

ATTACHMENT 3 -- CITY OF FOUNTAIN VALLEY

Fountain Valley Municipal Code							
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Title 21 ZONING

Chapter 21.08 RESIDENTIAL ZONING DISTRICTS

21.08.050 Standards for specific land uses.

(a) Affordable Housing Density Bonus Incentives.

(1) Purpose. The purpose of this section is to provide incentives for the production of affordable housing, senior housing, and child care facilities in compliance with State Government Code Section 65915 et seq., regarding density bonuses and other incentives.

(2) Qualified Project. To qualify for a density bonus and concessions or other incentives, the developer of a proposed housing project of at least five units, must provide housing units affordable to certain income households, donate land, and/or construct a child care facility or provide qualifying senior housing pursuant to State Government Code Section 65915 et seq.

(3) Application and Review Process.

(A) Preliminary Application. A developer of a qualified housing project and/or child care facility may submit a preliminary application pursuant to this article prior to the submittal of any formal requests for approvals for a housing project development.

Within thirty days of receipt of the application, the planning department shall provide to the applicant the procedures for compliance with this section, a copy of this section and related policies, the pertinent sections of the state codes to which reference is made in this section, and an application.

(B) Submittal. The completed formal application shall include the following information.

(i) A legal description of the total site proposed for development including a statement of present ownership and present and proposed zoning.

(ii) A letter signed by the present owner stating how the project will comply with California Government Code Section 65915 et seq., and stating what is being requested of the city, e.g., density bonus and specific concessions or incentives.

(iii) A pro-forma for the proposed project to justify the requested concession or incentive and to establish the land valuation per dwelling unit of bonus units. The applicant shall show that any requested waiver or reduction of a development standard is necessary to make the housing units economically feasible.

(iv) A management plan for complying with the maintenance of the designated units regarding income qualification documentation and rent or sale price documentation.

(v) Site plan and supporting plans per the planning application submittal requirements.

(C) Review. The review of an application for a density bonus and concession or incentive request shall be processed as a planning application pursuant to Chapter 21.32 of the Municipal Code. The planning department shall review the application for its conformance with California Government Code Section 65915 et seq., and applicable city codes and make a report to the planning commission. If the application involves a request for direct financial incentives, then any action by the planning commission on the application shall be advisory only, and the city council shall have the authority to make the final decision on the application.

(b) Accessory Uses and Structures. This section provides standards for accessory uses and structures allowed in the applicable zoning district (see Section 21.08.030, Residential zoning district land uses and permit requirements), subject to the following criteria and standards:

CITY OF HUNTINGTON BEACH

Huntington Beach Charter and Codes

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ZONING CODETitle 23 ZONING CODE—PROVISIONS APPLYING IN ALL OR SEVERAL DISTRICTSChapter 230 SITE STANDARDSArticle I. Residential Districts[\[remove highlighting \]](#)**230.26 Affordable Housing****A. Purpose.**

1. The purpose and intent of this chapter is to implement the goals, objectives and policies of the City's **Housing Element**. It is intended to encourage low- and moderate-income **housing**, which is integrated, compatible with and complements adjacent uses, and is located in close proximity to public and commercial services.
2. The **affordable housing** program is one tool the City utilizes to meet its commitment to provide **housing affordable** to all economic sectors, and to meet its regional fair-share requirements for construction of **affordable housing**.
3. As a result of being located within a redevelopment area and/or Specific Plan area, additional restrictions or requirements may apply.

B. Applicability. This section shall apply to new residential projects three or more units in size.

1. A minimum of 10% of all new residential construction shall be **affordable housing units**. The whole number established by dividing the total unit count proposed by 10 shall be **affordable housing units** unless paragraph (B)(4) of this section applies. Any fractional amount may be paid with an equivalent in-lieu fee.
2. Rental units included in the project shall be made available to low-income households as defined by Health and Safety Code Section 50079.5, or a successor statute. Rental units included in the project may be made available to moderate-income households as defined by Health and Safety Code Section 50093, or a successor statute if the moderate-income units are located on-site within the project.
3. For sale units included in the project shall be made available to moderate-income households, as defined by Health and Safety Code Section 50093, or a successor statute.
4. Developers of residential projects consisting of 30 or fewer units may elect to pay a fee in lieu of providing the units on-site to fulfill the requirement of this section, unless the **affordable housing** requirement is outlined as part of a Specific Plan project.
5. Developers of residential projects may elect to provide the **affordable** units at an off-site location pursuant to subsection B of this section unless otherwise outlined as part of a Specific Plan project. If **affordable** units are off-site, they must be under the full control of the applicant, or other approved party.
6. New residential projects shall include construction of an entirely new project or new units added to an existing project. For purposes of determining the required number of **affordable housing** units, only new units shall be counted.

C. Fees in Lieu of Construction.

1. Fees paid to fulfill the requirements of this section shall be placed in the City's **Affordable Housing** Trust Fund, the use of which is governed by subsection E of this section.
2. The amount of the in-lieu fees shall be calculated using the fee schedule established by resolution of the City Council.
3. One hundred percent of the fees required by this section shall be paid prior to issuance of a building permit.

[Ordinance No. 3827 (expired 4/15/10) and Ordinance No. 3879, effective from 5/3/10 to 5/3/11, temporarily deferred the payment of certain Development Impact Fees.]

4. Fees paid as a result of new residential projects shall be based upon the total number of the new residential units which are to be constructed.

D. Off-Site Construction of Affordable Units. Except as may be required by the California Coastal Act and/or the Government Code Section 65590 or a successor statute, developers may provide the required **affordable housing** off-site, at one or several sites, within the City of Huntington Beach.

1. Off-site projects may be new construction or substantial rehabilitation, as defined by Government Code Section 33413 **affordable housing** production requirements, of existing non-restricted units conditioned upon being restricted to long-term affordability. "At risk" units identified in the **Housing** Element or mobile homes may be used to satisfy this requirement.
2. All **affordable** off-site **housing** shall be constructed or rehabilitated prior to or concurrently with the primary project. Final approval (occupancy) of the first market rate residential unit shall be contingent upon the completion and public availability, or evidence of the applicant's reasonable progress towards attainment of completion, of the **affordable** units.

E. Miscellaneous Provisions.

1. The conditions of approval for any project that requires **affordable** units shall specify the following items:
 - a. The density bonus being provided pursuant to Section 230.14, if any;
 - b. The number of **affordable** units;
 - c. The number of units at each income level as defined by the Health and Safety Code; and
 - d. A list of any other incentives offered by the City.
2. An **Affordable Housing** Agreement outlining all aspects of the **affordable housing** provisions shall be executed between the applicant and the City and recorded with the Orange County Recorder's Office, or the applicable in-lieu fee shall be paid in full, prior to issuance of the first building permit.
3. The agreement shall specify an affordability term of not less than 55 years for rental **housing** or 45 years for ownership **housing**.
4. All **affordable** on-site units in a project shall be constructed concurrently with or prior to the construction of the primary project units unless otherwise approved through a phasing plan. Final approval (occupancy) of the first market rate residential unit shall be contingent upon the completion and public availability, or evidence of the applicant's reasonable progress towards attainment of completion, of the **affordable** units.
5. All **affordable** units shall be reasonably located throughout the project unless otherwise designed through a master plan, shall contain on average the same number of bedrooms as the market rate units in the project, and shall be comparable with the market rate units in terms of exterior appearance, materials and finished quality.

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6. **Affordable Housing** Trust Funds shall be used for projects which have a minimum of 50% of the dwelling units **affordable** to very low- and low-income households, with at least 20% of the units available to very low-income households. Concurrent with establishing the annual fee schedule pursuant to subsection C of this section, the City Council shall by resolution set forth the permitted uses of **Affordable Housing** Trust Funds. All units that obtain **Affordable Housing** Trust Funds shall maintain the affordability of the units for a minimum of 55 years. The funds may, at the discretion of the City Council, be used for pre-development costs, land or air rights acquisition, rehabilitation, land write downs, administrative costs, gap financing, or to lower the interest rate of construction loans or permanent financing.

7. New **affordable** units shall be occupied in the following manner:

a. If residential rental units are being demolished and the existing tenant(s) meets the eligibility requirements, he/she shall be given the right of first refusal to occupy the **affordable** unit(s); or

b. If there are no qualified tenants, or if the qualified tenant(s) chooses not to exercise the right of first refusal, or if no demolition of residential rental units occurs, then qualified households or buyers will be selected.

F. **Price of Affordable Units.** **Affordable housing** cost shall be calculated in accordance with Health and Safety Code Section 50052.5 standards for ownership units and Health and Safety Code Section 50053 standards for rental units. This methodology is fully described in the City's adopted **housing** policies.

G. **Reduced Fees for Affordable Housing.** Projects that exceed **inclusionary** requirements on-site will be eligible for reduced City fees, pursuant to an **Affordable Housing Fee Reduction Ordinance**, upon adoption by the City Council.

H. **Annual Program Review and Periodic Adjustment of the Fee.** Within 180 days after the last day of each fiscal year, the City Council shall review the status of the City's **Affordable Housing** Trust Fund, including the amount of fees collected, expenditures from the **Affordable Housing** Trust Fund, and the degree to which the fees collected pursuant to this chapter are assisting the City to provide and encourage low- and moderate-income **housing**. The fee shall be updated annually using the Real Estate and Construction Report published by the Real Estate Research Council of Southern California. The fee change shall be based on the percentage difference in the new home prices in Orange County published in the fourth quarter report for the then current year versus the immediately preceding year. (3687-12/04, 3827-4/09, 3829-6/09, 3879-6/10, 4040-12/14)

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ZONING CODE

Title 23 ZONING CODE—PROVISIONS APPLYING IN ALL OR SEVERAL DISTRICTS

Chapter 230 SITE STANDARDS

Article I. Residential Districts

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230.14 Affordable Housing Density Bonus

A. When a developer of a residential property which is zoned and general planned to allow five or more dwelling units proposes to provide **affordable housing**, he or she may request a density bonus and incentives or concessions through a Conditional Use Permit subject to the provisions contained in this section. A density bonus request pursuant to the provisions contained within this section shall not be denied unless the project is denied in its entirety.

B. Affordability Requirements.

1. Percentage of Affordable Units Required. To qualify for a density bonus and incentives or concessions, the developer of a residential project shall elect at least one of the following:
 - a. Provide at least 10% of the total units of the **housing** development for lower income households, as defined in Health and Safety Code Section 50079.5; or
 - b. Provide at least 5% of the total units of the **housing** development for very-low-income households, as defined in Health and Safety Code Section 50105; or
 - c. Provide a senior citizen **housing** development as defined in Civil Code Sections 51.3 and 51.12, or mobile home park that limits residency based on age requirements for **housing** for older persons pursuant to Civil Code Sections 798.76 or 799.5; or
 - d. Provide at least 10% of the total dwelling units in a common interest development as defined in Civil Code Section 1351 for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

The density bonus shall not be included in the total number of the **housing** units when determining the number of **housing** units required to be **affordable**. Remaining units may be rented, sold or leased at “market” rates.

2. Duration of Affordability.
 - a. An applicant shall agree to, and City shall ensure, continued affordability of all low- and very-low-income units that qualified the applicant for the award of the density bonus for 30 years or a longer period of time if required by a construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.
 - b. Where there is a direct financial contribution to a **housing** development pursuant to Government Code Section 65915 through participation in cost of infrastructure, write-down of land costs, or subsidizing the cost of construction, the City will ensure continued availability for low- and moderate-income units for 30 years. The affordability agreement required by Section 230.14(B)(4) shall specify the mechanisms and procedures necessary to carry out this section.
 - c. An applicant shall agree to, and the City shall ensure that, the initial occupant of the moderate-income units that are directly related to the receipt of the density bonus in the

common interest development, as defined in Section 1351 of the Civil Code, are persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code. The City shall enforce an equity-sharing agreement, unless it is in conflict with the requirements of another public funding source of law. The following shall apply to the equity-sharing agreement:

- i. Upon resale, the seller of the unit shall retain the value of any improvements, the down payment, and the seller's proportionate share of appreciation. The City shall recapture any initial subsidy and its proportionate share of appreciation, which shall then be used within three years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote home ownership.
- ii. The City's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any down payment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.
- iii. The City's proportionate share of appreciation shall be equal to the ratio of the initial subsidy to the fair market value of the home at the time of initial sale.

3. **Affordable Unit Distribution and Product Mix.** Affordable units shall be located throughout the project and shall include a mixture of unit types in the same ratio as provided throughout the project.

4. **Affordability Agreement.** Affordability shall be guaranteed through an Affordability Agreement executed through the developer and the City. Said agreement shall be recorded on the subject property with the Orange County Recorder's Office prior to the issuance of building permits and shall become effective prior to final inspection of the first unit. The subject agreement shall be legally binding and enforceable on the property owner(s) and any subsequent property owner(s) for the duration of the agreement. The agreement shall include, but not be limited to, the following items:

- a. The duration of the affordability and the number of the **affordable** units;
- b. The method in which the developer and the City are to monitor the affordability of the subject **affordable** units and the eligibility of the tenants or owners of those units over the period of the agreement;
- c. The method in which vacancies will be marketed and filled;
- d. A description of the location and unit type (bedrooms, floor area, etc.) of the **affordable** units within the project; and
- e. Standards for maximum qualifying household incomes and standards for maximum rents or sales prices.

5. **City Action.** Pursuant to this section the City shall grant a density bonus and at least one of the concessions or incentives identified in subsection D of this section unless the City makes a written finding pursuant to subsection J of this section.

C. **Calculation of Density Bonus.**

1. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the project's percentage of **affordable housing** exceeds the percentage established in subsection B of this section.

a. For **housing** developments meeting the low-income criteria of subparagraph 230.14(B)(1)(a), the base density bonus of 20% shall be increased by 1.5% for every 1% increase in the percentage of low-income units above 10%. The maximum allowable density bonus shall be 35%.

b. For **housing** developments meeting the very low-income criteria of subparagraph 230.14(B)(1)(b), the base density bonus of 20% shall be increased by 2.5% for every 1% increase in the percentage of very low-income units above 5%. The maximum density bonus shall be 35%.

c. For **housing** developments meeting the senior citizen **housing** criteria of subparagraph 230.14(B)(1)(c), the density bonus shall be 20%.

d. For **housing** developments meeting the moderate-income criteria of subparagraph 230.14(B)(1)(d), the base density bonus of 5% shall be increased by 1% for every 1% increase in the percentage of moderate-income units over 10%. The maximum density bonus shall be 35%.

2. All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a General Plan amendment, Local Coastal Plan amendment, zoning change, or other discretionary approval. As used in subsection B of this section, "total units" does not include units permitted by a density bonus awarded pursuant to this section.

3. The developer may request a lesser density bonus than the project is entitled to, but no reduction will be permitted in the number of required **affordable** units pursuant to paragraph 230.14(B)(1).

4. Reductions in Density Within the Coastal Zone. In reviewing residential development application for low- and moderate-income **housing**, as defined in Government Code Section 65589.5(h)(3), the City may not require measures that reduce residential densities below the density sought by an applicant if the density sought is within the permitted density or range of density established by local zoning plus the additional density permitted under Government Code Section 65915, unless the City makes a finding, based on substantial evidence in the record, that the density sought by the applicant cannot feasibly be accommodated on the site in a manner that is in conformity with the certified Local Coastal Program.

D. **Incentives and Concessions.**

1. Types of Incentives or Concessions. The City shall grant an incentive or concession to the developer. An incentive or concession includes, but is not limited to, the following:

a. A reduction in site development standards or modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.

i. At the request of the developer, the City will permit a vehicular parking ratio, inclusive of handicapped and guest parking, for a development meeting the criteria of subsection B of this section at ratios that shall not exceed:

(A) Zero to one bedroom: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four or more bedrooms: two and one-half onsite parking spaces.

ii. If the total number of parking spaces required for a housing development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this section only, a housing development may provide on-site parking through tandem parking or uncovered parking but not through on-street parking.

b. Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

c. Other regulatory incentives or concessions proposed by the developer or the City that result in identifiable, financially sufficient, and actual cost reductions.

2. Number of Incentives and Concessions. An applicant for a density bonus shall receive the following number of incentives or concessions:

a. One incentive or concession for projects that included at least 10% of the total units for lower income households, at least 5% for very-low-income households, or at least 10% for persons and families of moderate income in a common interest development.

b. Two incentives or concessions for projects that include at least 20% of the total units for lower income households, at least 10% for very-low-income households, or at least 20% for persons and families of moderate income in a common interest development.

c. Three incentives or concessions for projects that include at least 30% of the total units for lower income households, at least 15% for very-low-income households, or at least 30% for persons and families of moderate income in a common interest development.

3. Requirements for Incentives and Concessions Within the Coastal Zone. Within the coastal zone, any incentive or concession or combination of incentives and concessions must be consistent with the requirements of the certified Land Use Plan.

E. **Waiver or Reduction of Development Standards.** An applicant may submit to the City a proposal for the waiver or reduction of development standards. The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible.

F. **Donation or Transfer of Land.** A developer may donate or transfer land in lieu of constructing the affordable units within the project pursuant to Government Code Section 65915(h).

G. **Child Care Facilities.**

1. When a developer proposes to construct a housing development that includes affordable units that conform to subsection B of this section and includes a child care facility that will be located on the premises of, as part of, or adjacent to the housing development, the City shall grant either of the following:

a. An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.

b. An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

2. A housing development shall be eligible for the density bonus or concession described in this section if the City makes all of the following findings:

- a. The child care facility will remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain **affordable** pursuant to paragraph (B)(2) of this section.
- b. Of the children who attend the child care facility, the percentage of children of very-low-income households, lower-income households, or moderate-income households shall be equal to or greater than the percentage of dwelling units that are required to be **affordable** to very-low-income households, low-income households, or moderate-income households.

3. "Child care facility," as used in this section, means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and school age child care centers.

H. Procedure.

1. In addition to submitting all documentation required to apply for a Conditional Use Permit, a developer requesting a density bonus pursuant to this section shall include the following in the written narrative supporting the application:

- a. A general description of the proposed project, General Plan designation, applicable zoning, maximum possible density permitted under the current zoning and General Plan designation and such other information as is necessary and sufficient. The property must be zoned and general planned to allow a minimum of five units to qualify for a density bonus.
- b. A statement detailing the number of density bonus units being proposed over and above the number of units normally permitted by the applicable zoning and General Plan designations.
- c. A description of the requested incentive or concessions that the developer requests.
- d. A calculation of the density bonus allowed.

2. All subsequent City review of and action on the applicant's proposal for a density bonus and/or consideration of any requested incentives or concessions shall occur in a manner concurrent with the processing of the Conditional Use Permit and any other required entitlements, if any. If the developer proposes that the project not be subject to impact fees or other fees regularly imposed on a development of the same type, final approval will be by the City Council.

3. The Planning Commission/City Council shall review the subject Affordability Agreement concurrently with the development proposal. No project shall be deemed approved until the affordability agreement has been approved by the City Council.

4. The Planning Commission/City Council may place reasonable conditions on the granting of the density bonus and any other incentives as proposed by the applicant; however, such conditions must not have the effect, individually or cumulatively, of impairing the objective of California Government Code Section 65915 et seq., and this section, of providing **affordable housing** for qualifying residents.

5. A monitoring fee, as established by resolution of the City Council, shall be paid by the applicant to the City prior to issuance of a certificate of occupancy for the first unit. This fee shall be in addition to any other fees required for the processing of the Conditional Use Permit, environmental analysis, and/or any other entitlements required.

I. Required Findings for Approval.

1. Density Bonus. In granting a Conditional Use Permit for a density bonus, the Planning Commission/City Council shall make all of the following findings:

- a. The proposed project, which includes a density bonus, can be adequately serviced by the City and county water, sewer, and storm drain systems without significantly impacting the overall service or system.
- b. The proposed project, which includes a density bonus, will not have a significant adverse impact on traffic volumes and road capacities, school enrollments, or recreational resources.
- c. The proposed project, which includes a density bonus, is compatible with the physical character of the surrounding area.
- d. The proposed project, which includes a density bonus, is consistent with the overall intent of the General Plan.
- e. If located within the coastal zone, the proposed project which includes a density bonus will be consistent with the requirements of the certified Land Use Plan and will not result in the fill, dredge, or diking of a wetlands.

J. Required Finding for Denial.

1. Concessions or Incentives. The City shall grant the concession or incentive requested by the applicant unless the City makes a written finding, based upon substantial evidence, of one or more of the following:

- a. The concession or incentive is not required in order to provide **affordable housing** costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in California Government Code Section 65915(c).
- b. The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of California Government Code Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.
- c. The concession or incentive is inconsistent with the requirements of the certified Land Use Plan. (3710-6/05, 3764-3/07, Res. 2009-36-9/09, 4040-12/14)

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CITY OF IRVINE

CHAPTER 2-3. - AFFORDABLE HOUSING IMPLEMENTATION PROCEDURE^[1]

Footnotes:

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Editor's note—Ord. No. 04-15, adopted December 14, 2004, amended the Code by repealing former ch. 2-3, §§ 2-3-1—2-3-8, and adding a new ch. 2-3. Former ch. 2-3 pertained to similar subject matter, and derived from Ord. No. 03-09, adopted April 8, 2003.

Sec. 2-3-1. - Intent.

The affordable housing implementation procedure is a means for fulfilling the affordable housing requirements for certain developments or planning areas, as set forth in the General Plan Housing Element (hereinafter the "Housing Element"). The implementation procedure describes the requirements for submitting the affordable housing plan to the City and to ensure that General Plan requirements are met. Except as otherwise provided in the Housing Element, nothing herein is intended, nor does it place any obligation on the City to provide financial incentives or offset the cost of providing affordable housing.

(Ord. No. 04-15, § 3, 12-14-04; Ord. No. 07-11, § 3, 4-24-07)

Sec. 2-3-2. - Applicability.

The provisions of this Chapter shall be applicable to all residential development proposals, regardless of zoning, within the City of Irvine. However, unless stated otherwise in this Chapter, the terms "applicant," "application," "project," and "development" relate only to residential developments of 50 or more units. For the purposes of this Chapter, the term "Applicant" shall mean and, depending on context, shall include the owner(s), lessee(s) or developer(s) of property, or their authorized agents, with regard to any application for residential property development permits or approvals from the City of Irvine.

Projects with less than 50 units may utilize one of the menu options listed in Section 2-3-5.B.3, in lieu of providing affordable units.

(Ord. No. 04-15, § 3, 12-14-04; Ord. No. 07-11, § 3, 4-24-07)

Sec. 2-3-3. - Submittal requirements.

- A. An applicant whose proposal is subject to meeting affordable housing requirements shall submit an affordable housing plan to the Housing Division as follows:
1. Affordable housing plans for an entire planning area(s) shall be submitted in conjunction with the first residential map. No application subject to this section shall be deemed complete without submittal of an affordable housing plan. The plan shall be reviewed and approved by the Planning Commission as part of the entitlement process for a proposed project.
 2. Other residential projects shall submit an affordable housing plan in conjunction with an application for a general plan amendment or zone change, or with the conditional use application if no general plan amendment or zone change is proposed. No application subject to this section shall be deemed complete without submittal of an affordable housing plan. The plan shall be reviewed and approved by the Planning Commission as part of the entitlement process for a proposed project.
- B. The plan shall include the following components:

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1. A description of the affordable housing units to be provided, including type of occupancy, unit mix, income level served by the affordable housing units, and location of the units.
 2. A description of how the affordability of the units will be maintained for the period required by law. The minimum period of affordability for a newly constructed or converted affordable unit is 30 years. The minimum period of affordability for the extension of affordability of an existing affordable unit is 40 years.
 3. Whether or not affordable credits are being requested. Guidelines for the Affordable Credits Program are included in Section 2-3-6 of this Chapter.
- C. In conjunction with the submittal of an affordable housing plan, the applicant shall submit a written request to the City for any specific financial and/or processing incentives requested as a subsidy for the provision of affordable units. Financial and/or processing incentives that the City may provide include, but are not limited to, U.S. Department of Housing and Urban Development (HUD) funds, in-lieu fee proceeds, and the waiver of processing fees.
1. If the applicant is seeking financial, processing or other assistance from the City of Irvine or the Irvine Redevelopment Agency, as such assistance is defined in the Housing Element, the following additional information shall be provided:
 - a. The type and level of financial, processing and/or other assistance being requested.
 - b. An explanation of why the assistance is being requested.
 - c. A justification for the type and level of assistance being requested. Such justification shall be in a format acceptable to the City to allow it to determine the validity of the justification.
 - d. A list of any and all other non-City or non-Redevelopment Agency sources for assistance the applicant has received or applied for in conjunction with the project.
 - e. A list of any and all other non-City or non-Redevelopment Agency sources for assistance the applicant has reviewed and a detailed explanation of why each of the other sources is not being used.
- D. The applicant shall make a good faith effort to obtain funding sources to achieve the affordable housing goal. In the event the proposed funding sources are not available or funding is limited for the development within the planning area, satisfaction of the affordable housing goal shall be achieved through selection of alternatives in the menu option defined in Section 2-3-5 B 2.
- E. The City will participate, when possible, in financial partnerships with applicants of affordable housing projects as a means of assisting the applicant's endeavor to secure subsidies and financing for the development of Income I, II and III rental or ownership housing. An applicant receiving financial incentives for affordable housing development projects shall be required to comply with the program monitoring guidelines as defined in Section 2-3-6.

(Ord. No. 04-15, § 3, 12-14-04; Ord. No. 07-11, § 3, 4-24-07)

Sec. 2-3-4. - Affordable housing requirements defined.

Residential projects shall provide a minimum of 15 percent of their total units as affordable units, as defined in the Housing Element and herein, unless otherwise required by this Chapter. The 15 percent affordable units shall be allocated in accordance with the following percentages:

A.

Income Levels I and II, as defined in the Housing Element. Five percent of the actual number of dwelling units shall be affordable as rental or ownership units to households earning less than 50 percent of the County median income as annually defined by the California State Department of Housing and Community Development (Incomes I and II as defined in the Housing Element).

1. To the degree ownership units are provided to Income II households, a 2:1 credit will be attributed toward the achievement of the Income II goal.
 2. To the degree Income I units are provided, a 1.6:1 credit is available. However, the number of Income I units in a specific project is subject to approval by the City.
 3. To the degree 3-bedroom Income I or II units are provided, a 1.4:1 credit will be attributed toward the achievement of the Income II goal.
 4. To the degree 4-bedroom Income I or II units are provided, a 1.6:1 credit will be attributed toward the achievement of the Income II goal.
- B. *Income Level III, as defined in the Housing Element.* Five percent of the actual number of dwelling units shall be affordable as either rental or ownership units, with the emphasis on ownership units, to households earning 51 percent to 80 percent of the County median income as annually defined by the California State Department of Housing and Community Development. (Income III as defined in the Housing Element).
1. To the degree ownership units are provided to Income III households, a 2:1 credit will be attributed toward achievement of the Income III goal.
 2. To the extent that the affordable units referenced under Section 2-3-4 A, above, are provided with the use of financial and processing incentives in excess of the five percent goal, a 2:1 credit will also be attributed toward the achievement of this goal.
 3. To the degree three-bedroom Income III units are provided, a 1.4:1 credit will be attributed toward the achievement of the Income III goal.
 4. To the degree four-bedroom Income III units are provided, a 1.6:1 credit will be attributed toward the achievement of the Income III goal.
- C. *Combined income levels I, II, and III, as defined in the Housing Element (Alternative to meeting Sections 2-3-4 A and B, above).* In order to allow projects to compete for County affordable housing funds and because this approach provides a greater overall level of affordability, the City will regard the following as meeting the combined affordability goals for Incomes I, II, and III, as set forth in Sections 2-3-4 A and 2-3-4 B of this Chapter:
1. Projects which provide a minimum of ten percent of the proposed units affordable to households earning 60 percent or less of the County median income as annually defined California State Department of Housing and Community Development.
 2. The Planning Commission shall have, on a case-by-case basis, the discretion to consider and approve ratios other than the currently required five percent ratios if the Commission determines that a proposal will provide equivalent or enhanced affordability.
- D. *Income Level IV, as defined in the Housing Element.* Five percent of the total number of dwelling units shall be affordable as rental or ownership units, with emphasis on ownership units in projects offering ownership housing, to households earning 81 percent to 120 percent of the County median income as annually defined by the California State Department of Housing and Community Development. (Income IV as defined in the Housing Element).

(Ord. No. 04-15, § 3, 12-14-04; Ord. No. 07-11, § 3, 4-24-07)

Sec. 2-3-5. - Provision of affordable units; menu option.

A. *Location of affordable units.*

1. Unless an applicant is qualified to utilize the menu option listed under Section 2-3-5 B, affordable units must be located within the planning area or on the site of the proposed project. Any affordable units to be developed outside of the planning area shall be proposed and identified as part of the affordable housing plan submitted for the overall development proposal. Provision of units outside of the subject planning area shall count toward the affordable housing goals of the subject planning area, not the planning area receiving the units.
2. The affordable housing units shall be distributed to prevent a concentration of lower income households in a neighborhood that already has a disproportionately high number of lower income households. This prohibition also applies to any excessive concentration of housing provided for a single income level (e.g., an over-concentration of income level I housing in a neighborhood). However, in order to expand the applicant's opportunities to obtain financial assistance for the provision of affordable housing, a project with up to 100 percent affordability will be considered, and may be approved, by the City. A project application offering to provide affordable housing excess of the requirements set forth in this Chapter, or the Housing Element, may only be denied in accordance with the terms of Government Code Section 65589.5(d).

B. *Menu option alternatives.*

1. *Intent of menu option.* The menu option is an alternative to the on-site affordable housing requirements set forth in Sections 2-3-4 and 2-3-5 A 1 of this Chapter. The menu option is designed to provide to the City affordable housing benefits that are equal in value to the actual provision of on-site units in the quantity and quality that would otherwise be provided. Equivalent values will be determined by taking into account an applicant's ability to reasonably secure financial incentives (leveraging) for the development of affordable units.
2. *Applicability of the menu option.* An applicant may only use the menu option if the fulfillment of its affordable housing obligations under this Chapter are otherwise infeasible. The City will consider the fulfillment of affordable housing requirements set forth in Sections 2-3-4 and 2-3-5 A 1 of this Chapter to be "infeasible" under the following circumstances:
 - a. The applicant proposes development in the hillside Planning Areas 1, 2, 6, 17, 18, 22, or 27 where development of affordable housing is impacted by the increased cost of development in hillside areas; or
 - b. The applicant proposes a zone change and/or general plan amendment to change the land use designation from high, medium, or medium-high residential density to low or estate density which would bring the percentage of residential land in the planning area designated for low or estate density to 75 percent or more; or
 - c. The planning area meets all the following criteria:
 - (1) The planning area is predominately (over 75 percent of the entitlement) developed.
 - (2) The planning area does not have a City-approved affordable housing program.
 - (3) The undeveloped residential areas have a zoning designation of estate, low, and/or medium density; or

- d. Financial or processing incentives are not available to bridge the gap of developing affordable housing within the planning area. In order to determine whether or not financial and/or processing incentives are available to bridge the gap of developing affordable housing within the project area, the applicant shall submit the following items to the Director of Redevelopment, who will subsequently provide a written determination regarding the project's ability to utilize the menu option:
- (1) A list of any and all other non-City or non-Redevelopment Agency sources for assistance the applicant has reviewed and a detailed explanation of why each of the other sources is not being used.
3. *Menu options.* Applicants who qualify to choose a menu option may choose from one of the following "equivalent value" options:
- Convert existing market rate housing to affordable housing for a period of at least 30 years.
 - Extend the term of affordability for affordable units for a period of at least 40 years.
 - Payment of in-lieu fees.
 - Transfer control of units to a nonprofit housing agency.
 - Transfer of off-site credits for affordable units not provided on the site.
 - Provision of alternative housing.
 - Dedication of land for affordable housing.
 - An alternative option acceptable to the City.

An applicant may use one or more options to satisfy the affordable housing requirement.

4. *Annual study.* To ensure comparable equivalent value of selected menu options in exchange for not providing units within the planning area, the City shall conduct an annual reevaluation of the variables used in the in-lieu fee matrix.
5. *Implementation of menu options.* Should the menu option be utilized in achieving the affordability goal, the following criteria shall be utilized to implement each option as respectively listed in Section 2-3-5 B 3:
- Convert market rate housing to affordable housing: The purchase cost of owner occupied or the rent for rental units shall be reduced to provide the same number of units at the same income levels as outlined in Section 2-3-4 for a period of at least 30 years.
 - Extend the term of affordability of existing program affordable units: For bond units or other program affordable units whose affordability will expire within five years of the approval of the affordable housing plan, the existing level of affordability for the designated income households shall be extended for a period of at least 40 years from the existing expiration date for an equivalent or greater number of units than required in Section 2-3-4.
 - Payment of in-lieu fees: The applicant may pay an in-lieu fee, based on the total number of units being developed, as determined by City Council resolution and based on the in-lieu fee formula. The in-lieu fee shall be determined at the time building permits are issued for development of a project. Applicants may pay an affordable housing in-lieu fee of \$17,000 per unit if an application for a general plan amendment in the Irvine Business Complex (Planning Area 36) was filed prior to January 1, 2007 and the in-lieu fees are paid and a building permit is pulled by December 31, 2009. Menu option items are designed to

generate a value in furtherance of affordable housing that is equivalent or comparable to the actual value of providing such housing in the planning area as defined in Section 2-3-5 B 1.

Fees collected under the in-lieu fee program will be placed in the City's Affordable Housing Fund (AHF) and will be used to fund projects implementing the City's Housing Element Needs Assessment and/or serving households earning 80 percent or less of the Area Median Income (AMI), as annually defined by the California State Department of Housing and Community Development.

- d. Transfer control of units to a nonprofit housing agency: Dedicate applicant-owned units to nonprofit organizations in the same ratio and at the same income levels as required in Section 2-3-4.
- e. Transfer of credits for affordable units provided elsewhere in the City: If an applicant has provided affordable housing above the required number of units, the excess units can be used as credit for satisfaction of affordable housing requirements off-site or can be sold to applicants who do not provide sufficient affordable units on-site, subject to the Affordable Housing Credits Program guidelines outlined in Section 2-3-6 of this chapter
- f. Provision of alternative housing: The applicant may propose to provide alternative housing, such as special needs housing, single room occupancy hotels, or resident shelters. The number of units, rooms, or beds provided in alternative housing shall be credited on a one-to-one ratio to the total number of units required for the affordable housing needs goal. The same ratio may be applied to alternative housing provided within the planning area. To the degree Income I units are provided, a 1.6:1 credit is available. Menu option items are designed to generate a value in furtherance of affordable housing that is equivalent or comparable to the actual value of providing such housing in the planning area as defined in Section 2-3-5 B 1.
- g. Dedication of land for affordable housing: Transfer control of land to the City, Redevelopment Agency, or a City-approved non-profit agency to be used for affordable housing projects. The value of land dedication will be the same as the value of the number of affordable units with income levels as defined in Section 2-3-4 which are not provided in the proposed project. The value shall be calculated based on a City-approved appraisal of the land. Menu option items are designed to generate a value in furtherance of affordable housing that is equivalent or comparable to the actual value of providing such housing in the planning area as defined in Section 2-3-5 B 1.
- h. Other programs: Alternative programs which provide affordable housing in a manner not specifically described above may be considered by the City provided the requirement of Section 2-3-4 is met either through the provision of units or through the value of the alternative. Multiple credits may be allowed if such programs provide affordable housing in excess of the goals either in terms of the degree of affordability, in the amount of affordable units or both. Such programs may be approved at the discretion of the City as specified in an affordable housing implementation program. Menu option items are designed to generate a value in furtherance of affordable housing that is equivalent or comparable to the actual value of providing such housing in the planning area as defined in Section 2-3-5 B 1.

(Ord. No. 04-15, § 3, 12-14-04; Ord. No. 07-11, § 3, 4-24-07)

Sec. 2-3-6. - Affordable housing credits guidelines.

A. *Introduction.* The purpose of the Affordable Credits ("Credits") Program is to promote the construction of affordable housing units within the City by establishing a system of credits that can be earned by applicants of residential projects which include higher percentages of affordable units than are currently required by the City's Inclusionary Housing Program and in turn sold or transferred to applicants of other residential projects.

Separate credit programs are established for the three categories of affordable homes (Income Levels I/II, III and IV), so that a project can fulfill its affordable requirements on-site at one income level, while using credits to cover its requirement at another income level. The City will maintain a database to keep track of existing credits so that applicants of market-rate projects can be informed of the availability of such credits.

B. *Defined terms.* The following defined terms are utilized in these guidelines:

Affordable housing credits agreement means an agreement required for any residential development project that is involved in the purchase or sale of credits.

Affordable housing in-lieu fees means fees payable by an applicant of a market-rate project or a mixed project with affordable shortfalls, in lieu of the actual construction of affordable units on the project site.

Affordable project means a residential project that includes only affordable units.

Affordable unit means a residential dwelling unit that is affordable to and rented or sold to a household with an income of below 120 percent of the County of Orange median income. An affordable unit may be designated as falling into one of four income categories (Income Levels I—IV), based on the highest household income that is qualified to purchase or rent that unit.

Agreement means an affordable housing credits agreement.

Applicant shall mean and, depending on context, shall include the owner(s), lessee(s) or developer(s) of property, or their authorized agents, with regard to any application for residential property development permits or approvals from the City of Irvine.

City means the City of Irvine.

County median income means the current median income in Orange County as determined by the U.S. Department of Housing and Urban Development.

Credits means affordable housing credits.

Excess affordable units means the number of affordable units in a residential project that fall within a given income level category that exceeds the required affordable component for that income level.

Income level I means a household income of not more than 30 percent of the county median income, as adjusted for household size.

Income level II means a household income of over 30 percent but not more than 50 percent of the county median income, as adjusted for household size.

Income level III means a household income of over 50 percent but not more than 80 percent of the county median income, as adjusted for household size.

Income level IV means a household income of over 80 percent but not more than 120 percent of the county median income, as adjusted for household size.

In-lieu fees means affordable housing in-lieu fees.

Market-rate project means a residential project that only includes market-rate units.

Market-rate units mean residential dwelling units that are not affordable units.

Mixed project means a residential project that includes both affordable units and market-rate units.

Mixed project with excess affordables means a mixed project in which there are excess affordable units at one or more income levels. (Please note that it is possible that a mixed project with excess affordables for one income level category may have a shortage of affordable units at other income level categories).

Mixed project with affordable shortfall means a mixed project in which there is a shortage of affordable units at one or more income levels. (Please note that it is possible that a mixed project with affordable shortfall at one income level category may have sufficient affordable units or excess affordable units at other income level categories).

Program means the City Affordable Housing Credits Program.

Required affordable component means, for any residential project within the City, the percentages of dwelling units that are required to be affordable to households in each of the three income level categories listed below:

Income levels I and II: Five percent of project

Income level III: Five percent of project

Income level IV: Five percent of project

- C. *Guidelines.* The Program shall be administered by the City according to the following guidelines:
1. An agreement must be executed prior to the issuance of building permits for those units in a market-rate project or mixed project with affordable shortfall that will be satisfying their required affordable component through the use of credits. The purchaser of credits, the seller of credits and the city shall all be signatories to the agreement. The agreement shall state the number of credits involved, and must identify the specific residential projects that will be generating the credits and will be receiving the credits. Information on the purchase price or payment arrangements for the credits shall not be required to be disclosed within the agreement.
 2. Affordable credits generated by excess affordable units shall become available for use by a market-rate project or mixed project after:
 - (i) Building permits for the excess affordable units have been issued, and
 - (ii)

The applicant of the affordable project or mixed project with excess affordables has posted a bond to assure the construction of the excess affordable units or a certificate of occupancy has been issued for the excess affordable units.

3. Separate affordable credits shall be issued for excess affordable units in each of the three income level categories (i.e., income levels I/II, III and IV).
4. Affordable projects and mixed projects that agree to satisfy the required affordable component for one or more income level categories on-site shall not be required to pay in-lieu fees or provide affordable credits for the income level categories anticipated to be provided on-site. Said agreement will be enforced through a condition of the discretionary approval of the project.
5. Until credits become available, even after the agreement is executed, the applicant of any residential project that is not providing its required affordable component for a given income level category on-site must pay in-lieu fees at the time of building permit issuance for any market-rate units or affordable units not yet covered by credits for that income level category. These in-lieu fees shall be reimbursed to the applicant of the market-rate project and/or the mixed project, without interest, upon availability of the credits listed in the agreement (see guideline #2).
6. One credit for any income level category shall release 19 dwelling units in a market-rate project or a mixed project with affordable shortfall from their required affordable component for that same income level category.
7. The following guidelines for granting credits and combining credits for affordable units are summarized in table 1 below:
 - a. Units that are priced for, sold to and occupied by households in income level categories I, II and III shall receive 2.0 Credits in the corresponding income category.
 - b. 1.6 income level I/II credits shall be granted for each rental excess affordable unit that satisfies the income level I category requirement.
 - c. 3.2 income level I/II credits shall be granted for excess affordable units that satisfy income level I category requirements and are priced for, sold to and occupied by households in the income level I category.
 - d. 1.4 income level II and III credits shall be granted in the corresponding income level category for rental excess affordable units that include three bedrooms, and 1.6 income level II and III credits shall be granted in the corresponding income level category for rental excess affordable units that include four bedrooms.
 - e. 2.24 income level I/II credits shall be granted for rental excess affordable units in the income level I category that include three bedrooms, and 2.56 income level I/II credits shall be granted for rental excess affordable units in the income level I category that include four bedrooms.
 - f. 2.8 income level II and III credits shall be granted for excess affordable units in the corresponding income level categories that include three bedrooms and are priced for, sold to and occupied by households in the corresponding income level category.
 - g. 3.2 income level II and III credits shall be granted for excess affordable units in the corresponding income level categories that include four bedrooms and are priced for, sold to and occupied by households in the corresponding income level category.

- h. 4.48 income level I/II credits shall be granted for excess affordable units in the income level I category that includes three bedrooms and are priced for, sold to and occupied by households in the income level I category.
 - i. 5.12 income level I/II credits shall be granted for excess affordable units in income category I that include four bedrooms and are priced for, sold to and occupied by households in the income level I category.
8. All applicants of market-rate projects or mixed projects with affordable shortfalls utilizing the program shall pay for their share of the administration costs related to the application of credits to their project through hourly fees charged by the City. Any administrative costs not covered by the hourly fees shall be paid to the City by the applicant of the market-rate project or mixed project with affordable shortfall prior to the acceptance of the credits for the specific project by the city.
 9. Credits shall be assigned to applicants of affordable projects or mixed projects with excess affordables, based on the guidelines listed above, for:
 - (i) The conversion of existing market-rate units to affordable units for a period of at least 30 years,
 - (ii) The extension of the term of affordability of existing affordable units by an additional 40 years, and
 - (iii) The construction of second units that meet the City's affordability guidelines.
 Credits may be assigned to property owners and applicants in return for the dedication of land for affordable housing use and the construction of special needs housing, with the number of credits assigned based on the City's determination of the value of these types of assistance.
 10. Affordable projects or mixed projects with excess affordable that have received affordable housing in-lieu fees from the City shall have their credits reduced based on the proportion of their affordable units that have been fully or partially assisted with the affordable housing in-lieu fees. The Director shall make all determinations regarding the number of affordable units assisted in this manner.
 11. A database shall be prepared and maintained by the City to keep track of the use and availability of affordable credits within the City. A list of uncommitted excess affordable credits shall also be kept on file by the City to be made available to applicants of market-rate projects and mixed projects with affordable shortfalls who are interested in purchasing Credits.

(Ord. No. 04-15, § 3, 12-14-04; Ord. No. 07-11, § 3, 4-24-07)

Sec. 2-3-7. - Role of financial and processing incentives.

Pursuant to the Housing Element, the purpose of financial and processing incentives is to bridge the gap between the actual cost of construction of a market rate unit and the value of an affordable unit. If financial incentives are not available for on-site construction of affordable units, satisfaction of the affordable housing goal shall be achieved through the selection of alternatives in the menu options outlined in this Section. Nothing herein is intended nor does it place any obligation on the City to provide financial incentives or offset the cost of providing affordable housing as required by the Housing Element.

- A. *Financial incentives defined.* Financial incentives mean monetary assistance to the project for the purpose of subsidizing the cost of providing affordable units. The City, the Redevelopment Agency or another public, private or non-profit source may provide financial assistance.
- B. *Processing incentives defined.* Processing incentives are any changes to existing land use policies which will increase the applicant's ability to provide affordable housing, such as modifications for setbacks or building height, fee waivers, and density bonuses granted according to Government Code regulations.

(Ord. No. 04-15, § 3, 12-14-04; Ord. No. 07-11, § 3, 4-24-07)

Sec. 2-3-8. - Monitoring.

The applicant of an affordable housing development project shall comply with the program monitoring guidelines set forth herein.

- A. The applicant shall provide the City with an annual report detailing compliance with the adopted affordable housing plan for the project.
- B. Failure to comply with the terms of the adopted affordable housing plan may result in the revocation of a conditional use permit for the project or similar exercises of the City's enforcement powers.

(Ord. No. 04-15, § 3, 12-14-04; Ord. No. 07-11, § 3, 4-24-07)

Sec. 2-3-9. - Affordable housing plan requirements for planning areas.

When a project entails the development of an entire planning area, the applicant shall designate the sites on which affordable housing units shall be developed. The designation of affordable housing sites shall be made in conjunction with the submittal of the first subdivision map for the planning area. The applicant may submit a site plan or a letter indicating the sites designated for affordable housing.

- A. The affordable housing sites shall be distributed to prevent undue concentration of affordable housing in any one area.
- B. In order to expand the applicant's opportunities to obtain financial assistance for the provision of affordable housing, a project with up to 100 percent affordability will be considered, and may be approved, by the City. A project application offering to provide affordable housing in excess of the requirements set forth in this Chapter, or the Housing Element, may only be denied in accordance with the terms of Government Code Section 65589.5(d).

The owner(s) of any of the parcels indicated as a site for affordable housing shall be required to inform any potential purchaser/applicant that this site is to be used to fulfill the City's affordable housing requirements.

(Ord. No. 04-15, § 3, 12-14-04; Ord. No. 07-11, § 3, 4-24-07)

Sec. 2-3-10. - Residential density bonus standards.

- A. *Purpose and Intent.* The purpose of the provisions of this section is to comply with State Density Bonus standards, which are intended to provide incentives for the production of housing for very low income, low, and moderate income households, or senior households in accordance with Sections 65915 through 65918 of the California Government Code, as may be amended from time

to time or any successor density bonus statute. In enacting this Section, it is the intent of the City of Irvine to facilitate the development of affordable housing and to implement the goals, objectives and policies of the City's Housing Element.

- B. *Implementation.* The City shall grant requests for a Density Bonus and Incentives as set forth in Subsection 2-3-10(D), and in accordance with California Government Code Sections 65915-65918, as may be amended from time to time or any successor density bonus statute.
- C. *Development Standards.* Target Units should be constructed concurrently with Market Rate Units unless both the City and the applicant agree within the Density Bonus Housing Agreement, required pursuant to Subsection 2-3-10(F), to an alternative schedule for development.

In determining the maximum Affordable Rent or Affordable Sales Price of Target Units the following household and unit size assumptions shall be used, unless the Housing Development is subject to different assumptions imposed by other governmental regulations:

SRO (single room) unit	75% of 1 person
0 bedroom (studio)	1 person
1 bedroom	2 person
2 bedroom	4 person
3 bedroom	6 person
4 bedroom	8 person

Target units should be built on-site wherever possible and, when practical, be dispersed within the Housing Development. Where feasible, the number of bedrooms of the target units should be equivalent to the bedroom mix of the market rate units of the Housing Development; except that the applicant may include a larger proportion of target units with a higher bedroom counts. The design and appearance of the target units shall be compatible with the design of the total Housing Development. Housing Developments shall comply with all applicable development standards, except those which may be modified as provided by this Subsection 2-3-10(D).

Circumstances may arise in which the public interest would be served by allowing some or all of the target units associated with one Housing Development to be produced and operated at an alternative development site. Where the applicant and the City form such an agreement, the resulting linked developments shall be considered a single Housing Development for purposes of this Section. Under these circumstances, the applicant shall be subject to the same requirements of this Section for the target units to be provided on the alternative site.

A density bonus housing agreement shall be made a condition of the discretionary planning permits (e.g., tract maps, parcel maps, site plans, planned development or conditional use permits, etc.) for all Housing Developments pursuant to this Section. The agreement shall be recorded as a restriction on the parcel or parcels on which the target units will be constructed. The agreement shall be consistent with Subsection 2-3-10(F).

D. *Development incentives.* Development incentives shall be granted by the City in accordance with California Government Code Sections 65915-65918, as may be amended from time to time or any successor density bonus statute.

Criteria that may be used to evaluate whether an incentive is sufficient to make the affordable units economically feasible may include, but are not limited to, one or more of the following:

1. A development pro forma outlining the capital costs, operating expenses, return on investment, revenues, loan-to-value ratio and the debt-coverage ration including the contribution provided by any applicable subsidy programs, and the economic effect created by the 30-year use and income restrictions of the affordable housing units.
2. An appraisal report indicating the value of the density bonus and of the incentive(s) and of the value of any other incentives.
3. Sources and use of funds statement identifying the projected financing gap of the project with the affordable housing units that are the basis for granting the density bonus and incentive(s). The applicant shall establish how much of the gap would be covered by the density bonus, leaving a remainder figure to be covered by additional incentives.

E. *Application requirements and review.* An application pursuant to this Section shall be processed concurrently with any other application(s) required for the Housing Division. Final approval or disapproval of an application shall be made by the Planning Commission. The approval or disapproval of the proposed development may be subject to the provisions of Government Code Section 65589.5, which requires certain findings where the City proposes to:

1. Disapprove, or approve with conditions rendering the affordable housing development infeasible, or
2. Disapprove, or approve at a lesser density, a housing development proposal which complies with the applicable general plan, zoning, and development policies in effect at the time the project's application is deemed complete.

F. *Density bonus housing agreement.* Applicants requesting a density bonus, shall (draft and) agree to enter into a density bonus housing agreement with the City. The terms of the draft agreement shall be reviewed and revised as appropriate by the director of redevelopment. Following execution of the agreement by all parties, the completed density bonus housing agreement, or memorandum thereof, shall be recorded and the resulting conditions filed and recorded on the parcel or parcels designated for the construction of target units.

The approval and recordation shall take place prior to final map approval, or, where a map is not being processed, prior to issuance of building permits for such parcels or units. The density bonus housing agreement shall be binding to all future owners and successors in interest.

The density bonus housing agreement shall include at least the following:

1. The total number of units approved for the housing development, including the number of target units.

2. A description of the household income group to be accommodated by the housing development, as outlined in Subsection 2-3-10(A) and the standards for determining the corresponding affordable rent or affordable sales price and housing cost.
3. The location, unit sizes (square feet) and number of bedrooms of target units.
4. Tenure of use restrictions for target units of at least 30 years, in accordance with Government Code Sections 65915-65918, as may be amended from time to time or any successor density bonus statute.
5. A schedule for completion and occupancy of target units.
6. A description of the incentive(s) being provided by the City.
7. A description of remedies for breach of the agreement by either party (the City may identify tenants or qualified purchasers as third party beneficiaries under the agreement).
8. Other provisions to ensure implementation and compliance with this section.

In the case of for-sale housing developments, the density bonus housing agreement shall provide for the following conditions governing the initial sale and use of target units during the applicable use restriction period:

1. Target units shall, upon initial sale, be sold to eligible very low, low or moderate income households at an affordable sales price and housing cost, or to qualified residents (i.e., maintained as senior citizen housing) as defined in Government Code Sections 65915-65918, as may be amended from time to time or any successor density bonus statute.
2. Target units shall be initially owner-occupied by eligible very low, low or moderate income households, or by qualified residents in the case of senior citizen housing.
3. The initial purchaser of each target unit shall execute an instrument or agreement approved by the City restricting the sale of the target unit in accordance with this chapter during the applicable use restriction period. Such instrument or agreement shall be recorded against the parcel containing the target unit and shall contain such provisions as the City may require to ensure continued compliance with this ordinance and the state density bonus law.

In the case of rental housing developments, the density bonus housing agreement shall provide for the following conditions governing the use of target units during the use restriction period:

1. The rules and procedures for qualifying tenants, establishing affordable rent, filling vacancies, and maintaining target units for qualified tenants;
2. Provisions requiring owners to verify tenant incomes and maintain books and records to demonstrate compliance with this Section.
3. Provisions requiring owners to submit an annual report to the City, which includes the name, address, and income of each person occupying target units, and which identifies the bedroom size and monthly rent or cost of each target unit.

In the case of housing developments that utilize the density bonus provisions associated with child care facilities, the applicant shall comply with Government Code Sections 65915-65918, as may be amended from time to time or any successor density bonus statute.

(Ord. No. 04-16, § 3, 12-14-04; Ord. No. 07-11, § 3, 4-24-07)

CITY OF SANTA ANA

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 developments that involve an increase in the density otherwise available under applicable zoning and development standards; a change in land use designation from a zoning regulation that does not permit residential uses to one that does permit residential uses; or the conversion of rental units to condominium ownership.

(Ord. No. NS-2825, § 2, 11-28-11)

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 (1) 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.

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) per cent of the income of a household earning fifty (50) per cent of the Orange County median income adjusted for family size appropriate for the unit.

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

Moderate income households. Thirty-five (35) per cent of the income of a household earning one hundred ten (110) per cent of the Orange County median income for for-sale units, and thirty (30) per cent of the income of a household earning one hundred ten (110) per cent 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.

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

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.

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 low or moderate-income households, at an affordable housing cost, in compliance with this article.

Low-income households means "lower income households" as that term is defined by Section 50079.5 of the Health & Safety Code.

Low-income units, moderate-income units, and very low-income units means inclusionary units restricted to occupancy by low, moderate, 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.

Moderate-income households means "persons and families of low or moderate income" as that term is defined by Section 50093 of the Health & Safety Code.

Regulatory agreement means an agreement entered into between the city or the Santa Ana Community Redevelopment 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.

Residential 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 rental units to condominium ownership.

Total housing costs mean 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

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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 "very low income households" as that term is defined by Section 50105 of the Health & Safety Code.

(Ord. No. NS-2825, § 3, 11-28-11)

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

- (a) *Zone changes.* The requirements of this article shall apply to any residential project located within a zone that has been changed to allow for residential uses where such uses were not previously allowed, or where the zone change allows an increase to the existing residential density permitted by the zoning in place as of the effective date of the ordinance from which this article derives.
- (b) *Applications.* The requirements of this article shall apply to any 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.
 - (2) Increase the permitted percentage of residential development allowed for a mixed-use development above the percentage at the time of the application.
 - (3) Convert commercial or industrial land to residential uses; including, but not limited to, the conversion of a hotel to residential use.
 - (4) Approval of an overlay zone site plan permitting residential land uses pursuant to division 28 of this chapter.
 - (5) Convert rental units to condominium ownership.
- (c) *Units for sale.* If the residential project consists of units for sale, then a minimum of fifteen (15) per cent of the total number of units in the project shall be sold to moderate-income households, or lower.
- (d) *Rental units.* If the residential project consists of rental units, then a minimum of fifteen (15) per cent of the units shall be rented to low or very low-income households.
- (e) *Allowable credits.* The inclusionary unit requirements of this section may be reduced at the discretion of the executive director if a greater level of affordability is provided.
- (f) *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 subsection 41-1904(c) for the fractional units, which shall be calculated based on a percentage of the per unit cost.
- (g) *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, low, and/or moderate income household(s) shall be required to provide on-site inclusionary units as required by this article.
- (h) *[Compliance with article.]* All inclusionary units required by this article shall be sold or rented in compliance with this article.

(Ord. No. NS-2825, § 4, 11-28-11)

Sec. 41-1903. - Exempt projects.

The following are exempt from the requirements of this article:

- (a) *Applications deemed complete.* A residential project for which a development application has been deemed complete prior to December 29, 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.
- (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 this chapter.

(Ord. No. NS-2825, § 5, 11-28-11)

Sec. 41-1904. - Alternatives.

- (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.* Upon application by the developer and at the discretion of the city council, the developer may satisfy the inclusionary unit requirements for the project, in whole or in part, by constructing a mix of affordable units or substantially rehabilitating existing rental units. For purposes of providing off-site units, substantially rehabilitating means rehabilitating a dwelling unit that has substantial building and other code violations, and has been vacant for at least ninety (90) days, such that the unit is returned to the city's housing supply as decent, safe and sanitary housing, and the cost of the work exceeds twenty-five (25) per cent of the market value of the unit after rehabilitation. The number of substantially rehabilitated units that will be required under the off-site unit provision will be determined based on a calculation of the affordability gap associated with on-site provision of the units. This affordability gap will then be translated into the number of off-site units that can be produced at a financial gap equal to the affordability gap associated with on-site provision of the 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.
 - (2) *More than twenty (20) units.* In the case of a residential project comprised of more than twenty (20) residential lots or residential units, the developer may apply to pay a fee in lieu of constructing some or all of the required units, and such application shall be subject to the review and approval of the city council, which may grant such the developer's request if substantial evidence supports a finding that the cost of providing inclusionary units on-site would substantially exceed the amount of the applicable in-lieu fee.

- (3) *Calculation of fee.* The amount of the fees allowed by this section shall be calculated in accordance with the methodology to be set forth in the administrative procedures. The calculation methodology is based on the affordability gap associated with fulfilling the required affordable housing units on site within the proposed residential project.
- (4) *Timing of payment.* The developer shall pay any in-lieu fees allowed by this section in full before issuance of a building permit for any portion of the residential project, including any non-residential portions of a mixed-use development.
- (5) *Inclusionary housing fund.* Fees collected in compliance with this section shall be deposited in the inclusionary housing fund.

(Ord. No. NS-2825, § 6, 11-28-11)

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. If the inclusionary housing plan includes alternatives to on-site units that require the approval of the city council, then the inclusionary housing plan shall be subject to the review and approval of the city council. All other inclusionary housing plans shall be subject to the approval of the executive director, subject to appeal to the city council. Any such appeal shall be filed within fifteen (15) days of the decision of the executive director.
 - (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, 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.

(Ord. No. NS-2825, § 7, 11-28-11)

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, 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) *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 forty-five (45) 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.
 - (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 entire purchase price of the unit. Recovered funds shall be deposited into the inclusionary housing fund. Notwithstanding the foregoing, it shall be within the discretion of the executive director to allow the buyer and seller to cure any violation of the resale price controls within one hundred eighty (180) days.
- (d) *Rental units.*
- (1) *Time limit for inclusionary restrictions.* A rental 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 units 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.
- (e) *[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.
- (f) *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.

(g) *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.

(Ord. No. NS-2825, § 8, 11-28-11)

Sec. 41-1907. - Takings determination.

- (a) *Determination of a taking of property without just compensation.* In accordance with the procedures provided by this section, a developer may request a determination as to whether the requirements of this article, taken together with the inclusionary incentives as applied to the residential project, would constitute a taking of property without just compensation under the California or Federal Constitutions.

- (1) The developer may request the executive director to make a takings determination within fifteen (15) days of approval or disapproval of the inclusionary housing plan. The developer may file an appeal of the takings determination of the executive director within fifteen (15) calendar days after the date of the decision. Any appeal shall be subject to the provisions of chapter 3 of this Code.

- (2) Reserved.

- (b) *Presumption of facts.* In making the takings determination, the executive director, shall presume each of the following facts:

- (1) *Application of requirements.* Application of the inclusionary housing requirement to the residential project;
- (2) *Incentives.* Application and utilization of all density bonuses and incentives available under state and local law;
- (3) *Product type.* Utilization of the most cost-efficient product type for the inclusionary units that would meet the standards of this article; and
- (4) *External funding.* The reasonable availability of external funding.

- (c) *Modifications to reduce obligations.* If it is determined that the application of the provisions of this article would be a taking, the inclusionary housing plan shall be modified to reduce the obligations in the inclusionary housing component to the extent, and only to the extent necessary, to avoid a taking. If it is determined no taking would occur through application of this article to the residential project, the requirements of this article remain applicable.

(Ord. No. NS-2825, § 9, 11-28-11)

Sec. 41-1908. - Enforcement.

- (a) *[Violation.]* Any violation of this article constitutes a misdemeanor.
- (b) *Forfeiture of funds.* Any individual who sells or 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.

(Ord. No. NS-2825, § 10, 11-28-11)

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 and very 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, redevelopment plan, 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.

(Ord. No. NS-2825, § 11, 11-28-11)

Sec. 41-1910. - Administrative.

- (a) *Fees.* The council may by resolution establish reasonable fees and deposits for the administration of this article.
- (b) *Administrative procedures.* The city manager is hereby authorized and directed to promulgate administrative procedures for the implementation of this article.

(Ord. No. NS-2825, § 12, 11-28-11)

Secs. 41-1911—41-1999. - Reserved.