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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 General 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 persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five 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:

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 (70) 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.

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.

"Executive Director" means the Executive Director of Community Development 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 of Santa Ana 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 Income Households, at an affordable housing cost, in compliance with this Article.

“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.

“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.

“Pipeline 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 5 or more residential lots or residential condominium units; or

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

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

The conversion of 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 50106.

Sec. 41-1902. Applicability and Inclusionary Unit Requirements

- (a) Applicability. The requirements of this Article shall apply to any new Residential Project 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 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.
 - (2) Increase in the permitted residential density or percentage of residential development allowed due to City initiated zone changes after November 28, 2011.
 - (3) 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.
 - (4) Approval of new projects in an overlay zone site plan permitting residential land uses pursuant to Division 28 of this Chapter.
 - (5) 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.
- (c) Units for sale. If the new Residential Project consists of units for sale, then a minimum of 15-percent of the total number of units in the project shall be sold or rented to Low Income Households.

- (d) Rental units. If the new Residential Project consists of rental units, then a minimum of 15-percent of the units shall be rented to Low-Income Households, or 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 development 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 development 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.

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 of Santa Ana 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 of Santa Ana, 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 of Santa Ana at a rate of 1 ½ 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 of Santa Ana at a rate of 1 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.²) 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) **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 dollars per square foot (\$15.00/ft.²) 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.
- (3) **Timing of payment.** The Developer shall pay any in-lieu fees allowed by this Section in full before issuance of the first Building Permit for any portion of the Residential 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.

Sec. 41-1904.1. Inclusionary Housing Development Incentives

- (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 (1) on-site parking space for each 0-1 bedroom unit; two (2) on-site parking spaces for each 2-3 bedroom unit; 2½ parking spaces for each 4 or more bedroom unit.
- (2) Concession on one of the following Zoning Code site development standards:
 - (i) Setback reduction of up to 25% reduction on subject property;
 - (ii) Height increase of up to 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 1 percent increase above 15 percent in the percentage of units affordable to low income households, the density bonus shall be increased by 1.5 percent up to a maximum of 35 percent.
 - c) For each 1 percent increase above 10 percent in the percentage of units affordable to very low income households, the density bonus shall be increased by 2.5 percent up to a maximum of 35 percent.

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 10% for very low income or 15% 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 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 out of every twelve 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. 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 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 City's Housing Element, Consolidated Plan, or subsequent plan adopted by the City Council to construct, rehabilitate, or subsidize affordable housing or 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.

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 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 \$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.
(Ord. No. NS-2815, 11-28-11; Ord. No. NS-2881, 9-1-15; Ord. No. NS-2885 10-6-15)