

BOARD OF SUPERVISORS OF THE COUNTY OF MARIN

ORDINANCE NO. 2572

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF MARIN,
STATE OF CALIFORNIA, ADDING CHAPTER 22.97 (PROVISIONS FOR LOW
AND MODERATE INCOME HOUSING) TO THE MARIN COUNTY CODE

THE BOARD OF SUPERVISORS OF THE COUNTY OF MARIN DOES HEREBY ORDAIN AS
FOLLOWS:

CHAPTER 22.97

PROVISION FOR LOW AND MODERATE INCOME HOUSING

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22.97.000 Findings. The County of Marin finds that the citizens of the County are experiencing a housing shortage for low and moderate income households. A goal of the County 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 County are unable to locate housing at prices they can afford and are increasingly excluded from

living in Marin County. Federal and State housing subsidy programs are not sufficient by themselves to satisfy the housing needs of low and moderate income households. The County finds that the high cost of newly constructed housing does not, to any appreciable extent, provide housing affordable by low and moderate income households, and that continued new development which does not include lower cost housing will serve to further aggravate the current housing shortage by reducing the supply of developable land. The County 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 County, and a public policy of the State of California as mandated by the requirements for a Housing Element of the Countywide Plan, to make available an adequate supply of housing for persons of all economic segments of the community.

22.97.010 Purpose. The purpose of this chapter is to enhance the public welfare and assure that further housing development contributes to the attainment of these housing goals by increasing the production of units affordable by households of low and moderate income, and additionally stimulating funds for development of low income housing. A limited and finite amount of land remains for development of housing in the urban areas of the County. In order to assure that the remaining developable land is utilized in a manner consistent with the County housing policies and needs, the County declares that 10 percent of the total number of units of all new developments containing 15 or more units shall be affordable by households of low or moderate income.

22.97.020 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.

(a) "Applicant": Any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks County permits and approvals.

(b) "At One Location": 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, or separated only by other land of the applicant.

(c) "Project": A housing development at one location including all units which permits have been applied for or approved within a twelve month period.

(d) "Moderate", "Low", and "Very Low" Income Levels: 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:

"Moderate Income" - 80% to 120% of the SMSA median

"Low Income" - 50% to 80% of the SMSA median

"Very Low Income" - Under 50% of the SMSA median.

(e) "Density Bonus": An increase in the number of units otherwise allowed for any particular parcel.

(f) "Dwelling Unit": A dwelling designed for occupancy by one household.

(g) "Housing Authority": Housing Authority of the County of Marin, a non-profit public corporation.

(h) "Housing Costs": 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.

(i) "Housing Director": The Executive Director of the Housing Authority of the County.

(j) "HUD": The United States Department of Housing and Urban Development or its successor.

(k) "Inclusionary Unit": An ownership or rental housing unit as required by this Ordinance, which is affordable by households with low or moderate income.

(l) "Income Eligibility": 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.

(m) "In-Lieu-Participation Fee": A fee paid to the County by developers subject to this ordinance in-lieu of providing the required inclusionary units or lots.

(n) "Resale Controls": Legal restrictions by which the price of inclusionary units will be controlled to insure that the unit is affordable by low or moderate income County households over time.

(o) Ecumenical Association of Housing: A nonprofit organization dedicated to providing affordable housing in Marin County.

22.97.030 General Requirements for New Residential Developments of 15 or More Units.

(a) Any new residential development involving fifteen or more parcels or dwelling units intended and designed for permanent occupancy, including but not limited to single-family dwellings, apartments, multiple dwelling structure, or group of dwellings, condominium development, townhouse development, cooperative, or land subdivisions, which is approved on or after the effective date of this Ordinance shall be conditioned to provide 10 percent of the total number of dwelling units within the development as inclusionary units affordable by moderate, low, or very low income households, or 5 percent of the total number of lots in the case of land subdivisions, for the development of inclusionary units, unless the developer, in agreement with County staff, elects to make an in-lieu payment.

In applying these percentages, any decimal fraction less than or equal to 0.50 may be disregarded and any decimal fraction greater than 0.50 shall be construed as requiring one dwelling unit. The inclusionary requirement shall be imposed only once on a given development, regardless of changes in the character or ownership of the development.

(b) Any development permit for new residential construction projects of 15 or more units shall have conditions attached which will assure compliance with the provisions of this Ordinance. 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, a resale control mechanism, and, if applicable, density bonuses.

In addition the conditions shall require a written agreement to indicate the number, type, location, approximate size and construction scheduling of all dwelling units and such reasonable information as shall be required by the County for the purpose of determining the applicant's compliance with this Ordinance.

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 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) All inclusionary units shall be reasonably dispersed throughout the development where feasible, shall contain on average the same number of bedrooms as the non-inclusionary units in the development, and shall be compatible with the design or use of remaining units in terms of appearance, materials, and finished quality.

(e) The applicant shall have the option of reducing the interior amenity level of the inclusionary units provided such units conform to the requirements of County building and housing codes. The applicant shall have the option of reducing the square footage of the inclusionary units below that of large market rate units provided all units conform to the requirements of County building and housing codes.

(f) The applicant shall have the option, with the approval of the County, to transfer credit for inclusionary units constructed at one location within the unincorporated area of the County to any other location within the unincorporated area of Marin County to satisfy the requirements of this Ordinance. The inclusionary requirement may be satisfied with construction of units eighteen (18) months prior to the approval of the project.

(g) The applicant shall, upon a finding by applicant with staff concurrence that the construction of the required inclusionary units is not feasible or appropriate as part of a larger development project, have the option to construct the inclusionary units on a site or sites not contiguous with the development.

(h) The applicant shall have the option, in a homeownership project, of constructing rental units in a number sufficient to meet the inclusionary requirements of this Ordinance. These rental units shall be subject to the "Inclusionary Unit Requirements for Rental Developments" section of this Ordinance. The County shall assist the applicant in obtaining available financing and/or subsidies for such a project.

22.97.050 Inclusionary Unit Requirements for Rental Developments

(a) In rental projects of 15 or more units, 10 percent of the units shall be inclusionary units affordable by moderate, low or very low 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 30 percent of gross income. Where housing assistance rental subsidies are available, units should be made available to lower income households.

(b) The County shall contract with the Housing Authority 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 shall be the designated authority on behalf of the County 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, the Director shall prepare a Certification indicating that the developer has complied with the requirements of this section, and shall transmit it to the County.

22.97.070 Inclusionary Unit Requirements for Ownership Developments.

(a) In ownership residential projects of 15 or more units, 10 percent of the units shall be inclusionary units affordable by moderate, or low income households. Moderate income units shall be sold at prices affordable to a range of families earning 80 percent to 120 percent of the area median income; low income shall be affordable by households earning 50 to 80 percent of the median income. The housing unit sales prices corresponding to this income range shall be established by the County or its designee.

(b) The applicant shall be required to offer to the Housing Authority or a County designated party all such inclusionary units as are required by this Ordinance for sale to eligible purchasers for a period of not less than 90 days from the date of the County's permission to occupy. Sale and resale restrictions are removed in the event the Housing Authority or County designee 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 30 days of submission of cash deposit) within 90 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 this Ordinance.

(c) 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 Marin 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. The developer/owner shall retain final approval in the selection of the qualified purchasers selected by the Housing Authority, provided that the same terms and conditions (except income) are applied to purchasers of inclusionary units as are applied to all other purchasers. Preference will be given first to residents of Marin County and second to people employed in Marin County.

22.97.090 Inclusionary Requirements for Land Subdivisions Development.

In land subdivisions of 15 or more parcels, 5 percent of the developable lots or their equivalent shall be set aside for immediate or future development of moderate, low or very low income units. Such land may be developed by the applicant or another profit or nonprofit developer, private or public, or deeded to the County of Marin or its designee. The units built on these parcels may be rental or owner occupied, and shall conform to the requirements set forth in the appropriate sections of this ordinance. The method of providing inclusionary units from land subdivisions shall be specified in the conditions of approval of each such land subdivision.

22.97.100 Eligibility Requirements.

(a) In establishing moderate household income, the County or its designee 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 County that the said unit is being purchased for the purchaser's primary place of residence. The Housing Authority 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.

22.97.120 Control of Resale.

(a) In order to maintain the availability of the housing units as may be constructed pursuant to the requirements of this Ordinance, the County 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 in the median income since the date of purchase, or the fair market value, whichever is less.

(b) Homeownership inclusionary units constructed, offered for sale, or sold under the requirements of this Ordinance shall be offered to the Housing Authority or its assignee for a period of at least 90 days by the first purchaser or subsequent purchaser(s) from the date of the original sale for a price affordable to moderate income families as stipulated in this Ordinance. Homeownership inclusionary units shall be sold and resold from the date of the original sale only to moderate income households as determined to be eligible for inclusionary units by the Housing Authority according to the requirements of this Ordinance. The seller shall not levy or change any additional fees nor shall any "finders fee" or other monetary consideration be allowed other than customary real estate commissions and closing costs.

(c) 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 Ordinance. The Grant Deed shall afford the grantor and the County 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 Ordinance.

(d) The Housing Authority shall be given the responsibility of monitoring the resale of ownership inclusionary units. The Housing Authority or its assignee shall have a 90 day option to commence purchase of ownership inclusionary units after the owner gives notification of intent to sell. Any abuse in the resale provisions shall be referred to the County for appropriate action.

22.97.150 In-Lieu Participation Fees

(a) In-lieu participation fees may be appropriate for particular developments not suitable for inclusionary units due to factors such as, but not limited to, location, development density, accessibility to public transportation, and environmental conditions. In such cases, the County and the applicant may agree to the contribution of "in-lieu" participation fees. These in-lieu fees shall be used by the County, or its designee such as a non-profit housing development corporation for the purpose of developing affordable housing for low/very low income households elsewhere in the County.

(b) In-lieu participation fees will be used within the Planning Area of the project except by 4/5 vote of the Board of Supervisors. The eight Planning Areas of the County are those designated in the Countywide Plan.

(c) In-lieu participation fees for all residential development, including land subdivisions, shall be calculated on the basis of the difference between the ability to pay of moderate income families (earning 100 percent of median income) and the estimated cost of a market rate unit of appropriate size, to be determined by the County. (Estimates of the cost price of a market rate unit to be provided four times yearly by the Planning Director.) This differential shall be multiplied by the required number of inclusionary units, that is 10 percent of the total number of market rate units in the development. For the purposes of applying percentages to in-lieu fees, decimal fractions of a unit shall be used.

(d) At the option of the developer, in-lieu participation fees may be paid as proceeds from sales are received or at the time of sale of the last unit or parcel. The in-lieu fees shall constitute a lien on the property, which shall be recorded as a separate document at the recordation of the subdivision map. The in-lieu fee shall be due within 24 months from the date of approval of the development, regardless. The lieu shall include a provision for foreclosure under power of sale if the in-lieu payment is not made within 24 months from the recordation of the lien, regardless of whether or not the individual lots have been sold.

22.97.160 Availability of Government Subsidies.

(a) It is the intent of this Ordinance 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. This Ordinance is also not intended to be an undue burden on the developers of residential projects. Therefore, as detailed in succeeding sections of this Ordinance, incentives are given to provide inclusionary units.

22.97.180 Density Bonus

(a) To avoid any undue economic burden or cost to the applicant providing inclusionary units or in-lieu fees required by the provisions of this Ordinance, the

County shall favorably consider the applicability of an increase in density up to 10 percent in the proposed residential project or land subdivision, provided that a density bonus granted does not conflict with the goals of the Countywide Plan. This density bonus is exclusive of and not a substitute for the other density bonus(es). Granting of a density bonus shall be based on a project-by-project analysis and determination that such an increase in density will not be detrimental to the public health, safety and/or welfare.

22.97.200 Fee Waiver for Inclusionary Units

(a) In the attempt to feasibly provide moderate-income affordable units, the County shall waive all park dedication, school, and other County fees applicable to the inclusionary units of a proposed housing development.

22.97.210 Technical Assistance

(a) In order to emphasize the importance of securing low and very low income housing as a part of this program, the County planning department, other agencies, and/or designated consultants shall provide assistance on financial subsidy programs to applicants. The County 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 ordinance 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.

22.97.220 Enforcement

(a) The provisions of this Ordinance 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, which does not meet the requirements of this Ordinance.

(b) In addition to, or in lieu of, the provisions of subsection (a) of this Section, the County shall institute injunction, mandamus, or any other appropriate legal actions or proceedings for the enforcement of this Ordinance.

(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 Ordinance, shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable for each offense by a fine of not more than \$500 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 Ordinance is commenced, continued, or permitted by such person, firm, or corporation, and shall be punishable as herein provided.

22.97.270 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 Board of Supervisors.

(b) Any applicant or other person who contends that his(her) interests are adversely affected by any determination or requirement of the Housing Authority staff in regard to this Ordinance may appeal to the Housing Director. Further appeal recourse is open to the Board of Commissioners of the Housing Authority. The appeal shall set forth specifically wherein the action of the Housing Authority staff fails to conform to the provisions of this Ordinance thereby adversely affecting the applicant's interests. Such appeal shall be filed in duplicate in the public office of the Housing Authority. Subsequent appeal may be made to the Board of Supervisors. The Board of Supervisors, by Resolution, may reverse or modify any determination or requirement of the Housing Authority if they make the finding that the action under appeal does not conform with the provisions of this Ordinance or to the contract between the Housing Authority and the County.

22.97.280 Annual Report

(a) The County Planning Department shall prepare an annual report to the Board of Supervisors on the status of the inclusionary units constructed under the provisions of this Ordinance. The report shall include the number, size, type, tenure, and general location of the inclusionary units as well as the number of resales and rental vacancy rate. The report shall provide a basis for an evaluation of the overall effectiveness of this Ordinance.

22.97.290 Severability of this Ordinance

(a) The provisions of this Ordinance are severable and if any provision, clause, sentence, section, word or part thereon is held illegal, invalid, unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, sections, words or parts thereof of the Ordinance or their applicability to other persons or circumstances.

(b) The provisions of this Ordinance shall be reviewed and changed in the event that economic condition warrant, as determined by the Board of Supervisors.

This Ordinance shall be and is hereby declared to be in full force and effect as of thirty (30) days from and after the date of its passage and shall be published once before the expiration of fifteen (15) days after its passage with the names of the Supervisors voting for and against the same in the Independent Journal a newspaper of general circulation published in the County of Marin.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin, State of California, on the 8th day of July, 1980, by the following vote, to wit:

AYES: Supervisors: Gary Giacomini, Gail Wilhelm, Barbara Boxer

NOES: Supervisors -

ABSENT: Supervisors: Bob Roumiguere, Denis T. Rice



Chairman of the Board of Supervisors
County of Marin

Attest:



Clerk of the Board

APPROVED AS TO FORM:



County Counsel