



# **PLANNING COMMISSION AGENDA REPORT**

**MEETING DATE: DECEMBER 11, 2023      ITEM NUMBER: PH-1**

**SUBJECT: AN ORDINANCE AMENDING TITLE 13 (PLANNING, ZONING AND DEVELOPMENT) OF THE COSTA MESA MUNICIPAL CODE TO ESTABLISH AFFORDABLE HOUSING REQUIREMENTS FOR NEW RESIDENTIAL DEVELOPMENT PROJECTS**

**FROM: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT/  
PLANNING DIVISION**

**PRESENTATION BY: NANCY HUYNH, PRINCIPAL PLANNER**

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## **RECOMMENDATION**

Staff recommends the Planning Commission adopt a Resolution to:

1. Find that the adoption of Ordinance No. 2023-XX is exempt from the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15061(b)(3), General Rule in that the affordable housing ordinance will not have a significant impact on the environment; and
2. Recommend that the City Council give first reading to Ordinance No. 2023-XX modifying Title 13 (Planning, Zoning, and Development) of the Costa Mesa Municipal Code (CMMC) to establish affordable housing requirements for new residential developments.

## **APPLICANT OR AUTHORIZED AGENT**

The subject Ordinance is a City-initiated effort to implement Program 2A of the City's adopted 2021-2029 6<sup>th</sup> Cycle Housing Element. It states:

*"PROGRAM 2A: Inclusionary Housing Ordinance As of adoption of the 6th Cycle Housing Element, the City of Costa Mesa is analyzing the market impacts and potential affordability requirements for an inclusionary housing requirement for specific projects. The City has hired a consultant to evaluate and make recommendations regarding the structure of a potential inclusionary housing ordinance, including the affordability percentage requirement, potential for an in-lieu fee option, and other*

*factors. As part of this effort, the City will consider the applicability of establishing a local preference policy.*

*Objectives: Adopt an inclusionary housing ordinance.*

*Timeframe: To be completed by December 2023.*

*Responsible Agency: City of Costa Mesa Economic and Development Services Department/Housing and Community Development Division and Planning Division*

*Funding Source: In Kind, General Fund"*

## **BACKGROUND**

At the Planning Commission's regular meeting on November 13, 2023, staff presented the proposed draft content of the Affordable Housing Ordinance for Planning Commission review and feedback. The Planning Commission also received public comments on the item.

The November 13, 2023 Planning Commission agenda report, meeting video, and public comments are included in the links below:

- November 13, 2023 Planning Commission agenda report:  
<https://costamesa.legistar.com/LegislationDetail.aspx?ID=6413792&GUID=4C906E13-F94B-49E9-AD3E-73B588C6EB6E>
- November 13, 2023 Planning Commission meeting video:  
[https://costamesa.granicus.com/player/clip/4063?view\\_id=14&redirect=true&h=f22a251337c41beeb55301395ff67cc2](https://costamesa.granicus.com/player/clip/4063?view_id=14&redirect=true&h=f22a251337c41beeb55301395ff67cc2)
- November 13, 2023 Planning Commission public comments:  
<https://costamesa.legistar.com/View.ashx?M=E3&ID=1135455&GUID=7ECD4C06-87E5-4283-8149-4BFF97215AA2>

The Planning Commission provided the following feedback on the draft content:

- **Project Threshold Size:** Commissioners discussed whether the minimum project size subject to the affordable housing requirement should be higher than ten units (as proposed in the draft ordinance) because of the potential risk of adversely impacting smaller infill housing projects and small lot developments. As such, it was suggested to increase the minimum threshold project size to 25 units. There were also discussions about lowering the threshold project size so that it would apply to any applicable residential project.
- **Homeownership:** Commissioners shared their desire for more homeownership opportunities in the City especially considering that the ratio of rental housing to ownership housing is higher than the surrounding neighboring cities. Potential ideas to provide more homeownership opportunities included increasing the maximum

density allowed in the existing residential zones or considering not applying the Affordable Housing Ordinance to ownership housing projects.

- **Housing Fund:** Commissioners asked which types of residential projects or housing programs could be funded by the Housing Fund. There was concern that the Housing Fund would take time to accumulate over a number of years before enough funding is available to support a housing program.
- **Preference for Costa Mesa Residents:** Several Commissioners expressed their preference to prioritize available affordable housing units for Costa Mesa residents. Given that there is a current need for affordable housing in the community, Commissioners felt that the City's affordable housing program should be targeted to those already living and/or working in the City that need access to affordable housing options.

## **ANALYSIS**

Staff has prepared a draft Affordable Housing Ordinance for the Planning Commission to review and to make recommendations to the City Council for potential adoption.

### ***Staff Clarifications***

Since the November 13, 2023 Planning Commission meeting, staff has updated the draft content previously provided with minor revisions to certain definitions, text changes for language consistency throughout, and clarifications to certain sections including the following:

- **Section 13-330 (Affordable Housing Requirements):** Minor language changes for clarity and consistency in the "applicability" section as well as an added requirement for projects that include both ownership and rental units;
- **Section 13-331 (Alternative Compliance Procedures):** Clarified offsite options for master planned residential projects;
- **Section 13-335 (Parking Requirements):** Modified to allow a lower parking requirement for a residential project if supported by a parking study and approved by the Director, if not in conflict with State law(s); and
- **Section 13-338 (Administrative Procedures):** Added language to clarify that the City Manager is authorized to adopt administrative procedures related to the implementation of the affordable housing ordinance including an eligibility requirement and local preference for affordable housing units.

The previous Planning Commission agenda report included an analysis on each of the proposed affordable housing program components including project threshold size, required percentage of affordable housing, required income level(s), covenant periods, and alternative compliance options. This agenda report will primarily focus on the topics discussed by the Planning Commission and the public at the November 13, 2023 meeting.

## ***Response to Planning Commission Comments***

The following provides additional information and analysis to address the Planning Commission's previous comments and discussion topics.

### **Project Threshold Size**

As presented during the previous Planning Commission meeting, residential projects with ten or more units would be subject to the proposed affordable housing requirements. Comments on the minimum project size focused on increasing the minimum.

KMA's Policy Recommendation Memorandum (included in the July 11, 2023 Study Session Agenda Report) recommended a minimum project threshold size of five units which is also the minimum required in order to utilize the State's Density Bonus Law (DBL). Staff's recommendation of ten units is based on data regarding the housing projects approved in the City from 2014 to 2021. Of the total development during this period, 65% of residential projects were under 10 units and 35% were over 10 units. Projects under 10 units were mainly one- or two-unit developments on residentially zoned sites located within existing residential neighborhoods. Projects over 10 units were either located in the City's urban plan areas or along major commercial or industrial corridors that were approved through a rezone.

According to a 2019 survey of existing inclusionary housing programs in 31 states throughout the United States (conducted by a housing non-profit organization, Grounded Solutions Network) – 27% had a minimum project size between 2 and 5 units, 35% between 6 and 10 units, 8% 11 or more units, 13% other measures, and 17% without a minimum size (meaning any project regardless of size is subject to the affordable housing requirements). In the same survey, it found that 45% of programs in California have a minimum requirement between 2 and 5 units. More locally in Orange County, six programs have a minimum requirement between 2 and 5 units and 3 programs between 6 and 10 units. When comparing the proposed minimum project size in the draft ordinance to programs throughout the country, the requirement of 10 or units would be in line with a majority of these existing programs. Compared to the State and Orange County, the proposed requirement would be on the higher end. Staff believes this is appropriate given the residential development patterns in the last decade in the City.

The Planning Commission could recommend a higher or lower project threshold size requirement to the City Council. If too high, the City would receive less affordable housing units because residential projects under the minimum threshold would not be subject to the requirements. If too low, the requirement may make small projects less financially feasible. The Affordable Housing Program is envisioned to evolve over time to respond to the real estate and development market conditions as well as changes to residential development patterns in the City. Thus, the minimum threshold size could also be adjusted in the future as necessary.

### **Homeownership Opportunities**

Commissioner comments emphasized the desire for more homeownership opportunities in the City. Some suggested exempting ownership housing projects from the affordable housing requirements altogether as a means of encouraging ownership housing projects over rental projects.

Many factors determine whether the development community proposes ownership versus rental projects in a City. Most of those factors have to do with financing and investment opportunities, available properties and site sizes as well as local zoning considerations. In its Financial Evaluation KMA evaluated whether it is feasible, and at what level, ownership projects would be able to support an affordable housing requirement. The KMA Financial Evaluation found that it is feasible. Therefore, staff recommends ownership projects be included in the Ordinance.

Furthermore, including ownership projects in the ordinance and permitting an in-lieu fee would help the City build a Housing Trust Fund to assist with the goal of improving homeownership opportunities. The Housing Trust Fund could be used to support homeownership programs, provide funding assistance for a new 100% affordable ownership project, or funding assistance to convert existing rental units to ownership units. Ultimately, the Trust Fund would allow the City to accumulate funds in a manner that would staff to assist a larger number of units at a deeper affordability level than would be provided if the ownership units were built onsite within market rate projects.

Exempting ownership projects from the affordable requirements altogether would mean all new ownership housing units would likely be market rate (with most falling into above moderate categories) and in addition, such projects would not contribute funds to City programs that could promote affordable ownerships projects or otherwise support homebuyers.

The Planning Commission could recommend to the City Council that the affordable housing requirement should apply to both rental and ownership projects or the Commission could recommend exempting ownership housing projects.

#### Housing Fund Availability

As drafted, the Affordable Housing Ordinance specifies that the collected in-lieu fees deposited in a Housing Fund would be expended exclusively to further affordable housing goals in the City. This would include but is not limited to acquisition, construction, development assistance, rent subsidies, or first-time homebuyer programs, and for the associated costs of administering and monitoring these housing programs.

Commissioners commented on the availability of sufficient funding to support housing programs since it could be years to accumulate a substantial amount. As with any new City program, the implementation would occur over time. Other cities with existing robust affordable housing programs which have been in existence for many years such as the City of Huntington Beach and Irvine have found success with their Housing Fund including providing funding for 100% affordable housing developments (ownership and rental housing). Ultimately, this is a policy matter and would be decided on by the City

Council at the time the Housing Fund is created, and then reconsidered through the annual budget process.

#### Local Preference for Costa Mesa Residents

A “local preference” requiring affordable units to be offered first to existing Costa Mesa residents could be considered. The local eligibility preference could be expanded and also include people who work in the City – which is similar to the City of Brea’s affordable housing eligibility preference program for rentals. To that end, a provision has been added to the draft ordinance in order to grant the City Manager the authority to establish eligibility preference for affordable units by administrative action. The details of the eligibility criteria would be described in the City’s Affordable Housing Guidelines (that would be drafted should the ordinance be adopted by the City Council).

#### Stakeholders Meetings

Commissioners asked for a general list of the interest groups that were a part of the numerous stakeholders meetings with staff and/or Keyser Marston Associates (KMA). The stakeholders included residents from the Costa Mesa community and representatives from the following organizations: Affordable Housing Coalition, The Irvine Company, Sakioka Company, Legacy Partners, City Ventures, The Olson Company, Red Oak Investments, Kennedy Commission, People for Housing, OC Resilience and the Building Industry Association. In addition, staff and/or KMA have had conversations with the City of Huntington Beach, Irvine, Santa Ana and several other cities about their experiences with adopting and managing an affordable housing program.

#### Applicability

Commissioners had questions regarding the applicability of the ordinance (when and where it would apply) and how it would create a local density bonus program.

As drafted in Section 13-328, the Affordable Housing Ordinance would be effective 30 days after adoption and would only apply to housing projects located on properties that are either in the City’s “Corridor Areas” slated for a City-initiated visioning and rezoning process (shown in Figure 13-200.106 of the CMMC) or new housing projects that receive City approval for a General Plan Amendment or a rezone that allows for residential uses and/or densities beyond those existing at the site. (In addition to the Corridor Areas, the ordinance would also apply to any property that the City approves a rezone or other discretionary approval(s) to allow for residential uses or higher densities not currently allowed by its zoning).

The “Corridor Areas” include the properties and urban plan areas identified in the Housing Element Programs 3C and 3D as well as the commercial and/or industrial corridor areas generally along Newport Boulevard, Harbor Boulevard, Baker Street, Bristol Street, West 17<sup>th</sup> Street, West 18<sup>th</sup> Street, Placentia Avenue, and north of the 405 Freeway. Refer to the attachments for a map of the Corridor Areas.

The Corridor Areas would be the subject of a community visioning process and considered for rezoning that would allow for residential uses and/or an increase in allowable density on the properties. The proposed rezoning program would allow residential uses and higher densities than allowed today in order to promote housing opportunities, with the higher densities generally allowed north of the I-405 Freeway. The rezoning effort coupled with the affordable housing requirement effectively creates a local density bonus program to incentivize housing and affordable housing in the Corridor Areas.

While any residential project with five or more units could qualify and utilize the DBL (under DBL, a minimum of five units is required in order to use it), an applicant may prefer the local density bonus program because of the City's higher maximum affordable rent calculations specifically for the low-income category. Under the DBL, the maximum low-income rent calculation is based on 60% of the area median income (AMI). However, the City's maximum low-income rent calculation would be based on 80% AMI meaning the developers could charge a slightly higher affordable rent than the maximum allowed under the DBL. This would help developer's offset the costs of producing the affordable units and encourage use of the local program over the State's program. Refer to Attachment 4 prepared by KMA for a comparison of the DBL and City's maximum affordable rent for 2023.

The City anticipates kicking off the visioning and planning process for the Corridor Areas in spring 2024 and anticipates the process would occur over 24 months.

### ***Next Steps***

Should the Planning Commission adopt a resolution to make a recommendation to the City Council, the draft ordinance would then be updated per any additional feedback and recommendations from the Commission. The recommended draft ordinance would then be scheduled and presented to the City Council for their review as a public hearing agenda item at their regular meeting, likely in January 2024. If City Council gives first reading of the draft ordinance, a second reading would be scheduled as a consent calendar agenda item at a subsequent regular City Council meeting. Upon the second reading, Ordinance No. 2023-XX would be adopted and in full effect 30 days from the date of adoption.

### **In-Lieu Fee Study**

Once the minimum affordable housing requirement percentages have been determined by the City Council, the in-lieu fee study would be finalized by KMA and presented to the City Council as a fee resolution for their review and adoption. The in-lieu fees would likely be calculated on a per square foot of total leasable area for rental projects or total saleable area for ownership projects. The fee structure would be based on a "sliding scale" approach meaning the in-lieu fee amount would be different depending on the total number of proposed dwelling units in a residential project. This is for the benefit of smaller projects that may not have as many units to "spread" the cost of the in-lieu fee payment.

Rental projects with less than 100 units would have the option to produce affordable units onsite or pay the in-lieu fees. This is, again, to allow greater flexibility for the smaller projects. Rental projects with over 100 units, however, would be required to produce units onsite. Ownership projects of any size would have the option to produce units onsite or pay the in-lieu fees.

## **GENERAL PLAN CONFORMANCE**

The following analysis evaluates the General Plan and its goals, objectives, and policies for consistency and compliance with the proposed Affordable Housing Ordinance:

1. **Housing Goal #2:** *Facilitate the creation and availability of housing for residents at all income levels and for those with special housing needs.*
2. **Policy HOU-2.1:** *Facilitate the development of housing that meets the needs of all segments of the population including affordable housing and households with specialized needs.*
3. **Policy HOU-2.2:** *Promote the use of State density bonus provisions to encourage the development of affordable housing for lower and moderate-income households, as well as senior housing through the dissemination of informational materials and discussions with project applicants.*
4. **Policy HOU-2.4:** *Encourage housing programs and future actions that address the need for affordable housing options as well as the housing needs of Costa Mesa's senior resident population and the large households population.*

Adoption of the proposed affordable housing ordinance would support the above policies identified in the City's adopted 2021-2029 Housing Element as well as further achieve the goal of facilitating housing for all income levels in the community and especially for the lower income households. Upon adoption of the ordinance, the Affordable Housing Program would be established to implement the requirements of the ordinance as well as monitor implementation and compliance with the affordable housing requirements and applicable State law(s). Adoption of the Ordinance would fulfil the objective of Program 2A of the 2021-2029 General Plan Housing Element.

## **ENVIRONMENTAL DETERMINATION**

The Code Amendment and Ordinance were reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures. The Planning Commission's recommendation regarding the Ordinance are exempt pursuant to CEQA Guidelines Section 15061(b)(3) (General Rule) because the recommended ordinance will not have a significant effect on the environment. Furthermore, the Ordinance is not considered a project as defined pursuant to Public Resources Code Section 21065 that would be subject to CEQA requirements because



the Ordinance will not cause either direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

### **LEGAL REVIEW**

The staff report and draft Ordinance has been reviewed and approved as to form by the City Attorney's Office.

### **PUBLIC NOTICE**

This item was noticed for the November 13, 2023 Planning Commission meeting. At the November 13, 2023 Planning Commission meeting, the Planning Commission continued the item to December 11, 2023. Therefore, this continued item does not require additional public notice.

As of this report, no new written public comments have been received. Any public comments received prior to the Planning Commission meeting will be provided separately.

### **CONCLUSION**

The adoption of the proposed Affordable Housing Ordinance would require new rental and ownership residential development projects proposed with ten or more units to set aside a portion of its new units as "affordable units." Its adoption would fulfill the objective of Program 2A of the 2021-2029 General Plan Housing Element.