



Staff Report

TO: Town of Loomis Planning Commission
FROM: Mary Beth Van Voorhis, Planning Director
DATE: December 15, 2021
RE: DRAFT - INCLUSIONARY ORDINANCE

Recommendation

1. Discuss and provide input regarding the DRAFT Inclusionary Ordinance – Chapter 11.16 Affordable Housing, and;
2. Approve Planning Commission Resolution #21-07 recommending adoption of an Inclusionary Ordinance – Chapter 11.16 Affordable Housing to the Town Council for adoption.

Issue Statement and Discussion

During the 2021-2029 Housing Element Update, the Committee and Planning Commission discussed the creation of an Inclusionary Ordinance to identify acceptable methods to provide affordable housing. It was through this discussion that the recommendation of Policy 9 was added to the 2021-2029 DRAFT Housing Element that was recommended by the Town Council for submittal to California Housing and Community Development (HCD) on May 11, 2021 under Resolution #21-19.

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Policy 9 states:

The Town will recommend adoption of an inclusionary housing ordinance to Town Council. This ordinance will identify acceptable methods to provide affordable housing such as: (a) construction of housing on-site, (b) construction of housing off-site, (c) dedication of land for housing, and (d) payment of an in-lieu or affordable housing linkage fee. Development of this ordinance requires an analysis of the following variables:

- a. Limiting the application of the ordinance to developments exceeding a certain size.
- b. Percentage of housing units required to be set aside as affordable.
- c. Feasibility of waiving 100 percent of application processing fees for developments in which 5 percent of units are affordable to extremely low-income households.
- d. Design and building requirements.
- e. Timing of affordable unit construction.
- f. Determination of a fee in lieu of development affordable units.
- g. Developer incentives, such as fee deferrals and waivers.
- h. Administration of affordability control.

Following adoption of an inclusionary housing ordinance, an evaluation of its effects on the cost and supply of housing will be conducted. If constraints are identified, the inclusionary housing ordinance will be written

to minimize the constraints and increase the chances of housing development at multiple income levels.

Responsible Entity: Planning Director
Timeframe: Analyze variables to be incorporated in the inclusionary ordinance by December 2023 and recommend adoption to Town Council by March 2024.
Funding: General Fund
Quantified Objective: 15 lower-income units, encourage 5 in areas of concentrated overpayment.

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At the Planning Commission meetings of July 27, 2021 and August 24, 2021, the Planning Commission heard presentations from the Town Attorney and housing industry experts regarding inclusionary housing ordinances. The Planning Commission continued their discussion with Staff at their meeting of October 26, 2021 which provided Staff sufficient direction to DRAFT an Inclusionary Ordinance for Planning Commission consideration. The Town Attorney has prepared the attached DRAFT Inclusionary Ordinance for your review, discussion, and recommendation to Town Council to proceed with adoption.

ATTACHMENTS

1. DRAFT - Inclusionary Ordinance Chapter 11.16 - Affordable Housing
2. Planning Commission Resolution #21-07

ORDINANCE _____

**AN ORDINANCE OF THE TOWN COUNCIL
OF THE TOWN OF LOOMIS
ADDING CHAPTER 11.16 AFFORDABLE HOUSING**

The Town Council of the Town of Loomis does ordain as follows:

Section 1. Amendment: Chapter 11.16 of the Loomis Municipal Code is hereby added to read as follows:

11.16.010 Purpose and Intent

The purpose of this Chapter is to:

- A. Provide a Chapter implementing Program 9 of the 2021-2029 Housing Element of the Loomis General Plan.
- B. Promote the provision of housing for all economic segments of the community.
- C. Ensure that affordable rental housing is managed, maintained, and operated consistently with its status as an important community asset.

11.16.020 Findings

The Town Council finds that:

- A. The Housing Element of the Town's General Plan, which guides and directs new growth and development, calls for an implementing Chapter to further the affordable housing goals of the Town and address State housing requirements. The lack of affordable housing has a direct impact upon the health, safety, and welfare of Town residents.
- B. Federal and State housing subsidy programs are insufficient to address the housing needs of very low and lower income households.
- C. Affordable rental housing developed under this Chapter represents a unique and valuable community asset. Unlike for-sale housing, the households benefiting directly from affordable rental housing have only a limited ability to control such issues as maintenance and repair of units, leasing and operating practices, and on-site security. Ensuring that this asset is well managed and maintained for the duration of the affordability controls furthers important public goals by providing a safe and healthy living environment for households most in need, and by ensuring that rental housing developments do not deteriorate and create or exacerbate urban blight within the Town.
- D. Certain for-sale housing developments contain significant areas and buildings that are under common ownership and control, typically through a homeowner's association, and thus present some of the same issues that arise in the case of rental housing. For that reason, it is important to ensure that such common areas and buildings are also well managed and maintained.

11.16.030 Definitions

- A. "Accessory Dwelling Unit" or "ADU" shall have the meaning as set forth in Government Code section 65852.2(j)(1), as that section may be amended from time to time.
- B. "Affordable Housing Agreement" means the agreement described in Section 11.16.100 of this Chapter between the Developer of a Residential Project and the Town detailing how a Residential Project's inclusionary requirements will be met.
- C. "Affordable Housing Cost" means, for Residential Projects with for-sale units, a monthly payment which shall not exceed the product of 30 percent of 70 percent of the Area Median Income, adjusted for household size appropriate for the unit and inclusive of mortgage principal and interest, property taxes, insurance, and any applicable special taxes or homeowners' association dues. As used in this section, "appropriate for the unit" means a household of one person in the case of a studio **unit**, two persons in the case of a one-bedroom **unit**, three persons in the case of a two-bedroom **unit**, four persons in the case of a three-bedroom **unit**, and five persons in the case of a four-bedroom **unit**.
- D. "Affordable Rent" means an affordable rent determined in accordance with any state or federal funding program used to finance development or construction of the Units within a particular Residential Project. If no such state or federal funding program is involved, or if the program does not specify how affordable rent is to be determined, "Affordable Rent" shall have the meaning as set forth in Health and Safety Code Section 50053, as that section may be amended from time to time.
- E. "Affordable Unit" means a Dwelling Unit which, pursuant to a recorded instrument, may only be sold or rented to a household of a designated income or for a restricted sale price or rent.
- F. "Area Median Income" means area median income for Placer County as published by the California Department of Housing and Community Development pursuant to Health and Safety Code Section 50093, as that section may be amended from time to time.
- G. "Developer" means the Owner of any real property upon which a Residential Project is to be constructed or the Owner's duly authorized designee.
- H. "Development Standards" means the standards governing development of real property within the Town as set forth in the Town's Municipal Code, uncodified ordinances, and any applicable regulations adopted pursuant thereto.
- I. "Dwelling Unit" or "Unit" means one or more rooms that include permanent provision for living, sleeping, eating, cooking, and sanitation that are occupied for residential purposes by one or more persons living as a single housekeeping unit. All rooms within a dwelling unit must have their principal entrance from inside said dwelling unit. For purposes of this Chapter, the term "Dwelling Unit" does not include "Accessory Dwelling Units" or "Junior Accessory Dwelling Units."
- J. "Feasible" means that even after complying with the requirements of this Policy, the Residential Project as a whole remains reasonably capable of being financed, built and marketed, given the economic conditions prevailing at the time of approval of the Affordable Housing Agreement and taking into account the incentives and alternatives that may be made available to the Residential Project and under this Chapter. In all cases, feasibility shall be determined by the Town in its sole discretion.

- K. "For-Sale Unit" means a Dwelling Unit developed as part of a Residential Project which the Developer intends will be offered for individual sale or which is customarily offered for individual sale, including but not limited to single-family detached homes, duplex units, condominiums, and cooperatives.
- L. "General Plan" means the General Plan of the Town of Loomis, as it may be amended from time to time.
- M. "Inclusionary Unit" means a Dwelling Unit developed in accordance with an Affordable Housing Agreement to satisfy the requirements of this Chapter. Inclusionary Unit includes "For Sale Inclusionary Unit" which is a Dwelling Unit made available for sale at an Affordable Housing Cost and a "Rental Inclusionary Unit" which is a Dwelling Unit made available for rent at an Affordable Rent.
- N. "In-Lieu Fee" means a fee established by the Town Council based on an analysis of the local fees typically necessary to provide gap financing to an affordable housing developer sufficient to allow the production of Affordable Units. In-lieu fees will be deposited in a separate Town fund and used to assist in the development of affordable housing.
- O. "Junior Accessory Dwelling Unit" or "JADU" shall have the meaning as set forth in Government Code section 65852.22(h)(1) as that section may be amended from time to time.
- P. "Lower Income Household" means the same as how that term is defined in Health and Safety Code section 50079.5 as amended from time to time.
- Q. "Rental Unit" means a Dwelling Unit developed as part of a Residential Project which the Developer intends to offer for lease or rent, or which is customarily offered for lease or rent.
- R. "One Location" means all adjacent land within the Town owned or controlled by the same Developer or Owner, the property lines of which are contiguous at any point, or the property lines of which are separated only by a public or private street, road or other public or private right-of-way.
- S. "Owner" includes the person, persons, corporation, or public or private entity having sufficient legal interest in real property to commence and maintain development of a Residential Project on the real property, or the Owner's agent, assignee, or successor in interest.
- T. "Ordinance" means this Inclusionary Housing Ordinance of the Town of Loomis.
- U. "Residential Lot" means a parcel of land that has been legally created with the intention that it will be used for the development of one or more Dwelling Units.
- V. "Residential Project" means any project involving the construction of one or more Dwelling Units at One Location and requiring the issuance of a building permit, or the creation of five or more Residential Lots at One Location, including in the aggregate all Dwelling Units or Residential Lots for which building permits or discretionary approvals have been applied for from or granted by the Town. Where all or a portion of the Inclusionary Units for a Residential Project are built off-site, the term "Residential Project" shall also include all residential units built at the off-site location(s), including all Inclusionary Units and market-rate units built as part of the same development.

- W. "Town Manager" means the Town manager of the Town or their designee.
- X. "Very Low Income" means the same as how that term is defined in Health and Safety Code section 50105, as that section may be amended from time to time.
- Y. "Zoning Regulations" means Title 13 of the Municipal Code of the Town.

11.16.040 Applicability—General

All Residential Projects within the Town shall comply with the requirements set forth in this Chapter, with the following exceptions:

- A. Residential Projects which have acquired a vested right under California law to proceed with development without complying with this Chapter.

11.16.050 No Town Approvals Until Compliance

No building permit will be issued and no use permit, final parcel or subdivision map or other agreement with the Town will be approved in connection with any Residential Project until the Town Manager confirms in writing one of the following:

- A. For Residential Projects proposing ten (10) or more Dwelling Units or Residential Lots, an Affordable Housing Agreement has been executed by the Developer and the Town and a memorandum of that agreement recorded with the Placer County Recorder's Office.
- B. For Residential Projects proposing less than ten (10) Dwelling Units or Residential Lots, the Developer has paid in-lieu fees or committed to construct an Accessory Dwelling Unit consistent with Section 11.16.060(A)(3)(ii) and (iii).
- C. The Developer has requested, and the Town Council has determined that it is not Feasible to comply with the requirements of this Chapter. Full compliance shall be presumed Feasible unless the Town Council expressly determines otherwise. Any request by a Developer for such a determination shall be made no later than the time of application for Town approval that triggers the obligation to comply with this Chapter.

11.16.060 Standards for Implementation

- A. Calculation of inclusionary housing requirements.
 - 1. **Rental Units.** Ten percent (10%) of all Rental Units in a Residential Project shall be made available at Affordable Rents to Very Low and Low Income Households. Five percent (5%) shall be affordable to Very Low Income Households and five percent (5%) shall be affordable to Lower Income Households.
 - 2. **For-Sale Units.** Ten percent (10%) of all For-Sale Units in a Residential Project shall be made available at an Affordable Cost to Lower Income Households.
 - 3. **Fractional Units.**
 - i. For Residential Projects proposing ten (10) or more Dwelling Units or Residential Lots, if the inclusionary housing requirement for a Residential Project yields a fractional unit, the Developer shall pay an in-lieu fee for the fractional unit.

- ii. For Residential Projects proposing five (5) or more but less than ten (10) Dwelling Units or Residential Lots, the inclusionary housing requirement for a Residential Project yields a fractional unit. In this case, the Developer shall pay an in-lieu fee for the fractional unit but may substitute one (1) ADU or JADU for payment of in-lieu fees on five (5) Dwelling Units or Residential Lots, or two (2) ADUs or JADUs for payment of all in-lieu fees.
 - iii. For Residential Projects proposing less than five (5) Dwelling Units, the inclusionary housing requirement for a Residential Project yields a fractional unit. In this case, the Developer shall either pay an in-lieu fee for the fractional unit or may substitute, at their choosing, one ADU or JADU for payment of in-lieu fees.
4. **Substitution of Rental Units for For-Sale Units.** The Town will permit a Developer to substitute Rental Units to meet all or a portion of the inclusionary obligation for For-Sale Units for the Residential Project. For-Sale Units may not be substituted for Rental Units.
- i. Such Rental Units shall be made available at Affordable Rents in accordance with Section 11.16.060(A)(1).
 - ii. The decision to substitute rental Units for For-Sale Units shall be made prior to approval of the Affordable Housing Agreement for the Residential Project.
- B. General standards for development. Except as may otherwise be provided in the Affordable Housing Agreement for a Residential Project, a Developer shall comply with all of the following requirements in fulfilling the obligations under this Chapter:
1. **Location of Inclusionary Units.** Inclusionary Units shall be built on site, within the Residential Project
 2. **Timing of Development.** Inclusionary Units shall be constructed and offered for sale or rent in accordance with this Chapter concurrently with or prior to completion of market rate Units within the Residential Project or phase thereof. As used in this Chapter, “concurrently” means that a proportionate share of Inclusionary Units must be completed by the time each twenty-five (25%) of the market rate units within a Residential Project are completed.
 3. **Exterior Appearance.** Inclusionary Units shall be visually and architecturally consistent with and similar in quality of construction materials to market-rate Units within the Residential Project or phase thereof.
 4. **Size of Inclusionary Units; Bedroom Counts.** Inclusionary Units may be smaller than the market rate Units within the Residential Project, provided that the Inclusionary Units contain not less than ninety percent (90%) of the interior living space of the smallest market rate unit within the Residential Project. The number of bedrooms in Multifamily Rental Inclusionary Units shall be generally consistent with the bedroom mix of market rate Units within the same Residential Project.
 5. **Development Standards.** Inclusionary Units shall comply with the same Development Standards applicable to market rate Units within the Residential Project.

11.16.070 Incentives and Alternatives

A. Incentives.

1. Requests for regulatory or financial incentives will be considered on a project-by-project basis. All requests for incentives under this Chapter shall be accompanied by such information as the Town deems necessary in order to evaluate the request. Incentives may include, but are not limited to:
 - i. Reduced parking in relationship to parking requirements associated with each residential zoning category.
 - ii. Priority permit processing.
 - iii. Waiver or modification in Development Standards.
 - iv. Technical assistance in project development.
2. Incentives must be approved by Town Council except to the extent the authority to review and approve such incentives has been delegated to the Town Manager.

B. Alternatives.

1. The Town Council may allow the Developer to satisfy all or part of the Inclusionary Housing requirement through one of the alternative methods described in this section if the Town Council determines, at its sole discretion, that the alternative will achieve goals set forth in the Town's Housing Element.
2. In approving any alternative, the Town Council may impose such conditions as it deems appropriate in order to further the purposes of this chapter.
3. The Town Council, at its sole discretion, may allow the Developer to satisfy all or part of the Inclusionary Housing requirement through an alternative method if the Town Council determines, at its sole discretion, that the proposed alternative meets the general standards for approval set forth in Section 11.16.070.B.4. Such alternatives may include, but are not limited to:
 - i. **Acquisition, Rehabilitation, and Conversion.** The Developer may propose to acquire, rehabilitate, and convert existing market rate Units to Inclusionary Units. Duration of affordability restrictions shall meet standards in Section 11.16.100.B.3.
 - ii. **Off-Site Construction.** The Developer may propose to construct Inclusionary Units at an off-site location.
 - iii. **Preservation of At-Risk Units.** The Developer may propose the acquisition and preservation of at-risk Affordable Rental Units. In order for the proposed Units to qualify as Inclusionary Units, the Town Manager must determine that the units are currently Affordable Units available at Affordable Rents but are at-risk of converting to market rate Units within the next five (5) years due to expiring affordability covenants. Duration of affordability restrictions shall comply with standards in Section 11.16.100.B.3.
4. Standards for Approval of Alternatives. Any proposed alternative by a Developer must comply with the following general standards.

- i. **Town Approval of Third-Party Developer.** If the Developer is proposing to partner with another Developer to carry out the alternative, such as a Developer specializing in affordable housing, the Town Council must approve the third-party Developer.
 - ii. **Financing Plan for Inclusionary Units.** The Developer must submit a financial analysis for the proposed alternative project (pro forma) and such additional information as the Town Council deems necessary to demonstrate that sufficient funding will be available to complete, operate, and maintain the Affordable Units developed through the proposed alternative.
 - iii. **Suitability of Alternative Site.** If the Developer is proposing to construct Inclusionary Units off-site, the proposed site must be appropriately zoned to allow for the proposed development, be physically and environmentally suitable to develop housing, and be of sufficient acreage to develop the required number of Inclusionary Units. The proposed off-site development must include full on- and off-site infrastructure including paved street access, frontage improvements (curb, gutter, sidewalk, streetlights, etc.), and utility service connections (installed underground if otherwise required by the Town for the development of the site).
 - iv. **Timing of Development.** Inclusionary Units developed through the proposed alternative shall generally be constructed concurrently with or prior to completion of market rate Units within the Residential Project. If the Inclusionary Units will not be available for occupancy concurrently with market rate Units within the Residential Project, the Town Council may require that the Developer provide performance security in an amount determined to be sufficient to secure completion of the Inclusionary Units.
5. In approving any alternative, the Town Council may impose such conditions as it deems appropriate in order to further the purposes of this Chapter.

11.16.080 Administration

- A. The Town Manager may promulgate guidelines for the implementation of this Chapter.
- B. The Town Council may, by resolution, establish a reasonable fee for the administration of this Chapter, including, but not limited to, the annual monitoring of Inclusionary Units.
- C. Except as otherwise required by this Chapter, the Town Manager is authorized to approve Affordable Housing Agreements. A decision by the Town Manager approving or denying an Affordable Housing Agreement, or denying any incentive requested by the Developer that the Town Manager is authorized to approve, may be appealed to the Town Council. On appeal, the Town Council will determine whether the Town Manager's decision conforms to the requirements of this Chapter. No appeal may be filed under this Chapter for the purpose of seeking Town Council review of the underlying merits of the Residential Project.

11.16.90 Monitoring

Inclusionary Units will be monitored by the Town to verify that the Dwelling Units are and continue to be affordable.

11.16.100 Affordable Housing Agreement

- A. For Residential Projects proposing ten (10) or more Dwelling Units or Residential Lots, evidence of compliance with this Chapter shall be in the form of an Affordable Housing Agreement between the Developer and the Town.
- B. Affordable Housing Agreements shall require full compliance with this Chapter and shall specifically address all the following:
 - 1. Number, location, household incomes targeted and affordability of Inclusionary Units.
 - 2. Calculation of Affordable Housing Price for For-sale Units and Affordable Rent for Rental Units.
 - 3. Duration of affordability of the Inclusionary Units according to the following standards:
 - i. Rental Units shall remain affordable for no less than fifty-five (55) years.
 - ii. For-sale Units shall be regulated with the goal of preserving affordability for five (5) years. Upon a showing that the owner of the Inclusionary Unit has been unable to identify a qualified buyer for the Unit after a good faith affirmative marketing effort, the Town Manager may: (1) permit the owner to sell the Unit to a buyer who is not income qualified but who will remain obligated to resell the Unit at an Affordable Price to an income qualified Household for the remainder of the five year period; or (2) permit the early termination of the affordability restrictions on the Unit as part of a program that will ensure that the Town recaptures an amount that reflects the gap between the affordable and market prices for the Unit at the time of the Unit's sale to the current owner.
 - 4. In the case of Residential Projects containing rental units or with significant areas or buildings under common ownership or control (for example, condominiums and apartments), provisions designed to ensure that the Residential Project will be well managed and maintained throughout the term of the affordability controls. Prior to initial occupancy, the Developer shall be required to provide, for Town review and approval, a management plan that addresses in detail issues such as maintenance of common areas and buildings (including the provision of adequate reserves), operations, and leasing practices. The Management Plan shall provide for Town enforcement of its terms.
 - 5. In the case of Residential Projects that satisfy all or a portion of the requirements of this Chapter through an alternative, the Affordable Housing Agreement shall specify how the proposed alternative is consistent with Section 11.16.070.
 - 6. Any other provisions required by the Town to document the obligations imposed by this Chapter.
- C. Master Affordable Housing Agreement. A Developer may propose a Master Affordable Housing Agreement for any Residential Project which the Developer anticipates will be developed over an extended period of time. Developers are encouraged to request Master Affordable Housing Agreements for Residential Projects containing a mixture of For-Sale and Rental Units, or when the Developer believes that the Project can be enhanced and the purposes of this Chapter better served by modifying the standard requirements of this Chapter. The Master Affordable Housing Agreement will contain the general rules that will govern the development of the Inclusionary Units for the Residential Project. It is anticipated that details such as, for example, the specific location of the Inclusionary Units within the overall project will be addressed through map- or project-

specific Affordable Housing Agreements that will incorporate the terms set out in the Master Agreement.

11.16.110 Judicial Review

Nothing in this Chapter shall in any way preclude or limit any aggrieved party from seeking judicial review after such person has exhausted the administrative remedies provided in this Chapter. However, it shall be conclusively presumed that a litigant has not exhausted administrative remedies of any and all issues not raised in the administrative proceedings authorized herein.

Section 2. Severability

If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance for any reason shall be held to be invalid or unconstitutional, the decision shall not affect the remaining portions of the Ordinance. The Council of the Town of Loomis hereby declares that it would have passed this Ordinance and each article, section, subsection, paragraph, sentence, clause, or phrase which is a part thereof, irrespective of the fact that any one or more articles, sections, subsections, paragraphs, sentences, clauses or phrases are declared to be invalid or unconstitutional.

Section 3. Effective Date and Publication

This Ordinance shall take effect thirty (30) days after its adoption. The Town Clerk shall cause this Ordinance to be published in the Loomis New and to be posted at three (3) locations within fifteen (15) days after its passage; shall certify to the adoption and posting of the Ordinance; and shall cause this Ordinance and its certification to be entered in the Book of Ordinances of the Town of Loomis.

The foregoing Ordinance was introduced at a regular meeting of the Council of the Town of Loomis held on _____, 2022, as was ADOPTED AND ORDERED published and post a meeting of the Council held on the ____ day of _____, 2022 by the following vote:

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAINED:**

_____, Mayor

ATTEST:

APPROVED AS TO FORM:

Carol Parker, Deputy Town Clerk

Jeffrey Mitchell, Town Attorney

RESOLUTION NO. 21-07

**A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF LOOMIS
RECOMMENDING ADOPTION OF AN INCLUSIONARY ORDINANCE
CHAPTER 11.16 – AFFORDABLE HOUSING
TO THE TOWN COUNCIL**

WHEREAS, the 2021-2029 Housing Element, Policy 9 (adopted by Town Council Resolution #21-19, May 11, 2021) provides for adoption of an Inclusionary Housing Ordinance; and

WHEREAS, the Planning Commission meetings of July 27, 2021 and August 24, 2021 provided presentations from the Town Attorney and housing industry experts regarding inclusionary housing ordinances; and

WHEREAS, the Planning Commission continued their discussion with staff at their meeting of October 26, 2021 which provided sufficient direction to staff to draft an Inclusionary Ordinance for Planning Commission consideration; and

WHEREAS, Town staff prepared a DRAFT Inclusionary Ordinance, Chapter 11.16 that was reviewed and discussed by the Planning Commission at their meeting of December 15, 2021; and

NOW THEREFORE, the Planning Commission of the Town of Loomis, at its meeting of December 15, 2021, did resolve as follows:

1. The draft Inclusionary Ordinance Chapter 11.16 – Affordable Housing is hereby recommended to the Town Council for adoption.

ADOPTED this 15th day December 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Sarah Jennings
Secretary to the Planning Commission

Greg Obranovich
Planning Commission Chairman