

**PRELIMINARY DRAFT FOR DISCUSSION PURPOSES ONLY**

**ORDINANCE NO. 2023-XX**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA AMENDING THE COSTA MESA MUNICIPAL CODE, TITLE 13 (PLANNING, ZONING AND DEVELOPMENT) TO ESTABLISH AN INCLUSIONARY HOUSING PROGRAM**

**THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:**

WHEREAS, in fall 2020, the City began preparation of its Housing Element and held multiple community outreach meetings to obtain feedback regarding community housing goals and priorities;

WHEREAS, the City submitted the Housing Element to the State for certification and adopted the Housing Element on February 1, 2022;

WHEREAS, following revisions that were required in order to respond to State comments and requests, the City Council re-adopted the 2021-2029 6th Cycle Housing Element on November 15, 2022;

WHEREAS, the Housing Element includes the City's housing goals, policies, and implementation actions (referred to as Housing Element "programs"). One of the Housing Element goals (Housing Goal #2) is to "facilitate the creation and availability of housing for residents at all income levels and for those with special housing needs";

WHEREAS, in order to accomplish this goal, the Housing Element identifies several housing programs including Program 2A which calls for the City to consider adoption of an inclusionary housing ordinance;

WHEREAS, the City retained an expert consultant, Keyser Marston Associates Inc. (KMA), to evaluate and make policy recommendations for a potential inclusionary housing ordinance, including the affordability percentage requirement and the potential for an in-lieu fee option;

WHEREAS, in May 2023, staff held several stakeholder meetings with housing advocates, housing developers, and the Building Industry Association (BIA) to gather feedback on a potential inclusionary housing ordinance;

WHEREAS, on May 16, 2023, City Council held a joint study session meeting including the City's the Planning Commission to discuss the components of an inclusionary housing ordinance and provided policy direction for staff to include in a draft inclusionary housing ordinance;

WHEREAS, the Planning Commission held a public hearing on DATE with all persons having the opportunity to speak for and against the proposed inclusionary housing ordinance and recommended VOTE;

WHEREAS, the City Council held a public hearing on DATE with all persons having the opportunity to speak for and against the proposed inclusionary housing ordinance;

WHEREAS, Ordinance No. 2023-XX has been reviewed for compliance with the California Environmental Quality Act (CEQA);

WHEREAS, the CEQA findings reflect the City's independent judgment and analysis;

WHEREAS, the City Council finds that the provisions of this Ordinance are consistent with the City of Costa Mesa's General Plan; and

WHEREAS, all legal prerequisites prior to the adoption of this Ordinance have occurred.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1. Compliance with CEQA.**

**SECTION 2. Inconsistencies.** Any provision of this ordinance which is inconsistent with state law shall be interpreted in a manner to be consistent with state law. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to affect the provisions of this Ordinance.

**SECTION 3. Severability.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity

of the remaining portions of this Ordinance. The City Council of the City of Costa Mesa hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

**SECTION 4. Effective Date.** This Ordinance shall take effect and be in full force thirty (XX) days from and after the passage thereof, and prior to the expiration of fifteen (15) days from its passage shall be published once in the ORANGE COAST DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

**SECTION 5. Certification.** The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted in the manner required by law.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2023 by the following XX vote:

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John Stephens, Mayor

ATTEST:

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Brenda Green, City Clerk

APPROVED AS TO FORM:

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Kimberly Hall Barlow, City Attorney

DRAFT

STATE OF CALIFORNIA     )  
COUNTY OF ORANGE     )     ss  
CITY OF COSTA MESA     )

I, Brenda Green, City Clerk of the City of Costa Mesa, do hereby certify that the above and foregoing is a true and correct copy of Ordinance No.2023-XX \_\_\_\_ introduced at a regular meeting of the City Council of the City of Costa Mesa held on the \_\_\_\_ day of \_\_\_\_\_, 2023, and was thereafter adopted at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2023, by the following vote:

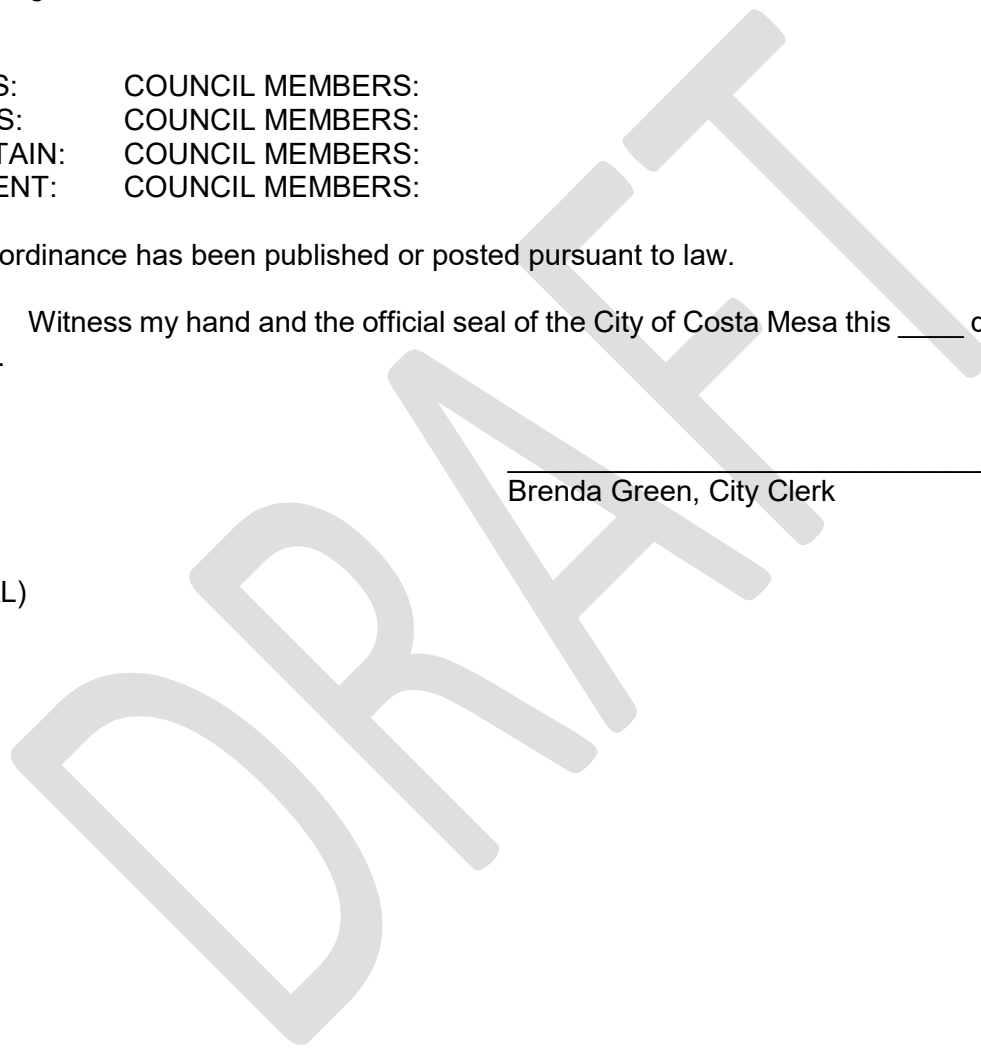
AYES:           COUNCIL MEMBERS:  
NOES:           COUNCIL MEMBERS:  
ABSTAIN:       COUNCIL MEMBERS:  
ABSENT:        COUNCIL MEMBERS:

Said ordinance has been published or posted pursuant to law.

Witness my hand and the official seal of the City of Costa Mesa this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Brenda Green, City Clerk

(SEAL)



## **Purpose.**

The purpose is to facilitate 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. Provision of inclusionary units within new residential developments will assure that new affordable housing units are distributed throughout the City in order to provide for economically diverse neighborhoods and sufficient housing opportunities affordable to all segments of the Costa Mesa community. It is intended in part to implement state policy that declares that local governments have a responsibility to exercise their powers to facilitate the development of housing to adequately provide for the housing needs of all economic segments of the community, as stated in Government Code Section 65580. It is also intended to implement Program 2A of the Housing Element of the General Plan which identifies an inclusionary housing program as a desirable housing policy that would require either production of affordable housing; payment of in-lieu fees, or alternative means of compliance to support construction of affordable housing units.

## **Definitions.**

1. Area Median Income
2. Extremely-Low Income
3. Very-Low Income
4. Low-Income
5. Moderate-Income
6. Market Rate Housing Unit
7. Affordable Ownership Housing Unit
8. Affordable Rental Housing Unit
9. Inclusionary Housing Agreement
10. Affordable Housing Agreement
11. New Residential Project
12. Ownership Units

## **Applicability.**

This ordinance shall apply to new ownership residential projects of XX or more units in size and to new rental residential projects of XX or more units in size.

## **Affordable Ownership Housing Units – Onsite Production.**

The following requirements and standards shall apply to onsite production of affordable ownership housing units:

1. *Set-aside Requirement.* New ownership residential projects shall provide a minimum of XX% of the project's base units as affordable ownership housing units.

2. *Affordability Level.* The affordable ownership housing units shall be provided at the XX income level.
3. *Affordability Terms.* The affordable ownership units shall remain affordable for a period of XX years or as stated in the Affordable Housing Agreement, or other adopted agreement(s).
4. *Concurrent Construction.* The affordable ownership units shall be built concurrently with the market rate units as provided in the project's approved Construction Phasing Plan. All exterior and interior improvements, finishes, applicable packages, access to community amenities, etc. for the affordable unit shall be comparable, if not same, to the market rate units.
5. *Bedroom Mix.* The bedroom mix for the affordable ownership unit shall be proportional to the bedroom mix of the market rate units. The affordable units may be no more than XX% smaller in square footage than the average square footage of the market rate units.
6. *Location.* The affordable ownership units shall be dispersed and evenly distributed throughout the project.

#### **Affordable Ownership Housing Units – Alternatives to Onsite Production.**

Pursuant to Government Code Section XX, alternative methods of compliance must be provided for new residential projects that cannot produce the affordable units onsite. The following are the alternative options to fulfill the inclusionary housing requirement if onsite production of affordable ownership housing units is determined to be economically infeasible and would impose an extreme hardship:

1. *In-Lieu Fee.* A fee may be paid in lieu of providing the affordable ownership housing units.
  - a. The fee shall be calculated based on \$XX per the project's base unit/\$XX per square foot/a formula as adopted by the City Council;
  - b. The fee shall be paid prior to the issuance of the first building permit for any residential structure in the development project or as determined by the project's conditions of approval or other adopted agreement(s); and
  - c. Fees paid to fulfill the inclusionary housing requirements shall be placed in the City's housing fund, the use of which is governed by this ordinance in the below section.
2. *Offsite Production.* Affordable ownership housing units may be provided offsite at one or several sites within the City of Costa Mesa and shall be located within a reasonable distance from the original project triggering the inclusionary housing requirement. The same provisions as outlined in subsection 1 through 6 for onsite of affordable ownership housing units shall also apply to the offsite affordable units.

3. *Land Dedication.* The City Council has the discretion to allow a developer to dedicate property in lieu of onsite production of affordable ownership units. The following requirements are applicable to any property proposed to be dedicated:
  - a. The property shall be located in the City of Costa Mesa;
  - b. The developer shall convey the property to the City at no cost;
  - c. The site's General Plan and zoning standards shall allow for residential use at a density sufficient to allow for the project's required number of inclusionary affordable units to be developed; and
  - d. The site shall be suitable in terms of size, configuration, and physical characteristics to allow for the project's required number of inclusionary affordable units to be developed.
  
4. *Acquisition and Rehabilitation of Existing Units.* The City Council has the discretion to allow a developer to acquire, rehabilitate and place affordability covenants on existing offsite units that are within the City of Costa Mesa. The offsite location of existing units shall meet the following requirements:
  - a. The location shall be identified as at-risk in the City's Housing Element;
  - b. At least XX% of the original project's base units shall be affordable for the same affordability level and period required in subsections 2 and 3; and
  - c. Existing units shall be rehabilitated concurrently with the construction of the project's market rate units or as determined in the project's conditions of approval or adopted agreement(s).

#### **Affordable Rental Housing Units – Onsite Production.**

The following requirements and standards shall apply to onsite production of affordable ownership housing units:

1. *Set-aside Requirement.* New rental residential projects shall provide a minimum of XX% of the project's base units as affordable rental housing units.
2. *Affordability Level.* The affordable rental housing units shall be provided at the XX income level or a mix of XX and XX income levels.
3. *Affordability Terms.* The affordable rental units shall remain affordable for a period of XX years or as stated in the Inclusionary Housing Agreement, Affordable Housing Agreement, or other adopted agreement(s).
4. *Concurrent Construction.* The affordable rental units shall be built concurrently with the market rate units as provided in the project's approved Construction Phasing Plan. All exterior and interior improvements, finishes, applicable packages, access to community amenities, etc. for the affordable unit shall be comparable, if not same, to the market rate units.
5. *Bedroom Mix.* The bedroom mix for the affordable ownership unit shall be proportional to the bedroom mix of the market rate units. The affordable units may be no more than



XX% smaller in square footage than the average square footage of the market rate units. At least XX% of the units shall include a mix of XX-bedroom and XX-bedroom units.

6. *Location.* The affordable rental units shall be dispersed and evenly distributed throughout the project.

### **Affordable Rental Housing Units – Alternatives to Onsite Production.**

The following are the alternative options to fulfill the inclusionary housing requirement if onsite production of affordable rental housing units is determined to be economically infeasible and would impose an extreme hardship:

1. *In-Lieu Fee.* A fee may be paid in lieu of providing the affordable ownership housing units.
  - a. The fee shall be calculated based on \$XX per the project's base unit/\$XX per square foot/a formula as adopted by the City Council;
  - b. The fee shall be paid prior to the issuance of the first building permit for any residential structure in the development project or as determined by the project's conditions of approval or other adopted agreement(s); and
  - c. Fees paid to fulfill the inclusionary housing requirements shall be placed in the City's housing fund, the use of which is governed by this ordinance in the below section.
2. *Offsite Production.* Affordable rental housing units may be provided offsite at one or several sites within the City of Costa Mesa and shall be located within a reasonable distance from the original project triggering the inclusionary housing requirement. The same provisions as outlined in subsection 1 through 6 for onsite of affordable rental housing units shall also apply to the offsite affordable units.
3. *Land Dedication.* The City Council has the discretion to allow a developer to dedicate property in lieu of onsite production of affordable rental units. The following requirements are applicable to any property proposed to be dedicated:
  - a. The property shall be located in the City of Costa Mesa;
  - b. The developer shall convey the property to the City at no cost;
  - c. The site's General Plan and zoning standards shall allow for residential use at a density sufficient to allow for the project's required number of inclusionary affordable units to be developed; and
  - d. The site shall be suitable in terms of size, configuration, and physical characteristics to allow for the project's required number of inclusionary affordable units to be developed.
4. *Acquisition and Rehabilitation of Existing Units.* The City Council has the discretion to allow a developer to acquire, rehabilitate and place affordability covenants on existing

offsite units that are within the City of Costa Mesa. The offsite location of existing units shall meet the following requirements:

- a. The location shall be identified as at-risk in the City's Housing Element;
- b. At least XX% of the original project's base units shall be affordable for the same affordability level and period required in subsections 2 and 3; and
- c. Existing units shall be rehabilitated concurrently with the construction of the project's market rate units or as determined in the project's conditions of approval or adopted agreement(s).

### **Density Bonus and Incentives.**

If the developer is proposing to provide affordable ownership or rental units in exchange for an increase in density, concessions, incentives, or waivers/modifications of development standards pursuant to the State Density Bonus Law (Government Code Section 65915), those affordable units may count as inclusionary units provided they meet the requirements outlined in this ordinance.

Notwithstanding the required concessions and incentives pursuant the State Density Bonus Law, the City Council or their designee in its sole discretion may grant additional incentives to encourage the construction of inclusionary units.

### **Agreements.**

Applications for new residential development projects shall be approved only concurrently with the approval of an Inclusionary Housing Agreement. This agreement shall not apply if the developer chooses to pay a fee in-lieu of providing inclusionary units.

### **Use of In-Lieu Fees.**

In-lieu fees collected as part of the inclusionary housing program shall be placed in a housing fund to be used for furthering existing housing support programs for the community including but not limited to subsidy for 100% affordable housing projects, loans for a first-time home buyer program, rental assistance program. In addition, the fees may be used to implement and manage the inclusionary housing program.

### **In-Lieu Fee Adjustments.**

The in-lieu fee amount shall be adjusted annually/bi-annually/as determined by the City Council or their designee. The fee adjustment shall be adopted by resolution.

### **Exemptions.**

This ordinance shall not apply to accessory dwelling units.