

ORDINANCE NO. 2009-18

AN ORDINANCE OF THE CITY OF WINTERS REPEALING SECTION 17.60.030(B) OF THE ZONING CODE AND ADDING CHAPTER 17.200 TO THE ZONING CODE PERTAINING TO AFFORDABLE HOUSING REQUIREMENTS

The City Council of the City of Winters hereby ordains as follows:

SECTION 1. Recitals.

- A. The City of Winters undertook a comprehensive study and analysis of its affordable housing program, which prompted certain revisions to the affordable housing program for the City.
- B. The affordable housing requirements contained in this Ordinance are the culmination of the City's efforts to develop an affordable housing program that promotes a balance between encouraging the development of market-rate housing and mixed use development in the City, while at the same time, providing for the creation of affordable housing necessary to meet the needs of individuals of very low, low and moderate income within the City.
- C. The City of Winters Planning Commission conducted a noticed public hearing regarding this Ordinance, which amends the Zoning Code to repeal Section 17.60.030(B) and add Chapter 17.200 pertaining to affordable housing requirements within the City, and has recommended approval of the Ordinance.
- D. The City Council of the City of Winters has provided public notice of its intention to amend the Zoning Code to adopt Chapter 17.200, and conducted a public hearing thereon on December 15, 2009.
- E. The proposed amendment of the Zoning Code to add Chapter 17.200 is consistent with the goals, policies, and objectives of the City of Winters General Plan, and in particular, the Housing Element, as adopted on September 1, 2009.
- F. The proposed amendment of the Zoning Code to add Chapter 17.200 has been reviewed in accordance with the California Environmental Quality Act ("CEQA") and is exempt pursuant to CEQA Guidelines Section 15061(b)(3).

SECTION 2. Chapter 17.200 "Affordable Housing Requirements" is hereby added to the Winters Municipal Code to read as follows:

Section 17.200.010 Purpose and Intent

The public welfare requires the City to take action to ensure that affordable housing is constructed and maintained within the City. This Chapter is intended to provide that new development projects in the City contain or assist in the production of a defined percentage of housing affordable to low income and very low income households, to provide for a program of incentives, and to implement the affordable housing policies contained in the Housing Element of the City's General Plan.

Section 17.200.020 Definitions

"Affordable Housing Steering Committee" means an advisory committee appointed by the City Council for the purpose of advising the City Council, Planning Commission, Community Development Agency and City staff on affordable housing policies and programs, use of redevelopment housing funds, proposed affordable housing projects, and other housing matters, at the request of the City Council.

"Community Development Director" means the director of the Community Development Department of the City, or his or her designee.

"Developer" means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks the City's approval of discretionary land use entitlements for all or part of a development project. "Developer" includes "owner"

"Development project" means any development project that contains residential units, including single family and multifamily units.

"Inclusionary housing agreement" means an agreement between the developer and the City setting forth the manner in which the inclusionary housing requirements will be met in the development project.

"Inclusionary housing plan" means the plan setting forth the manner in which the developer proposes to satisfy the inclusionary housing requirements of this Chapter within the development project.

"Inclusionary housing requirement" means the inclusionary housing requirements as specified in this Chapter.

"Inclusionary housing unit or inclusionary unit" means an ownership or rental unit developed or provided in satisfaction of the inclusionary housing requirements of a development project, as provided for in this Chapter, and which is affordable to very low, low income or moderate income households.

"Low income household" means a household whose income does not exceed eighty percent (80%) of median income applicable to Yolo County, adjusted for family size as published and annually updated by the United States Department of Housing and Urban Development.

“Moderate income household” means a household whose income does not exceed one hundred twenty percent (120%) of median income applicable to Yolo County, adjusted for family size as published and annually updated by the United States Department of Housing and Urban Development.

“Very low income household” means a household whose income does not exceed fifty percent (50%) of the median income, adjusted for household size, applicable to Yolo County, as published and periodically updated by the United States Department of Housing and Urban Development.

Section 17.200.030 Inclusionary Housing Requirements

(A) Number and Affordability of Units. Except as otherwise provided for in this Chapter, all development projects consisting of five (5) or more residential units within the City of Winters shall include inclusionary housing units equal to fifteen percent (15%) of the total number of residential units in the development project, excluding density bonus units. The fifteen percent (15%) inclusionary housing requirement shall consist of six percent (6%) very low income units and nine percent (9%) low income or moderate income units in proportion to the unmet needs for each identified in the current housing element.

(B) Exception. The following development projects are exempt from the provisions of this Chapter:

1. Redevelopment Project Area. The fifteen percent (15%) inclusionary housing requirement provided in Subsection A above shall not apply to development projects within the Winters Community Development Agency Redevelopment Project Area that contain fifteen (15) or fewer residential units. This exception shall expire on December 31, 2013, unless extended by the City Council. Any development project that has not acquired a vested right to develop in accordance with existing laws and regulations by such expiration date shall be required to comply with the provisions of this chapter.
2. Project with prior approval. A development project that has obtained discretionary approval (e.g., a Development Permit, Use Permit, Design Review, Planned Development Permit, or Variance approval) before the effective date of this Chapter; or a building permit before the effective date of this Chapter; or a Certificate of Occupancy before the effective date of this Chapter.
3. Exempt by State law. A development project that is exempt from this Chapter by State law.
4. Project with vested rights. A development project for which the City has entered into a development agreement before the effective date of this Chapter, or which otherwise demonstrates a vested right to proceed without complying with this Chapter.

(C) Implementation. The developer shall propose an inclusionary housing plan to community development director as provided for in this Chapter. A condition requiring compliance with all of the terms of the inclusionary housing plan, as approved by the Planning Commission, shall be imposed on the development project. Further, the developer and the City shall enter into an inclusionary housing agreement that requires compliance with the inclusionary housing plan, and that will be recorded upon the property as provided in this Chapter.

(D) Density Ranges. Development projects which are proposed in areas of the City zoned for medium high and high density residential use, shall only be approved if density of the development project is in the upper one-half of the density ranges specified in the Zoning Code for developments in such zones, unless site constraints effectively prohibit such intensity of development.

(E) Unit Size. The inclusionary housing requirement shall accommodate diverse family sizes by including a mix of studio, one, two and/or three bedroom units where feasible.

(F) Exterior Appearance. The inclusionary units shall be visually compatible with and shall have similar external building materials and finishes as the market rate units in the immediate neighborhood.

(G) Access to Common Amenities. Tenants and residents of inclusionary units shall be provided the same rights and access to common amenities within the development project as tenants and residents occupying market rate units.

(H) Small Parts of Larger Projects. The City shall not approve development projects which reasonably appear to be smaller parts of a greater project and have the effect of circumventing the requirements of this Chapter.

Section 17.200.040 Inclusionary Housing Plan

(A) Submittal Requirements. At the time of and as part of the application for a discretionary land use entitlement for a development project, the inclusionary housing plan shall be submitted to the Community Development Director by the project developer, and shall include:

1. A detailed description of the method by which the developer will comply with the requirements of this Chapter.
2. The location of the inclusionary units within the development project, if applicable, the size of the inclusionary units, and any incentives requested by the developer in accordance with Section 17.200.060 of this Chapter.
3. Where an alternative to constructing inclusionary units on-site is intended, the developer shall provide detailed information regarding the alternative selected for meeting the inclusionary housing requirement, including a written statement that the proposed parcel(s), site, or existing market rate units, if applicable,

are available and capable of being dedicated to the City by the developer and that the affordable units shall be restricted as affordable housing, by way of contractual restrictions, recorded covenants or other legal mechanisms to assure that the units remain affordable housing units, as determined by City.

4. A phasing plan that provides a schedule for the timely development of the inclusionary units as the development project is built out.
5. Any other information deemed necessary by the Community Development Director.

(B) Affordable Housing Steering Committee Meeting. Prior to the submittal of the inclusionary housing plan, the Affordable Housing Steering Committee shall meet with and provide recommendations to the project developer regarding compliance with this Chapter.

(C) Community Development Director Preliminary Review. Upon receipt of the proposed inclusionary housing plan, the Community Development Director shall review the plan, and thereafter shall meet with the project developer to discuss the proposed plan.

(D) Plan Approval. After the preliminary review by the Community Development Director, the inclusionary housing plan shall be subject to the same review and approval as the discretionary land use entitlements.

Section 17.200.050 Alternative Methods to Meeting Inclusionary Housing Requirements

The City strongly prefers and shall encourage on-site construction of inclusionary units, however alternatives to the on-site construction of the inclusionary housing units may be proposed by the developer, consistent with the requirements set forth below in this section. The alternative methods are subject to review and approval of the City, as part of the inclusionary housing plan review process. The developer shall have the burden of demonstrating that the alternative selected is equivalent to the on-site construction of inclusionary housing units. Alternatives may include:

(A) Land Dedication. A developer may propose to dedicate land within the City sufficient to construct at least the same number of units and infrastructure to support the number of units as the developer would have been required to construct on-site subject to the inclusionary housing requirement. Land may be dedicated pursuant to this alternative provided the site will support the same number of units the developer is required to construct, has zoning of a minimum density necessary to accommodate the inclusionary housing requirement, that the site is physically and legally acceptable to the City, and that the site is restricted to affordable housing. The developer shall dedicate the land to the City at no cost the City.

(B) On-Site or Off-Site Construction. A developer may propose to develop housing to satisfy the inclusionary housing requirement at an on-site or off-site location within the City.

(C) Acquisition, Rehabilitation, and Conversion of Market Rate Units. A developer may propose to acquire and rehabilitate existing market rate units in the City which are at or above existing affordable rents, which require repair, rehabilitation, modernization or other work and convert those units to affordable housing units.

(D) Conversion of Market Rate Units. A developer may propose to convert existing market rate units in the City which do not require rehabilitation and are at or above existing affordable rents to affordable housing units by way of contractual restrictions, recorded covenants or other legal mechanisms to assure that the units remain affordable housing units, as determined by City.

(E) Accessory Units. A developer may propose to construct accessory dwelling units (e.g. granny flats) on site of the development project to meet the inclusionary housing requirement. The lots upon which the accessory dwelling units are constructed shall be restricted to provide that the units remain affordable housing units by way of contract, recorded covenants or other legal mechanisms.

(F) Inclusionary Housing Credits. A developer may propose to use inclusionary housing credits, as defined in this Chapter, to meet the inclusionary housing requirement.

(G) Payment of In-Lieu Fees. A developer may propose to pay an in-lieu fee to the City instead of constructing affordable units to meet the inclusionary housing requirement.

(H) Cooperative Ventures. A developer may propose a cooperative venture with a non-profit housing corporation, mutual housing association, limited equity housing cooperative, or other entity.

(I) Sweat Equity Project. A developer may propose a self-help or “sweat equity” project with a non-profit corporation or other entity.

(J) Combination. A developer may propose to utilize a combination of the above alternatives to meet the inclusionary housing requirement.

(K) Other Alternatives. A developer may propose, and the City may accept, other alternatives that meet the requirements and intent of this Chapter.

Section 17.200.060 Incentives and Assistance

(A) Request for Incentives and Assistance. The developer of a development project subject to the inclusionary housing requirements of this Chapter, may request, and the City, in its discretion, may grant or deny the request for incentives as set forth in this section.

(B) Fee Waivers or Deferrals. The City may grant to a developer a program of waivers, reduction or deferrals of development fees or administrative fees for the inclusionary units.

(C) Inclusionary Housing Credits. A developer may submit as part of the inclusionary housing plan a proposal to provide affordable housing units or a donation of land in connection with a development project beyond the requirements of this Chapter. The developer may credit the additional affordable units or land against future development projects proposed by the developer within the City, subject to the provisions of this chapter. Inclusionary housing credits may also be transferred or sold to any other person or entity subject to the following conditions:

(1) Inclusionary housing credits must be applied to another development project within five (5) years of issuance of a certificate of occupancy for the inclusionary units(s) or implementation of an alternative method of meeting the inclusionary method of meeting the inclusionary housing requirement which gives rise to the credits, such as land dedication. A developer who has not used, transferred or sold credits within the time specified in this section may apply to the City for a one (1) year extension on the life of the credits. A request for extension of the inclusionary housing credit shall be reviewed by City Council who shall grant or deny the request for extension. The City Council shall consider progress and efforts the developer has made to utilize the credits during the previous five (5) years, the impact on affordable housing in the City if the extension is granted, any proposals for use of the credits should the extension be granted and other relevant factors.

(2) Inclusionary units receiving monetary subsidies through the City shall not receive credits unless the City has been reimbursed for its financial assistance.

(D) Local Public Funding. A developer may apply to the community development agency for local public funding to assist in the financing and development of affordable housing to meet the inclusionary housing requirement.

(E) Modification of Development Standards. To the extent feasible in light of the uses, design and infrastructure needs of the development project, modifications to existing City planning standards may be made for the development project. Such modifications shall be requested through a development permit, or other such permit that allows the modification of planning standards, and shall be considered in conjunction with the other discretionary land use entitlements for the development project.

(F) Mixed Use Projects. Mixed use projects containing affordable units may be proposed and approved in areas of the City where the Zoning Code and the General Plan allow such development to help off-set the cost of developing affordable units pursuant to the requirements of this chapter.

Section 17.200.070 Density Bonus

Inclusionary units required by this Chapter or otherwise proposed to be constructed as part of a development project shall not be counted towards the number of units necessary to qualify for a density bonus under applicable state or local laws.

Section 17.200.080 Restrictions on Inclusionary Units

Each inclusionary unit created as a result of this Chapter shall have limitations governing its rental, sale, and/or resale and its occupancy, unless such limitations would be in conflict with federal or state law. The purpose of these limitations is to preserve the long-term affordability and to ensure its continued availability for income eligible households.

(A) Duration of Affordability for Rental and Resale of Inclusionary Units. All rental and for-sale inclusionary housing units developed within the City shall remain affordable for a period of not less than that required by Section 33334.3(f)(1) of the California Health and Safety Code (fifty-five years for rental units, forty-five years for owner-occupied units and fifteen years for mutual self-help housing units), and shall be regulated by regulatory agreement, recorded covenants or other legal mechanisms to assure that the units remain affordable housing units, as determined by City.

(B) Occupancy Requirements.

(1) Rental Units. Any person(s) who occupies a rental inclusionary unit shall occupy that unit as his or her principal residence and shall annually certify that he or she qualifies for the applicable affordable rent level. The Community Development Director shall annually initiate this certification process. If and when any person(s) who rents an inclusionary unit no longer qualifies at the applicable affordable rent and income levels, the person(s) shall be required to vacate the unit or pay the market rate for the unit provided another rental unit is made available at the income level of the inclusionary unit.

(2) For-Sale Units. (i) Except as provided in this section, an initial owner who purchases a for-sale inclusionary unit shall occupy that unit as his or her principal residence. The inclusionary housing agreement shall provide that a for-sale inclusionary unit may only be rented or leased with the written permission of the City, and then, only to an income eligible person and the inclusionary unit shall be rented at no greater a rental rate than the affordable rent level as defined in Health and Safety Code Section 50053. The inclusionary unit shall be rented or leased at the same income level of the original for-sale affordable housing price. For example, if the initial owner bought the unit at the very low income housing price the unit shall be rented at the very low income rent level currently in effect. Any person intending to offer a for-sale inclusionary unit for rent or lease shall first notify the City housing coordinator in writing, prior to the renting of the unit. (ii) An initial owner shall be required to execute a promissory note, secured by a deed of trust, payable to the City, for the difference between the fair market value of the unit and the actual purchase price ("Silent Second Note"). The Silent Second

Note shall accrue interest at the Local Agency Investment Fund (“LAIF”) rate, and shall be due and payable upon the sale, transfer or refinancing of the unit, unless the sale is to another low income eligible buyer, as determined by the City. The proceeds of any Silent Second Notes shall be deposited in an account designated for uses related to the provision of affordable housing in the City.

(C) Resale of For-Sale Units. The initial owner or any subsequent owner may sell a for-sale unit pursuant to the following requirements. Inclusionary for-sale units shall remain affordable to subsequent income eligible buyers pursuant to the resale restricted term provided for in subsection (A) above, and in accordance with the affordable housing costs set forth in Health and Safety Code Section 50052.5. The inclusionary for-sale unit shall be sold at the same affordable housing price income level as it was originally sold, and the new income eligible buyer shall be required to execute a new inclusionary housing agreement and Silent Second Note, secured by a deed of trust.

(1) Option to Sell to City. If the owner is unable to sell the inclusionary unit within one hundred and eighty (180) days of offering and advertising the unit for sale, the owner may offer to sell the unit to the City at the affordable housing price at the time offer. The Community Development Director may reduce the one hundred and eighty (180) day requirement specified above if the owner demonstrates, to the satisfaction of the Director, that such limit would create a hardship for the owner. If the City or its assignee does not complete the purchase of the unit within ninety (90) days of the owner’s offer of sale to the City, the resale obligation of this section shall terminate; however, the provisions of this section relating to recapture upon sale shall continue to apply and remain in full force and effect.

(2) Recapture Upon Sale. If the inclusionary unit does not sell within one hundred and eighty (180) days of offering and advertising the unit for sale, or such lesser time as established by the Community Development Director upon a finding that a hardship exists, and if the City does not acquire the inclusionary unit as specified in this section, the inclusionary unit may be sold at the current market price. Upon the sale of a unit at market price, the seller shall pay to the City housing trust fund the full amount of the Silent Second Note, described above in this section. The owner shall be entitled to any appreciation in the fair market value of the unit from the time of initial sale to the present sale.

Section 17.200.090 Administration of Inclusionary Housing Requirements

(A) Inclusionary Housing Agreement. Upon approval of the inclusionary housing plan pursuant to Section 17.200.030, the Community Development Director shall prepare an inclusionary housing agreement for the development project that is consistent with inclusionary housing plan, and shall indicate ownership information, type of inclusionary unit (for-sale or rental), the number and size of the inclusionary units, the developer of the inclusionary units, the phasing and construction scheduling of the inclusionary units, commitments for inclusionary incentives and any other information required by the City

relative to the inclusionary housing requirement. In the case of alternatives to the inclusionary housing requirement, the agreement shall also contain the information required in this chapter pertaining to the alternative. Upon completion, the inclusionary housing agreement shall be recommended for approval by the City Council at the next regular City Council meeting. The inclusionary housing agreement shall provide a direct financial contribution by the City in the amount of not less than one hundred dollars (\$100) per inclusionary unit.

No final map shall be approved and no grading permit or building permit shall be issued by the City prior to the full execution and recordation of the inclusionary housing agreement against the property.

(B) Action on Inclusionary Housing Agreement. The City Council shall approve the inclusionary housing agreement upon a finding that the agreement meets all the requirements of this chapter and shall direct that the agreement be recorded upon the subject property.

(C) Affordable Rental and Affordable Housing Agreements. Prior to obtaining a certificate of occupancy for a development project which includes inclusionary units, the developer shall cause an affordable rental agreement to be executed between the owner of the property and the City which shall be recorded with the county recorder's office against the parcels identified in the inclusionary housing agreement as being inclusionary units, in a form reviewed and approved by the City Attorney. Where the inclusionary unit is a for-sale unit within a development project, prior to obtaining a certificate of occupancy for that unit the developer shall cause an affordable sale agreement to be executed between the initial owner of the inclusionary unit and the City, which shall be recorded with the county recorder's office against the parcel, in a form reviewed and approved by the City Attorney.

(D) Administrative of Affordability for Rental Inclusionary Housing. The owner of rental inclusionary units or for-sale inclusionary units offered for rent shall be responsible for certifying the income of the tenant or owner to the City at the time of initial rental and annually thereafter. The owner of a for-sale inclusionary unit shall certify to the City the income of the initial purchaser.

(E) Accessory Dwellings. Prior to obtaining a certificate of occupancy for an accessory dwelling which is designated as an inclusionary units pursuant to an inclusionary housing agreement, the developer shall cause an affordable sale agreement to be executed between the initial owner of the accessory dwelling unit and the City, which shall be recorded with the county recorder's office against the accessory dwelling unit, in a form reviewed and approved by the City Attorney.

(F) Guidelines. The Community Development Director may develop additional guidelines as necessary for implementation of this chapter.

(G) Appeal. Where the provisions of this Chapter vest the Planning Commission with final decision making authority, any applicant aggrieved by the decision of the Planning Commission may appeal the decision to the City Council, within ten (10) days of the final decision of the Planning Commission. Any appeal of a decision of the Planning Commission must be filed with the City Clerk. The City Clerk shall set the appeal before the City Council within forty (40) days of receipt of the appeal.

Section 17.200.100 Monitoring of Inclusionary Housing

(A) Developers. Developers that have entered into an inclusionary housing agreement requiring the provision of inclusionary housing units will be monitored by the City annually to assure compliance with the inclusionary housing agreement.

(B) Inclusionary Units. Inclusionary housing units developed within the City will be monitored by the City annually to verify that the units remain affordable in accordance with Section 17.200.080(B) of this chapter.

(C) Reporting. An annual reporting mechanism shall be created by the City to identify the number of inclusionary housing units that have been required for development within the City by inclusionary housing agreements during the annual reporting period and shall include the number of inclusionary housing units that have actually been developed during the annual reporting period. The report shall also include the results of the monitoring of developers and inclusionary units already in existence.

Section 17.200.110 Administrative and In-Lieu Fees

The City Council may, by resolution, establish an in-lieu fee and reasonable fees and deposits to defray costs of processing applications, proposals pursuant to this Chapter.

Section 17.200.120 Enforcement and Penalties

It is unlawful to offer for sale or to rent or lease any inclusionary unit without compliance with this Chapter. Any person who violates any provision of this Chapter shall be guilty of a misdemeanor. Any person who violates any provision of this Chapter shall be guilty of a separate offense for each and every day which any person commits, continues, permits, or causes a violation thereof and, shall be punished accordingly.

SECTION 3.

Section 17.60.030(B) of Chapter 17.60 of the Winters Zoning Code pertaining to affordable housing requirements for individualized projects is hereby repealed in its entirety.

SECTION 4. Effective Date.

This Ordinance shall be in full force and effective 30 days after its adoption and shall be published and posted as required by law. The City Clerk of the City of Winters shall

cause this Ordinance to be published and posted in accordance with 36933 of the Government Code of the State of California.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Winters, California, held on December 15, 2009, and was passed and adopted at a regular meeting of the City Council held on January 5, 2010 by the following vote:

AYES: Council Members Aguiar-Curry, Fridae, Stone and Mayor Martin

NOES: None

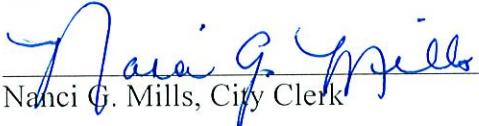
ABSENT: Council Member Anderson

ABSTAIN: None



Michael Martin, MAYOR

ATTEST:



Nanci G. Mills, City Clerk

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