

**ORDINANCE NO. 4219**

**AN ORDINANCE ADDING A NEW CHAPTER 20.238 TO ESTABLISH REQUIREMENTS FOR NEW RESIDENTIAL DEVELOPMENT TO CONTRIBUTE TO THE PROVISION OF AFFORDABLE HOUSING UNITS, AND TO ESTABLISH INCENTIVES FOR THE PROVISION OF AFFORDABLE HOUSING.**

**SECTION 1:** A new Chapter is added to the Mendocino County Code to read as follows:

**Chapter 20.238  
INCLUSIONARY HOUSING**

**Sections:**

<b>20.238.005</b>	<b>Purpose</b>
<b>20.238.010</b>	<b>Applicability</b>
<b>20.238.015</b>	<b>Inclusionary Housing Unit Requirement</b>
<b>20.238.020</b>	<b>Affordable Housing Standards</b>
<b>20.238.025</b>	<b>Inclusionary Housing Credit</b>
<b>20.238.030</b>	<b>Alternatives</b>
<b>20.238.035</b>	<b>Affordable Housing In-Lieu Fees</b>
<b>20.238.040</b>	<b>Incentives</b>
<b>20.238.045</b>	<b>Density Bonus and Other Incentives</b>
<b>20.238.050</b>	<b>Inclusionary Housing Plan Compliance</b>
<b>20.238.055</b>	<b>Eligibility to Occupy Inclusionary Housing Units</b>
<b>20.238.060</b>	<b>Equity Sharing</b>
<b>20.238.065</b>	<b>Owner-occupied Units</b>
<b>20.238.070</b>	<b>Renter-occupied Units</b>
<b>20.238.075</b>	<b>Affordable Housing Trust Fund</b>
<b>20.238.080</b>	<b>Adjustments, Modifications, or Waivers</b>
<b>20.238.090</b>	<b>Severability</b>

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, very low and extremely low incomes.

(B) It is a public purpose of the County and a policy of the State of California to achieve a diverse and balanced community with housing available for all households of all income levels.

(C) In order to meet its fair share obligation under the Regional Housing Needs Allocation, the County is responsible for efforts toward the provision of a State-specified number of affordable housing units per year of for extremely low, very low, low, or moderate income households within its unincorporated areas.

(D) Based on recent trends of the construction of affordable units, Mendocino County has not experienced progress in addressing the regional housing need.

(E) Affordable housing units constructed pursuant to the Inclusionary Housing Ordinance would serve to satisfy the needs of qualifying extremely low, 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 does not support County housing policies. Land otherwise available for the provision of housing affordable to extremely low, very low, low, and moderate income households would be developed out of their financial reach, and these households would be unable to obtain adequate housing.

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

(H) After considering all factors, including the significant need for affordable housing, the County has determined 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 to 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 20.238.025 results in a fractional unit.

#### **Section 20.238.005. Purpose.**

The purpose of this Chapter is to:

- A. Serve as 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 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, in each community, and in each 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 two or more units shall be applied at the sub-division level.
- B. Exemptions:
  - Residential development of efficiency units of 650 square feet or less.
  - Residential development that is restricted to extremely low, very low, low, or moderate income households shall be exempt from this Chapter.
  - Residential development that voluntarily complies with the 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 shall be exempt from this Chapter.
  - Construction of secondary single-family residences on parcels zoned for that purpose shall be exempt from this Chapter.

**Section 20.238.015. Inclusionary Housing Unit Requirement.**

Newly constructed residential development consisting of five (5) 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:

2-4 total housing units	=	an in-lieu fee would apply—no units required
5-25 total housing units	=	10% would have to be affordable
26-50 total housing units	=	15% would have to be affordable
51-75 total housing units	=	20% would have to be affordable
76 or more total units	=	25% would have to be affordable

- 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 20.238.025 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 Affordable Housing Trust Fund no later than issuance of the 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. Payment of an in-lieu fee shall be at the discretion of the developer in the following situations: ownership projects with fewer than twenty (20) units, projects in hillside areas, or in developments of two and fewer units per acre.
- D. An in-lieu fee to the Affordable Housing Trust Fund as an alternative to building inclusionary units may be paid in other situations, if approved by the Board of Supervisors as part of a negotiated development agreement prior to the issuance of any building permits for applicable primary dwelling units in the development.

**Section 20.238.020. 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 through the development and permitting process.
- B. Inclusionary units shall be comparable in appearance and style to market rate units and shall meet County Code. 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:

Type of Unit	Size (square feet)	
Owner-occupied detached dwelling	4- bedrooms or larger	1000
	2- or 3 bedroom	800
	1 bedroom	600
Owner-occupied attached dwelling	500	
Renter-occupied dwelling	500	

- 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 forty percent (40%) of the market-rate units in the development have obtained Final Construction Permits. All inclusionary units shall be completed and offered for sale or rent by the time eighty percent (80%) of the market-rate units have obtained Final Construction Permits. For phased developments, the inclusionary units required by

this Chapter shall be proportionally provided with each phase of the residential development.

**Section 20.238.025. 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. Market-rate builders may pool resources to satisfy their inclusionary requirement(s) through one affordable housing project. 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. 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. 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 20.238.030. 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 Board of Supervisors 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 such as employment and transportation, and infrastructure extended to the site.

**Section 20.238.035. Affordable Housing In-Lieu Fees.**

The in-lieu fee shall be progressive and based on the size of the development as follows:

- 2 housing units = 2%
- 3-4 housing units – 5%
- 5 or more housing units – 20%

of the County-wide median sales price of a single-family residence of the same size in Mendocino County. The median sales price shall be determined annually by the County Assessor prior to March 1, for use in the following year.

**Section 20.238.040. Incentives**

- A. The County shall provide the following incentives per Section 20.238.015 to developers who construct the required affordable housing units as follows:
- 5– 25 total housing units                      1 incentive
  - 26-50 total housing units                      2 incentives
  - 51-75 total housing units                      3 incentives
  - 76 or more total housing units                      4 incentives
- B. One (1) additional incentive will be provided to projects whose affordable units are entirely dedicated to low income households.
- C. Two (2) additional incentives will be provided to projects whose affordable units are entirely dedicated to very low income households.
- D. Three (3) will be provided to projects whose affordable units are entirely dedicated to extremely low income households.
- E. Incentives shall be negotiated and incorporated in a Development Agreement.

**Section 20.238.045. Density Bonus and Other Incentives.**

- A. In accordance with Government Code Section 65915-65918 (State Density Bonus Law), the County shall grant a density bonus for the provision of affordable housing, as the first incentive, as follows:
- 5 very low income units: 20%
  - 9 very low income units: 30%
  - 11 very low income units: 35%
  
  - 10 low income units: 20%
  - 14 low income units: 26%
  - 18 low income units: 32%
  - 20 low income units: 35%
  
  - 10 moderate income units: 5%
  - 15 moderate income units: 10%
  - 20 moderate income units: 15%
  - 25 moderate income units: 20%
  - 30 moderate income units: 25%
  - 35 moderate income units: 30%
  - 40 moderate income units: 35%

Any intermediate number of units proposed by the developer will follow the density increase listed in Section 65915 of the Government Code.

- B. 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%
- C. Additional incentives allowed will be negotiated by Planning and Building Services with the developer from the following list of acceptable incentives and incorporated into a development agreement:
  - 1. Expedited processing of development and building applications and permits by putting affordable housing projects at the front of the queue for every task.
  - 2. Utilization of Federal or State funds or, on a limited basis and when feasible, local funds, to provide the land and/or infrastructure on which the housing development will be constructed at a reduced cost.
  - 3. Exemption of the project from standard height restrictions to increase affordability.
  - 4. Exemption from standard setbacks and yard regulations.
  - 5. Reduction in off-street parking requirements.
  - 6. Exemption from design review process.
  - 7. 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, if it can be demonstrated that these needs can be met with existing facilities or if impacts on the facilities are minimal.

#### **Section 20.238.50. Inclusionary Housing Plan Compliance.**

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:
  - 1. the basis used to calculate the number of inclusionary units;
  - 2. a description of how the project will comply with the requirements;
  - 3. 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;
  - 4. 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;

5. the mechanisms that will be used to assure that the inclusionary units remain affordable for the term required;
  6. a plan that demonstrates the timely provision of inclusionary units; a description of any incentives requested by the developer; and
  7. 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. An incomplete determination may be appealed to the Board of Supervisors.
- 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 to Occupy Inclusionary Housing Units.**

- 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 90 days following the date a notice of intention to sell is filed, the owner may sell the unit at a market price, and pay a fee calculated as follows:
- $$10\% \times [(\text{the gross selling price of the residence}) - (\text{actual closing costs and sales commission})]$$

**Section 20.238.060 Equity Sharing.**

Equity sharing, as described in this Section, shall be applied to each owner-occupied inclusionary unit for a period of thirty (30) years from the date of first transfer, or as required by the funding source, of title at an affordable price determined pursuant to Section 20.238.065.

- A. 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 one hundred eighty (180) or the



number of months remaining in the thirty (30) year 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.

- B. If the property is sold before the thirty (30) 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 Affordable Housing Trust Fund established by this Chapter.
- C. At least twenty (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, and a description of and book value of any capital improvements made to the unit during the owner's ownership.
- D. Equity sharing provisions 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.
- E. If the owner of an inclusionary unit defaults on any loan secured by the inclusionary unit and the equity sharing provisions of Section 20.238.065 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.
- F. If the inclusionary unit is offered for sale at other than an affordable price as determined pursuant to Section 20.238.065, during the thirty (30) 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 at 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.

- G. Each inclusionary rental unit shall remain affordable for a minimum period of thirty (30) years from the date of the first transfer of title at an affordable price determined pursuant to Section 20.238.070. Each affordable housing unit constructed under a government subsidized program shall adhere to the term of affordability of that program.
- H. 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 20.238.065. 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 subsection B above 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 20.238.055 and the agreement therein provided.
- D. After sale at other than an affordable price, or at the end of thirty (30) years (or as required by funding sources) after the date of the first transfer of the title at an affordable price determined pursuant to Section 20.238.065, whichever is earlier, the unit will no longer be subject to this Chapter or any agreement referred to in Section 20.238.055.
- E. If an inclusionary unit is offered for rent by the initial owner at any time during the first thirty (30) years, the inclusionary unit will be offered only to income eligible households pursuant to the Inclusionary Housing Plan.

**Section 20.238.070. 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 thirty (30) 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 a list of eligible 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 thirty (30) 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 comparable 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 20.238.075. Affordable Housing Trust Fund.**

There is hereby established an Affordable Housing Trust Fund.

- A. 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 Housing Trust Fund shall be administered by a non-profit 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, very low, or extremely low income 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 an 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 20.238.080. Adjustments, Modifications, or Waivers.**

The requirements of this Chapter may be adjusted, modified, suspended or waived by the Director of Planning and Building Services for two units, and by the Board of Supervisors for all other development 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 constitute undue economic hardship, 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. A fee will be assessed to process a request for a waiver.

**Sec. 20.238.090 Ordinance Review**

The provisions of this ordinance shall be reviewed no later than two years after adoption to determine its effect upon housing production.

**Section 20.238.095 Severability.**

If any section, subsection, paragraph, sentence, clause or phrase of this Chapter which is reasonably separable from the remaining portion of this Chapter is, for any reason, held to be invalid or unconstitutional such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, subsections, paragraphs, sentences, clauses or phrases of this Chapter.

Passed and adopted by the Board of Supervisors of the County of Mendocino, State of California,  
on this 23rd day of March 2009, by the following vote:

AYES            Supervisors Brown, McCowen, Smith, and Colfax  
NOES:          Supervisor Pinches  
ABSENT:       None

WHEREUPON, the Chair declared said Ordinance passed and adopted and SO ORDERED.

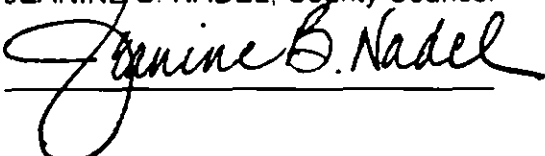
  
\_\_\_\_\_  
Chair  
Mendocino County Board of Supervisors

ATTEST:       KRISTI FURMAN  
                 Clerk of the Board

  
\_\_\_\_\_

I hereby certify that according to the  
provisions of Government Code Section  
25103, delivery of this document has been  
made.

APPROVED AS TO FORM:  
JEANINE B. NADEL, County Counsel

  
\_\_\_\_\_

BY:           KRISTI FURMAN  
                 Clerk of the Board

  
\_\_\_\_\_