selection of a renter or renters of each inclusionary rental unit shall be the responsibility of the property owner. Selection of a renter shall be from households maintained by the County or its designee. The County or its designee shall verify that the rent being charged for each rental unit is consistent with the approved Inclusionary Housing Plan, and that the renter meets the income qualifications as specified.
- C. When an inclusionary rental unit has been occupied for a period of 20 years following the date first occupied, the unit is no longer subject to this Chapter.
- D. If, after moving into an inclusionary unit, the renter's income exceeds the income limit for the unit, the renter shall be given one year's notice to vacate. If within that year a market rate unit becomes available, the owner may allow the renter to remain in the original unit, raise the renter's rate to market rate, and designate the newly vacated unit as an inclusionary unit to be rented at the income level previously applicable to the converted unit. The remainder of the period of affordability of the original unit would transfer to the converted unit.

Section 20.238.070. Affordable Housing Trust Fund.

- A. There is hereby established an affordable housing trust fund. The affordable housing trust fund will receive all funds collected pursuant to this Chapter. The fund may receive monies from other sources.
- B. The affordable trust fund shall be administered by the entity designated by the Board of Supervisors, which may develop procedures to implement the purpose of the fund with the provision of this Section.
- C. Monies deposited in the affordable housing trust fund shall be expended in accordance with the Housing Element of the General Plan to construct, rehabilitate or subsidize affordable housing or to assist other individuals or organizations to do so. Monies from the fund shall be used to increase and improve the supply of housing affordable to moderate-, low-, or very low-income, extremely low households within the County. Funds may be used for the benefit of both renter-occupied and owner-occupied housing.
- D. This Chapter is intended to be one tool in an effort to increase and improve affordable housing in Mendocino County. The Board of Supervisors will conduct a periodic review (bi-annual review) (annual review) of the progress of this Chapter to increase and improve affordable housing in the County. The review shall include an annual accounting of the use of the funds deposited in the affordable housing trust fund and a

discussion of other programs implemented by the County to increase affordable housing in the County.

Section 20.238.075. Adjustments, Modifications, or Waivers.

The requirements of this Chapter may be adjusted, modified, or waived by the Board of Supervisors if the developer demonstrates that there is no reasonable relationship between the impact of a proposed development and the requirements of this Chapter, or that applying the requirements of this Chapter would take property in violation of the United States or California Constitutions, or that there is no need for the inclusionary units. If the Board of Supervisors so determines, the Inclusionary Housing Plan shall be modified, adjusted, or waived to the extent necessary to avoid an unconstitutional result.