

**ARTICLE 1. RESIDENTIAL DISTRICTS****13-38.1. Affordable housing requirements for new residential developments.**

For any proposed single or multiple-family residential or mixed use projects with ten (10) dwelling units or more, the affordable housing requirements set forth in Chapter XVII (Affordable Housing Ordinance) of Title 13 shall apply unless exempted otherwise.

**CHAPTER XVII. AFFORDABLE HOUSING ORDINANCE****13-326. Purpose.**

The purpose of this ordinance is to establish an Affordable Housing Program that facilitates the development and availability of housing affordable to a broad range of households with varying income levels within the City to meet current and future affordable housing needs.

**13-327. Applicability.**

This ordinance shall apply to properties that receive City approval of a General Plan Amendment, Zone Change or other land use or development approval which allows for residential development and an increase in residential density as compared to the land uses and density that exists on the site at the time of the effective date of this Ordinance, provided, however, that this Ordinance shall not be applied in a manner that conflicts with applicable State law.

**13-328. Exemptions.**

The requirements of this ordinance shall not apply to the following:

- (a) New Residential Projects with less than ten (10) units;
- (b) Conversions of existing multi-family residential developments such as apartments to residential common interest developments (condominiums) for ownership housing pursuant to Section 13-42;
- (c) The reconstruction of any residential structures that have been destroyed by fire, flood, earthquake or other act of nature provided that the reconstruction does not increase the number of existing dwelling units by ten (10) or more;

- (d) Residential building additions, repairs or remodels provided that such work does not increase the number of existing dwelling units by ten (10) or more; and
- (e) Residential projects or mixed-use projects having residential units and located within the boundaries of the Fairview Development Center Specific Plan.

### **13-328. Fairview Development Center Specific Plan.**

All residential projects or mixed-use development projects having residential units and located within the boundaries of the Fairview Development Center Specific Plan shall be subject to the affordability requirements established by the provisions of the Specific Plan at the time of its adoption and are not subject to the requirements of this ordinance.

### **13-329. Definitions.**

As used in this article or chapter the following words shall have the following meanings:

*Affordable Housing Agreement.* A legally binding agreement between an owner, an applicant (if not the owner), and the City, a Declaration of Restrictions or other equivalent documents in a form satisfactory to the Director of Economic and Development Services and City Attorney and suitable for recording, and setting forth those provisions necessary to ensure that the requirements of the ordinance are, and will continue to be, satisfied and otherwise meeting the requirements of this ordinance.

*Affordable Housing Trust Fund.* The fund into which all in-lieu fees are deposited for the purposes of furthering affordable housing within the City. Such funds shall only be used for purposes of furthering affordable housing.

*Affordable Rent.* The maximum affordable housing cost minus any housing costs that are imposed on the tenant on a mandatory basis. The affordable housing cost is based on the percentages of AMI identified in the following table, as adjusted for household size appropriate for the unit (as defined in California Health and Safety Code Section 50052.5), multiplied times 30%:

Income Category	Percentage of AMI
Low Income	80%

*Affordable Sales Price.* The maximum price that can be charged to a Moderate Income Household based on the calculation methodology defined in California Health and Safety Code Section 50052.5.

*Applicant.* A person or entity who applies for approvals for a Residential Project, and if the applicant does not own the property on which the Residential Project is proposed, also means the owner.

*Area Median Income (AMI).* The median household income of households in Orange County, adjusted for household size, as determined by the California Housing and Community Development department (HCD).

*Building Permit.* Full structural building permits as well as partial permits such as foundation-only permits.

*Certificate of Occupancy.* Indicates that construction is complete and the City Building Official or his or her designee has approved for occupancy.

*City Manager.* The City Manager of Costa Mesa or his or her designee.

*Director of Economic and Development Services.* The Director of Economic and Development Services for the City of Costa Mesa or his or her designee.

*Density Bonus.* An increase in the number of units permitted in a proposed Residential Project provided pursuant to California State Density Bonus Law as set forth in Government Code Section 65915 et seq.

*Extremely Low-Income Household.* A household with a Gross Annual Household Income that does not exceed 30% of AMI for Orange County as defined in California Health and Safety Code Section 50106.

*Gross Annual Household Income.* All income from whatever source for all adult household members, which is anticipated to be received during the 12 month period following the date of the determination of gross income. The applicable sources of income

are defined in California Code of Regulations Title 25 Housing and Community Development Section 6914.

*Housing Element.* The current Housing Element of the City's General Plan prepared in accordance with State housing law.

*Affordable Housing Plan.* A plan containing all of the information specified and submitted in conformance with this ordinance specifying the manner in which Inclusionary Units will be provided.

*Inclusionary Unit.* A dwelling unit that is required to be rented at the Affordable Rent or sold at the Affordable Sales price to extremely low, very low, low- and moderate-income households.

*In-lieu Fee.* The fee payable as an alternative to the construction of on-site Inclusionary Units.

*Low-income Households.* A household with a Gross Annual Household Income between 51% and 80% of AMI for Orange County as defined in California Health and Safety Code Section 50079.5.

*Market-rate Unit.* A dwelling unit offered on the open market at the prevailing market-rate for purchase or rental.

*Moderate-income Household.* A household with a Gross Annual Household Income between 81% and 120% of AMI for Orange County as defined in California Health and Safety Code Section 50093.

*Rental Project.* A Residential Project that is intended to be rented to tenants upon completion.

*Residential Project.* A project undertaken for the purpose of development of land for residential purposes that requires the issuance of a discretionary or ministerial approval or permit, including a permit for construction, and that will include ten (10) or more dwelling units.

*Very Low-income Households.* A household with a Gross Annual Household Income that does not exceed 50% of AMI for Orange County, as defined in California Health and Safety Code Section 50105.

### **13-330. Affordable Housing Requirements.**

The following requirements and standards shall apply to any Residential Project subject to this ordinance:

(a) *Project Threshold.* The affordable housing requirements is applicable to any proposed Residential Projects with ten (10) dwelling units or more.

(b) *Set-aside Requirement and Affordability Level.* The minimum number of dwelling units required to be set aside as Inclusionary Units and the required affordability level(s) of the units are specified as follow:

(1) *Rental Residential Projects.* A developer of a rental residential project shall fulfill their obligation with onsite production of affordable rental units at either low or very-low income levels and the minimum set-aside requirement shall be calculated based on the proposed project's base density.

- a. Rezone areas at 60 or more dwelling units per acre: at least 11% of the total applicable dwelling units proposed shall be affordable at the low-income level or at least 7% at the very-low income.
- b. Rezone areas at under 60 dwelling units per acre: at least 6% of the total applicable dwelling units proposed shall be affordable at the low-income level or at least 4% at the very-low income.
- c. For any partial Inclusionary Unit calculated, the developer shall pay a fractional in-lieu fee payment in accordance with the adopted in-lieu fee schedule or round up the calculation to the highest whole number.

(2) *Ownership Residential Projects.* A developer of an ownership residential project may choose to fulfill their obligation with payment of in-lieu fees, on-site production of affordable ownership units, offsite production of affordable rental units, or dedication of land. On-site production of Inclusionary Units is not required for ownership residential projects.

- a. The applicable in-lieu fee calculation for ownership residential projects shall be based on the requirements set forth in Section 13-331(a).
  - b. Should a developer of an ownership residential project choose to fulfill their obligation with on-site production of affordable ownership units, the minimum set-aside requirement shall be at least 8% at the moderate-income level. All applicable requirements pursuant to this ordinance for onsite production of Inclusionary Units shall also apply.
- (3) *Parcel or Lot Merger.* In the event a developer merges two or more adjoining properties into one property under common ownership and the resulting cumulative number of housing units is increased to 10 or more, the affordable housing requirements shall apply.
- (c) *Covenant Period.* The Inclusionary Units shall remain affordable for a minimum period as specified in the subsection below or as stated in the Affordable Housing Agreement or other agreement(s).
- (1) For rental residential projects, the Inclusionary Units must remain affordable for not less than fifty-five (55) years. After fifty-five (55) years the affordability covenant may be removed only if the property is redeveloped as a non-residential use.
  - (2) For ownership residential projects that fulfill their obligation with on-site production of Inclusionary Units, the Inclusionary Units must remain affordable for not less than forty-five (45) years.
- (d) *Timing of Construction.* The Inclusionary Units shall be constructed and occupied concurrently with or prior to the construction and occupancy of market rate units. The developer shall provide a Construction Phasing Plan as part of their project plans for review by the Director or their designee prior to the submittal of plans for a building permit. In phased developments, the Inclusionary Units may be constructed and occupied in proportion to the number of dwelling units in each phase of the market rate development project.

- (e) *Unit Size*. The size of the Inclusionary Units shall be the same size as the market rate units. The final review authority may consider and approve Inclusionary Units no more than 15% smaller in square footage than the average square footage of the market rate units.
- (f) *Bedroom Mix*. The bedroom mix of the Inclusionary Units shall be proportional to the market rate units or as otherwise agreed in the Affordable Housing Agreements or other approved agreements with the City. The final review authority may consider and approve a different bedroom mix as long as there is a balanced mix of unit types.
- (g) *Design*. All exterior and interior improvements including floor plan design, finishes/materials, etc. for the Inclusionary Units shall be comparable, if not same, to the market rate units. The Inclusionary Units shall have same access to and enjoyment of all community amenities/facilities in the Residential Project. The final review authority may consider and approve alternative exterior and/or interior design improvements for the Inclusionary Units as long as it is comparably the same to the market rate units.
- (h) *Location*. Inclusionary Units shall be dispersed and evenly distributed throughout a residential development and not clustered in a particular area of the development. Inclusionary Units within Residential Project that share a common entrance or access shall not have separate entrances or access for market rate and Inclusionary Units.
- (i) *Certificate of Occupancy*. No certificate of occupancy will be issued for any corresponding market rate unit in a new residential project prior to completion of the required Inclusionary Units (including offsite) and/or payment of in-lieu fees.

### **13-331. Alternative Compliance Procedures.**

The following are the alternative options to fulfill the requirements of this ordinance if onsite production of Inclusionary Units is determined by the Director or their designee to be economically infeasible and would impose an extreme hardship. The Director or their designee's determination shall be made based upon evidence of economic hardship provided by the developer.

(a) *In-Lieu Fees.* The payment of in-lieu fees may be used to fulfill the affordable housing requirement for the following Residential Projects: Ownership housing development projects with ten (10) or more dwelling units; rental housing development projects with one-hundred (100) or fewer dwelling units; and any fractional number of Inclusionary Units required.

(1) In-lieu fees shall be paid prior to the issuance of the first building permit for the Residential Project unless specified and/or agreed elsewhere in recorded agreement(s) with the City. For phased developments, the developer may pay a pro rata share of the in-lieu fee concurrently with the issuance of a building permit for each phase.

(2) In-lieu fees shall be paid according to a fee schedule adopted by the City Council. The in-lieu fee schedule shall be adjusted periodically on an annual basis or as determined by the City Council or their designee and shall be adopted by resolution.

(3) All in-lieu fees collected shall be deposited in the City's Affordable Housing Trust Fund. The in-lieu fees collected and all earnings from investment of such fees, shall be expended exclusively to provide or assure continued provision of affordable housing in the City through including but not limited to acquisition, construction, development assistance, rent subsidies, or first-time homebuyer programs and for the associated costs of administering these programs.

(b) *Offsite Construction.* Inclusionary Units may be constructed offsite only upon a determination by the Director or their designee that onsite production of Inclusionary Units is economically infeasible. If this alternative compliance option is chosen, then the offsite Inclusionary Units must be constructed prior to or concurrently with construction of the market rate Residential Project.

(1) The offsite Inclusionary Units shall comply with all applicable requirements pursuant to this ordinance for onsite production of Inclusionary Units.



- (2) The offsite location shall be located within the City of Costa Mesa boundaries and shall be located within a reasonable distance from the market rate development project that is subject to the affordable housing requirement.
- (c) *Onsite Construction of Rental Units for Ownership Projects.* A developer of a market rate ownership project may construct affordable rental units concurrently with the market rate ownership units. The affordable rental units may be interspersed or located on a separate parcel within the market rate ownership project site and shall comply with all applicable requirements pursuant to this ordinance for onsite production of units.
- (d) *Land Dedication.* A developer may dedicate, without cost to the City, land (single or multiple parcels) within the City of Costa Mesa boundaries that is sufficient to accommodate the number of Inclusionary Units required by the market rate project. The following requirements are applicable to any land proposed to be dedicated to the City to fulfill the affordable housing requirement:
- (1) The property shall be located in the City of Costa Mesa;
  - (2) The General Plan and zoning standards shall allow for residential use at a density sufficient to allow for the market rate project's required number of Inclusionary Units to be constructed;
  - (3) The land shall be suitable in terms of size, configuration, and physical characteristics including existing utilities, streets, and other infrastructure improvements necessary to allow for the market rate project's required number of Inclusionary Units to be constructed;
  - (4) The value of the land shall be equivalent or comparable to the in-lieu fee that would be applicable to the proposed Residential Project;
  - (5) The developer shall provide property related report(s) to demonstrate the suitability and value of the land to be dedicated including but not limited to title report, appraisal report, and environmental site assessment(s).

### **13-332. Affordable Housing Agreement and Affordable Housing Plan.**

The developer shall prepare and submit a draft Affordable Housing Agreement and Affordable Housing Plan as part of the proposed Residential Project's planning

application(s). The Director or their designee shall review and determine if the plan and agreement are complete and in substantial conformance with the requirements of this ordinance. This section shall not apply to Residential Projects where the developer fulfills their obligation with payment of in-lieu fees or land dedication.

(a) *Affordable Housing Plan Requirements.* The developer shall submit a plan detailing how the requirements of this ordinance will be implemented. The plan shall include the following information but not limited to:

- (1) The location, structure, proposed tenure (rental or ownership) and size of the proposed market rate and Inclusionary Units;
- (2) The total number of affordable units to be provided and the calculations used to determine the number of required Inclusionary Units;
- (3) A floor plan and site plan depicting the location of the Inclusionary Units;
- (4) The income level targets for each Inclusionary Units;
- (5) The mechanisms that will be used to assure that the Inclusionary Units remain affordable for the required term as specified in Section 13-330(b);
- (6) A marketing plan for the process by which qualified households will be reviewed and selected to either purchase or rent Inclusionary Units; and
- (7) Construction schedule with the anticipated completion and opening date and as applicable for phased Residential Projects, a phasing plan.

(b) *Affordable Housing Agreement Requirements.* The developer shall submit an agreement prepared in a form to the satisfactory of the City Attorney and shall be a legally binding agreement between the developer and the City, executed by the City Manager or their designee. Upon final project approval, the developer shall execute and record the Affordable Housing Agreement prior to the issuance of a building permit. The agreement shall include the following information but not limited to:

- (1) Description of the development, including whether the Inclusionary Units will be rented or owner-occupied;

- (2) The number, size and location of the Inclusionary Units, or any approved alternative;
- (3) A covenant that includes the affordability terms, resale restrictions, deeds of trust, rights of first refusal or rental restrictions, options to purchase, and/or other relevant financial and administration documents that shall be recorded against the property; and
- (4) Provisions for the ongoing administration and monitoring of Inclusionary Units.

#### **13-333. Affordable Housing Trust Fund.**

All in-lieu fees, promissory note repayments, shared appreciation payments and other funds collected under this ordinance shall be deposited into a separate account to be designated as the City of Costa Mesa Affordable Housing Trust Fund. The City may elect to deposit funds from other sources into this Affordable Housing Trust Fund. The moneys and all earnings from investments of the moneys in the Affordable Housing Trust Fund shall be expended exclusively to provide housing affordable to extremely low-income, very low-income, low-income and/or moderate-income households in the City and administration and compliance monitoring of the affordable housing program.

#### **13-334. Density Bonus.**

Pursuant to the California State Density Bonus Law (Government Code Section 65915 et seq), if the developer is proposing to provide affordable ownership and/or rental units in exchange for an increase in density, concessions, incentives, or waivers/modifications of development standards, the affordable units required to fulfill the density bonus may also count as Inclusionary Units required in this ordinance provided they also meet, or exceed, the requirements outlined in Section 13-330.

#### **13-335. Parking Requirements.**

For rental housing projects subject to this ordinance, the parking requirements shall be an average of 1.75 spaces per unit. A developer of rental housing that provides Inclusionary Units is not required to comply with the parking requirements set forth in Section 13-35. A lower parking requirement may be allowed if supported by a parking study prepared by a traffic engineering firm with expertise in parking trends and demands.

### **13-336. Concurrent Processing.**

Concurrent processing of planning application(s) and plan check application(s) may be allowed at the discretion of the Director or their designee when the planning application(s) have been deemed complete. The developer shall be required to enter into a Hold Harmless Agreement with the City prior to any concurrent review.

### **13-337. Compliance Monitoring.**

To ensure that Inclusionary Units constructed pursuant to this ordinance are properly maintained and continue to comply with the applicable provisions of this ordinance, the developer or responsible party at the time shall submit annual compliance reports to the City for review. In addition, the City shall conduct periodic on-site audits to ensure compliance with all applicable laws, policies and agreements. The City Council may adopt fees for the costs of monitoring and compliance review, which shall be deposited into the Affordable Housing Trust fund for that purpose.

### **13-338. Administrative Procedures.**

The City Manager or their designee is authorized to initiate any administrative procedures including but not limited to establishing additional administrative rules, regulations, policies, guidelines, standards, and/or any other subject necessary to implement this ordinance.

### **13-339. Enforcement.**

- (a) The City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this ordinance including but not limited to:
  - (1) Actions to revoke, deny or suspend any permit, including a building permit, certificate of occupancy, or discretionary approval;
  - (2) Actions to recover from any violator of this ordinance, civil fines, restitution to prevent unjust enrichment from a violation of this ordinance, and/or enforcement costs, including attorney's fees;
  - (3) Eviction or foreclosure; and
  - (4) Any other appropriate action for injunctive relief or damages.

(b) Failure of any city official, employee, or agent to fulfill the requirements of this ordinance shall not excuse any person, owner, household or other party from the requirements of this ordinance.

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