



Agenda Report

Item #: 24-277

Meeting Date: 8/6/2024

TITLE: ORDINANCE NO. 2024-02 AMENDING TITLE 13 (PLANNING, ZONING AND DEVELOPMENT) OF THE COSTA MESA MUNICIPAL CODE TO ESTABLISH AFFORDABLE HOUSING REQUIREMENTS FOR NEW RESIDENTIAL DEVELOPMENT PROJECTS, AND A FEE RESOLUTION TO ESTABLISH THE AFFORDABLE HOUSING IN-LIEU FEE SCHEDULE

DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT/PLANNING DIVISION

PRESENTED BY: AMBER GREGG, CONTRACT PLANNER

CONTACT INFORMATION: AMBER GREGG, CONTRACT PLANNER, (714) 754-5617

RECOMMENDATION:

Staff recommends the City Council:

1. Find that the adoption of Ordinance No. 2024-02 is exempt from the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15061(b)(3), General Rule in that the Affordable Housing Ordinance and subsequent Affordable Housing In-Lieu Fee will not have a significant impact on the environment.
2. Adopt Ordinance No. 2024-02, approving the Affordable Housing Ordinance and amending Title 13 to establish the affordable housing requirements for certain new residential development projects or make changes to Ordinance No. 2024-02 and give it a new first reading.
3. Adopt a fee resolution establishing the affordable housing in-lieu fee.

BACKGROUND:

On January 16, 2024, the City Council considered the first reading of the Affordable Housing Ordinance. The Affordable Housing Ordinance would require certain new housing projects in the City to provide a percentage of its housing units as “affordable” units for low, and/or very low-income households, or fulfill the affordable requirement by permitted alternative options. During the public hearing, the City Council considered the ordinance as well as other issues raised by members of the public. Modifications to the ordinance were introduced and the City Council voted 4-2 (Councilmember Chavez and Mayor Pro Tem Harlan voting no; Councilmember Harper absent) to give first reading of Ordinance No. 2024-02. The January 16, 2024, City Council agenda report, meeting video, and public comments are included in the links below:

January 16, 2024, City Council Agenda Report:

<https://costamesa.legistar.com/LegislationDetail.aspx?ID=6478268&GUID=EE4EC0F0-BA26-4612-9692-A189F4B8DA25>

January 16, 2024, City Council Video:

https://costamesa.granicus.com/player/clip/4078?view_id=14&redirect=true

On February 27, 2024, City Council held a study session to review affordable housing in-lieu fees. During the study session, staff and Keyser Marston Associates (KMA) presented the proposed fee schedule as well as an explanation of the fee calculations. The City Council also received public comments, asked staff and KMA follow-up questions, and provided their comments on the proposed fees and overall vision for the proposed Affordable Housing Ordinance.

The February 27, 2024, City Council study session agenda report, meeting video, and public comments are included in the links below:

February 27, 2024 City Council Agenda Report:

<https://costamesa.legistar.com/LegislationDetail.aspx?ID=6554564&GUID=FD7A6E2C-57D9-41B7-AAA6-60D06D0D5B66>

February 27, 2024 City Council Meeting Video:

https://costamesa.granicus.com/player/clip/4093?view_id=14&redirect=true

February 27, 2024 City Council Public Comments:

<https://costamesa.legistar.com/View.ashx?M=E3&ID=1171565&GUID=B7C4B0DD-7AD7-4ADC-B8C3-392422409AF7>

Public comments as well as the City Council's feedback from the February 27, 2024 study session expressed the need to ensure that Costa Mesa is competitive with nearby cities, can attract housing developers for the creation of housing in the community, and the Affordable Housing Ordinance should not result in an impediment to the overall production of housing in the City. Discussions included comparing the City's proposed in-lieu fee amounts with the City of Santa Ana (which has seen success with their affordable housing production program) and concerns that the City's proposed fee amounts were too high. The City's expert housing consultant, KMA, clarified that Santa Ana did not determine their in-lieu fee amounts based on a fee study or financial impact analysis; and therefore, the Santa Ana in-lieu housing fee is not equivalent to their onsite production requirements. In contrast, Costa Mesa's proposed fee amounts are derived from the pending Affordable Housing Ordinance requirements so that the fees are equivalent to producing the affordable units onsite. While the City Council could consider lowering the in-lieu fee amounts below equivalency to producing the onsite units, doing so would possibly result in housing developers choosing to pay the in-lieu fees rather than developing the affordable units.

At the April 2, 2024, City Council meeting, the City Council considered the second reading of the Affordable Housing Ordinance, and an in-lieu fee resolution to establish an affordable housing in-lieu fee schedule. The following ordinance modifications were introduced, and the City Council passed a motion for staff to make changes to the Ordinance and bring it back for second reading:

- At 60 units per dwelling acre, provide 10% of the units for low-income housing, or 5% for very low-income housing.
- Allocate \$2.5 million into an Affordable Housing Trust Fund, including a first-time homeownership program.
- Direct staff to bring back strategies & needs to accelerate rezoning.

- Streamline projects subject to the affordable housing ordinance.
- Increase the project threshold subject to the ordinance to 50 dwelling units.
- Strike sections related to home ownership project requirements in the ordinance.
- Defer review of in-lieu fees to a future meeting.

April 2, 2024, City Council Agenda Report:

<https://costamesa.legistar.com/LegislationDetail.aspx?ID=6606550&GUID=99160B57-AADB-402D-9FD2-7A72792DF456>

April 2, 2023, City Council Video:

https://costamesa.granicus.com/player/clip/4125?view_id=14&redirect=true

On June 18, 2024, the City Council considered adoption of the proposed Affordable Housing Ordinance. At the meeting, concerns were raised that the proposed 50-unit project threshold may be too high, and could potentially impact the “candidate housing sites” production of affordable housing identified in the City’s Housing Element (Appendix B - Sites Analysis). The City Council requested additional information if the threshold was set at 30 rental units, and how this lower alternative threshold may affect the City’s required planning for affordable housing. In addition, the Council continued the in-lieu fee resolution. Both items were continued to the regular City Council meeting of July 16, 2024.

June 18, 2024, City Council Agenda Report - Second Reading of the Affordable Housing Ordinance (also provided as Attachment 4):

<https://costamesa.legistar.com/LegislationDetail.aspx?ID=6726106&GUID=7187166B-02AF-4690-8CEA-627EC9ACD7DE>

June 18, 2024, City Council Agenda Report - In-Lieu Fee Resolution (also provided as Attachment 5):

<https://costamesa.legistar.com/LegislationDetail.aspx?ID=6726107&GUID=E9E75AF2-0FBD-43E4-A8A8-2F4FA2E63722>

June 18, 2024, City Council Video:

https://costamesa.granicus.com/player/clip/4149?view_id=14&redirect=true

DISCUSSION

Affordable Housing Ordinance

Modifications from the April 2, 2024 City Council meeting have been incorporated and are reflected in the draft City Council Ordinance contained in Attachment 1. Attachment 2 shows the modifications to the Ordinance in “track changes” format, added text is identified by an underline and text removal is shown in ~~strikethrough~~. As presented, the Ordinance is the same as was included in the June 18, 2024 City Council Agenda.

Table 1 below provides a summary of the proposed Affordable Housing Program components and requirements included in the proposed ordinance.

Table 1 - Proposed Affordable Housing Program Components and Requirements

PROGRAM COMPONENT	PROPOSED REQUIREMENTS
Project Threshold	50 units
Number of Affordable Units/Required Income – Rental Project	<ul style="list-style-type: none"> • 60+ dwelling unit (du)/acre: 10% at low-income or 5% at very-low income • Under 60 du/acre: 6% at low-income or 4% at very-low income
Covenant Period – Rental	At least 55 years
Affordable Unit Minimum Size	No more than 15% smaller than average market rate unit
Affordable Unit Bedroom Mix	Proportional to market rate units
Affordable Unit Location	Evenly distributed/dispersed throughout the residential project
Alternatives for Compliance	<ul style="list-style-type: none"> • Land dedication • Offsite construction of affordable units • Payment of in-lieu fees
Incentives	<ul style="list-style-type: none"> • Allow residential uses in commercial/industrial corridors • Increased densities • Allow low-income rents to be charged based on 80% AMI vs. 60% AMI (required by State density bonus) • Reduced parking requirements • Concurrent processing

At the June 18, 2024, City Council meeting, concerns were raised about the number of Housing Element “Opportunity Sites” the Affordable Housing Ordinance would apply to at the 50-rental unit applicability threshold. The City Council requested staff provide additional analysis with the applicability threshold set at 30 rental units. Based on staff’s research, there are a total of 97 sites listed in the Housing Element Opportunity Sites inventory, and of those, 47% would be subject to the proposed Affordability Housing Ordinance with a threshold of 50 units or more. In considering the percentage of sites to which the Ordinance would apply, it’s also important to consider the number of overall units that will be subject to the requirements. The reason for this is because larger sites can accommodate a significant number of units, whereas smaller sites cannot. For City Council consideration, the following Table 2 identifies the number of opportunity sites included at the 30 rental unit threshold and at various other threshold levels. In addition, the table identifies the number of units subject to the Affordable Housing Ordinance and the percentage of overall units:

Table 2 – Housing Site Inventory and Affordable Housing Ordinance Threshold Applicability

Affordable Housing Ordinance Threshold	Number of Opportunity Sites Included	% of Opportunity Sites Included	Number of Opportunity Dwelling Units
50 units+	47	48%	15,184 units (91% of total units)
45 units+	55	57%	15,422 units (92% of total units)
40 units+	63	65%	15,785 units (95% of total units)
35 units+	73	75%	16,154 (97% of total units)
30 Units+	81	84%	16,375 (98% of total units)
25 units+	87	90%	16,536 (99% of total units)
20 Units+	89	92%	16,579 (99% of total units)
10 Units+	94	97%	16,659 (99.9% of total units)

Note: The City’s Regional Housing Needs Allocation (RHNA) is 11,760 units; however, State law requires City’s to provide additional capacities, or a “buffer” to accommodate capacity for lower income units, thereby helping jurisdictions stay compliant with state law and avoid the need for rezoning or identifying new sites. With the buffer and as approved by the HCD, the City’s total opportunity site net unit potential is 16,673.

Based on the above information, an applicability threshold of 50 units+ in a development would apply to 47% of the housing opportunity sites, and 91% of the total potential units. This is because larger sites accommodate most of our total unit count. At a threshold of 30 units+ per development, 84% of sites are subject to the Ordinance, and it applies to 98% of the potential units.

In-Lieu Fee

Attached to this Agenda Report is a fee resolution to adopt the in-lieu fee amounts as shown in Table 3 below. The proposed fee amounts are based on the proposed Affordable Housing Ordinance requirement set-aside percentages, and were originally proposed to be applicable to developments of 21+ units or more.

Table 3 – Proposed Affordable Housing In-Lieu Fee Amounts

In-Lieu Fee Payment Schedule Per Square Foot of Total Leasable Area in an Apartment Development	
Developments greater than 60 units per acre	Developments less than 60 units per acre
\$19.50 PSF	\$13.80 PSF

Previously, the proposed in-lieu fee payment schedule provided fee amounts for developments of 15 units to 21+ units; however, modifications to the Affordable Housing Ordinance now establishes the applicability threshold to developments with 50 dwelling units or more. Due to this, only one fee amount for each category is proposed. In addition, the previous in-lieu fee payment schedule included an “ownership housing development” fee category which has also been eliminated pursuant to the ownership housing development applicability removal from the Ordinance.

The fee resolution also includes a schedule of fractional in-lieu fee payments for developers who choose this option to fulfill an obligation to produce a fraction of an Inclusionary Unit. The fractional in-lieu fee schedule is included in Attachment 3.

Comparison of Other Cities In-Lieu Fee Amounts

To provide the City Council with additional comparisons of other cities’ affordable housing in-lieu fee amounts, refer to Table 4 below. As shown in the Table, there is no standard to establish an affordable housing in-lieu fee amount or fee structure, and cities generally adopt a fee that is consistent with their local housing conditions and objectives.

As shown in the fee examples below, the in-lieu fees could be based on a sliding scale, flat fee per square foot, incremental increase over time, and/or a formula based on certain variables. As an example, the City of Encinitas recently increased their fees from \$20 per square foot to \$23.79 per square foot. Encinitas also adjusts their fee administratively based on the percentage change in the most current Engineering News Record Construction Cost Index (CCI) for the Los Angeles region. The City of San Diego adopted a program that included an incremental increase to their in-lieu fee amounts each fiscal year with the current fee set at \$25 per square foot. The City of San Diego initially set the in-lieu fee at a lower amount and over a five-year period, increased the fee to its eventual rate. The fee increased \$12.27 over the five-year period. The fee is then updated annually based on the annual increase in the CCI, or similar construction industry index selected by the City Manager if the CCI index is discontinued.

Table 4 – Comparison of Other Cities In-Lieu Fee Amounts

City	Requirements
Santa Ana	<ul style="list-style-type: none"> • 5-9 Units: \$6 per sq. ft. • 10-14 Units: \$9 per sq. ft. • 15-19 Units: \$12 per sq. ft. • 20+ Units: \$15 per sq. ft. • Only applies to changes in land use and zoning designations. • Set Aside: 5-15% Rental, and 5% Ownership

	<ul style="list-style-type: none"> • Affordability Requirement: <ul style="list-style-type: none"> ○ 15% Low, or 10% Very Low, or 5% at Extremely Low, or ○ 5% Low + 3% Very Low + 2% Extremely Low
Long Beach	<ul style="list-style-type: none"> • Rental: \$38 per sq. ft. • Ownership: \$29.10 per sq. ft. • Affordability Requirement: <ul style="list-style-type: none"> ○ 11% Very Low – Rental ○ 10% Moderate – Ownership
Huntington Beach	<ul style="list-style-type: none"> • 3-30 Units: \$3.58-\$35.80 per SF • 30-100 Units: \$35.80 per SF • 100+ Units: Must build on-site
Mission Viejo	<ul style="list-style-type: none"> • Threshold: 10+ Units • Rental: \$41.90 per SF • Ownership: \$58.20 per SF • For rental projects, the in-lieu fee can only be paid for projects between 10 and 20 units. For projects exceeding 20 units, production is required to be on-site. Ownership, any project with 10 or more units can pay the in-lieu fee.
Encinitas	<ul style="list-style-type: none"> • 1 – 6 units: sliding scale¹ • 7+ units: \$23.79 per sq. ft. • Affordability Requirement: <ul style="list-style-type: none"> ○ 10% Very Low or 15% Low
Irvine	<ul style="list-style-type: none"> • Formula based and calculated per project² • Affordability Requirement: <ul style="list-style-type: none"> ○ 5% Very Low + 5% Low + 5% Moderate
Oceanside	<ul style="list-style-type: none"> • \$20 per sq. ft. • Affordability Requirement: <ul style="list-style-type: none"> ○ 10% Low – Rental ○ 10% Moderate – Ownership
Santa Monica	<ul style="list-style-type: none"> • Rental: \$35.70 per sq. ft. • Ownership: \$41.70 per sq. ft. • Affordability Requirement: <ul style="list-style-type: none"> ○ 5% to 30% Very Low, Low, and Moderate
San Diego	<ul style="list-style-type: none"> • Incremental increase from July 1, 2020 through June 30, 2024³ • 2024 in-lieu fee increased to \$25 per sq. ft. • Affordability Requirement: <ul style="list-style-type: none"> ○ 10% Very Low or Low – Rental ○ 10 to 15% Moderate – Ownership
<p>¹ Sliding scale is based on a percentage of the adopted in-lieu fee amount depending on the number of units. For example, one unit project would be required to pay 14% of the in-lieu fee dollar amount.</p> <p>² Formula is based on land value, density, and percentage share of cost related to affordable units not being produced.</p> <p>³ Prior to July 1, 2020, the in-lieu fee was established at \$12.73 per sq. ft. and has increased every fiscal year (2021 - \$15.18, 2022 - \$17.64, 2023 – \$20.09)</p>	

ENVIRONMENTAL DETERMINATION:

The proposed Ordinance and Resolution is exempt from the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15061(b)(3), General Rule in that the Affordable Housing Ordinance and subsequent Affordable Housing In-Lieu Fee will not have a significant impact on the environment.

ALTERNATIVES:

The City Council has the following alternatives:

1. Adopt the Ordinance. The City Council may adopt the draft Ordinance if no changes are made.
2. Give first reading with modifications. The City Council may modify the draft Ordinance and give it a new first reading.
3. Continue the Ordinance review to a date certain. The City Council may continue the item to a date certain with direction for staff to return with additional information, changes and/or clarifications.
4. Adopt the fee resolution, modify the proposed fee schedule, or not adopt the fee resolution.

Similar to San Diego, the Council could consider initially setting the fee at a lower rate and establish a schedule for increases over any specified period of time until the preferred maximum fee amount is met. For example, the Council may evaluate a fee of \$12 in year one, with increases over a 3-year period to an eventual amount of \$19.50 per applicable square foot (as currently proposed for developments with 60 dwelling units or more per acre), and/or include an annual update to the fee based on changes in the Orange County home values, building costs, or similar value related industry index.

FISCAL REVIEW:

Adoption of the proposed Ordinance is not anticipated to have a fiscal impact on the City's general fund budget. Should the City Council adopt the in-lieu housing fee resolution, the City could potentially receive revenue from payment of fees that would be deposited into a Housing Trust Fund (Fund 226) to support and promote affordable housing programs in the City, including the administration of the City's Affordable Housing Program.

Additionally, the City has been awarded a [Local Early Action Planning \(LEAP\)](#) grant, of which \$70,000 is earmarked for the Inclusionary Housing Ordinance and In-Lieu Fees. The State Housing and Community Development (HCD) has set a deadline of September 30, 2024, for reimbursement of LEAP grant projects, with the stipulation that the City Council would need to approve the Ordinance and in-lieu fees by this deadline in order to be granted full reimbursement of this portion of the grant.

LEGAL REVIEW:

The proposed Ordinance, fee resolution, and this report, have been prepared in conjunction with and approved by the City Attorney's Office.

PUBLIC NOTICE:

Pursuant to Government Code Section 6062a, a notice was published in a newspaper publication on two occasions in accordance with Gov Code 6062a. In addition, Pursuant to Government Code Section 66016, the proposed fee schedule and fee study was made available to the public 15 days prior to the August 6, 2024, City Council meeting.

Public comments received prior to the August 6, 2024, City Council meeting may be viewed at this link:

[CITY OF COSTA MESA - Calendar \(legistar.com\)](https://legistar.com/CITY_OF_COSTA_MESA_Calendar).

CITY COUNCIL GOALS AND PRIORITIES:

This item supports the City Council's Goal to *Diversify, Stabilize, and Increase Housing to Reflect Community Needs* in that the adoption of an Affordable Housing Ordinance, and subsequent in-lieu fee, assists in achieving the City's RHNA for the very-low-, low-, and moderate-income categories, coupled with the other Housing Element programs intended to remove or reduce existing barriers and constraints to market-rate housing developments.

CONCLUSION:

Addressing housing needs for all income levels has been identified as one of the main housing goals by the Costa Mesa community and City Council. The community profile described in the 2021-2029 Housing Element showed that approximately half of Costa Mesa residents are overpaying for housing costs due to the lack of housing options. Adoption of an Affordable Housing Ordinance would be a step towards addressing this issue coupled with the other Housing Element programs intended to remove or reduce existing barriers and constraints to market-rate housing developments. Furthermore, the Ordinance would help towards achieving the City's RHNA for the very-low-, low-, and moderate-income categories. Its adoption would also fulfill the objective of Program 2A of the Housing Element and help achieve City Council's goal to "diversify, stabilize and increase housing to reflect community needs."

A component of an Affordable Housing Ordinance is the establishment of an in-lieu fee for applicants choosing to fulfill their affordable housing requirements by paying an in-lieu fee rather than providing the affordable units on-site. The proposed fees are based on the KMA analysis, including the set-aside percentages previously considered by the City Council. However, the City Council may decide an alternative fee amount as discussed in this report.