

# REQUEST FOR Planning Commission Action



**PLANNING COMMISSION MEETING DATE:**

**AUGUST 3, 2020**

**TITLE:**

**PUBLIC HEARING – ZONING ORDINANCE  
AMENDMENT NO. 2020-03 TO UPDATE THE  
HOUSING OPPORTUNITY ORDINANCE**

**PLANNING COMMISSION SECRETARY**

APPROVED

- As Recommended
- As Amended
- Set Public Hearing For \_\_\_\_\_

DENIED

- Applicant's Request
- Staff Recommendation

CONTINUED TO \_\_\_\_\_

Prepared by Vince Fregoso, AICP

*Alvaro Nunez, For M.T.*  
Executive Director

*[Signature]*  
Planning Manager

## **RECOMMENDED ACTION**

Recommend that the City Council adopt an ordinance approving Zoning Ordinance Amendment No. 2020-03.

### **Request of Applicant**

The Planning Division is requesting approval of several revisions to Chapter 41 (Zoning) of the Santa Ana Municipal Code (SAMC) to amend various provisions of Article XVIII.I pertaining to the Housing Opportunity Ordinance.

### **Project Background**

The Housing Element of the General Plan identifies the long range plans for housing throughout the City. The Housing Opportunity Ordinance was established in part to implement the Housing Element goal to promote the provision of affordable housing within the City. In an effort to meet this goal, the City adopted the Housing Opportunity Ordinance (HOO) in 2011 that applied to proposals for five or more housing units. The ordinance required these residential projects to provide 15 percent of the total number of units as affordable, whether the project is for sale or rent and applied to developments requesting a zone change or general plan amendment. Further, it applied to projects increasing the existing allowable residential density and the conversion of apartments to condominiums. It also provided the option to pay an in lieu fee instead of providing units subject to City Council approval.

In 2015, the HOO was updated to make the inclusionary housing requirements more predictable for housing developers and to increase affordable housing production in conjunction with new market rate housing development. Some examples of the ordinance changes included simplifying the complex in-lieu fee calculation, modifying the "moderate income" definition to 80 percent of the area median, and creating additional incentives to allow developers the option of

providing inclusionary housing units either on or off-site. A provision of the ordinance was a requirement to revisit the HOO in three years to determine its effectiveness.

### **Project Analysis**

In December 2018, the City Council received and filed a report on the effectiveness of the Housing Opportunity Ordinance that was adopted in 2015. In July 2019, the Council formed an Ad Hoc Committee to review the Ordinance as was required by the 2015 ordinance. The Ad Hoc Committee included Mayor Pro Tem Villegas, Councilmember Iglesias, and Councilmember Solorio. In May 2020, the Ad Hoc Committee was revised to include new members and continued the review efforts of the previous committee. The sections below provide a summary of the recommendations by the Ad Hoc Committee.

### ***Proposed Amendments:***

- **Definitions** - This proposal consists of modifying certain definitions and the addition of new definitions. Definitions pertaining to “Affordable housing cost” and “Low income households” were modified to identify the type of households that qualify for these income levels. Further, a definition for “Moderate Income Households” is proposed to identify the parameters of this income level, a definition for “Entitled Residential Project” is proposed to identify when a project is entitled, a “General Plan” definition is proposed as is a definition for “Moderate income units.”
- **Applicability of Ordinance** – This section is proposed to be amended to only apply to those projects with 20 or more units in size and that are requesting an increase in the density permitted by the General Plan. The current ordinance applies to projects consisting of five or more units, projects requesting a zone change or a general plan amendment, and are within an overlay zone. It also reduces the percentage of for-sale units that need to be available for moderate income households from the current 15 percent to 10 percent of the total number of units in an effort to incentivize the construction of for-sale units.
- **Exempt Projects** – Revises language to be consistent with a change made in 2015 to the Adaptive Reuse Ordinance by clarifying that an adaptive reuse project is not subject to the Housing Opportunity Ordinance.
- **In-Lieu Fee Option** – This section is proposed to be revised to reduce the in-lieu fee from \$15 per habitable square foot to five dollars per habitable square foot. It also states that the in-lieu fee option does not apply to projects with less than 20 units. In addition, this section is proposed to be modified to clarify that, for phased projects, the total inclusionary fee will be paid as each phase of construction obtains a building permit.

This section also provides an incentive for an “Entitled Residential Project” to obtain building permits during the current economic climate. An Entitled Residential Project that consists of 20 or more units will be allowed to pay a reduced fee of \$10 per square foot of habitable area as compared to the current rate of \$15 per habitable square foot. This

incentive will be in place until April 2021, with any development not obtaining a building permit by that time obligated to pay the higher rate. Projects subject to a development agreement or an agreement to pay a specific in-lieu fee will be required to comply with the agreement as approved and will not be modified by the proposed ordinance.

- ***Inclusionary Housing Development Incentives*** – This section is proposed to eliminate the “double” density bonus concession available for developers as part of the production of affordable units while incentivizing developments of for-sale units. The proposed changes will also allow a developer of for-sale, moderate income housing units to request three concessions from the City. The amendment also requires the developer to provide a community benefit as part of the project, which may include park improvements, a community garden, developer funded down payment assistance, or pay a subsidy toward services, activities or programs.
- ***Inclusionary Housing Fund*** – This section is proposed to be revised to clarify the use of in-lieu fees paid to the City. It provides the Community Development Agency with a priority for the use of the funds and allows the funds to be used for one-time programs for code enforcement, and quality of life and general health and safety activities. It also codifies the City’s local preference for projects that are funded with in-lieu fees and encourages a commitment to use a skilled and trained workforce to complete the project.

### **CEQA Analysis**

In accordance with the California Environmental Quality Act, the proposed project is exempt from further review pursuant to Section 15061 (b)(3), as there is no potential for causing a significant impact on the environment due to the adoption of the ordinance. Categorical Exemption Environmental Review No. 2020-53 will be filed for this project.

### **Conclusion**

Following the direction of the City Council Ad Hoc Committee, staff recommends that the Planning Commission recommend that the City Council adopt an ordinance approving Zoning Ordinance Amendment No. 2020-03.

  
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Vince Fregoso, AICP  
Planning Manager

VF:vf  
M:\Reports\ZOA 2020-03 HOO

Attachment:  
Exhibit 1 – Proposed Housing Opportunity Ordinance

ORDINANCE NO. NS-XXXX

AN ORDINANCE OF THE CITY OF SANTA ANA AMENDING CHAPTER 41, ARTICLE XVIII.I (HOUSING OPPORTUNITY ORDINANCE) OF THE SANTA ANA MUNICIPAL CODE TO MODIFY APPLICABILITY AND VARIOUS IMPLEMENTATION PROVISIONS OF THE ORDINANCE

THE CITY COUNCIL OF THE CITY OF SANTA ANA HEREBY ORDAINS AS FOLLOWS:

Section 1. The City Council of Santa Ana hereby finds, determines and declares as follows:

- A. In Santa Ana, as in other cities in California, there has been a deficit in much needed housing. It is difficult to meet the many housing needs which include, but are not limited to: increasing the housing supply and mix of housing types, rental or ownership opportunities, affordability, promoting infill development and socio-economic equity, the protection of environmental resources, and the encouragement of efficient development patterns.
- B. In 2015, the City amended its Housing Opportunity Ordinance (HOO) in the Santa Ana Municipal Code (SAMC Sections 41-1900 through 41-1910) to require the construction of affordable units on or off-site or the payment of an in-lieu fee in the amount of \$5.00 per square foot of habitable space for projects consisting of 5-20 units, and the payment of an in-lieu fee in the amount of \$15.00 per square foot of habitable space for projects with over twenty (20) units.
- C. In addition to the housing crisis, international, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-Co V-2," and the disease it causes has been named "coronavirus disease 2019", abbreviated COVID-19 ("COVID-19").
- D. On March 4, 2020, the Governor of the State of California declared a state of emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for the broader spread of COVID-19.
- E. On March 13, 2020, the President of the United States of America declared a national emergency and announced that the federal government would make emergency funding available to assist state and local governments in preventing the spread of and addressing the effects of COVID-19.

- F. The Orange County Board of Supervisors and Department of Public Health declared a local emergency and local public health emergency to aid the regional healthcare and governmental community in responding to COVID-19.
- G. On March 17, 2020, the Santa Ana City Council proclaimed the existence of a local emergency to ensure the availability of mutual aid and support an expedient response to the COVID-19 pandemic.
- H. As a result of the public health emergency and the precautions recommended by health authorities, City Hall and the public counters for development processing and permit applications in Santa Ana were closed to the public from March 18 through June 1, 2020, thereby limiting the processing of development applications, delaying development projects that were already approved, and thereby impacting development activities in the city for over 10 weeks.
- I. The City Council of the City of Santa Ana is concerned about the unplanned detrimental effects caused by COVID 19 on the local economy and the development and construction of housing in the City. These unforeseen issues are of grave concern as it is imperative for the City to maintain a steady stream of housing units in the pipeline at all times.
- J. As a result of current world events, construction of single-family homes plummeted to its slowest pace in several years. Single-family housing starts dropped 17.5 percent while multifamily housing starts (5 or more units in a structure) fell 32.1 percent in April and were down 3.9 percent from a year earlier.
- K. Lack of housing units in the City of Santa Ana is a threat to public health and safety and requires urgent intervening action by the City Council.
- L. In an effort to combat the anticipated severe negative effects that a reduction in the availability of housing units in the City of Santa Ana will cause to the City and its residents, the City Council has determined that a reduction in the HOO fee will serve as an incentive and a catalyst for builders to initiate construction of housing in the City and for the City to continue providing quality housing opportunities in the City.
- M. The Santa Ana City Council finds that the construction of new housing units will also stimulate the economy by providing jobs and to that end the City is committed to encouraging that:
- N. The Santa Ana City Council finds that requiring projects with over twenty units to pay the full \$15.00 per square foot in-lieu housing fee would pose a serious threat to the public interest, health, safety and welfare for the following reasons:

(1) It would adversely impact the development of housing projects in the city;

- (2) It would adversely affect the number of housing developments in the pipeline;
- (3) It would cause a decline in the available housing stock;
- (4) It would put residents at risk for homelessness;
- (5) It would cause a decline in housing units available at diverse price points; and
- (6) It would risk the public health, safety and welfare of the City residents needing adequate housing.

- O. The City Council of the City of Santa Ana desires to use the inclusionary housing fund to increase and improve the supply of housing affordable to moderate, low, very low, and extremely low income households in the city with the priority on creation of affordable housing opportunities or units from the existing market rate housing stock rather than construction of new affordable housing units. This includes, but is not limited to, the purchase and rehabilitation of units for sale and the recapturing of affordable housing units at risk of market conversion. Monies may also be used to pay for one-time programs for code enforcement, and quality of life and general health and safety activities.
- P. The Request for Council Action for this ordinance dated August 18, 2020, and duly signed by the Executive Director of the Planning and Building Agency shall, by this reference, be incorporated herein, and together with this ordinance, any amendments or supplements, and oral testimony constitute the necessary findings for this ordinance.

Section 2. The proposed ordinance has been reviewed with respect to applicability of the California Environmental Quality Act ("CEQA") and the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.). The project is exempt from CEQA as it can be seen with certainty that there is no impact on the environment [Section 15061(b) (3)] and a Notice of Exemption will be filed upon adoption of this ordinance.

Section 3: The Santa Ana City Council hereby finds, determines and declares that Santa Ana Municipal Code Chapter 41, Article XVIII.I is hereby amended and restated, in its entirety as follows:

#### **ARTICLE XVIII.I. - HOUSING OPPORTUNITY ORDINANCE**

Sec. 41-1900. - Purpose.

This article establishes standards and procedures to encourage the development of housing that is affordable to a range of households with varying income levels. The

purpose of this article is to encourage the development and availability of affordable housing by requiring the inclusion of affordable housing units within new developments or the conversion of rental units to condominium ownership when the number of units exceed the densities permitted under the gGeneral plan.

Sec. 41-1901. - Definitions.

As used in this article, the following terms shall have the following meanings:

*Adjusted for household size appropriate for the unit* means a household of one person in the case of a studio unit, two (2) persons in the case of a one-bedroom unit, three (3) persons in the case of a two-bedroom unit, four (4) persons in the case of a three-bedroom unit, and five (5) persons in the case of a four-bedroom unit.

*Administrative procedures* means those regulations promulgated by the executive director pursuant to section 41-1910 of this article.

*Affordable housing cost* means the total housing costs paid by a qualifying household, which shall not exceed the fraction of gross income specified, as follows, ~~in accordance with Sections 50052.5 and 50053 of the Health & Safety Code:~~

*Extremely low-income households.* Thirty (30) percent of the income of a household earning thirty (30) percent of the Orange County median income adjusted for family size appropriate for the unit.

*Very low-income households.* Thirty (30) percent of the income of a household earning fifty (50) percent of the Orange County median income adjusted for family size appropriate for the unit.

*Low-income households.* Thirty (30) percent of the income of a household earning ~~seventy~~ eighty (70-80) percent of the Orange County median income ~~for for-sale units, and thirty (30) percent of the income of a household earning sixty (60) percent of the Orange County median income for rental units, adjusted in either case for family size appropriate for the unit.~~

*Moderate-income households.* Thirty (30) percent of the income of a household earning one hundred twenty (120) percent of the Orange County median income adjusted for family size appropriate for the unit.

The qualifying limits for very low-income, low-income and moderate-income households are established and amended annually pursuant to Section 8 of the United States Housing Act of 1937. The limits are published by the Secretary of Housing and Urban Development.

~~In the event of a conflict between the fractions specified in this definition and those found in Sections 50052.5 and 50053 of the Health & Safety Code, the fractions specified by state law shall control.~~

*Developer* means any association, corporation, firm, joint venture, partnership, person, or any entity or combination of entities, which seeks city approval for all or part of a residential project.

Development Agreement means an agreement approved by the City Council between a property owner and the City pursuant to Government Code section 65864, et seq.

Entitled Residential Project means a development project that includes residential units subject to the provisions and applicability of this Article XVIII.I. that received entitlement approvals by City Council action between August 4, 2015 and August 17, 2020 to construct the residential project and which has not been issued a building permit prior to August 18, 2020.

*Executive director* means the executive director of community development for the city.

General Plan means the adopted general plan for the City of Santa Ana.

*Inclusionary housing agreement* means a legally binding agreement between the developer and the city, in a form and substance satisfactory to the executive director and the city attorney, and containing those provisions necessary to ensure that the requirements of this article are satisfied, whether through the provision of inclusionary units or through an approved alternative method.

*Inclusionary housing fund* means the fund created by the city in which all fees collected in compliance with this article shall be deposited.

*Inclusionary housing plan* means the plan submitted by the developer, in a form specified by the executive director, detailing how the provisions of this article will be implemented for the proposed residential project.

*Inclusionary unit* means a dwelling unit that will be offered for sale or rent to very low, or low, or moderate income households, at an affordable housing cost, in compliance with this article.

*Low-income units and very low-income units* means inclusionary units restricted to occupancy by low or very low-income households, respectively, at an affordable housing cost.

*Market rate units* means dwelling units in a residential project that are not inclusionary units.

~~*Low-income households or lower income households* means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. The limits shall be published in the California Code of Regulations as soon as possible after adoption by the Secretary of Housing and Urban Development. In the event the federal standards are discontinued, the California Department of Housing and Community Development shall, by regulation, establish income limits for lower income households for all geographic areas of the state at eighty (80) percent of area median income, adjusted for family size and revised annually. Lower income households includes very low income households, as defined in the Health & Safety Code, Section 50105, and extremely low income households, as defined in Section 50106.~~



Moderate-income units means inclusionary units restricted to occupancy by Moderate-income households at an affordable housing cost.

*Pipeline Prior project* means any project for which an application was submitted and the application was deemed complete prior to August 4, 2015.

*Regulatory agreement* means an agreement entered into between the City of Santa Ana or the Santa Ana Community Development Agency and a developer by which the developer covenants to keep certain housing units at an affordable housing cost for a specified period of time.

*Rehabilitated units/rehabilitation* means the improvement of a unit in substandard condition to a decent, safe and sanitary level. Units are in substandard condition when, while they may be structurally sound, they do not provide safe and adequate shelter, and in their present condition endanger the health, safety or well-being of the occupants.

*Residential project/project* means any of the following:

A subdivision resulting in the creation of five (5) or more residential lots or residential condominium units; or

The new construction of a project consisting of five (5) or more multi-family units; or

The new construction of five (5) or more separate houses or dwelling units; or

The conversion of five (5) or more existing residential rental units to condominium ownership.

*Target area* means that area designated by the city from time to time, on an as-needed basis, as a priority area for rehabilitation due to health and safety concerns.

*Total housing costs* the total monthly or annual recurring expenses required of a household to obtain shelter. For a rental unit, total housing costs shall include the monthly rent payment and utilities paid by the tenant (excluding telephone and television). For an ownership unit, total housing costs shall include the mortgage payment (principal and interest), insurance, homeowners' association dues (if applicable), private mortgage insurance (if applicable), taxes, utilities, an allowance for maintenance and any other related assessments.

~~*Very low income households* means persons and families whose incomes do not exceed the qualifying limits for very low income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. These qualifying limits shall be published by the department in the California Code of Regulations as soon as possible after adoption by the Secretary of Housing and Urban Development. In the event the federal standards are discontinued, the California Department of Housing and Community Development shall, by regulation, establish income limits for very low income households for all geographic areas of the state at fifty (50) percent of area median income, adjusted for family size and revised annually. Very low income households include extremely low income households, as defined in Health & Safety Code Section 50406.~~

Sec. 41-1902. - Applicability and inclusionary unit requirements.

- (a) *Applicability.* The requirements of this article shall apply to any new residential project comprised of twenty (20) or more residential lots or residential units located within the city, including new construction, and condominium conversions which exceed the General Plan prescribed densities.
- (b) *Applications.* The requirements of this article shall apply to any new residential project proposed in connection with an application to do any of the following:
- (1) Increase the permitted residential density of the subject property above the density permitted by ~~applicable zoning~~ the General Plan at the time of the application. The inclusionary requirements shall only apply to the incremental increase in the number of units beyond that which is allowed by the applicable zoning density permitted by the General Plan.
  - ~~(2) Increase in the permitted residential density or percentage of residential development allowed due to city initiated zone changes after November 28, 2011.~~
  - (32) Increase the permitted percentage of residential development allowed for a mixed-use development above the percentage at the time of the application. The inclusionary requirements shall only apply to the incremental increase in the number of units beyond that which is allowed by the applicable zoning density permitted by the General Plan.
  - ~~(4) Approval of new projects in an overlay zone site plan permitting residential land uses pursuant to division 28 of this chapter.~~
  - (53) Convert rental units to condominium ownership. The inclusionary requirements shall only apply to the incremental increase in the number of units beyond that which is allowed by the applicable zoning density permitted by the General Plan.
- (c) *Units for sale.* If the new residential project consists of units for sale, then a minimum of ~~fifteen~~ ten (15 10) percent of the total number of units in the project shall be sold or rented to ~~low~~ moderate income households.
- (d) *Rental units.* If the new residential project consists of rental units, then a minimum of fifteen (15) percent of the units shall be rented to low-income households, or ten (10) percent rented to very low-income households.
- (e) *Rounding of quantities in calculations.* In calculating the required number of inclusionary units, fractional units shall be rounded-up to the next whole unit. The developer may choose to pay an in-lieu fee set forth in section 41-1904(c) for the fractional units, which shall be calculated based on the number of habitable square feet applicable in each case.
- (f) *Displacement of existing inclusionary units.* Notwithstanding any other provision of this article, any residential project subject to this article that results in the displacement of very low and/or low income household(s) shall be required to provide on-site inclusionary units as required by this article.

- (g) *Compliance with article.* All inclusionary units required by this article shall be sold or rented in compliance with this article.

Sec. 41-1903. - Exempt projects.

The following are exempt from the requirements of this article:

- (a) *Applications deemed complete.* Applications that include a residential project for which a development application has been deemed complete prior to November 28, 2011.
- (b) *Development agreements.* A residential project that is the subject of a ~~d~~Development ~~a~~Agreement under applicable provisions of the California Government Code that expressly provides for an exclusion to this article or provides for a different amount of inclusionary units from that specified by this article, provided the ~~d~~Development ~~a~~Agreement was adopted on or before November 28, 2011.
- (c) *Project with regulatory agreement.* A residential project for which a regulatory agreement has been approved, provided that the regulatory agreement is effective at the time the residential project would otherwise be required to comply with the requirements of this article, and there is no uncured breach of the regulatory agreement before issuance of a certificate of occupancy for the project. This may include a residential project that has obtained a density bonus under article XVI.I of the Santa Ana Municipal Code. Such projects cannot be used to satisfy the inclusionary requirement for another project.
- (d) *Adaptive Reuse.* Adaptive reuse development projects pursuant to Chapter 41, Article XVI.II – Adaptive Reuse.

Sec. 41-1904. - Options to satisfy inclusionary requirements.

- (a) *On-site units.* The primary means of complying with the inclusionary requirements of this article shall be the provision of on-site inclusionary units in accordance with section 41-1901, above. A developer may only satisfy the requirements of this article by means of an alternative to on-site inclusionary units in accordance with the requirements and procedures of this section.
- (b) *Off-site units.*
1. *New units.* The developer may satisfy the inclusionary unit requirements for the project, in whole or in part by constructing the required new inclusionary housing at a different location within the city borders at the ratio of one square foot of habitable inclusionary unit space for each required habitable square foot. While the total habitable square footage area of the required new inclusionary units must be the same as the sum-total of the number of habitable square feet for the project as directed by this ordinance, the number of units and bedrooms associated with the off-site units may be approved by the review authority of the

city, consistent with the type of affordable housing needed at the time of project review.

2. *Rehabilitated units outside a designated target area.* The developer may satisfy the inclusionary unit requirements for the project, in whole or in part by substantially rehabilitating existing housing units elsewhere within the borders of the city at a rate of one and one-half (1½) habitable square feet per each required habitable square foot of inclusionary units.
3. *Rehabilitated units within a designated target area.* Upon application, the developer may satisfy the inclusionary unit requirements for the project, in whole or in part by substantially rehabilitating existing housing units elsewhere within the borders of the city at a rate of one habitable square foot per each required habitable square foot of affordable inclusionary units.

(c) *In-lieu fee.*

~~(1) *Twenty (20) or fewer units.* In the case of a Residential Project containing between five (5) and twenty (20) residential lots or residential units, the Developer may elect to satisfy the Inclusionary Unit requirements for the Project, in whole or in part, by payment of a fee in lieu of constructing some or all of the required units. The amount of the fee allowed by this section shall be five dollars per square foot (\$5.00/ft. <sup>2</sup>) of the sum total of the number of habitable square feet within the entire Project, as measured from the exterior walls of the residential units. This calculation does not include exterior hallways, common areas, landscape, open space or exterior stairways.~~

~~(2-1) *More than 20 units.* In the case of a Residential Project comprised of more than twenty (20) residential lots or residential units, the developer may elect to satisfy the Inclusionary Unit requirements for the Project, in whole or in part, by payment of a fee in lieu of constructing some or all of the required units. The amount of the fee allowed by this section shall be fifteen five dollars per square foot (\$15.00/ft. <sup>2</sup>) of the sum total of the number of habitable square feet within the entire Project, as measured from the exterior walls of the residential units. This calculation does not include exterior hallways, common areas, landscape, open space or exterior stairways.~~

(2) *Entitled Residential Projects.* The applicant(s) of an Entitled Residential Project may either construct the inclusionary units or pay an in lieu fee as follows:

(i) *Twenty (20) or fewer units.* In the case of a Residential Project containing between five (5) and twenty (20) residential lots or residential units, the Developer may elect to satisfy the Inclusionary Unit requirements for the Project, in whole or in part, by payment of a fee in lieu of constructing some or all of the required units. The amount of the fee allowed by this section shall be five dollars per square foot (\$5.00/ft.) of the sum total of the number of habitable square feet within the entire Project, as measured from the exterior walls of the residential units. This calculation does not include

exterior hallways, common areas, landscape, open space or exterior stairways.

(ii) More than 20 units. In the case of a Residential Project comprised of more than twenty (20) residential lots or residential units, the Developer may elect to satisfy the Inclusionary Unit requirements for the Project, in whole or in part, by payment of a fee in lieu of constructing some or all of the required units. The amount of the fee allowed by this section shall be ten dollars per square foot (\$10.00/ft.) of the sum total of the number of habitable square feet within the entire Project, as measured from the exterior walls of the residential units. This calculation does not include exterior hallways, common areas, landscape, open space or exterior stairways. The in lieu fee amount allowed herein by this subsection shall revert to fifteen dollars per square foot (\$15.00) on April 1, 2021 for any construction which adds net residential units, which has City-approved entitlements, that has not been issued a building permit by April 1, 2021.

(iii) A Residential Project that has been entitled and approved with conditions to pay a specific in lieu fee or has a city council approved Development Agreement to pay a specific in-lieu fee shall comply with the conditions or the Development Agreement as approved and shall not be modified by this Ordinance.

(3) *Timing of payment.* The developer shall pay any the in-lieu fees allowed by this section ~~in full before~~ prior to issuance of the ~~first~~ building permit for any construction which adds net portion of the residential units project, including any non-residential portions of a mixed-use development. The developer may provide input regarding what project the in lieu fees should be applied towards, but such input shall not be dispositive. The in lieu fees collected by the city are city funds over which the city has complete and absolute discretion.

(4) *Inclusionary housing fund.* Fees collected in compliance with this section shall be deposited in the inclusionary housing fund.

( [Ord. No. NS-2881, § 2, 9-1-15](#) )

Sec. 41-1904.1. - Inclusionary housing development incentives for production of units.

(a) In order to make the production of new inclusionary units on-site or off-site or off-site rehabilitated units, certain incentives, standards and concessions shall be allowed and prescribed as set forth herein below. Such concessions shall not be available to those developers that choose to pay an in lieu fee rather than build the units. The developer may opt to take advantage of up to two (2) concessions among the following possible concessions:

(1) *Parking concession.* One on-site parking space for each zero to one bedroom unit; two (2) on-site parking spaces for each two (2) to three (3) bedroom unit; two and one-half (2½) parking spaces for each four (4) or more bedroom unit.

- (2) Concession on one of the following Zoning Code site development standards:
  - (i) Setback reduction of up to twenty-five (25) percent reduction on subject property;
  - (ii) Height increase of up to twenty (20) additional feet.
  - (iii) ~~Density bonus such that:~~
    - a) ~~An applicant must select only one housing affordability income level to merit a density bonus. A combination of affordable housing income levels is not permitted to be combined to increase the amount of density bonus.~~
    - b) ~~For each one percent increase above fifteen (15) percent in the percentage of units affordable to low income households, the density bonus shall be increased by one and one-half (1½) percent up to a maximum of thirty-five (35) percent.~~
    - c) ~~For each one percent increase above ten (10) percent in the percentage of units affordable to very low income households, the density bonus shall be increased by two and one-half (2½) percent up to a maximum of thirty-five (35) percent.~~

(b) A developer of a for sale Residential Project proposing to provide on-site Moderate Income Units and a surrounding community benefit may opt to take advantage of up to three (3) of the above concessions. The surrounding community benefit will include but not be limited to park improvements, urban community gardens, developer-funded down payment assistance, or subsidy of services, activities or programs.

Sec. 41-1905. - Housing plan and housing agreement.

- (a) *Submittal and execution.* The developer shall comply with the following requirements:
  - (1) *Inclusionary housing plan.* The developer shall submit an inclusionary housing plan in a form specified by the executive director, detailing how the provisions of this article will be implemented for the proposed residential project. The inclusionary housing plan and its supportive documents, plans, and details shall be submitted at the same time as the site plan and application materials for the original project. All inclusionary housing plans shall be subject to the approval of the executive director and subject to appeal processes and procedures set forth in the Santa Ana Municipal Code.
  - (2) *Inclusionary housing agreement.* The developer shall execute and cause to be recorded an inclusionary housing agreement. The inclusionary housing agreement shall be a legally binding agreement between the developer and the city, executed by the city manager, or his or her designee, and in a form and substance satisfactory to the executive director and the city attorney, and

containing those provisions necessary to ensure that the requirements of this article are satisfied, whether through the provision of inclusionary units or through an approved alternative method.

- (b) *Discretionary approvals.* No discretionary approval shall be issued for a residential project subject to this article until the developer has submitted an inclusionary housing plan.
- (c) *Issuance of building permit.* No building permit shall be issued for a residential project subject to this article unless the executive director has approved the inclusionary housing plan, and any required inclusionary housing agreement has been recorded.
- (d) *Issuance of certificate of occupancy.* A certificate of occupancy shall not be issued for a residential project subject to this article unless the approved inclusionary housing plan has been fully implemented.

#### Sec. 41-1906. - Standards.

- (a) Location within project, relationship to non-inclusionary units. All inclusionary units shall be:
  - (1) Reasonably dispersed throughout the residential project;
  - (2) Proportional, in number of bedrooms, gross floor area of habitable space, and location, to the market rate units;
  - (3) Comparable to the market rate units included in the residential project in terms of design, materials, finished quality, and appearance; and
  - (4) Permitted the same access to project amenities and recreational facilities, as are market rate units.
- (b) *Timing of construction.* All inclusionary units in a residential project shall be constructed concurrent with, or before the construction of the market rate units. If the city approves a phased project, a proportional share of the required inclusionary units shall be provided within each phase of the residential project.
- (c) *Location outside the proposed original project.* For projects where the developer proposes to either produce new inclusionary units or rehabilitate existing off-site units to meet the inclusionary affordable housing requirements of this ordinance, the off-site project(s) containing the required inclusionary units shall be subject to the following requirements:
  - (1) The sum-total area (in habitable square feet) of all the newly constructed off-site inclusionary units shall be the same number of habitable square feet of inclusionary area as required by this ordinance. For the purpose of the calculation of the number of square feet of required inclusionary housing, the total gross habitable square feet of the housing units of the original market rate project shall be used, as measured from exterior walls to exterior walls of the market units provided as the base for calculation either ten (10) percent for very

low income or fifteen (15) percent for low income inclusionary units. The common areas, exterior hallways, stairways, patios, and balconies shall not be calculated in determining the number of required square feet of inclusionary housing production. All new or rehabilitated units must meet all current zoning and general plan standards.

- (2) While the total number of square feet of inclusionary housing requirement is calculated based on the requirements of this ordinance, the number of units, bedrooms and other amenities on the proposed off-site inclusionary housing location shall be approved by the review authority commensurate with the size and type of units most in demand at the time of submittal of the application.
  - (3) Any off-site affordable inclusionary housing project shall be substantially comparable to the market rate units included in the residential project in terms of quality of design, materials and finishes.
  - (4) If tenants are displaced due to rehabilitation of housing to meet the inclusionary unit requirement, the developer shall be responsible for relocation costs as required by state law.
  - (5) No city, housing authority, or public funds, subsidies, or participation of any kind shall be expended on the production or building of any inclusionary housing projects associated with meeting the inclusionary unit requirement.
- (d) *Timing of construction.* All inclusionary units in a residential project or proposed off-site new inclusionary units or rehabilitated units shall be constructed concurrent with, or before the construction of the market rate units. If the city approves a phased project, a proportional share of the required inclusionary units shall be provided within each phase of the residential project.
- (e) *Units for sale.*
- (1) *Time limit for inclusionary restrictions.* A unit for sale shall be restricted to the target income level group at the applicable affordable housing cost for a minimum of fifty-five (55) years.
  - (2) *Certification of purchasers.* The developer and all subsequent owners of an inclusionary unit offered for sale shall certify, on a form provided by the city, the income of the purchaser and that such owners will live in such inclusionary unit as their primary residence.
  - (3) *Resale price control.* In order to maintain the availability of inclusionary units required by this article, the resale price of an owner occupied inclusionary unit shall be limited to the lesser of the fair market value of the unit as established by a licensed real estate agent based upon three (3) comparable properties or the restricted resale price. For these purposes, the restricted resale price shall be the applicable affordable housing cost.
  - (4) *Inheritance of inclusionary units.* Upon the death of an owner of an owner-occupied inclusionary unit, title in the property may transfer to the surviving joint tenant or heir (in the case of the death of a sole owner or all owners of the household).



- (5) *Forfeiture.* If an inclusionary unit for sale is sold for an amount in excess of the resale price controls required by this section, the buyer and the seller shall be jointly and severally liable to the city for the amount in excess of the affordable housing cost at the time of such sale of the inclusionary unit. Recovered funds shall be deposited into the inclusionary housing fund. Notwithstanding the foregoing, city may allow the buyer and seller to cure any violation of the resale price controls within one hundred eighty (180) days.
- (f) *Rental units.*
- (1) *Time limit for inclusionary restrictions.* A rental inclusionary unit shall remain restricted to the target income level group at the applicable affordable housing cost for fifty-five (55) years.
  - (2) *Certification of renters.* The owner of any rental inclusionary unit shall certify, on a form provided by the city, the income of all members of the household above the age of eighteen (18) at the time of the initial rental and annually thereafter.
  - (3) *Forfeiture.* Any lessor who leases an inclusionary unit in violation of this article shall be required to forfeit to the city all money so obtained. Recovered funds shall be deposited into the inclusionary housing fund.
- (g) *Execution and recording of documents.* The executive director may require the execution and recording of whatever documents are required to ensure enforcement of this section; including but not limited to promissory notes, deeds of trust, resale restrictions, rights of first refusal, options to purchase, and/or other documents, which shall be recorded against all inclusionary units.
- (h) *General prohibitions.*
- (1) No person shall sell or rent an inclusionary unit at a price or rent in excess of the maximum amount allowed by any restriction placed on the unit in accordance with this article.
  - (2) No person shall sell or rent an inclusionary unit to a person or persons that do not meet the income restrictions placed on the unit in accordance with this article.
  - (3) No person shall provide false or materially incomplete information to the city or to a seller or lessor of an inclusionary unit to obtain occupancy of housing for which that person is not eligible.
- (i) *Principal residency requirement.*
- (1) The owner or lessee of an inclusionary unit shall reside in the unit for not less than ten (10) out of every twelve (12) months.
  - (2) No owner or lessee of an inclusionary unit shall lease or sublease, as applicable, an inclusionary unit without the prior permission of the executive director.

Sec. 41-1907. - Reserved.

Sec. 41-1908. - Enforcement.

- (a) *Violation.* Any violation of this article constitutes a misdemeanor.
- (b) *Forfeiture of funds.* Any individual who sells an inclusionary unit in violation of this article shall be required to forfeit any money in excess of the affordable housing cost at such time. Any individual who rents an inclusionary unit in violation of this article shall be required to forfeit all money so obtained. Recovered funds shall be deposited into the inclusionary housing fund.
- (c) *Legal actions.* The city may institute any appropriate legal actions or proceedings necessary to ensure compliance with this article, including actions:
  - (1) To disapprove, revoke, or suspend any permit, including a building permit, certificate of occupancy, or discretionary approval; and
  - (2) For injunctive relief or damages.
- (d) *Recovery of costs.* In any action to enforce this article, or an inclusionary housing agreement recorded hereunder, the city shall be entitled to recover its reasonable attorney's fees and costs.

Sec. 41-1909. - Inclusionary housing fund.

- (a) *Inclusionary housing fund.* There is hereby established a separate fund of the city, to be known as the inclusionary housing fund. All monies collected pursuant to this article shall be deposited in the inclusionary housing fund. Additional monies from other sources may be deposited in the inclusionary housing fund. The monies deposited in the inclusionary housing fund shall be subject to the following conditions:
  - (1) Monies deposited into the inclusionary housing fund must be used to increase and improve the supply of housing affordable to moderate, low, very low, and extremely low income households in the city as specified in the city's Affordable Housing Funds Policies and Procedures. A priority will be on the creation of affordable housing opportunities or units from the existing market rate housing stock rather than construction of new affordable housing units. This includes, but is not limited to, the purchase and rehabilitation of units for sale. Monies may also be used to pay for one-time programs for code enforcement, quality of life and general health and safety activities. Monies may also be used to cover reasonable administrative or related expenses associated with the administration of this article.
  - (2) The fund shall be administered by the executive director, or his or her designee, who may develop procedures in the city's Affordable Housing Funds Policies and Procedures to implement the purposes of the inclusionary housing

fund consistent with the requirements of this article and any adopted budget of the city.

- (3) Monies deposited in accordance with this section shall be used in accordance with the Affordable Housing Funds Policies and Procedures, housing element, consolidated plan, or subsequent plan adopted by the city council to construct, rehabilitate, or subsidize affordable housing or to recapture affordable housing at risk of market conversion, or to assist other government entities, private organizations, or individuals to do so. Permissible uses include, but are not limited to, assistance to housing development corporations, equity participation loans, grants, pre-home ownership co-investment, pre-development loan funds, participation leases, or other public-private partnership arrangements. The inclusionary housing fund may be used for the benefit of both rental and owner-occupied housing.
- (4) A developer receiving funding from the Inclusionary Housing Fund shall implement a local preference in their resident selection criteria and marketing policies meeting guidelines established by the executive director.
- (5) A developer opting for the in lieu payment option or receiving funding from the Inclusionary Housing Fund, as well as its contractors and subcontractors at every tier performing work for the new housing units is encouraged and should provide an enforceable commitment that a skilled and trained workforce will be used to complete a contract or project in accordance with Public Contract Code §§ 2601-2602.

Sec. 41-1910. - Administrative.

- (a) *In-lieu fee calculation.* The amount per square foot of the inclusionary housing in-lieu fee shall be subject to city council review and consideration before the end of calendar year 2018, but after June 30, 2018. Between July 1, 2018 and December 31, 2018, staff shall report on the effectiveness of this ordinance and provide options for council consideration on the components of this ordinance, including, but not limited to, the monetary amount of inclusionary in-lieu fee per square foot.
- (b) *Pipeline Prior projects.* The applicant(s) of any project for which a site plan review application was submitted and such application was deemed complete prior to August 4, 2015, may either construct the inclusionary units pursuant to the prior housing opportunity ordinance (Ordinance No. NS-2825) or pay an in lieu fee calculated by the formula under the prior housing opportunity ordinance (Ordinance No. NS-2825) or request to revise its inclusionary housing plan and/or inclusionary housing agreement and pay an in-lieu fee of nine dollars and thirty-five cents (\$9.35) per square foot of habitable space for the entire project's inclusionary housing obligation.
- (c) *Administration fees.* The council may by resolution establish reasonable fees and deposits for the administration of this article including an annual monitoring fee and an inclusionary housing plan submittal fee.

- (d) *Monitoring/audits.* At the time of initial occupancy, and annually thereafter, the city will monitor the project to ensure that the income verifications are correct and in compliance with the inclusionary housing administrative procedures. For ownership units, the city shall monitor to verify that owner-occupancy requirements are maintained. Developer/property owners are required to cooperate with the city in promptly providing all information requested by the city in monitoring compliance with program requirements. The city will conduct periodic random quality control audits of inclusionary units to assure compliance with rules and requirements. Such audits may include verification of continued occupancy in inclusionary units by eligible tenants, compliance with the inclusionary housing plan and agreement, and physical inspections of the residential project.
- (e) *Administrative procedures.* The city manager is hereby authorized and directed to promulgate administrative procedures for the implementation of this article.

Secs. 41-1911—41-1999. - Reserved.

Section 4. SEVERABILITY. If any section, subsection, sentence, clause, phrase or portion of this ordinance 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 Santa Ana 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 5. EXECUTION OF ORDINANCE. The Mayor shall sign this Ordinance and the Clerk of the Council shall attest and certify to the adoption thereof.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Miguel A. Pulido  
Mayor

APPROVED AS TO FORM:

Sonia R. Carvalho  
City Attorney

By: \_\_\_\_\_  
Lisa Storck  
Assistant City Attorney

AYES: Councilmembers \_\_\_\_\_

NOES: Councilmembers \_\_\_\_\_

ABSTAIN: Councilmembers \_\_\_\_\_

NOT PRESENT: Councilmembers \_\_\_\_\_

**CERTIFICATE OF ATTESTATION AND ORIGINALITY**

I, DAISY GOMEZ, Clerk of the Council, do hereby attest to and certify that the attached Ordinance No. NS-XXXX to be the original ordinance adopted by the City Council of the City of Santa Ana on \_\_\_\_\_, 2020 and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: \_\_\_\_\_

\_\_\_\_\_  
Clerk of the Council  
City of Santa Ana