

ORDINANCE NO. 4235

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HUNTINGTON BEACH
AMENDING SECTION 230.26 OF THE HUNTINGTON BEACH ZONING AND
SUBDIVISION ORDINANCE TITLED AFFORDABLE HOUSING
(ZONING TEXT AMENDMENT NO. 19-004)

WHEREAS, the Huntington Beach Planning Commission and Huntington Beach City Council have held separate, duly noticed public hearings to consider Zoning Text Amendment No. 19-0004, which amends Chapter 230 of the Huntington Beach Zoning and Subdivision Ordinance related to an updated, and clarified, "inclusionary housing ordinance".

After due consideration of the findings and recommendations of the Planning Commission and all other evidence presented, the City Council finds that the aforesaid amendment is proper and consistent with the General Plan;

NOW, THEREFORE, the City Council of the City of Huntington Beach hereby ordains as follows:

SECTION 1. Section 230.26 of the Huntington Beach Zoning Code is amended to read as follows:

A. Purpose.

1. The purpose of this chapter is to create an Inclusionary Housing Ordinance to enhance the public welfare and implement the goals, objectives and policies of the City's General Plan, including its Housing Element. It is intended to encourage the supply of extremely low, very low, lower, and moderate- income housing, on sites that are integrated, compatible with and complements adjacent uses.
2. This Inclusionary Housing Ordinance is a tool the City utilizes to meet its commitment to provide housing affordable to all economic sectors.

B. Definitions.

1. Affordable Housing Cost. The percentage of income that shall be utilized to determine the maximum housing related costs as calculated in accordance with California Health and Safety Code (H&SC) Section 50052.5 (standards for ownership units) and H&SC Section 50053 (standards for rental units).
2. Affordable Housing Unit. A dwelling unit required by this Chapter to be affordable to Extremely Low, Very Low, Lower, or Moderate Income Households. Accessory

dwelling units (ADUs) do not satisfy the affordable housing obligation nor do they trigger the affordable housing obligation.

3. Area Median Income. The midpoint of a County's gross income distribution adjusted for household size as determined by the California Housing and Community Development Department (HCD) annually.
4. Extremely Low-Income. Households whose incomes meet the standards defined by the H&SC Section 50106, or a successor statute.
5. Lower Income. Households whose incomes meet the standards defined by the H&SC Section 50079.5, or a successor statute.
6. Moderate-Income. Households whose incomes meet the standards defined by the H&SC Section 50093, or a successor statute.
7. New Residential Project. Development that includes the creation of three or more new dwelling units, conversion of nonresidential uses to dwelling units, or the conversion of a use from a residential rental development to a residential ownership development.
8. Ownership Units. Dwelling units constructed as part of a New Residential Project, or contained within a rehabilitation project, offered for individual unit sale, including, but not limited to, single-family detached or attached homes, condominiums, or cooperatives.
9. Phasing Plan. A detailed plan provided by a developer that outlines each segment or phase of construction including housing units and site improvements to be developed in a New Residential Project.
10. Very Low-Income. Households whose incomes meet the standards defined by the H&SC Section 50105, or a successor statute.

C. Applicability. This Section shall apply to New Residential Projects of three or more units in size not located in a Specific Plan. Projects located within a Specific Plan shall defer to the Specific Plan for affordable housing requirements.

1. **Affordable Housing Obligations.** All New Residential Projects must be restricted, as set for herein, to contain a minimum of 10% of Affordable Housing Units. In the event a fractional unit is established, the Affordable Housing Unit count shall be

rounded up, unless paragraph (C)(2) of this section applies. For projects providing affordable units onsite, an equivalent in-lieu fee may be paid instead of rounding up.

2. Developers of residential projects may elect to fulfill the affordable housing obligations imposed by this Section by providing Affordable Housing Units at the New Residential Project site pursuant to subsection D below (onsite production) or through an applicable alternative compliance option as provided by subsection E below (alternatives to onsite production).
3. For purposes of determining the required number of Affordable Housing Units, only new units shall be counted. Construction of an accessory dwelling unit does not trigger the affordable housing obligation.

D. Options for Fulfilling Affordable Housing Obligations: On-Site Production

1. Affordable Ownership Housing Units
 - a. Pursuant to section 230.26(F), New Residential Project Owners or Developers shall place an affordability covenant on Ownership Units that is set at the Moderate-Income Household affordability level.
 - b. The Affordable Housing Units shall be built concurrently with the market rate units as provided with an approved Phasing Plan.
 - c. The bedroom mix for the affordable units shall be proportional to the bedroom mix of the market rate units. The affordable units may be no more than 20% smaller in square footage than the average square footage of the market rate units.
 - d. All exterior and interior improvements, finishes, appliance packages, etc., for the affordable units shall be comparable to the base level market rate units.
2. Affordable Rental Housing Units within an Ownership Housing Project
 - a. The affordability covenant placed on Rental Units is set at the Low-Income level, but the developer may choose to fulfill the affordable housing requirement with units at the Very-Low or Extremely-Low Income level.
 - b. A Market Rate Developer may create a separate affordable housing parcel within the New Residential Development site and enter into an agreement with an Affordable Housing Developer to construct, own, and operate the affordable

housing units. The Affordable Housing Developer is required to enter into an Affordable Housing Agreement with the City, subject to the following:

- i. The Affordable Housing Developer shall have recent relevant experience and be approved by the Community Development Director or their designee.
- ii. The Affordable Housing Developer and/or Market Rate Developer may not request any financial assistance from the City.
- c. The bedroom mix is not required to match the unit mix provided in the market rate ownership housing project. At least 40% of the affordable units shall include at least two bedrooms.
- d. The affordable units shall be built concurrently with the market rate project. The Affordable Housing Units may be constructed in phases if the market rate project is developed in phases, with an approved Phasing Plan.

3. Affordable Rental Housing Units

- a. Pursuant to section 230.26(F), New Residential Project owners or developers shall place an affordability covenant on Rental Units at the Low-Income Household affordability level, but the developer may choose to fulfill the affordable housing requirement with units at the Very-Low or Extremely-Low Income Household affordability level.
- b. The affordable units shall be built concurrently with the market rate project. The Affordable Housing Units may be constructed in phases if the market rate project is developed in phases, with an approved Phasing Plan.
- c. The bedroom mix for the affordable units shall be proportional to the bedroom mix of the market rate units. The affordable units may be no more than 20% smaller in square footage than the average square footage of the market rate units.
- d. The minimum construction standards for interior improvements of the affordable units shall be the same as those imposed by the Low-Income Housing Tax Credit (LIHTC).

E. Options for Fulfilling Affordable Housing Obligations: Alternatives to On-Site Production

1. Off-Site Production of Affordable Housing Units

- a. Except as may be required by the California Coastal Act or Government Code Section 65590 or a successor statute, developers may provide the required Affordable Housing Units off-site, at one or several sites, within the City of Huntington Beach.
- b. Pursuant to Section 230.26(F), New Residential Project owners or developers shall place an affordability covenant on the off-site units that is set at 15% of the total number of units included in the New Residential Project that generated the affordable housing obligation. The affordability covenant placed on the off-site Affordable Housing Units shall be at the Low-Income Household affordability level, but the developer may choose to fulfill the affordable housing requirement with units at the Very-Low or Extremely-Low Income Household affordability level. The affordability covenant shall specify the off-site Affordable Housing Units shall be rental units.
- c. The provision of the off-site Affordable Housing Units shall not create an over concentration of Affordable Housing Unites in any specific area.
- d. The design, building quality, and maintenance standards shall be the requirements imposed by the LIHTC minimum construction standards.
- e. The bedroom mix for the affordable units is not required to match the mix provided in the market rate project that is subject to the affordable housing obligations. At minimum, 40% of the affordable units shall include at least two bedrooms.
- f. Pursuant to Section 230.26(F), a market rate developer may enter into an agreement with an affordable housing developer to construct, own and operate the off-site affordable housing project. The affordable housing developer is required to enter into an Affordable Housing Agreement with the City, subject to the following:

- i. The Affordable Housing Developer shall have recent relevant experience and be approved by the Community Development Director or their designee.
- ii. The Affordable Housing Developer and/or Market Rate Developer may not request any financial assistance from the City.
- iii. All off-site affordable units shall be constructed prior to or concurrently with the market rate project that generated the affordable housing obligation. If the market rate project is developed in phases, with an approved Phasing Plan, the affordable units may be developed along with the first phase of the market rate 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.

2. Existing Units Acquisition and Rehabilitation Projects

The City Council has the discretion, but not the requirement, to approve a developer's request to acquire, rehabilitate, and place affordability covenants on existing off-site units. The request shall meet either of the following threshold requirements in order to fulfill a project's affordable housing obligation:

- a. The project(s) shall be identified as at-risk in the City's Housing Element; or
- b. The project is a motel that can be adaptively reused as residential units.

Additional requirements for acquisition and rehabilitation projects:

- a. The developer or owner shall place an affordable housing covenant on the Affordable Housing Units that are equal to at least 20% of the units in the New Residential Project that triggered the affordable housing obligation.
- b. The rents charged for the rehabilitated units shall be set at the lesser of the H&SC 50053 rents or at least 10% discount from the achievable market rents for the units, subject to annual monitoring and reporting.

- c. If there are more units in the acquisition and rehabilitation project than are required to fulfill the affordable housing requirement, those units may be rented at market rate.

3. Land Dedication.

The City Council has the discretion, but not the requirement, to allow a developer to dedicate property in lieu of constructing Affordable Housing Units. The following requirements are applicable to any property proposed to be dedicated:

- a. The property shall be located within the City of Huntington Beach.
- b. The developer shall convey the property to the City at no cost.
- c. The property proposed to be dedicated shall yield a minimum of 20% of the total units constructed within the market rate project:
 - i. The site's existing General Plan and zoning standards shall allow for a residential use at a density sufficient to allow for the requisite number of affordable units to be developed without a density bonus request.
 - ii. The site shall be suitable in terms of size, configuration, and physical characteristics to allow for the requisite number of affordable units to be developed on a cost efficient basis.
 - iii. The bedroom mix for the affordable units shall be proportional to the bedroom mix of the market rate units. The affordable units may be no more than 20% smaller in square footage than the average square footage of the market rate units.
- d. The developer shall provide evidence of the following when the land dedication proposal is submitted:
 - i. A title report showing the developer/owner has lien-free, fee simple title. Any encumbrances or easements that adversely impact the property's title shall be disclosed and will be factored into the estimated value of the interests proposed to be conveyed to the City.
 - ii. An appraisal dated within 30 days of the application by a Member Appraisal Institute (MAI) appraiser.

- iii. A Phase I Environmental Site Assessment and a Phase II Environmental Site Assessment if the Phase I report indicates that hazardous materials were potentially previously used on the site.
- iv. The property shall not contain any hazardous materials at the time the land dedication proposal is submitted. If hazardous materials were previously remediated, a site closure letter from the appropriate regulatory agency showing evidence that the site was remediated to residential standards is required.
- e. The property shall not have been improved with any residential use for at least five years prior to the submission of a land dedication proposal.
- f. Payment in full of all taxes and/or assessments shall have been made when the proposal is submitted, and again prior to conveyance of the property to the City.
- g. The construction of affordable units on the property shall not create an over concentration of low income housing in any specific area.
- h. The property shall be fully served by the necessary infrastructure prior to conveyance to the City.
- i. To assist the City in evaluating land dedication proposals, the developer shall submit a conceptual site plan and narrative description of a project that could be developed on the property.

4. Fee Payment in Lieu of Construction

- a. Developers of the following New Residential Project types may pay an in-lieu fee to fulfill Affordable Housing Obligations:
 - i. Ownership residential projects proposing any number of units.
 - ii. Rental residential projects proposing 100 units or fewer.
- b. The amount of the in-lieu fees shall be calculated using the fee schedule established by Resolution of the City Council.
- c. A project may be permitted to pay in-lieu fees if it does not meet the eligibility standards of this section if the City Council determines, at its discretion, that the requirement to provide affordable housing units would impose an extreme hardship on the developer.

- d. One hundred percent of the fees required by this section shall be paid prior to issuance of a building permit. However, for phased projects the developer may pay a pro rata share of the in-lieu fee concurrently with the issuance of building permits for each development phase, as approved by a Phasing Plan.
- e. 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 F of this section.
- f. 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 prior to the grant of any density bonus.

F. Miscellaneous Provisions.

- 1. An Affordable Housing Agreement placing a covenant that runs with the land and outlining all aspects of the Affordable Housing Obligations, including but not limited to the affordability term for the restricted units, shall be executed between the applicant and the City and recorded with the Orange County Recorder's Office.
- 2. The Affordable Housing Agreement shall specify an affordability term of not less than 55 years for rental units or 45 years for ownership units.
- 3. In general, the 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 E of this section, the City Council shall by resolution set forth additional permitted uses of Affordable Housing Trust Funds. To obtain Affordable Housing Trust Funds, the recipient shall enter into an affordable housing agreement as set forth above, and 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.
- 4. New affordable units shall be occupied in the following manner:

- a. Any existing residents shall be allowed to occupy their units until six months before the start of construction activities with proper notice.
- b. The developer shall provide relocation benefits to the occupants of the affordable units that are displaced.
- c. 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 a comparable unit available in the new housing development affordable to the household at an affordable rent (e.g. Extremely-Low Income, Very-Low Income, Low-Income, Moderate Income, Market Rate).
- d. 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.

G. 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.


PASSED AND ADOPTED by the City Council of the City of Huntington Beach at
a regular meeting thereof held on the ____ day of _____, 2021.

Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney 

REVIEWED AND APPROVED:

INITIATED AND APPROVED:

City Manager



Director of Community Development