

ORDINANCE NO. NS-XXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA ANA AMENDING SECTIONS 41-1900, 41-1901, 41-1902, 41-1903, 41-1904, 41-1906, 41-1909, AND 41-1910 OF THE SANTA ANA MUNICIPAL CODE RELATING TO THE HOUSING OPPORTUNITY ORDINANCE

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

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

A. On November 28, 2011, the Santa Ana City Council adopted Ordinance No. NS-2825, known as the Housing Opportunity Ordinance and appearing as Article XVIII.1 of Chapter 41 of the Santa Ana Municipal Code. The Housing Opportunity Ordinance was adopted to implement the City's Housing Element Goal of providing affordable housing within the City.

B. On September 1, 2015, the City Council adopted Ordinance No. NS-2881, which amended the Housing Opportunity Ordinance in various respects, including applicability, options to satisfy inclusionary requirements, and calculation of the in-lieu housing fee. These amendments were intended to make the inclusionary housing requirements more predictable for housing developers and to incentivize more affordable housing production on-site in conjunction with new market rate housing development.

C. In response to impacts of the COVID-19 pandemic on the development and construction of housing in the City, including the reduction of housing starts, the City Council adopted Ordinance No. NS-2994 on September 1, 2020. Ordinance No. NS-2994 further amended the Housing Opportunity Ordinance to lower the in-lieu housing fee for all projects from \$15 to \$5 per square foot, adjust the trigger of the ordinance, and expand the eligible uses of in-lieu fees collected by the City.

D. In early 2021, at the direction of the City Council, an Ad Hoc Committee for Housing was formed. The Ad Hoc Committee reviewed the Housing Opportunity Ordinance and recommended certain changes. The Ad Hoc Committee's recommendations were presented and discussed at the City Council Meeting on July 6, 2021.

E. On July 26, 2021, the City Council conducted a work-study session to further evaluate the Committee's recommendations and to receive input from key stakeholders and members of the public. The City Council provided direction to staff to prepare amendments to the Housing Opportunity Ordinance concerning the applicability

and triggers for the ordinance, adjustments to the in-lieu fee calculation, set-aside units, and options for satisfaction of inclusionary requirements.

F. On \_\_\_\_\_, 2021, the Planning Commission held a duly noticed public hearing on the proposed amendments.

G. The Request for City Council Action for this ordinance dated \_\_\_\_\_, 2021 and duly signed by the Executive Director of the Planning and Building Agency shall, by this reference, be incorporated herein, and together with this ordinance, any amendments or supplements, and oral testimony, constitute the necessary findings for this ordinance.

**Section 2.** The City Council finds and determines that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the State CEQA Guidelines because it will not result in a direct or reasonably foreseeable indirect physical change in the environment, as there is no possibility it will have a significant effect on the environment and it is not a "project", as defined in Section 15378 of the CEQA Guidelines.

**Section 3.** The title of Article XVIII.1 of Chapter 41 of the Santa Ana Municipal Code is amended to read in its entirety as follows:

**2021 AFFORDABLE HOUSING OPPORTUNITY AND CREATION ORDINANCE**

**Section 4.** Section 41-1900 of Chapter 41 of the Santa Ana Municipal Code is hereby amended to read in its entirety as follows:

Sec. 41-1900. - Purpose.

This article establishes standards and procedures to encourage the development of housing that is affordable to a range of households with varying income levels. The purpose of this article is to encourage the development and availability of affordable housing by requiring the inclusion of affordable housing units within new developments ~~or the conversion of rental units to condominium ownership~~ when the number of units exceed the densities permitted under the general plan, zoning classification, or the conversion of rental units to condominium ownership.

**Section 5.** Section 41-1901 of Chapter 41 of the Santa Ana Municipal Code is hereby amended to read in its entirety as follows:

Sec. 41-1901. - Definitions.

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

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

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

*Affordable housing cost* means the total housing costs paid by a qualifying household, which shall not exceed the fraction of gross income specified, as follows:

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

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

*Low-income households.* Thirty (30) percent of the income of a household earning eighty (80) percent of the Orange County median income for family size appropriate for the unit.

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

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

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

*Development agreement* means an agreement approved by the city council between a property owner and the city pursuant to Government Code section 65864, et seq.

~~*Entitled residential project* means a development project that includes residential units subject to the provisions and applicability of this Article XVIII.I. that received entitlement approvals by city council action between August 4, 2015 and August 17, 2020 to construct the residential project and which has not been issued a building permit prior to August 18, 2020. A list of the currently entitled residential projects is attached hereto as Exhibit A and is incorporated by reference.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Section 6.** Section 41-1902 of Chapter 41 of the Santa Ana Municipal Code is hereby amended to read in its entirety as follows:

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

(a) *Applicability.* The requirements of this article shall apply to any new residential project comprised of ~~twenty-five~~ (205) or more residential lots or residential units ~~located within which has not received entitlement approvals by the city~~ City Council as of [insert date], including new construction, and condominium conversions which ~~exceeds one or all of the general plan prescribed densities following applicability thresholds:~~

(1) A change in use to allow for residential or that exceeds the general plan or zoning prescribed densities or percentage of residential development of the subject property at the time of application.

~~(2) Implementation of (b) — Applications. The requirements of this article shall apply to any new residential project proposed in connection with an application to do any of the following: (1) Increase the permitted residential density of the subject property above the density or percentage of residential development allowed as a result of city initiated zone changes or city initiated general plan amendments after November 28, 2011.~~

~~permitted by the general plan at the time of the application. The inclusionary requirements shall only apply to the incremental increase in the number of units beyond that which is allowed by the applicable density permitted by the general plan.~~

~~— (2) — (3) Increase of the permitted percentage of residential development allowed for a mixed-use development above the percentage at the time of the application. The inclusionary requirements shall only apply to the incremental increase in the number of units beyond that which is allowed by the density permitted by the general plan permitted under the zoning classification at the time of application.~~

~~(3) — (4)~~ Development of new residential uses or increase of the permitted residential density or percentage of residential development within an overlay zone approved pursuant to Division 28 of Article I of this Chapter.

(5) Conversion of rental units to condominium ownership.

(b) Applications. The inclusionary requirements shall only apply to the incremental ~~increase in the number of~~ units beyond that which is allowed ~~by the density permitted by the general plan, as prescribed in Subsection (a) above.~~

(c) *Units for sale.* If the new residential project consists of units for sale, then a minimum of ten (10) percent of the total number of units in the project shall be sold to ~~moderate income~~ moderate-income households.

(d) *Rental units.* If the new residential project consists of rental units, then a minimum of fifteen (15) percent of the units shall be rented to low-income households, ~~or ten (10) percent rented to very low-income households,~~ or five (5) percent rented to extremely low-income households.

(e) *Rounding of quantities in calculations.* In calculating the required number of inclusionary units, fractional units shall be rounded-up to the next whole unit. The developer may choose to pay an in-lieu fee set forth in section 41-1904(c) for the fractional units, which shall be calculated based on the number of habitable square feet applicable in each case.

(f) *Displacement of existing inclusionary units.* Notwithstanding any other provision of this article, any residential project subject to this article that results in the displacement of very low and/or low-income household(s) shall be required to provide on-site inclusionary units as required by this article.

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

**Section 7.** Section 41-1903 of Chapter 41 of the Santa Ana Municipal Code is hereby amended to read in its entirety as follows:

Sec. 41-1903. - Exempt projects.

The following are exempt from the requirements of this article:

(a) *Applications deemed complete.* Applications that include a residential project for which a development application has been deemed complete prior to November 28, 2011.



(b) *Development agreements.* A residential project that is the subject of a development agreement under applicable provisions of the California Government Code that expressly provides for an exclusion to this article ~~or provides for a different amount of, provides for a different amount of inclusionary units, or provides for a different specified method for determining the in-lieu fee provisions of this ordinance, such as the timing of payment or the point in time for determining the applicable in-lieu fee amount, to satisfy the~~ inclusionary units from that specified by this article, ~~provided the development agreement was adopted on or before November 28, 2011.~~

(c) *Project with regulatory agreement.* A residential project for which a regulatory agreement has been approved, provided that the regulatory agreement is effective at the time the residential project would otherwise be required to comply with the requirements of this article, and there is no uncured breach of the regulatory agreement before issuance of a certificate of occupancy for the project. This may include a residential project that has obtained a density bonus under article XVI.I of the Santa Ana Municipal Code. Such projects cannot be used to satisfy the inclusionary requirement for another project.

(d) *Adaptive Reuse.* Adaptive reuse development projects pursuant to Chapter 41, Article XVI.II - Adaptive Reuse.

**Section 8.** Section 41-1904 of Chapter 41 of the Santa Ana Municipal Code is hereby amended to read in its entirety as follows:

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

(a) *On-site units.* The primary means of complying with the inclusionary requirements of this article shall be the provision of on-site inclusionary units in accordance with section 41-~~1904~~1902 above. A developer may only satisfy the requirements of this article by means of an alternative to on-site inclusionary units in accordance with the requirements and procedures of this section.

(b) *Off-site units.*

1. *New units.* The developer may satisfy the inclusionary unit requirements for the project, in whole or in part by constructing the required new inclusionary housing at a different location within the city borders at the ratio of one square foot of habitable inclusionary unit space for each required habitable square foot. While the total habitable square footage area of the required new inclusionary units must be the same as the sum-total of the number of habitable square feet for the project as directed by this ordinance, the number of units and bedrooms associated with the off-site units may be approved by the review authority of the city, consistent with the type of affordable housing needed at the time of project review.

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

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

(c) *In-lieu fee.*

(1) ~~More than twenty-Five (205) or more units. For a~~ residential project comprised of ~~five (5) or more than twenty (20)~~ residential lots or residential units, the developer may elect to satisfy the inclusionary unit requirements for the project, in whole or in part, by payment of a fee in-lieu of constructing some or all of the required units. The total amount of the fee allowed by this section shall be calculated using the In-Lieu Fee Schedule as shown below in section 41-1904(c)(1)(i) multiplied by five dollars per square foot (\$5.00/ft.<sup>2</sup>) of the sum total of the number of habitable square feet within the entire project, as measured from the exterior walls of the residential units. This calculation does not include exterior hallways, common areas, landscape, open space or exterior stairways.

(i) In-Lieu Fee Schedule

<u>In-Lieu Fee Schedule</u>	
<u>Units</u>	<u>Fee Per Square Foot of Habitable Area</u>
<u>5 – 9</u>	<u>\$6.00</u>
<u>10 – 14</u>	<u>\$9.00</u>
<u>15 – 19</u>	<u>\$12.00</u>
<u>20 or more</u>	<u>\$15.00</u>

(2) ~~Entitled residential projects. Timing of payment.~~ The applicant(s) of an entitled residential total fee amount for the entirety of a project (see Exhibit A) may either construct the inclusionary units or pay an in-lieu fee as follows:

(i) ~~Twenty (20) or fewer units.~~ In the case of an entitled residential project containing between five (5) is calculated, determined, and twenty (20) residential lots or residential units, the developer may elect to satisfy the inclusionary unit requirements for the project, in whole or in part, by payment of a fee in lieu of constructing some or all of the required units. ~~The amount of the fee allowed by this section shall be five dollars per square foot (\$5.00/ft.) of the sum total of the number of habitable square feet within the~~



~~entire project, as measured from the exterior walls of the residential units. This calculation does not include exterior hallways, common areas, landscape, open space or exterior stairways.~~

~~(ii) *More than twenty (20) units.* In the case of an entitled residential project comprised of more than twenty (20) residential lots or residential units, the developer may elect to satisfy the inclusionary unit requirements for the project, in whole or in part, by payment of a fee in lieu of constructing some or all of the required units. The amount of the fee allowed by this section shall be five dollars per square foot (\$5.00/ft.) of the sum total of the number of habitable square feet within the entire project, as measured from the exterior walls of the residential units. This calculation does not include exterior hallways, common areas, landscape, open space or exterior stairways. The in lieu fee amount allowed herein by this subsection shall revert to fifteen dollars per square foot (\$15.00) on October 1, 2021 for any construction which adds net residential units, which has city-approved entitlements, that has not been issued aset at the time of issuance of the first building permit by October 1, 2021.~~

~~(iii) A residential project that has been entitled and approved with conditions to pay a specific in lieu fee or has a city council approved development agreement to pay a specific in lieu fee shall comply with the conditions or the development agreement as approved and shall not be modified by this ordinance.~~

~~(3) *Timing of payment.* The developer shall pay the for the project. The developer shall pay all in-lieu fees allowed by this section for the entire project prior to issuance of the building permitfirst occupancy approval for any construction which adds net residential units. The developer may provide input regarding what project the in lieu fees should be applied towards, but such input shall not be dispositive.~~ The in-lieu fees collected by the city are city funds over which the city has complete and absolute discretion.

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

**Section 9.** Section 41-1906 of Chapter 41 of the Santa Ana Municipal Code is hereby amended to read in its entirety as follows:

Sec. 41-1906. - Standards.

(a) Location within project, relationship to non-inclusionary units. All inclusionary units shall be:

- (1) Reasonably dispersed throughout the residential project;
- (2) Proportional, in number of bedrooms, gross floor area of habitable space, and location, to the market rate units;
- (3) Comparable to the market rate units included in the residential project in terms of design, materials, finished quality, and appearance; and

(4) Permitted the same access to project amenities and recreational facilities, as are market rate units.

(b) *Timing of construction.* All inclusionary units in a residential project shall be constructed concurrent with, or before the construction of the market rate units. If the city approves a phased project, a proportional share of the required inclusionary units shall be provided within each phase of the residential project.

(c) *Location outside the proposed original project.* For projects where the developer proposes to either produce new inclusionary units or rehabilitate existing off-site units to meet the inclusionary affordable housing requirements of this ordinance, the off-site project(s) containing the required inclusionary units shall be subject to the following requirements:

(1) The sum-total area (in habitable square feet) of all the newly constructed off-site inclusionary units shall be the same number of habitable square feet of inclusionary area as required by this ordinance. For the purpose of the calculation of the number of square feet of required inclusionary housing, the total gross habitable square feet of the housing units of the original market rate project shall be used, as measured from exterior walls to exterior walls of the market units provided as the base for calculation either ten (10) percent for very low income or fifteen (15) percent for low income inclusionary units. The common areas, exterior hallways, stairways, patios, and balconies shall not be calculated in determining the number of required square feet of inclusionary housing production. All new or rehabilitated units must meet all current zoning and general plan standards.

(2) While the total number of square feet of inclusionary housing requirement is calculated based on the requirements of this ordinance, the number of units, bedrooms and other amenities on the proposed off-site inclusionary housing location shall be approved by the review authority commensurate with the size and type of units most in demand at the time of submittal of the application.

(3) Any off-site affordable inclusionary housing project shall be substantially comparable to the market rate units included in the residential project in terms of quality of design, materials and finishes.

(4) If tenants are displaced due to rehabilitation of housing to meet the inclusionary unit requirement, the developer shall be responsible for relocation costs as required by state law.

(5) No city, housing authority, or public funds, subsidies, or participation of any kind shall be expended on the production or building of any inclusionary housing projects associated with meeting the inclusionary unit requirement.

(d) *Timing of construction.* All inclusionary units in a residential project or proposed off-site new inclusionary units or rehabilitated units shall be constructed concurrent with, or before the construction of the market rate units. If the city approves a phased project, a proportional share of the required inclusionary units shall be provided within each phase of the residential project.

(e) *Units for sale.*

(1) *Time limit for inclusionary restrictions.* A unit for sale shall be restricted to the target income level group at the applicable affordable housing cost ~~for a minimum of fifty-five (55) years in perpetuity.~~

(2) *Certification of purchasers.* The developer and all subsequent owners of an inclusionary unit offered for sale shall certify, on a form provided by the city, the income of the purchaser and that such owners will live in such inclusionary unit as their primary residence.

(3) *Resale price control.* In order to maintain the availability of inclusionary units required by this article, the resale price of an owner occupied inclusionary unit shall be limited to the lesser of the fair market value of the unit as established by a licensed real estate agent based upon three (3) comparable properties or the restricted resale price. For these purposes, the restricted resale price shall be the applicable affordable housing cost.

(4) *Inheritance of inclusionary units.* Upon the death of an owner of an owner-occupied inclusionary unit, title in the property may transfer to the surviving joint tenant or heir (in the case of the death of a sole owner or all owners of the household).

(5) *Forfeiture.* If an inclusionary unit for sale is sold for an amount in excess of the resale price controls required by this section, the buyer and the seller shall be jointly and severally liable to the city for the amount in excess of the affordable housing cost at the time of such sale of the inclusionary unit. Recovered funds shall be deposited into the inclusionary housing fund. Notwithstanding the foregoing, city may allow the buyer and seller to cure any violation of the resale price controls within one hundred eighty (180) days.

(f) *Rental units.*

(1) *Time limit for inclusionary restrictions.* A rental inclusionary unit shall remain restricted to the target income level group at the applicable affordable housing cost ~~for fifty-five (55) years in perpetuity.~~

(2) *Certification of renters.* The owner of any rental inclusionary unit shall certify, on a form provided by the city, the income of all members of the household above the age of eighteen (18) at the time of the initial rental and annually thereafter.

(3) *Forfeiture.* Any lessor who leases an inclusionary unit in violation of this article shall be required to forfeit to the city all money so obtained. Recovered funds shall be deposited into the inclusionary housing fund.

(g) *Execution and recording of documents.* The executive director may require the execution and recording of whatever documents are required to ensure enforcement of this section; including, but not limited to, promissory notes, deeds of trust, resale restrictions, rights of first refusal, options to purchase, and/or other documents, which shall be recorded against all inclusionary units.

(h) *General prohibitions.*

(1) No person shall sell or rent an inclusionary unit at a price or rent in excess of the maximum amount allowed by any restriction placed on the unit in accordance with this article.

(2) No person shall sell or rent an inclusionary unit to a person or persons that do not meet the income restrictions placed on the unit in accordance with this article.

(3) No person shall provide false or materially incomplete information to the city or to a seller or lessor of an inclusionary unit to obtain occupancy of housing for which that person is not eligible.

(i) *Principal residency requirement.*

(1) The owner or lessee of an inclusionary unit shall reside in the unit for not less than ten (10) out of every twelve (12) months.

(2) No owner or lessee of an inclusionary unit shall lease or sublease, as applicable, an inclusionary unit without the prior permission of the executive director.

**Section 10.** Section 41-1909 of Chapter 41 of the Santa Ana Municipal Code is hereby amended to read in its entirety as follows:

Sec. 41-1909. - Inclusionary housing fund.

(a) *Inclusionary housing fund.* There is hereby established a separate fund of the city, to be known as the inclusionary housing fund. All monies collected pursuant to this article shall be deposited in the inclusionary housing fund. Additional monies from other sources may be deposited in the inclusionary housing fund. The monies deposited in the inclusionary housing fund shall be subject to the following conditions:

(1) Monies deposited into the inclusionary housing fund must be used to increase and improve the supply of housing affordable to moderate, low, very low, and extremely low income households in the city as specified in the city's affordable housing

funds policies and procedures. A priority will be on the creation of new affordable housing opportunities ~~or units from for large families currently living in the existing market rate~~City. Other eligible uses of the inclusionary housing stock ~~rather than construction of new affordable housing units. This includes, fund include~~ but ~~is~~are not limited to, ~~the purchase and rehabilitation of units for sale. Monies may also be used to pay for one-time programs for code enforcement, quality of life and general health and safety activities. Monies may also be used to cover reasonable administrative or related expenses associated with the administration of this article.~~

(i) Creating affordable units from the existing market rate housing stock including but not limited to, the purchase and rehabilitation of units.

(ii) Funding one-time programs for code enforcement, quality of life, and general health and safety activities.

(iii) Implementing and promoting programs addressing housing security, eviction prevention, and housing legal assistance for city residents.

(iv) Funding reasonable administrative or related expenses associated with the administration of this article.

(2) The fund shall be administered by the executive director, or his or her designee, who may develop procedures in the city's affordable housing funds policies and procedures to implement the purposes of the inclusionary housing fund consistent with the requirements of this article and any adopted budget of the city.

(3) Monies deposited in accordance with this section shall be used in accordance with the affordable housing funds policies and procedures, housing element, consolidated plan, or subsequent plan adopted by the city council to construct, rehabilitate, or subsidize affordable housing or to recapture affordable housing at risk of market conversion, or to assist other government entities, private organizations, or individuals to do so. Permissible uses include, but are not limited to, assistance to housing development corporations, equity participation loans, grants, pre-home ownership co-investment, pre-development loan funds, participation leases, or other public-private partnership arrangements. The inclusionary housing fund may be used for the benefit of both rental and owner-occupied housing.

(4) A developer receiving funding from the inclusionary housing fund shall implement a local preference in their resident selection criteria and marketing policies meeting guidelines established by the executive director.

(5) A developer opting for the in-lieu fee payment option or receiving funding from the inclusionary housing fund, as well as its contractors and subcontractors at every tier performing work for the new housing units ~~is encouraged and should~~ shall

provide an enforceable commitment that a skilled and trained workforce will be used to complete a contract or project in accordance with Public Contract Code §§ 2601—2602.

**Section 11.** Section 41-1910 of Chapter 41 of the Santa Ana Municipal Code is hereby amended to read in its entirety as follows:

Sec. 41-1910. - Administrative.

(a) *In-lieu fee calculation.* The amount per square foot of the inclusionary housing in-lieu fee shall be subject to city council review and consideration. ~~before the end of calendar year 2018, but after June 30, 2018. Between July 1, 2018 and December 31, 2018, staff shall report on the effectiveness of this ordinance and provide options for council consideration on the components of this ordinance, including, but not limited to, the monetary amount of inclusionary in-lieu fee per square foot.~~

(b) *Prior projects.* The applicant(s) of any project for which a site plan review application was submitted and such application was deemed complete prior to August 4, 2015, may either construct the inclusionary units pursuant to the prior housing opportunity ordinance (Ordinance No. NS-2825) or pay an in lieu fee calculated by the formula under the prior housing opportunity ordinance (Ordinance No. NS-2825) or request to revise its inclusionary housing plan and/or inclusionary housing agreement and pay an in-lieu fee of nine dollars and thirty-five cents (\$9.35) per square foot of habitable space for the entire project's inclusionary housing obligation.

(c) *Administration fees.* The council may by resolution establish reasonable fees and deposits for the administration of this article including an annual monitoring fee and an inclusionary housing plan submittal fee.

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

(e) *Administrative procedures.* The city manager is hereby authorized and directed to promulgate administrative procedures for the implementation of this article.

**Section 12.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of



any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Santa Ana hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

**Section 13.** This Ordinance shall become effective thirty (30) days after its adoption.

**Section 14.** The Clerk of the Council shall certify the adoption of this ordinance and shall cause the same to be published as required by law.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Vicente Sarmiento  
Mayor

APPROVED AS TO FORM:  
Sonia R. Carvalho, City Attorney

By: \_\_\_\_\_  
John M. Funk  
Sr. Assistant City Attorney

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

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

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

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

## **CERTIFICATE OF ATTESTATION AND ORIGINALITY**

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

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

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