

ATTACHMENT 2  
(EXHIBIT A)

**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 project with ~~ten (10)~~ ~~or more~~ 60 dwelling units or more per acre and with a minimum project site size of two (2) acres, the affordable housing requirements set forth in Chapter XVII (Affordable Housing Ordinance) shall apply unless otherwise exempted.

## CHAPTER XVII. AFFORDABLE HOUSING ORDINANCE

### 13-326. Purpose.

The purpose of this chapter 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 chapter shall apply to:

- (a) properties that are located in areas which the City completed a Zone Change and/or General Plan Amendment that allows for residential development after the effective date of this chapter; and/or
- (b) properties that receive City approval of a General Plan Amendment, Zone Change or other discretionary land use or development approval including but not limited to Master Plan, Specific Plan, or subdivision after the effective date of this chapter and which allows for residential development and/or 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 chapter; and
- (c) provided, however, that this chapter shall not be applied in a manner that conflicts with applicable State law.

### 13-328. Exemptions.

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

- (a) Residential projects with less than 60 ~~ten (10)~~ dwelling units per acre;
- (~~a~~) (b) Residential projects with a site size under two (2) acres regardless of proposed density;
- (c) Any ownership residential project;

~~(b)~~(d) \_\_\_ Conversions of existing multi-family residential developments such as apartments to residential common interest developments (condominiums) for ownership housing pursuant to section 13-42;

~~(e)~~(e) \_\_\_ 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)~~(f) \_\_\_ Residential building additions, repairs or remodels ~~provided that such work does not increase the number of existing dwelling units by ten (10) or more;~~

~~(e)~~(g) \_\_\_ Residential projects or mixed-use projects having residential units and located within the boundaries of the Fairview Development Center Specific Plan; and

### **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 chapter.

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

As used in this chapter the following terms shall have the meanings set forth below. Terms not specifically defined herein shall have the meanings ascribed to them elsewhere in this code:

*Affordable Housing Agreement.* A legally binding recorded agreement and/or deed restriction in a form satisfactory to the director and the city attorney setting forth those provisions necessary to ensure that the requirements of the chapter are met, including but not limited to those specified in section 13-332.

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

*Affordable Housing Trust Fund.* The fund into which all collected in-lieu fees are deposited for the purposes of furthering affordable housing goals within the City.

*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), times 30%:

| Income Category | Percentage of AMI |
|-----------------|-------------------|
| Low Income      | 80%               |
| Very Low Income | 50%               |

*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.

*Affordable Unit.* A dwelling unit that is required to be rented at the affordable rent or sold at the affordable sales price to very low, low- and moderate-income households.

*Applicant.* A person or entity that applies for approval or approvals for a residential project and/or owns the property or properties on which a residential project is proposed.

*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).

*Director.* The Director of Economic and Development Services 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.* As defined in 25 Cal Code Regs. Section 6914 including any successor section thereto.

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

*Ownership Project.* A residential project that is intended to be sold for homeownership.

*Rental Project.* A residential project that is intended to be rented to tenants.

*Residential Project.* A project undertaken for the purpose of development of land for residential purposes that requires the issuance of a discretionary 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.

*Zone Change.* Any proposed change to the official zoning map. The terms rezone and zoning amendment shall also have the same meaning.

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

The following requirements and standards shall apply to any residential project subject to this chapter:

- (a) *Project Threshold.* The affordable housing requirements is applicable to any proposed residential project with ~~ten (10)~~60 dwelling units or more and with a project site size of two (2) acres.

(b) *Number of Affordable Units.* The minimum number of dwelling units required to be set aside as affordable units and the required affordability level(s) of the units are specified as follow:

(1) *Rental Projects.* An applicant of a rental project shall fulfill their obligation with onsite production of affordable rental units at either low or very-low income levels and the minimum required number of units shall be calculated based on the proposed project's base density.

a. For residential projects either rezoned to or located in the areas designated to be rezoned in the General Plan and/or within the boundaries of Figure 13-200.106 of section 13.200.106 at 60 or more dwelling units per acre: at least 1044% of the total applicable dwelling units proposed shall be affordable at the low-income level or at least 57% at the very-low income level.

~~b. For residential projects either rezoned to or located in the areas to be rezoned in the General Plan and/or within the boundaries of Figure 13-200.106 of section 13.200.106 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 level.~~

~~e.b.~~ For any partial affordable unit calculated, the applicant 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 Projects.* An applicant of an ownership project may choose to fulfill their obligation with payment of in-lieu fees, onsite production of affordable ownership or rental units, offsite production of affordable ownership or rental units, or dedication of land. Onsite production of affordable units is not required for ownership 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 an applicant 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 chapter for onsite production of affordable units shall also apply.~~

~~(3) Residential Projects with Mixed Housing Types. If an applicant proposes a residential project that includes both ownership and rental units, the provisions of this chapter that apply to ownership projects shall apply to that portion of the development that consists of ownership units, while the provisions of this chapter that apply to rental projects shall apply to that portion of the development that consists of rental units.~~

~~(4)(2) Parcel or Lot Merger. An applicant shall not avoid the requirements of this chapter by submitting piecemeal planning permit applications. At the time of the application for first approval for the residential project, the applicant shall identify all contiguous property under common ownership and control. The applicant shall not be required to construct dwelling units upon the contiguous property at the time of the application for first approval; however, the applicant shall be required to include the contiguous property under common ownership or control in its affordable housing plan. The affordable housing agreement shall be recorded against the residential project and all contiguous property under common ownership or control and shall require compliance with this chapter upon development of each contiguous property at such time as there are planning permit applications that would authorize residential units for the residential development and the contiguous property under common ownership or control.~~

(c) *Covenant Period.* The affordable 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 projects, the affordable 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 projects that fulfill their obligation with onsite production of affordable units, the affordable units must remain affordable for not less than forty five (45) years.~~

(d) *Timing of Construction.* The affordable units shall be constructed concurrently with or prior to the construction of market rate units.

(1) In phased developments, the affordable units shall be constructed in proportion to the number of dwelling units in each phase of the market rate project. The applicant 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.

(e) *Unit Size.* The size of the affordable units shall be the same size as the market rate units but the final review authority may consider and approve affordable 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 affordable 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.

(g) *Design.* All exterior and interior improvements including floor plan design, finishes/materials, etc. for the affordable units shall be comparable, if not same, to the market rate units. The affordable 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 affordable units as long as it is comparably the same to the market rate units.

(h) *Location.* Affordable Units shall be dispersed and evenly distributed throughout a residential project and not clustered in a particular area of the development or as otherwise agreed at the City's discretion in an affordable housing agreement. Affordable units within a residential project that share a common entrance or access shall not have separate entrances or access for market rate and affordable 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 affordable 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 chapter if onsite production of affordable 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 applicant.

- (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 projects;~~ rental projects with one-hundred (100) or fewer dwelling units; and any fractional number of affordable 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 applicant 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 to the City's housing trust fund.

- (b) *Offsite Construction*. Affordable units may be constructed offsite only upon a determination by the director or their designee that onsite production of affordable units is economically infeasible. If this alternative compliance option is chosen, then the offsite affordable units must be constructed prior to or concurrently with construction of the market rate residential project.

- (1) The offsite affordable units shall comply with all applicable requirements pursuant to this chapter for onsite production of affordable 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 residential project that is subject to the affordable housing requirement.
- (3) For residential projects for which a master plan is required, the affordable units may either be provided onsite or offsite on a separate parcel within the residential project's approved master plan boundaries.

~~(c) *Onsite Construction of Rental Units for Ownership Projects.* An applicant 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 chapter for onsite production of units.~~

~~(d)~~(c) *Land Dedication.* An applicant 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 affordable 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 land to be dedicated to the City 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 affordable 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 affordable units to be constructed;
- (4) The value of the land shall be equivalent or comparable to the in-lieu fee payment that would be applicable to the proposed residential project;

- (5) The applicant 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 applicant 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 shall review and determine if the plan and agreement are complete and in substantial conformance with the requirements of this chapter. 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 applicant shall submit a plan detailing how the requirements of this chapter 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 affordable units;
- (2) The total number of affordable units to be provided and the calculations used to determine the number of required affordable units;
- (3) A floor plan and site plan depicting the location of the affordable units;
- (4) The income level targets for each affordable unit;
- (5) The mechanisms that will be used to assure that the affordable 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 affordable units; and
- (7) Construction phasing plan schedule with the anticipated completion and opening date and as applicable for phased residential projects, ~~a phasing plan.~~

(b) *Affordable Housing Agreement Requirements.* Upon final project approval, the developer shall execute and record an affordable housing agreement in a form approved by the City Attorney, prior to approval of any final or parcel map or issuance

of any building permit, whichever occurs first, and that at a minimum specifies the number, type, location, size, and phasing of all affordable units, provisions for income certification and screening of potential ~~purchasers or renters of units, and resale control mechanisms, including the financing of ongoing administrative and monitoring costs~~, consistent with the approved affordable housing plan and any administrative procedures adopted pursuant to section 13-338.

- (1) An affordable housing agreement will not be required for projects which will be satisfying their affordable housing requirement through payment to the City of an in-lieu fee.
- (2) The City Council, by resolution, may establish fees for the ongoing administration and monitoring of the affordable units, which fees may be updated periodically, as required.

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

All in-lieu fees, promissory note repayments, shared appreciation payments and other funds collected under this chapter 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 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 and monitoring these programs.

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

Pursuant to the California State Density Bonus Law (Government Code Section 65915 et seq), if the applicant 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 affordable units required in this chapter provided they also meet, or exceed, the requirements outlined in section 13-330.

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

An applicant that provides affordable units pursuant to this chapter is not required to comply with the parking requirements set forth in section 13-85. 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, unless otherwise prohibited by state law. The parking study shall be reviewed and approved by the director or their designee.

### **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 applicant 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 affordable units constructed pursuant to this chapter are properly maintained and continue to comply with the applicable provisions of this chapter, the applicant or responsible party at the time shall submit annual compliance reports to the City for review. In addition, the City shall conduct periodic onsite 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 is authorized to adopt administrative rules, regulations, policies, guidelines, standards, and/or procedures necessary to implement the provisions of this chapter including but not limited to eligibility requirements and/or preference standards that may be applied in the selection of homebuyers and tenants.

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

(a) Violations of this chapter may be enforced by all available remedies at law or in equity, including, but not limited to those set forth in section 1-33 of this code.

(b) Failure of any city official, employee, or agent to fulfill and/or enforce the requirements of this chapter shall not excuse any person or property from the requirements of this chapter.