

230.26 Affordable Housing

A. Purpose.

1. The purpose ~~and intent~~ 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, which is integrated, compatible with and complements adjacent uses, and is located in close proximity to public and commercial services.
2. This Inclusionary Housing Ordinance ~~The affordable housing program~~ is ~~one a~~ 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. 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 Section 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.

B-C. Applicability. Unless otherwise specified in a Specific Plan, This section this Section shall apply to ~~new residential projects~~ New Residential Projects of three or more units in size.

1. **Affordable Housing Obligations.** All New Residential Projects must be restricted, as for herein, to contain a A minimum of 10% of Affordable Housing Units. 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 In the event a fractional unit is established, the Affordable Housing Unit count shall be rounded up unless paragraph (B C)(4 2) of this section applies. For projects providing affordable units onsite, Any fractional amount may be paid with an equivalent in-lieu fee may be paid instead of rounding up.

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 2. Developers of residential projects may elect to provide 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).

~~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 3. ~~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. Construction of an accessory dwelling unit does not trigger the affordable housing obligation.~~

~~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.~~
- ~~3.—The number of units to be provided off-site shall be consistent with the requirements of this chapter.~~
- ~~4.—All off-site inclusionary units will contain on average the same number of bedrooms as the non-inclusionary units in the project, and shall be comparable with the non-inclusionary units in terms of square footage of individual units, overall unit mix, appearance, finished quality, materials, and even distribution throughout the site.~~

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 for 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 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 the rental units is set 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. A market rate developer may create a separate affordable housing parcel within the New Residential Project 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 Housing 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 Housing 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 Housing Units shall be the same as those imposed by the Low-Income Housing Tax Credit (LIHTC) program.

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.
- b. The provision of the off-site Affordable Housing Units shall not create an over concentration of Affordable Housing Units in any specific area.

- c. The design, building quality, and maintenance standards shall be the requirements imposed by the LIHTC minimum construction standards.
- d. 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.
- e. Pursuant to Section 230.26(F), the 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 affordable housing requirement is equal to at least 20% of the units in the 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.

E F. 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 1.~~ An Affordable Housing Agreement placing a covenant that runs with the land and outlining all aspects of the ~~a~~Affordable ~~h~~Housing ~~provisions~~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, ~~or the applicable in-lieu fee shall be paid in full, prior to issuance of the first building permit.~~

~~3 2.~~ The Affordable Housing aAgreement shall specify an affordability term of not less than 55 years for rental ~~housing units~~ or 45 years for ownership ~~housing units~~.

~~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.

~~6 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 ~~C E~~ of this section, the City Council shall by resolution set forth ~~the additional~~ permitted uses of Affordable Housing Trust Funds. ~~All units that~~ 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.

~~7 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.

~~ab.~~ The developer shall provide relocation benefits to the occupants of the affordable units that are displaced.

~~b.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 ~~the affordable~~ a comparable unit(s); 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).

~~ed.~~ 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.~~

G 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)