

ORDINANCE NO. 2019-10

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON AMENDING TITLE 19 OF THE AMERICAN CANYON MUNICIPAL CODE TO REINSTATE INCLUSIONARY HOUSING REQUIREMENTS FOR PROJECTS CONTAINING FIVE OR MORE RENTAL DWELLING UNITS AND INCREASE THE AFFORDABILITY TERM FROM 40 YEARS TO 55 YEARS FOR RENTAL AND OWNERSHIP RESIDENTIAL PROJECTS

WHEREAS, the City of American Canyon ("City") seeks to ensure that the City's zoning laws are consistent with the goals, policies, and standards set forth in the City General Plan; and

WHEREAS, increasing the supply of housing at all income levels, when designed and located well, can strengthen neighborhoods and local economies and there are many ways in which a community may provide housing for low- and moderate-income families; and

WHEREAS, since at least 2001, the City has used an Inclusionary Housing Ordinance ("Ordinance") to require residential projects containing five or more residential units to provide 10% of the units in the project to be sold or rented at prices affordable to lower-income households; and

WHEREAS, in 2016, the City Council repealed rental inclusionary housing requirements in response to the California Court of Appeals in *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles* (2009) 175 Cal. App. 4th 1396, which held that inclusionary housing requirements for residential rental units are pre-empted by the Costa-Hawkins Rental Housing Act; and

WHEREAS, as part of the California Legislature's 15-bill housing package approved in the Fall of 2017, Assembly Bill 1505, was signed into law on September 29, 2017 and became effective on January 1, 2018; and

WHEREAS, AB 1505 comes on the heels of a 2015 ruling of the California Supreme Court in *Building Industry Association v. City of San Jose* (2015) 61 Cal. 4th 435, which strongly upheld the ability of local governments to adopt inclusionary housing ordinances; and

WHEREAS, under that ruling, courts will review and uphold inclusionary housing requirements under the most deferential standard, whether the regulation is reasonably related to the public welfare, and will not require the demonstration of a nexus between the development of new market-rate housing and the need for the affordable housing; and

WHEREAS, the proposed Ordinance establishes a Rental Inclusionary requirement of at least five percent (5%) project units rented at prices affordable to very-low income households, five percent (5%) affordable to low income households; and (5%) affordable to moderate income households; and

WHEREAS, the 15% inclusionary standard is permissible in accordance with State Law because AB 1505 does not limit the percentage of units that a jurisdiction may require to be affordable; and

WHEREAS, the inclusionary term of affordability for rental and ownership projects shall be 55 years; and

WHEREAS, increasing the affordability term of rental units from 40 to 55 years reflects the affordability term standard in the Density Bonus Ordinance and typical tax credit financing requirements; and

WHEREAS, the proposed ordinance complies with State Law by providing alternatives to on-site inclusionary rental units, such as reduced or modified site development standards to make inclusionary units economically feasible; and

WHEREAS, State Law requires Cities that reinstate inclusionary rental ordinances provide developers with an alternative means of compliance. The proposed ordinance complies with State Law by providing these and other alternatives:

- In-lieu fees;
- Dedication of land;
- Construction of affordable units off-site; or
- Acquisition and rehabilitation of existing units; and

WHEREAS, on March 28, 2019, City of American Canyon Planning Commission conducted a public hearing on the proposed ordinance, and unanimously recommended approval; and

WHEREAS, on October 1, 2019, the City of American Canyon City Council conducted a public hearing on the proposed ordinance, at which time all those in attendance were given the opportunity to speak on this proposal.

NOW, THEREFORE, BE IT ORDAINED, that the City Council of the City of American Canyon **HEREBY** amends Chapter 19.28 of the Municipal Code as follows:

Chapter 19.28 Inclusionary Housing Requirements

19.28.010 Purpose.

The purpose of this chapter is to implement the inclusionary housing program set forth in the housing element of the American Canyon general plan. (Ord. 2001-02 § 1, 2001)

19.28.020 Definitions.

Unless the context clearly requires otherwise, the definitions in this chapter shall have the following meanings:

"Above moderate-income households" are those households with income of more than one hundred twenty percent of area median income for Napa County, as published by the state of California Department of Housing and Community Development, and its successors.

"Affordable Housing Nexus Fee" is an impact fee to fund affordable housing demand created by new market-rate housing and new nonresidential development.

"Apartment" is a multi-family development residential project that creates residential dwelling units that cannot be sold individually.

"Financially infeasible" is a residential project, once all costs for development are established, (i.e. land acquisition, entitlements, site development fees, and construction costs), the developer (and/or their creditors) would not achieve an Internal Rate of Return (IRR) of at least 6%.

"Gross square feet" is the area included within the surrounding walls of a structure as calculated by the building division in accordance with its standard practice. This area does not include garages or carports.

"Inclusionary units" are those that are required to be provided at affordable rents or sales prices to specified households.

"Lower income households" are those households with income of no more than eighty percent of the area median income for Napa County, adjusted for household size, as published by the state of California Department of Housing and Community Development, and its successors.

"Market rate units" means dwelling units in a residential project which are not affordable units or target units.

"Maximum residential density" means the maximum number of dwelling units permitted in a residential project by the city's zoning ordinance and by the land use element of the general plan on the date that the application for the residential project is deemed complete, excluding any density bonus. If the maximum density allowed by the zoning ordinance is inconsistent with the density allowed by the land use element of general plan, the land use element density shall prevail.

"Median income" means the median income, adjusted for family size, applicable to Napa County as published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provision) by the California Department of Housing and Community Development.

"Moderate income households" are those households whose income does not exceed the moderate income limits applicable to Napa County as published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provision) by the California Department of Housing and Community Development.

"Nonresidential development" means any development in the city for which a discretionary permit or building permit is required, other than those developments involving solely residential projects, that includes an addition, the new construction of gross square feet of nonresidential space, the conversion of a residential use to a nonresidential use, or the conversion of one nonresidential use to another nonresidential use.

"Residential project" means any development for which a discretionary permit or building permit is required that includes the creation of one or more additional dwelling units, an addition to a dwelling unit, conversion of nonresidential uses to dwelling units, or a condominium conversion.

"Residential ownership project" means any residential project that includes the creation of one or more residential dwelling units that may be sold individually. A residential ownership project also includes the conversion of apartments to condominiums.

"Residential rental project" means any residential project that creates residential dwelling units that cannot be sold individually.

"Senior citizen residential project" means a senior citizen housing development with at least thirty-five dwelling units as defined in Civil Code Section 51.3, or a mobilehome park that limits residency based on age requirements for older persons pursuant to Civil Code Sections 798.76 or 799.5.

"Stacked Flat means a multi-family residential building with single-level dwelling units, stacked on top of each other in a multi-story building.

"Target unit" means a deed-restricted dwelling unit within a residential project which is reserved for sale or rent, at an affordable rent or affordable sales price, to very low, low, or moderate income households, and which qualifies the residential project for a state density bonus and incentives pursuant to Chapter 19.27.

"Very low income households" are those households with income of no more than fifty percent of the area median income for Napa County, adjusted for household size, as published by the state of California Department of Housing and Community Development, and its successors.

(Ord. 2006-09 § 1, 2006; Ord. 2006-08 § 1, 2006; Ord. 2001-02 § 1, 2001)

19.28.030 Applicability.

- A. The provisions of this chapter shall apply to:
 - i. Residential projects containing five or more residential parcels or units whose initial sales prices or rents will be affordable (as defined in Chapter 19.04, Definitions) to above moderate-income households.
 - ii. Residential Rental projects containing five or more rental dwelling units.
 - iii. Nonresidential projects.
- B. These provisions shall not apply to:
 - i. Any subdivision for which the final or parcel map was recorded, or any residential project subject to discretionary approval by the city for which a building permit has been issued by the city prior to the effective date of this chapter, unless approval or conditional approval of the subdivision or project was expressly conditioned upon participation in an inclusionary program such as that established by this chapter, or such participation was expressly required as an environmental mitigation measure for the subdivision.
 - ii. New Residential development that is owned and operated by a nonprofit entity.
 - iii. New Residential development that is deed restricted to be affordable to lower income households.
 - iv. New nonresidential development with a bona fide tax-exempt status.
(Ord. 2006-09 § 1, 2006; Ord. 2006-08 § 1, 2006; Ord. 2001-02 § 1, 2001)

19.28.040 Inclusionary requirements.

- A. Required Number and Type of Inclusionary Units.
 - 1. Ownership projects subject to the provisions of this chapter shall provide a number of inclusionary units equal to at least ten percent (10%) of applicable project units (per this chapter) at prices or rents affordable to lower-income households, unless one of the alternative actions set forth in this chapter is approved. Such inclusionary units may be either ownership units or rental units.
 - 2. Rental projects subject to the provisions of this chapter shall provide a number of inclusionary units equal to at least five percent (5%) of applicable project units (per this chapter) at

prices or rents affordable to very-low income households, five percent (5%) affordable to low income households, and five percent (5%) to moderate income households unless one of the alternative actions set forth in this chapter is approved. The inclusionary units shall be rental units.

3. In determining the number of inclusionary units to be provided, any decimal fraction of 0.3 or more shall be rounded up to the nearest whole number, and any decimal fraction of less than 0.3 shall be rounded down to the nearest whole number.

4. Where an even number of inclusionary units are required of a rental housing project, a larger number of units affordable to very low-income households shall be provided (e.g., if the inclusionary requirement equals four units, two shall be affordable to very low-income households and one shall be affordable to a lower-income household and one shall be affordable to a moderate income household). If only one inclusionary unit is required, such unit must be affordable to a very low-income household.

B. Development Standards for Target Units.

1. Inclusionary units should be constructed concurrently with market rate units unless both the city and the developer/applicant agree within the housing agreement to an alternative schedule for development.

2. Inclusionary units shall be evenly distributed throughout the project, except that the decision-making body may waive this requirement if it finds that such distribution is infeasible for one or more of the following reasons:

a. Significant topographic or other constraints exist rendering such distribution infeasible.
b. Substantially improved site design will result from such waiver.
c. Substantially improved building design and an improved unit amenity level will result from such waiver.

d. Significant economic hardships will result from such distribution that does not apply to other projects in the city.

e. Significant economic hardships will result from such distribution for the developer of the inclusionary units receiving financial assistance from federal, state, or local governmental agencies if such waiver is not granted.

3. Where feasible, the number of bedrooms of the inclusionary units should be equivalent to the bedroom mix of the market rate units of the housing development; except that the developer may include a higher proportion of inclusionary units with more bedrooms.

4. The design and appearance of the inclusionary units shall be compatible with the design of the total housing development.

5. The applicant may reduce the size or interior amenities of the inclusionary units as long as there are not significant differences between inclusionary and market rate units visible from the exterior of the dwelling units and the size and design of the dwelling units are reasonably consistent with the market rate units in the project, provided that all dwelling units conform to the requirements of the applicable building and housing codes.

6. Inclusionary units shall comply with all applicable development standards, except those which may be modified as provided by this chapter.

C. Continued Affordability of Ownership Units. Inclusionary units shall remain restricted and affordable to the targeted household(s) for a period of at least fifty-five years, or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Covenants evidencing these restrictions shall be recorded against the property.

D. Continued Affordability of Rental Units. Inclusionary units shall remain restricted and affordable to the targeted household(s) for a period of at least fifty-five years, or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Covenants evidencing these restrictions shall be recorded against the property.

E. Determination of Affordable Rents and Sales Prices. In determining the maximum affordable rent or affordable sales price of inclusionary units, the following household and unit size assumptions shall be used, unless the project is subject to different assumptions imposed by other governmental regulations:

| | |
|------------------------------|-----------------|
| SRO (residential hotel) unit | 75% of 1 person |
| 0 bedroom (studio) | 1 person |
| 1 bedroom | 2 person |
| 2 bedroom | 3 person |
| 3 bedroom | 4 person |
| 4 bedroom | 6 person |

F. Housing Agreement. A housing agreement consistent with this chapter shall be made a condition of the discretionary planning permits (e.g., tract maps, parcel maps, site plans, planned development or conditional use permits) for a project that provides inclusionary units.

G. In the event a project exceeds the total number of inclusionary units required in this chapter, the project owner may request inclusionary unit credits that may be used to meet the inclusionary unit requirements of another project, subject to the approval of the city manager. Inclusionary unit credits are issued to and become the possession of the project owner and may only be transferred to another project owner subject to the approval of the city council. The number of inclusionary unit credits awarded for any project is subject to the approval of the city council.

(Ord. 2006-09 § 1, 2006; Ord. 2006-08 § 1, 2006; Ord. 2001-02 § 1, 2001)

19.28.050 Inclusionary alternatives.

A. It is the intent of these provisions that the inclusionary units be provided within each project in order to disperse such units throughout the community.

B. The following alternatives to providing inclusionary units on-site may be approved by the decision-making body if it finds that evidence presented by the applicant shows that on-site inclusionary units are financially infeasible due to project size, location or site characteristics, or that the alternative would further housing opportunities for lower-income households to an equal or greater extent:

1. The provision of some or all of the required inclusionary units at an off-site location.

2. The dedication of suitable land to the city, or entity acceptable to the city, for the construction of the inclusionary units. The acceptability of such dedication shall be based on the suitability of the site in terms of location, size, zoning, timing of construction and other applicable factors. The acceptability of such dedication shall also be based on the fair market value of the dedicated land, in comparison to the amount of in-lieu contribution as calculated above.

3. Acquisition and rehabilitation of existing rental units.

a. The term of existing rental unit affordability shall be extended 55 years longer than any existing affordability term.

b. The existing units shall be affordable to the same income groups as the on-site inclusionary units that they replace.

4. Incorporate attached or detached Accessory Dwelling Units (ADUs) into the project.

5. Provide an affordability term longer than 55 years for fewer than 15% of the units.

6. Provide fewer than 15% inclusionary units, but increase the number of bedrooms in the inclusionary units that are provided.

7. Provide fewer than 15% inclusionary units, but increase the percentage of lower income units.

8. Provide greater than 15% inclusionary overall, but a smaller percentage of lower-income units.

9. Extend the affordability terms of existing inclusionary units.

10. Any combination of the above alternatives.

11. Other alternatives that achieve inclusionary housing not listed above.

12. As a last resort, the developer may be allowed to pay In-Lieu Nexus Fees.

a. The in-lieu contribution shall be paid to the city at the issuance of the building permit for each unit.

b. Such contribution shall be deposited in the city housing fund and can only be used to provide housing affordable to very low and low-income households.

(Ord. 2009-09 § 3, 2009; Ord. 2006-09 § 1, 2006; Ord. 2006-08 § 1, 2006; Ord. 2001-02 § 1, 2001)

19.28.060 City assistance.

The following development concessions may be approved by the decision-making body if it finds that evidence presented by the applicant shows that on-site inclusionary units are financially infeasible due to project size, location or site characteristics, or that the alternative would further housing opportunities for lower-income households to an equal or greater extent. Possible assistance includes the following:

A. A reduction of site development standards or a modification of zoning code or architectural design requirements which exceed the minimum building standards provided in Part 2.5 (commencing with Section 18901) of Division 13 of the California Health and Safety Code for the inclusionary units. These may include, but are not limited to, one or more of the following:

1. Increase the allowable density limits of the zoning district (ie: a Density Bonus).
2. Reduced minimum lot sizes and/or dimensions.
3. Reduced minimum lot setbacks.
4. Reduced minimum outdoor and/or private outdoor living area.
5. Increased maximum lot coverage.
6. Increased maximum building height and/or stories.
7. Reduced on-site parking standards, including the number or size of spaces and garage requirements.
8. Reduced minimum building separation requirements.
9. Reduced street standards, e.g., reduced minimum street widths.
10. Waived, reduced, or deferred planning, plan check, building permit, and/or development impact fees (e.g., capital facilities, park, or traffic fees).
11. Any development standard concession not listed above.

(Ord. 2006-09 § 1, 2006; Ord. 2006-08 § 1, 2006; Ord. 2001-02 § 1, 2001)

19.28.070 Application procedures.

In addition to the application contents required for any associated permits or approvals, an applicant proposing to include inclusionary units in a project shall provide the following information:

- A. The number of proposed inclusionary units and an indication of the target households.
- B. Proposed sales prices or rents for the inclusionary units.
- C. The location, unit size (square feet), and number of bedrooms of inclusionary units.
- D. A description of any proposed differences between the inclusionary units and other project units in terms of construction, appearance, or amenities.
- E. A schedule for completion and occupancy of the inclusionary units compared to a schedule for completion and occupancy of market rate units in the subject development.
- F. An offer to reserve inclusionary units for target households for at least fifty-five years when ownership and fifty-five years when rental. (Ord. 2006-09 § 1, 2006; Ord. 2006-08 § 1, 2006; Ord. 2001-02 § 1, 2001)

19.28.080 Housing agreement.

A. Where required by this chapter, applicants/developers shall draft and agree to enter into a housing agreement with the city. The terms of the draft agreement shall be reviewed and revised as appropriate by the community development director, who shall formulate a recommendation to the decision-making body for final approval.

B. The housing agreement shall include at least the following:

1. The number of inclusionary units, bedroom counts for the inclusionary units and their target households;

2. The standards for determining the affordable rent or affordable sales price and housing cost for the inclusionary units;

3. The location, unit size (square feet), and number of bedrooms of the inclusionary units;

4. The tenure of use restrictions for the inclusionary units;

5. A schedule for completion and occupancy of the inclusionary units and market rate units;

6. A description of remedies for breach of the agreement by either party (the city may identify tenants or qualified purchasers as third party beneficiaries under the agreement);

7. Other provisions to ensure implementation and compliance with this chapter.

C. In the case of for-sale inclusionary units, the housing agreement shall include the following conditions governing the sale and use of inclusionary units during the applicable use restriction period:

1. The inclusionary units shall be sold to and owner-occupied by eligible lower-income households at an affordable sales price and housing cost.

2. The initial and subsequent purchasers of an inclusionary unit shall execute an instrument or agreement approved by the city restricting the sale of the inclusionary unit in accordance with this chapter during the applicable use restriction period. Such instrument or agreement shall be recorded against the parcel containing the inclusionary unit and shall contain such provisions as the city may require to ensure continued compliance with this chapter.

3. The city shall establish maximum resale prices for inclusionary units during the applicable use restriction period, taking into consideration such factors as cost-of-living increases, any improvements made to the unit, and customary closing costs.

4. The owner of an inclusionary unit who wishes to sell the unit shall provide the first right of refusal to purchase the unit to the city and send written notice to the city of their intent to sell not less than sixty calendar days prior to the intended date of sale of the unit. Upon receipt of the owner's notice, the city shall have sixty calendar days to purchase the unit or to assign its right of refusal.

5. The owner shall share with the city any amount received by the owner as a result of the first sale following expiration of the applicable use restriction period that is above the maximum resale price. The city shall deposit its share of any such proceeds in its housing fund.

D. In the case of rental inclusionary units, the housing agreement shall provide for the following conditions governing the use of inclusionary units during the use restriction period:

1. The rules and procedures for qualifying tenants, establishing affordable rent, filling vacancies, and maintaining inclusionary units for qualified tenants;

2. Provisions requiring owners of the rental project to verify tenant incomes on an annual basis and maintain books and records to demonstrate compliance with this chapter;

3. Provisions requiring owners of the rental project to submit an annual report to the city which includes the name, address, and income of each person occupying the inclusionary units, and which identifies the bedroom size and monthly rent or cost of each inclusionary unit.

E. Following execution of the agreement by all parties, the completed housing agreement, or memorandum thereof, shall be recorded and the conditions therefore filed and recorded on the parcel or parcels designated for the construction of inclusionary units. The approval and recordation shall take place prior to final map approval, or, where a map is not being processed, prior to issuance of building permits for such parcels or units. The housing agreement shall be binding to all future owners and successors in interest. (Ord. 2006-09 § 1, 2006; Ord. 2006-08 § 1, 2006; Ord. 2001-02 § 1, 2001)

19.28.090 Nonresidential Inclusionary requirements.

Nonresidential projects subject to the provisions of this chapter shall provide the applicable affordable housing nexus fee for each square foot of new construction. The affordable housing nexus fee shall be adopted by Resolution by the City Council.

19.28.100 Waiver.

Notwithstanding any other provision of this chapter, the requirements of this chapter shall be waived, adjusted or reduced if the applicant shows that there is no reasonable relationship between the impact of a proposed residential project 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 Constitution. To receive a waiver, adjustment or reduction under this section, the applicant must make a showing under this section when applying for a first approval for the residential project, and/or as part of any appeal which the city provides as part of the process for the first approval. (Ord. 2006-09 § 1, 2006; Ord. 2006-08 § 1, 2006)

SECTION 2: CEQA FINDINGS Compliance with California Environmental Quality Act. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, Title 14, Chapter 3 of the California Code of Regulations because it has no potential for resulting in physical change to the environment, directly or indirectly, as it prevents changes in the environment pending the completion of the contemplated possible review of City zoning regulations.

SECTION 3: EFFECTIVE DATE. This Ordinance shall become effective thirty (30) days following adoption.

SECTION 4: SEVERABILITY. If any section, subsection, sentence, clause, phrase or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one (1) or more sections, subsections, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 5: CUSTODIAN OF RECORDS. The documents and materials that constitute the record of proceedings on which this Ordinance is based are located at the City Clerk's office located at 4831 Broadway, Suite 201, American Canyon, CA 94503. The custodian of these records is the City Clerk.

SECTION 6: RESTATEMENT OF EXISTING LAW. Neither the adoption of this Ordinance nor the repeal of any other Ordinance of this City shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license or penalty or the penal provisions applicable to any violation thereof. The provisions of this Ordinance, insofar as they are substantially the same as Ordinance provisions previously adopted by the City related to the same subject matter or relating to the enumeration of permitted uses under the zoning code, shall be construed as restatements and continuations, and not as new enactments.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of American Canyon, State of California, held on the 1st day of October, 2019 by the following vote:

AYES: Council Members Leary, Joseph, Oro, Vice Mayor Aboudamous and Mayor Garcia

NOES: None

ABSTAIN: None

ABSENT: None

The foregoing Ordinance was adopted at a regular meeting of the City Council of the City of American Canyon, State of California, held on the 15th day of October, 2019 by the following vote:

AYES: Council Members Leary, Joseph, Oro, Vice Mayor Aboudamous and Mayor Garcia

NOES: None


ABSTAIN: None

ABSENT: None



Leon Garcia, Mayor

ATTEST:


Suellen Johnston, CMC, City Clerk

APPROVED AS TO FORM:


William D. Ross, City Attorney