

**ORDINANCE NO. 1178**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO AMENDING TITLE 10  
"PLANNING AND ZONING" OF THE SAN ANSELMO MUNICIPAL CODE TO ADD CHAPTER 21  
"AFFORDABLE HOUSING"**

**WHEREAS**, all communities in the State of California, including the Town of San Anselmo, face a housing crisis that includes the lack of access to affordable housing, which has a direct negative impact on the public health, safety, and welfare of the residents of San Anselmo; and

**WHEREAS**, inclusionary housing policies, and related affordable housing in-lieu and non-residential/commercial linkage fees, are tools that help jurisdictions increase the supply of affordable housing units; and

**WHEREAS**, the provision of safe and stable housing for households at all income levels is in the public interest; and

**WHEREAS**, California Government Code section 65580 provides that the availability of housing is of vital Statewide importance and that local governments have a responsibility to use their powers to facilitate the development of housing and make adequate provision for the housing needs of all economic segments of the community; and

**WHEREAS**, the Town of San Anselmo was awarded funding pursuant to a State Grant established by California Senate Bill 2 (SB 2) for actions to increase housing, and a portion of this money was utilized in collaboration with other Marin jurisdictions to formulate inclusionary housing policies and supporting fee studies; and

**WHEREAS**, all California jurisdictions receive a target number of homes for which they must plan at various income levels called the Regional Housing Needs Allocation (RHNA) and the RHNA number for the Town of San Anselmo's 2023-2031 Housing Element cycle has increased to 833 units up from the previous 106 units; and

**WHEREAS**, the adoption of inclusionary housing policies is critical for the Town in reaching its RHNA housing requirements for very low, low, and moderate income households; and

**WHEREAS**, the proposed Ordinance Amendment adds Chapter 21 "Affordable Housing" to Title 10 "Planning and Zoning" of the San Anselmo Municipal Code, which would provide for inclusionary housing requirements, establish an affordable housing fund, and authorize affordable housing in-lieu fees and non-residential/commercial linkage fees "(Ordinance Amendment)"; and

**WHEREAS**, using the SB 2 funding, the Town of San Anselmo collaborated with several Marin jurisdictions lead by Strategic Economics, Inc. and Vernazza Wolf Associates (Consultants) on the development of a common inclusionary housing policy; and

**WHEREAS**, Consultants completed an In-Lieu Housing Fee Study and a Non-Residential/Commercial Linkage Fee Study (Fee Study Reports), which studies support the adoption of said fees; and

**WHEREAS**, Consultants used appropriate, best-practices methodology to determine the maximum amount of said fees to mitigate the burdens created by residential and non-residential/commercial development, and demonstrate that there is a reasonable relationship between the need for affordable housing and the impacts of the development described in the Fee Study Reports for which the corresponding fee is charged, and that there is also a reasonable relationship between the fee's use and the type of development for which the fee is charged; and

**WHEREAS**, the Fee Study Reports include an economic feasibility analysis that determined the fees as recommended would be feasible; and

**WHEREAS**, in compliance with Assembly Bill 602 (AB 602), Government Code section 66000, to ensure that the fractionable affordable housing in-lieu fee and non-residential commercial linkage fee recommended herein does not exceed the actual affordable housing impacts attributable to the development projects on which the fee is imposed, the Town Council will consider the Fee Study Reports; and

**WHEREAS**, based on the findings above, the Town desires to further the public health, safety, and welfare by requiring residential and non-residential/commercial projects in the Town to mitigate their impact on the need for affordable housing in San Anselmo; and

**WHEREAS**, the Planning Commission held a duly noticed public hearing on May 15, 2023 to consider recommendation of said Amendments to the Town Municipal Code; and

**WHEREAS**, on May 15, 2023, the Planning Commission of the Town of San Anselmo adopted Resolution No. 2023-08 to recommend Town Council approval of the Affordable Housing Requirements and Program Regulations; and

**WHEREAS**, public notice of the Town Council hearing to consider the Ordinance Amendment was published in the Marin Independent Journal on May 11, 2023; and

**WHEREAS**, the Town Council held a public hearing on May 23, 2023, to consider the Planning Commission recommendation and introduce the draft Ordinance; and

**WHEREAS**, on May 23, 2023, the Town Council unanimously approved Resolution number 4497 for the establishment of Affordable Housing requirements and Program regulations; and

**WHEREAS**, on May 23, 2023, the Town Council unanimously approved Resolution number 4498 for the adoption of Affordable Housing In-Lieu fees and Commercial/Non-residential Linage fees; and

**WHEREAS**, the Ordinance Amendment is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that the Amendment will have a significant effect on the environment; the Amendment will make no changes to land uses, development intensities, or the rate at which development is expected to occur, and is therefore will have no significant environmental effect; and

**WHEREAS**, the adoption of the proposed Ordinance Amendment is consistent with the Town's current and draft Housing Element, both of which contain policies to adopt inclusionary housing policies and related fees to be deposited into an affordable housing fund; and

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO DOES ORDAIN AS FOLLOWS:**

**SECTION 1:** Environmental Review. The Ordinance Amendment is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that the Amendment will have a significant effect on the environment. The Amendment will make no changes to land uses, development intensities, or the rate at which development is expected to occur and therefore will have no significant environmental effect.

**SECTION 2:** The above recitals are true and correct and are incorporated as findings herein.

**SECTION 3:** Ordinance Amendment. Chapter 21 "Affordable Housing" is hereby added to Title 10 "Planning and Zoning" of the San Anselmo Municipal Code as follows:

**10-21-010 Purpose and Intent.**

- a. The purpose of this Chapter is to ensure that new residential and non-residential development projects contribute to the availability and attainment of decent, affordable housing to a broad range of households with varying income levels throughout the Town of San Anselmo.
- b. These requirements implement the Town's Housing Element by assisting in meeting the Town's Regional Housing Needs obligations, providing funding to facilitate affordable housing development, and affirmatively furthering fair housing by ensuring that affordable housing is constructed in all parts of the Town.
- c. The Town Council desires to provide and maintain affordable housing opportunities through an affordable housing in-lieu fee, the funds of which will be deposited into the Affordable Housing Fund to be used in the development of affordable housing and related programs in the Town. The non-residential/commercial linkage fee requirements will assist in alleviating the impacts of the demand for new affordable housing created by new non-residential development.

**10-21-020 Definitions.** For the purposes of this Chapter, the following definitions apply:

- a. "Affordable housing fund" means the fund established pursuant to Section 10-21.050 of this Chapter.
- b. "Affordable housing unit" means a dwelling unit that shall be offered at an affordable rent or affordable ownership cost to very low-, low- or moderate-income households.
- c. "Common ownership or control" means property owned or controlled by the same person, persons, or entity, or by separate entities in which any shareholder, partner, member, or family member of an investor of the entity owns ten percent or more of the interest in the property.
- d. "Housing in-lieu fee" means the applicable fee established pursuant to Section 10-21.060 of this Chapter.
- e. "Low income households" or "low income" means households with incomes no greater than the maximum income for low income households for Marin County as published annually by the California Department of Housing and Community Development (HCD) in California Code of Regulations Title 25, Section 6932 (or successor provision).
- f. "Moderate income households" or "moderate income" means households with incomes no greater than the maximum income for moderate income households for Marin County, as published annually by the California Department of Housing and Community Development (HCD) in California Code of Regulations Title 25, Section 6932 (or successor provision).
- g. "Non-residential development project" means an application for a planning permit or building permit that includes the new construction of gross square feet of non-residential space or the conversion of a residential use to a non-residential use.
- h. "Non-residential/commercial linkage fee" means the applicable fee established pursuant to Section 10-21.060 of this Chapter.
- i. "Rental unit" means a dwelling unit that is intended to be offered for rent or lease and that cannot be sold individually in conformance with the Subdivision Map Act.
- j. "Residential development project" means a project at one location to create one or more additional dwelling units, convert nonresidential uses to dwelling units, subdivide a parcel to create one or more separately transferrable parcels intended for residential development, or implement a condominium conversion, including development constructed at one time and in phases. "One location" shall include all adjacent parcels of land under common ownership or control with contiguous property lines at any point, or the property lines of which are separated by a public or private street, road, or public or private right-of-way.
- k. "Very low income households" or "very low income" means households with incomes no greater than the maximum income for very low-income households for Marin County, as published annually by the California Department of Housing and Community Development (HCD) in California Code of Regulations Title 25, Section 6932 (or successor provision).

**10-21-030 Affordable Housing Requirements.**

- a. **Residential Development Projects – General Requirements.** Any new residential development project shall be developed to provide affordable housing units to very low, low, moderate, and above moderate-income households in accordance with the provisions of this Chapter and applicable Town policies.
- b. **Affordable Housing Units—Percentage Required, In-Lieu Fees, Target Incomes.** Residential development projects shall provide affordable housing units and/or pay housing

in-lieu fees in accordance with the policies and procedures specified in the Affordable Housing Requirements and Program Regulations, as adopted, and amended from time to time by Town Council Resolution.

c. **Exemptions.** The requirements of this Chapter do not apply to:

1. Projects where a building permit application has been accepted as complete by the Town prior to the effective date of this Chapter; provided however that any extension or modification of such a permit shall not be exempt.
2. Any structure proposed to repair or replace a building that was damaged or destroyed by fire or other calamity so long as the total number of units, square footage, and land use of the building remains the same and construction of the replacement building begins within one (1) year of the damage's occurrence.
3. Single-family structure.
4. Any Accessory Dwelling Unit or Junior Accessory Dwelling unit approved by the Town.
5. Any residential development project exempted by State law as may be amended from time to time.

d. **Density Bonus.** An applicant may submit a separate application for a housing density bonus pursuant to applicable State law and San Anselmo Municipal Code Title 10, Chapter 11 "Density Bonus", if eligible.

e. **Enforcement.**

1. The Town Attorney is authorized to abate violations and to enforce the provisions of this Chapter and all implementing regulations and resale controls placed on affordable housing units, by civil action, injunctive relief, and/or any other proceeding permitted by law including without limitation foreclosure.

2. It shall be unlawful, a public nuisance, and a misdemeanor for any person/entity to sell or rent an affordable unit at a price or rent exceeding the maximum allowed under this Chapter and implementing regulations, or to a household not qualified hereunder, and such person/entity shall be subject to a fine of five hundred dollars (\$500) per month plus restitution of the amount charged that exceeded the maximum allowed under this Chapter from the date of original noncompliance until the affordable unit is in compliance with this Chapter and implementing regulations. Fine monies collected that exceed the cost of enforcement shall be deposited into the Affordable Housing Fund.

3. The remedies provided herein nonexclusive and cumulative and shall not preclude the Town from any other remedy or relief to which it is entitled under law or equity.

**10-21-040 Administration.** The Town Council shall adopt and may amend from time to time by Resolution, implementing Affordable Housing Requirements and Program Regulations consistent with the provisions of this Chapter and the Housing Element for the purpose of carrying out the administration of this Chapter. A copy of the Affordable Housing Requirements and Program Regulations shall be on file with the Town Clerk's Office and made available for public examination and posted on the Town's website. The Affordable Housing Requirements and Program Regulations shall set forth affordable housing requirements, affordable housing in-lieu fee requirements, and non-residential/commercial fee requirements. The Planning Director or designee is responsible for administering this Chapter. As part of this administration, the Director may perform the following tasks including, but not limited to

interpret the provisions of this Chapter and the Affordable Housing Requirements and Program Regulation and establish operational and procedural requirements such as tenant eligibility, application processes, waitlist management, and income verification requirements.

**10-21-050 Affordable Housing Fund.** An Affordable Housing Fund is established to receive all housing impact and other applicable fees and funds.

a. All applicable affordable housing in-lieu fees and non-residential/commercial linkage fees collected shall be deposited into the Affordable Housing Fund. The monies deposited in the Affordable Housing Fund, with any interest earned, shall be used solely to increase, and improve the supply of housing affordable to moderate, low, and very low-income households, consistent with the goals and policies contained in the Town's Housing Element and affordable housing requirements and policies.

b. The Affordable Housing Fund shall be administered by the Planning Director who may develop procedures to implement said fund consistent with the requirements of this Chapter and subject to any adopted budget of the Town and generally acceptable accounting and procurement processes.

**10-21-060 Affordable Housing In-Lieu Fees and Non-Residential/Commercial Linkage Fees.**

a. Affordable housing in-lieu fees and non-residential/commercial linkage fees (fees) are hereby established for residential development projects and non-residential/commercial development projects. The amount of said fees shall be established by Town Council Resolution, as may be amended from time to time. The amount of fees shall not exceed the cost of mitigating the impact residential or non-residential/commercial development projects on the need for affordable housing in the Town of San Anselmo.

b. All such fees shall be deposited in the Affordable Housing Fund described in Section 10-21-040 herein.

c. Payment of fees shall be due at the issuance of the building permit for the project. Fees shall be calculated based on the fee schedule in effect at the time the building permit is issued, unless State law specifies that the Town must use a fee schedule in effect at an earlier date.

**SECTION 5:** Severability. The Town Council hereby declares every section, paragraph, sentence, clause, and phrase is severable. If any section, paragraph, sentence, clause, or phrase of these ordinance amendments are for any reason found to be invalid or unconstitutional, such invalidity, or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses or phrases.

**SECTION 6:** Effective Date. This Ordinance Amendment shall go into effect thirty (30) days from its adoption. Prior to the expiration of fifteen (15) days of adoption, this Ordinance Amendment, or a summary thereof pursuant to Government Code section 36933, shall be published at least once in a newspaper of general circulation, along with the names of the members of the Town Council voting for and against its adoption.

**THE FORGOING ORDINANCE** was introduced at a regular meeting of the San Anselmo Town Council on May 23, 2023, and was adopted at a regular meeting of the San Anselmo Town Council on June 21, 2023, by the following vote:

<b>AYES:</b>	<b>Councilmember:</b>	<b>Kullaway, Fineman, Colbert, Burke, Mayor Burdo</b>
<b>NOES:</b>	<b>Councilmember:</b>	<b>None</b>
<b>ABSTAIN:</b>	<b>Councilmember:</b>	<b>None</b>
<b>ABSENT:</b>	<b>Councilmember:</b>	<b>None</b>
<b>RECUSED:</b>	<b>Councilmember:</b>	<b>None</b>

DocuSigned by:  
**APPROVED:** Steve Burdo  
Steve Burdo, Mayor

DocuSigned by:  
**ATTEST:** Serge Avila  
Serge Avila, Town Clerk