

ADMINISTRATIVE PROCEDURES MANUAL:

OWNERSHIP HOUSING DEVELOPMENT

2021 AFFORDABLE HOUSING OPPORTUNITY & CREATION ORDINANCE



THE CITY OF SANTA ANA

APRIL 19, 2023

TABLE OF CONTENTS

I.	DEFINITION OF TERMS.....	1
II.	INTRODUCTION	12
II-A.	SUMMARY OF THE ORDINANCE.....	12
II-B.	INCLUSIONARY HOUSING REQUIREMENTS	14
II-C.	CONTINUED AFFORDABILITY.....	21
II-D.	INCLUSIONARY HOUSING FUND	21
III.	PROGRAM ADMINISTRATION	23
III-A.	GENERAL	23
III-B.	FAIR HOUSING POLICY	23
III-C.	PRIVACY RIGHTS	23
III-D.	AUTHORITY	23
III-E.	ADMINISTRATION FEES.....	24
IV.	ELIGIBILITY STANDARDS	25
IV-A.	GENERAL POLICY.....	25
IV-B.	HOMEBUYER ELIGIBILITY CRITERIA	25
IV-C.	INCOME ELIGIBILITY CRITERIA.....	27
IV-D.	MORTGAGE / DOWN PAYMENT GIFT FUND REQUIREMENTS	28
V.	DEVELOPER RESPONSIBILITIES	30
V-A.	SUBMITTAL REQUIREMENTS.....	30
V-B.	RESIDENTIAL PURCHASE AGREEMENT	34
V-C.	DISCLOSURE DOCUMENTS	34
VI.	AFFORDABLE SALES PRICE CALCULATION METHODOLOGY	36
VI-A.	GENERAL POLICY.....	36
VI-B.	AFFORDABLE SALES PRICE CALCULATIONS	36
VII.	COMPLAINTS AND APPEALS	39
VIII.	MONITORING AND ENFORCEMENT	40
VIII-A.	FILE AUDITS UPON CLOSE OF PURCHASE	40
VIII-B.	REFERRALS, COMPLAINTS, OR TIPS	40
VIII-C.	INTERNAL FILE REVIEW	40

ATTACHMENTS

Attachment A	2021 Affordable Housing Opportunity and Creation Ordinance: Santa Ana Municipal Code Article XVIII.I of Chapter 41
Attachment B	Inclusionary Housing Plan Application
Attachment C	Homebuyer Selection Procedures
Attachment D	No Income Certification
Attachment E	Disclosure Documents
Attachment F	Lender Checklist

I. DEFINITION OF TERMS

The following words, terms and phrases are used in this Administrative Procedures Manual unless the particular context or usage of a word, term or phrase requires another interpretation.

“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, five (5) persons in the case of a four- bedroom unit, and six (6) persons in the case of a six-bedroom unit. This household size standard is used in the Affordable Housing Cost calculations. It is neither an occupancy minimum nor a maximum.

“Administrative Procedures Manual” means this Administrative Procedures Manual: Ownership Housing Development and attachments that have been prepared by the City for the implementation and administration of Chapter 41. Each Developer of an Ownership Housing Development that is subject to the Chapter 41 requirements will be provided with a copy of the Administrative Procedures Manual when an Inclusionary Housing Agreement is executed. In the event the Administrative Procedures Manual is modified prior to the sale of the last Inclusionary Unit in an Ownership Housing Development, the modified Administrative Procedures Manual will apply to the sale of the remaining Inclusionary Units.

“Adult” means a person 18 years of age or older.

“Affordability Gap” is equal to the difference between the Fair Market Value of an Inclusionary Unit and the Affordable Sales Price for that Inclusionary Unit at the time of acquisition by a Homebuyer.

“Affordability Period” shall be set at 55 years from the date of the first sale of the Inclusionary Unit.

“Affordable Housing Cost” means the total housing costs paid by a qualifying Moderate Income Household, which shall not exceed 30% multiplied times 120% of AMI. The Affordable Housing Cost calculation methodology is described in Section VI-B of this Administrative Procedures Manual.

“Affordable Ownership Housing Program” means the City’s program to implement the Ordinance.

“Affordable Sales Price” means the maximum price that can be charged for the Inclusionary Unit. The Affordable Sales Price is equal to the lesser of:

1. The sum of the Supportable Mortgage plus the Benchmark Down Payment; or
2. The purchase price prospective Homebuyers are willing to pay in return for purchasing a home subject to restrictive covenants.

The Affordable Sales Prices for Inclusionary Units shall be adjusted quarterly.

“AMI” means the annual median income for Orange County, adjusted for household size, as published periodically in the California Code of Regulations, Title 25, Section 6932, or its successor provision, or as established by the City in the event that such median income figures are no longer published in the California Code of Regulations.

“Appraiser” means an independent licensed appraiser who is a member of the American Institute of Real Estate Appraisers (or in case such professional designation is modified or discontinued, the most nearly equivalent designation) with at least ten (10) years of experience appraising property similar to the Property.

“Back-End Ratio” means the ratio between monthly Gross Income and monthly housing costs plus all payments on long-term installment debt. As applicable, the Back-End Ratio test will be applied to a spouse or domestic partner irrespective of whether or not the spouse or domestic partner will be vested on title to the Inclusionary Unit.

“Base Density” means the maximum number of dwelling units allowed per acre of land within each land use category designated in the General Plan.

“Benchmark Down Payment” shall be set at 5% of the Affordable Sales Price for the Inclusionary Unit being purchased by the Homebuyer. The Benchmark Down Payment is used solely for the purposes of calculating the Affordable Sales Price of an Inclusionary Unit. It does not represent a cap on the down payment amount that can be contributed by a Homebuyer.

“Building Permit” includes full structural building permits as well as partial permits such as foundation only permits.

“Chapter 41” means Chapter 41 of the Santa Ana Municipal Code. Article XVIII.I of Chapter 41 details the requirements imposed by the Ordinance.

“City” means the City of Santa Ana, California.

“City Approvals” are defined as the entitlement approvals for the Ownership Housing Development and the Inclusionary Housing Plan that must be approved by the Program Director prior to the issuance of Building Permits for the Ownership Housing Development.

“City Council” means the City of Santa Ana City Council.

“City Density Bonus” means a sliding scale density bonus offered by the City to projects that allocate more than 5% of the units in a Market Rate Ownership Housing Development to Moderate Income Households.

“City Performance Deed of Trust” means a deed of trust that secures the Homebuyer’s obligations imposed by the Regulatory Agreement. The City Performance Deed of Trust is recorded on legal title to the Inclusionary Unit.

“Common Ownership or Control” refers to property owned or controlled by the same person, persons, or entity, or by separate entities in which any shareholder, partner, member (or family member of such shareholder, partner or member) of the entity owns 10% or more of the interest in the property.

“Contiguous Property” means any parcel of land that is:

1. Touching another parcel at any point; or
2. Separated from another parcel at any point only by a public right-of-way, private street or way, or public or private utility, service or access easement; or
3. Separated from another parcel only by other real property of the Developer which is not subject to the requirements of Chapter 41 at the time the Planning Entitlement application by the Developer.

“Default” means the failure of a Party to perform any action or covenant as defined in the Inclusionary Housing Agreement.

“Developer” means any association, corporation, firm, joint venture, partnership, person, or any entity or combination of entities, which seeks approval for all or part of an Ownership Housing Development.

“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.

“Discretionary Approval” means any entitlement or approval, including but not limited to a use permit, variance, design approval, and subdivision map.

“Effective Date” means the date on which the Inclusionary Housing Agreement is approved and executed by appropriate authorities of the Developer and the City.

“Eligible Purchaser” means a prospective purchaser who meets the eligibility criteria set forth in Section IV of this Administrative Procedures Manual.

“Executive Director” is the Executive Director of Community Development for the City. The Executive Director has the ultimate authority to evaluate appeals submitted in relation to this Administrative Procedures Manual.

“Fair Market Value” means the Fair Market Value of an Inclusionary Unit at the time of initial purchase of that unit without regard to any restrictions on sales price, as substantiated by an appraisal in a form and substance and by an Appraiser acceptable to the City.

“First Approval” means the earlier approval of the Planning Entitlement or the Building Permit to occur with respect to an Ownership Housing Development after the effective date of the Ordinance.

“General Plan” means the adopted General Plan for the City of Santa Ana.

“Gross Income” means all income from whatever source from all Adult Household members, which is anticipated to be received during the 12-month period following the date of the determination of Gross Income. The applicable sources of income are defined in California Code of Regulations Title 25 Housing and Community Development Section 6914. The definition includes the following specific requirements:

1. Except as provided in subdivision (2), all payments from all sources received by the head of Household (even if temporarily absent) and each additional member of the

Household who is not a minor shall be included in the annual income of a Household.

Gross Income shall include, but not be limited to:

- a. The gross amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses.
- b. The net income from operation of a business or profession or from rental or real or personal property (for this purpose, expenditures for business expansion or amortization of capital indebtedness shall not be deducted to determine the net income from a business).
- c. Interest and dividends.
- d. The full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts (but see subdivision (2)(c)).
- e. Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay.
- f. Public Assistance. If the public assistance payment includes an amount specifically designated for shelter and utilities which is subject to adjustment by the public assistance agency in accordance with the actual cost of shelter and utilities, the amount of public assistance income to be included as income shall consist of:
 - g. The amount of the allowance or grant exclusive of the amount specifically designated for shelter and utilities, plus
 - h. The maximum amount which the public assistance agency could in fact allow for the Household for shelter and utilities.
 - i. Periodic and determinable allowances such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling.
 - j. All regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is head of the Household or spouse or domestic partner (but see subdivision (2)(e)).

Where a Household has net assets in excess of \$5,000, income shall include the actual amount of income, if any, derived from all of the net Household assets or 10 percent (10%) of the value of all such assets, whichever is greater. For purposes of this definition, net Household's assets means value of equity in real property other than the Household's full-time residence, savings, stocks, bonds, and other forms of capital investment. The value of necessary items such as furniture and automobiles shall be excluded.

2. The following items shall not be considered as income:
 - a. Casual, sporadic or irregular gifts.
 - b. Amounts which are specifically for or in reimbursement of the cost of medical expenses.
 - c. Lump-sum additions to Household assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses.
 - d. Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment. Any amounts of such scholarships, or payments to veterans not used for the above purposes of which are available for subsistence are to be included in income.
 - e. The special pay to a serviceman head of a Household away from home and exposed to hostile fire.
 - f. Relocation payments made pursuant to federal, state, or local relocation law.
 - g. Foster child care payments.
 - h. The value of coupon allotments for the purchase of food pursuant to the Food Stamp Act of 1964 which is in excess of the amount actually charged the eligible Household.
 - i. Payments received pursuant to participation in the following volunteer programs under the ACTION Agency:

- i. National Volunteer Antipoverty Programs which include VISTA, Service Learning Programs and Special Volunteer Programs.
- ii. National Older American Volunteer Programs for persons aged 60 and over which include Retired Senior Volunteer Programs, Foster Grandparent Program, Older American Community Services Program, and National Volunteer Program to Assist Small Business Experience, Service Corps of Retired Executive (SCORE) and Active Corps of Executives (ACE).

“Habitable Area” means the total square footage of the Market Rate Ownership Housing Development multiplied times the area within the exterior walls of the residential units. Habitable Area does not include exterior hallways, common areas, landscape, open space or exterior stairways.

“HCD” means the California Department of Housing and Community Development.

“HOA” means Homeowners Association.

“Homebuyer” means the purchaser of an Inclusionary Unit as vested on legal title to the Inclusionary Unit. The Homebuyer shall enter into a Regulatory Agreement and City Performance Deed of Trust.

“Homeowner” means the owner of an Inclusionary Unit as vested on legal title to the Inclusionary Unit.

“Household” means all the persons who will occupy the Inclusionary Unit as their Primary Residence. A child who is subject to a legally-binding shared-custody agreement, in which the child resides with the Household at least 50% of the time, is counted as a member of the Household. Excluded from the definition of Household are live-in caregivers/caretakers, foster children, unborn children and children being pursued for legal custody or adoption that are not currently living with the Household.

“Housing Cost” means and includes all of the following costs associated with ownership of an Inclusionary Unit as defined in Title 25 of the California Code of Regulations Section 6920:

1. Principal and interest on a mortgage loan at the defined interest rate;
2. Property tax and assessments;

3. Fire and casualty insurance covering replacement value of property improvements;
4. Property maintenance and repairs;
5. A reasonable utility allowance, as determined by the City; and
6. Homeowner Association assessments and dues.

“HSC” means the California Health and Safety Code.

“Inclusionary Housing” means the affordable housing development requirements imposed by Chapter 41.

“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 Chapter 41 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 are collected in compliance with Chapter 41 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 Chapter 41 will be implemented for the proposed Ownership Housing Development.

“Inclusionary Unit” means a dwelling unit that will be offered for sale to Moderate Income Households, at an Affordable Housing Cost, in compliance with Chapter 41.

“In-Lieu Fee” refers to a fee that may be paid by a Developer in specific circumstances in lieu of providing Inclusionary Units within an Ownership Housing Development. These circumstances are identified in Section II-B-4. of this Administrative Procedures Manual. The In-Lieu Fee schedule is updated periodically, and is approved by the City Council.

“Lender Checklist” identifies the documents required by the Program Director and the timing of events during the escrow period for the sale of each Inclusionary Unit. The Lender Checklist is found in Attachment F to this Administrative Procedures Manual.

“Market Rate Ownership Housing Development” means the Ownership Housing Development that triggered the Inclusionary Housing obligation.

“Market Rate Unit” means a new dwelling unit in an Ownership Housing Development that is not an Inclusionary Unit that is subject to the recorded affordability restrictions imposed by Chapter 41 and any adopted Administrative Procedures Manual.

“Moderate Income Household” refers to Households whose incomes meet the standards defined in Title 25 of the California Code of Regulations Section 6932, and by the HSC Section 50093. The maximum household income amount for Moderate Income Households shall be the amount published by HCD as adjusted to reflect the Household size of the Homebuyer of a particular Inclusionary Unit.

“Ordinance” means the 2021 Affordable Housing Opportunity and Creation Ordinance adopted by the City Council on April 19, 2022 as Ordinance No. NS-3019. The Ordinance is codified in Article XVIII.I of Chapter 41.

“Ownership Housing Development” means any of the following:

1. A subdivision resulting in the creation of five or more residential lots or residential condominium units; or
2. The new construction of five or more separate houses or dwelling units; or
3. The conversion of five or more existing residential rental units to condominium ownership.

“Participating Lender” is a Primary Lender that has executed an agreement affirming that they understand the requirements imposed by the Regulatory Agreement and the City Performance Deed of Trust.

“Party and Parties” means the City, the Developer, the Homebuyer and/or the Homeowner as parties to the agreements required to implement the activities required by Chapter 41.

“Planning Entitlement” means any Discretionary Approval of an Ownership Housing Development including, but not limited to, a general or specific plan adoption or amendment, rezoning, tentative map, parcel map, conditional use permit, variances, design review, or coastal development permit.

“Primary Lender” means a bank, savings and loan association, insurance company, pension fund, publicly traded real estate investment trust, governmental agency, charitable organization, or other governmentally regulated entity regularly engaged in making residential real estate loans.

“Primary Mortgage” means a purchase money loan of funds obtained by the Homebuyer from a Primary Lender to be used to finance the acquisition of the Inclusionary Unit, or for a refinancing approved by the City.

“Primary Mortgage Deed of Trust” means the deed of trust executed to secure the Primary Mortgage, which shall be in a lien position senior to the City Performance Deed of Trust and in a lien position junior to the Regulatory Agreement.

“Primary Residence” is defined as the principal place of residence of the Homeowner, and the only home that is occupied by the Homeowner.

“Program Director” has day-to-day authority for making determinations related to the requirements imposed by Chapter 41 and this Administrative Procedures Manual. The Executive Director will appoint the Program Director to undertake the following duties:

1. Assist in administering the selection process for potential Homebuyers.
2. As needed, provide assistance to potential Homebuyers in the completion of the Pre-Application Checklist.
3. Evaluating the documentation submitted by the Primary Lender for a potential Homebuyer to determine whether or not the potential Homebuyer is an Eligible Purchaser.
4. Referring Eligible Purchasers back to the Developer for the commencement of the negotiations that are intended to result in a sales transaction.
5. Submitting the Regulatory Agreement to escrow for execution.
6. Monitoring the Homebuyers’ compliance with Regulatory Agreement requirements.
7. Administering the activities related to transfers of Inclusionary Units, and the resale procedures set forth in the Regulatory Agreement.

“Program Summary & Pre-Application Checklist” is a form created by the City that is to be used as a preliminary self-qualification tool by prospective Homebuyers. The Program Summary & Pre-Application Checklist shall be updated quarterly, and provided to Developers with active Ownership Housing Developments that are subject to the requirements imposed by Chapter 41.

“Regulatory Agreement” means an agreement between the City or the Santa Ana Community Development Agency and the Homebuyer, that governs how the Homebuyer shall comply with the requirements imposed by the Ordinance. The Regulatory Agreement is secured by the City Performance Deed of Trust.

“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 wellbeing of the occupants.

“Residential Purchase Agreement” means a binding contract between the Developer and the Homebuyer for the ownership transfer of an Inclusionary Unit. The Residential Purchase Agreement outlines the terms and conditions agreed to by both the Developer and the Homebuyer.

“Section 65915” means the density bonus provided by the State of California under California Government Code Section 65915-et seq. and codified in Section 41-1600 of the Santa Ana Municipal Code.

“Skilled and Trained Workforce” is based on the definition provided in Public Contract Code Section 2601.

“Supportable Mortgage” means the Primary Mortgage amount that can be supported by a Moderate Income Household based on the Affordable Housing Cost calculations. The mortgage calculation is based on the prevailing market interest rate for a 30-year fully amortizing mortgage with a fixed interest rate.

“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.

II. INTRODUCTION

This Administrative Procedures Manual describes the affordable housing requirements imposed by the Ordinance on Ownership Housing Developments. The Ordinance is presented in Attachment A to this Administrative Procedures Manual.

II-A. Summary of the Ordinance

A-1. APPLICABILITY

The Ordinance requirements apply to any Ownership Housing Development that meets one or all of the following applicability standards:

1. A change in use to allow for residential development or that exceeds the General Plan or zoning prescribed densities or percentages of residential development of the subject property at the time of application.
2. Implementation of the permitted residential 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.
3. Increase of the permitted percentage of residential development allowed for a mixed-use development above the percentage permitted under the zoning classification at the time of application.
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 Chapter 41.
5. Conversion of rental units to condominium ownership.

A-2. EXEMPTIONS

Section 41-1903 exempts the following Ownership Housing Developments from Inclusionary Housing requirements:

1. Projects with four or fewer units.

2. Projects developed under the auspices of a Development Agreement that expressly provides for one of the following:
 - a. An exemption from the Ordinance requirements; or
 - b. A requirement for a different number of Inclusionary Units; or
 - c. The use of a different specified method for determining the In-Lieu Fee provisions of the Ordinance.
3. Projects that are subject to an approved regulatory agreement, provided that the regulatory agreement is effective at the time the Ownership Housing Development would otherwise be required to comply with the Ordinance requirements. This may include projects that have obtained a Section 65915 density bonus.
4. Adaptive reuse projects that fulfill the requirements imposed by Chapter 41, Article XVI.II.
5. Development projects approved under the provisions of Ordinance No. NS-2994, that received entitlement approvals by City Council action prior to November 16, 2021. However, the vested rights shall terminate if any or all of the entitlement approvals become invalid or have expired. A list of the pertinent projects is attached to the Ordinance as Exhibit A.

A-3. HOME OWNERSHIP OPPORTUNITIES

The primary objective of the Ordinance is to provide affordable housing to residents who would otherwise have difficulty owning a home in Santa Ana. Persons interested in purchasing an Inclusionary Unit through the City's Ordinance must apply to and be approved by the Program Director.

The Program Director will authorize the initial sale of an Inclusionary Unit only when it determines that the Homebuyer is an Eligible Purchaser, and that the unit is being sold at the Affordable Sales Price. For the duration of the income and affordability covenants, the Homebuyer is subject to continuing Homeowner requirements.

II-B. Inclusionary Housing Requirements

B-1. INCLUSIONARY HOUSING PRODUCTION REQUIREMENTS

In general, Ownership Housing Developments that are subject to the Ordinance requirements are required to allocate at least 5% of the units to Moderate Income Households.¹ Section 41-1904 provides for this requirement to be fulfilled in one of the following ways:

1. The Inclusionary Units may be constructed on site within the Market Rate Ownership Housing Development.
2. The Inclusionary Units may be newly constructed in an off-site location.
3. The Inclusionary Requirement can be fulfilled with Rehabilitated Units.
4. A fee can be paid in lieu of producing any Inclusionary Units.

B-2. INCLUSIONARY HOUSING PLAN

Developers of Ownership Housing Developments subject to the Ordinance must prepare an Inclusionary Housing Plan that demonstrates how the Ownership Housing Development will comply with the pertinent Inclusionary Housing obligations:

1. The Inclusionary Housing Plan must be submitted to the Executive Director for approval prior to the award of Discretionary Approvals for the proposed Ownership Housing Development; and
2. The requirements identified in the Inclusionary Housing Plan must be fulfilled before the City will issue a certificate of occupancy for the Ownership Housing Development.

Contiguous Property Under Common Ownership or Control

A Developer shall not avoid Inclusionary Housing requirements by submitting piecemeal Planning Entitlement applications. When applying for First Approval, the Developer must identify all Contiguous Property under Common Ownership or Control. The following process will be applied to these types of properties:

¹ If the required number of Inclusionary Units results in a fraction, then the developer may choose to provide an additional Inclusionary Unit or to pay an In-Lieu Fee to the Inclusionary Housing Fund.

1. The Developer is required to include the Contiguous Property Under Common Ownership or Control in its Inclusionary Housing Plan.
2. An Inclusionary Housing Agreement will be recorded on legal title to the Ownership Housing Development and the Contiguous Property Under Common Ownership or Control.
3. Once the Planning Entitlement applications are submitted for a total of 10 or more residential units, the Inclusionary Housing requirements will be triggered.

Section 65915 Density Bonus

A Developer that is providing all the required Inclusionary Units on site within the Ownership Housing Development, which wishes to apply for a Section 65915 Density Bonus, may do so concurrently with the submittal of the Inclusionary Housing Plan for the project. The Section 65915 Density Bonus application must identify and describe any of the following, as pertinent:

1. The requested increase in density;
2. Any development standards waivers;
3. The number and type of incentives or concessions; and
4. Any modification to the parking requirements imposed by the Santa Ana Municipal Code.

B-3. INCLUSIONARY HOUSING STANDARDS

On-Site Development of Inclusionary Units

Section 41-1906 imposes the following development standards on the on-site development of the required Inclusionary Units within an Ownership Housing Development:

1. All Inclusionary Units are required to be:
 - a. Reasonably dispersed throughout the Ownership Housing Development;
 - b. Proportional, in number of bedrooms, Habitable Area, and location, to the Market Rate Units;

- c. Comparable to the Market Rate Units included in the Ownership Housing Development in terms of design, materials, finished quality, and appearance; and
 - d. Be provided with the same access as the Market Rate Units to common areas, recreational facilities, parking, storage and any other amenities located within the Ownership Housing Development:
 - i. Any amenities that are provided at no cost to the owners of the Market Rate Units must also be provided at no cost to the owners of the Inclusionary Units.
 - ii. Any costs that are required to be incurred to secure use of the amenities within the Ownership Housing Development must be factored into the Housing Cost calculations for the Inclusionary Units.
2. All Inclusionary Units in an Ownership Housing Development must be constructed concurrently or prior to the construction of the Market Rate Units. For phased projects, a proportional share of the required Inclusionary Units are required to be provided within each phase of the Ownership Housing Development.

B-4. ALTERNATIVE COMPLIANCE OPTIONS

The alternative Inclusionary Housing compliance options identified in Section 41-1904 can be described as follows.

Off-Site Development of Inclusionary Units

Section 41-1904 (b) imposes the following requirements on the Inclusionary Units proposed to be newly constructed in an off-site location:

1. The Inclusionary Units must be constructed within the Santa city limits.
2. The Inclusionary Units must include at least the same total Habitable Area as would be required if the requirements were fulfilled on-site within the Market Rate Ownership Housing Development.
3. The number of Inclusionary Units and the bedroom mix can vary from the characteristics of the on-site development requirements. Proposed variations are subject to approval

by the City's review authority, consistent with the type of affordable housing needed at the time of the review.

Provision of Rehabilitated Units

The Developer may satisfy the Inclusionary Housing requirements by substantially rehabilitating existing housing units located within the Santa Ana city limits. The requirements imposed by Section 41-1904 (b) vary by location as follows:

1. Rehabilitated Units located outside of a Target Area must fulfill the Inclusionary Housing obligation at a rate of 1-1/2 habitable square feet of area per each one square foot of habitable square foot of area required by the Ownership Housing Development's Inclusionary Unit obligation.
2. Rehabilitated Units located within a Target Area can fulfill the Inclusionary Housing obligation at a rate of one square foot of Habitable Area per each required habitable square foot of Habitable Area required by the Ownership Housing Development's Inclusionary Unit obligation.

In-Lieu Fee Payment

Section 41-1904 (c) provides an In-Lieu Fee payment option to all Ownership Housing Developments that are subject to an Inclusionary Housing obligation. The following basic requirements apply:

1. If the In-Lieu Fee payment option is selected, the Developer cannot apply for a Section 65915 Density Bonus for the Ownership Housing Development that triggered the Inclusionary Housing requirement.
2. If the In-Lieu Fee payment option is selected, 100% of the In-Lieu Fee obligation must be paid in full prior to the issuance of the first Building Permit for the Market Rate Ownership Housing Development. However, for phased projects, a proportional share of the required In-Lieu Fee payment is required to be paid within each phase of the Ownership Housing Development.

The In-Lieu Fee payments are established based on the following criteria:

1. The City Council has established In-Lieu Fee schedules fees that will be applied to Ownership Housing Developments that are subject to Inclusionary Housing requirements. The fees will be updated periodically, as required.
2. The In-Lieu Fee payment requirements vary as function of the number of units included in the proposed Market Rate Ownership Housing Development. The differences are detailed in the following sections of this Administrative Procedures Manual.

Market Rate Ownership Housing Developments with Five to 19 Units

The In-Lieu Fee for Market Rate Ownership Housing Developments with between five and 19 units is calculated using the schedule presented in the following table multiplied times the sum total of the Habitable Area within the Market Rate Ownership Housing Development.

In-Lieu Fee Schedule Ownership Housing Developments Five to 19 Unit Projects	
Units / Lots	In-Lieu Fee Per Square Foot of Habitable Area
5-9	\$6.00
10-14	\$9.00
15-19	\$12.00

Market Rate Ownership Housing Developments with 20 or More Units

The In-Lieu Fee for Market Rate Ownership Housing Developments with 20 or more units is set at \$15 per square foot of the Habitable Area within the Market Rate Ownership Housing Development. In addition, Developers that opt to pay the In-Lieu Fee for projects with 20 or more units are subject to the following labor hiring standards:

1. Between November 16, 2021 and December 31, 2025, the Developer of a Market Rate Ownership Housing Development, which consists of 20 or more units, will not be required to hire a Skilled and Trained Workforce to construct the project. However, the dollar amount of the In-Lieu Fee obligation will be reduced as follows if the Developer agrees to comply with the standards presented in the following table:

In-Lieu Fee Schedule Ownership Housing Developments Five to 19 Unit Projects	
Use of a Skilled and Trained Workforce	In-Lieu Fee Per Square Foot of Habitable Area
30% of Workforce Utilizing Two or More Construction Trades	\$10.00
60% of Workforce Utilizing Three or More Construction Trades	\$5.00
A minimum of 20% of the above work hours shall be performed in accordance with local hire policies approved by the City Council.	

2. From January 1, 2026 forward, at least 30% of the project must be constructed by a Skilled and Trained Workforce, and at least 35% of the Skilled and Trained employees must meet the qualification standards imposed by local hire policies adopted by the City Council. However, the In-Lieu will be reduced from \$15 per square foot of Habitable Area, as follows if the Developer commits to the following labor standards:

In-Lieu Fee Schedule Ownership Housing Developments 20+ Units	
Use of a Skilled and Trained Workforce	In-Lieu Fee Per Square Foot of Habitable Area
60% of Workforce	\$10.00
90% of Workforce	\$5.00
A minimum of 35% of the above work hours shall be performed in accordance with local hire policies approved by the City Council.	

B-5. INCENTIVES

Section 41-1904.1 defines development incentives that will be provided Ownership Housing Developments that fulfill the Inclusionary Housing requirements by constructing affordable units on-site within the Market Rate Ownership Housing Development, or in an off-site

location.² The base incentive package allows a Developer to receive two concessions among the following available concessions:

1. Parking standards:
 - a. Studio and one-bedroom units: One on-site space
 - b. Two- and three-bedroom units: Two on-site spaces
 - c. Four or more bedroom units: Two and one-half spaces
2. One of the following Zoning Code Standard Concessions:
 - a. Up to a 25% reduction in the setback requirement imposed on the proposed Ownership Housing Development; or
 - b. A height increase of up to an additional feet about the height limit imposed on the development site.

The Developer can receive an additional incentive from the preceding list in return for providing a community benefit such as park improvements, urban community gardens, developer funded down payment assistance, or subsidy of services, activities, or programs.

B-6. CITY DENSITY BONUS

The City will provide a density bonus to Developers who agree to allocate more than 5% of the units in a Market Rate Ownership Housing Development to Moderate Income Households. The parameters are:

1. For each 1% increase above the 5% threshold, the Base Density shall be increased by 1.5%.
2. The maximum City density bonus for an Ownership Housing Development is set at 35%.

² Development incentives are not available to Ownership Housing Developments in which the Developer chooses to pay a fee in lieu of producing Inclusionary Units.

II-C. Continued Affordability

Section 41.1906 (e) describes the income and affordability covenants that will be imposed on the Inclusionary Units in Ownership Housing Developments. These requirements can be summarized as follows:

1. The income and affordability covenants will remain in place for a minimum of one cumulative 55-year period following the issuance date of a tentative or final Certificate of Occupancy for an Inclusionary Unit.
2. Throughout the covenant period, the resale price of an Inclusionary Unit will be limited to the lesser of the Fair Market Value of the unit as established by an Appraiser or the then current Affordable Sales Price.
3. The City Attorney will cause to have prepared the covenants and agreements required to secure the continued compliance with the income and affordability restrictions being imposed on the Inclusionary Units.

II-D. Inclusionary Housing Fund

In accordance with Section 41-1909, all In-Lieu Fees and other funds collected under the auspices of the Chapter 41 Inclusionary Housing requirements must be deposited into the Inclusionary Housing Fund. The Inclusionary Housing Fund shall be administered by the Executive Director, or their designee.

Monies deposited into the Inclusionary Housing Fund may only be used for the following purposes:

1. To increase and improve the supply of affordable housing as specified in the City's affordable housing funds policies and procedures, the Housing Element, the Consolidated Plan, or plans subsequently adopted by the City Council;
2. To pay for one-time programs for code enforcement, quality of life, and general health and safety activities; and
3. Activities associated with administering and enforcing the requirements imposed by the Ordinance.

The following obligations are imposed on Developers that receive monies from the Inclusionary Housing Fund:

1. Resident Selection:
 - a. The Developer must implement a local preference in the resident selection criteria and marketing policies that meet guidelines established by the Executive Director.
 - b. The Developer's marketing plan must comply with all applicable fair housing laws. Specifically, the Developer shall not discriminate on account of race, color, sex, religion, sexual orientation, creed, ancestry, national or ethnic origin, age, family or marital status, handicap or disability.
2. The Developer, and their contractors and subcontractors, are encouraged to negotiate in good faith to provide the City with the following enforceable commitments:
 - a. A minimum of 30% of the labor, using two or more construction trades, will be performed by a Skilled and Trained Labor Force; and
 - b. A minimum of 35% of this work performed in accordance with local hire policies approved by the City Council.

III. PROGRAM ADMINISTRATION

III-A. General

The Program Director has the day-to-day responsibilities related to administering the requirements imposed by the Ordinance. Specific activities performed by the Program Administrator are:

1. Administering the initial sale and resale of the Inclusionary Units, including the evaluation of the prospective Homebuyer's eligibility and the calculation of the Affordable Sales Prices;
2. Monitoring Homeowners' compliance with the Ordinance requirements; and
3. Responding to appeals and complaints submitted by Developers, Homebuyers and Homeowners.

III-B. Fair Housing Policy

It is the City's policy to comply fully with all federal, state, and local non-discrimination laws. Specifically, the City shall not discriminate on account of race, color, sex, religion, sexual orientation, creed, ancestry, national or ethnic origin, age, family or marital status, handicap, or disability.

III-C. Privacy Rights

Requests for the City to release information involving a prospective Homebuyer or a Homeowner must be accompanied by a written release request and/or a court order unless disclosure is authorized under federal or state law.

All eligibility applications are held in strict confidence and are not considered public records (HSC Section 34332).

III-D. Authority

The Executive Director is authorized to sign all documents requiring approvals related to sales, waivers, refinances, subordinations, and any non-substantial changes to the Administrative Procedures Manual.

III-E. Administration Fees

By resolution, the City Council will establish reasonable fees and deposits for the administration of the Ordinance requirements. These fees include an annual monitoring fee and an Inclusionary Housing Plan submittal Fee.

IV. ELIGIBILITY STANDARDS

IV-A. General Policy

As the first step in the process, prospective Homebuyers must complete the City’s Program Summary & Pre-Application Checklist. If an applicant proceeds to the formal underwriting process, the Primary Lender must obtain documentation that demonstrates the prospective Homebuyer’s eligibility to purchase an Inclusionary Unit.

Applicants that are unable to provide satisfactory evidence of income, assets, Household composition, or other qualifying criteria will not be considered Eligible Purchasers and will not be allowed to purchase an Inclusionary Unit. Applicants who are determined not to meet the qualifications to be an Eligible Purchaser must wait a period of at least one year prior to submitting a new application to purchase an Inclusionary Unit.

IV-B. Homebuyer Eligibility Criteria

B-1. HOUSEHOLD AND UNIT SIZE COMPATIBILITY

The size of a prospective Homebuyer’s Household must be compatible with the size of the Inclusionary Unit to be purchased. The minimum and maximum number of occupants are set as follows:

Number of Bedrooms in the Inclusionary Unit	Minimum Number of Occupants	Maximum Number of Occupants
1	1	4
2	2	6
3	3	8
4	4	10

B-2. OWNER OCCUPANCY

Prospective Homebuyers must certify that the Inclusionary Unit will be the Household’s Primary Residence, and that it will not be used for any another purpose. This requires the Homebuyer to agree to adhere to the following requirements:

1. The Homeowner must reside in the Inclusionary Unit for at least 10 out of every 12 months.
2. No part of the Inclusionary Unit may be rented or leased at any time except under a hardship provision approved in writing by the City. In an approved hardship case, the Homeowner may rent the Inclusionary Unit under the following restrictions:
 - a. The rental period cannot exceed one year;
 - b. The Inclusionary Unit must be rented to a Moderate Income Household at an affordable rent established by the City; and
 - c. The Homeowner must provide copies of all rental/lease agreements to the City.

Any violation of these restrictions will constitute a Default by the Homeowner.

B-3. OWNERSHIP OF OTHER RESIDENTIAL REAL ESTATE

No member of the Household may own other residential property, including mobile home property, unless the property will be sold prior to or in conjunction with the purchase of an Inclusionary Unit.

B-4. VERIFIABLE INCOME

All Adult Household members, except stay-at-home spouses, domestic partners and dependents, must have at least one continuous year of verifiable income and income tax payment history in the United States at the time of application. This requirement is increased to two continuous years of verifiable personal and business income for self-employed individuals.

Adult stay-at-home spouses, domestic partners and dependents that are reporting that they do not receive any type of income must fill out an affidavit certifying this fact. The affidavit form is provided in Attachment D to this Administrative Procedures Manual.

B-5. BANKRUPTCY

No member of the Household may have a bankruptcy with a discharge date that is fewer than two years prior to the submission of an application to purchase an Inclusionary Unit.

B-6. DIVORCED OR SEPARATED APPLICANTS

Divorced or legally separated Household members must provide a copy of the divorce decree or legal separation document signed by a court officer. Otherwise separated married Household members must demonstrate at least one year of complete financial and residential separation at time of application for the couple to be considered separate for purposes of determining eligibility. If this cannot be demonstrated, the couple must submit the application as co-applicants.

B-7. JOINT CUSTODY OF CHILDREN

Prospective Homebuyers with joint custody of children must have custodial parent rights defined in a divorce decree for a child to be considered part of the Household. This rule shall not be interpreted as disallowing children from living with parents with less than 50% custody rights; it is solely intended to be applied when determining Household size for program eligibility.

B-8. COMPOSITION OF HOUSEHOLD

The Household composition may not be altered after the prospective Homebuyer is approved as an Eligible Purchaser. If a prospective Homebuyer wishes to change the Household composition after being approved as an Eligible Purchaser, the prospective Homebuyer must restart the approval process from the beginning.

IV-C. Income Eligibility Criteria

C-1. GROSS INCOME

The City will consider Gross Income for all Adult Household members when determining applicant eligibility. The funds included in Gross Income are detailed in the definitions section of this Administrative Procedures Manual.

C-2. MAXIMUM INCOME

The Inclusionary Units in Ownership Housing Developments are designated for Moderate Income Households. The maximum allowable Gross Income is determined on the basis of the actual Household size of the prospective Homebuyer. The Gross Income data will be updated annually following publication of the State Income Limits by HCD.

IV-D. Mortgage / Down Payment Gift Fund Requirements

The mortgage and Homebuyer down payment requirements applied to the initial purchase of an Inclusionary Unit are described as follows:

D-1. MORTGAGE REQUIREMENTS

1. The Primary Mortgage must be secured by a loan agreement and a deed of trust from a bank or company licensed to make home loans in California. Loans from family members, friends, or other non-licensed entities shall be considered gift funds to the applicant, as defined in this Administrative Procedures Manual.
2. The City will subordinate the City Performance Deed of Trust to the deed of trust executed to secure the Primary Mortgage. The City will not subordinate the City Performance Deed of Trust to any secondary financing.
3. The Regulatory Agreement shall be senior to the Primary Mortgage, and shall not be extinguished by foreclosure, a deed in lieu of foreclosure or power of sale, or sale.
4. Homebuyers must obtain a Primary Mortgage that is a fully amortizing, fixed interest rate mortgage with a term of at least 30 years. No interest only loans, negative amortization loans, balloon payment loans or variable interest rate loans will be allowed.
5. The Homebuyer is prohibited from using a co-signer to obtain a Primary Mortgage.
6. The Primary Mortgage used to acquire the Inclusionary Unit cannot exceed the lesser of:
 - a. 95% of the Inclusionary Unit's appraised Fair Market Value, or
 - b. 95% of the Affordable Sales Price.
7. The Back-End Ratio for Adult Household members cannot exceed 45%.

D-2. MINIMUM AND MAXIMUM DOWN PAYMENT

The following minimum and maximum down payment requirements are applied to the purchase of an Inclusionary Unit:

1. Using their own funds, Homebuyers must be able to make a down payment equal to at least 3% of the designated Affordable Sales Price, and to pay all the closing costs associated with the purchase of the Inclusionary Unit.
2. The Maximum Homebuyer down payment, including the Homebuyer contribution and gift funds, is capped at 20% of the Affordable Sales Price for the Inclusionary Unit.

In extraordinary circumstances, the Executive Director has the authority to review and approve variations to the established minimum and maximum amounts.

D-3. GIFT FUNDS

The gift funds an applicant can apply to the purchase of an Inclusionary Unit are capped at 3% of the Affordable Sales Price.

V. DEVELOPER RESPONSIBILITIES

The Developer of Inclusionary Units must adhere to the Homebuyer Selection Procedures detailed in Attachment C to this Administrative Procedures Manual. The Developer and/or the Primary Lender, must compile the information required to demonstrate that the prospective Homebuyer complies with the requirements imposed by this Administrative Procedures Manual.

The Program Director will review the submittal for completeness and will notify the Developer and/or the Primary Lender of any missing information and/or documents. The Developer and/or the Primary Lender will be given 10 business days to provide the missing information and/or documents. Failure to provide the requested information and/or documents will be cause for denial of eligibility.

The Program Director will evaluate the submitted information to determine whether the applicant is an Eligible Purchaser. Under extraordinary circumstances, at the written request of a Developer, the Executive Director, at his/her sole discretion, may waive certain Homebuyer Eligibility Requirements.

V-A. Submittal Requirements

The Developer and/or the Primary Lender must compile the following information, and provide it to the Program Director:

A-1. HOUSEHOLD COMPOSITION DOCUMENTS

For all Adult Household members, the City will require a photocopy of a driver license or California photo identification. For minors, the City will require a copy of the birth certificate. If the birth certificate for a minor is not available, the City may accept the following: adoption papers, custody agreement, court-ordered assignment, or verification from a social services agency.

School Registration Documents

Adult Household members who are dependents of the applicant and who are full-time students will be required to provide copies of school transcripts or registration verification showing current full-time student status.

Verification of Divorce or Separation Status

Divorced or legally separated Household members must provide a copy of the divorce decree or legal separation document signed by a court officer. Married, but separated, couples must demonstrate at least one full year of complete financial and residential separation at time of application to be considered separated for purposes of determining eligibility. If this cannot be demonstrated, the couple must submit the application as co-applicants.

A-2. FINANCIAL DATA

Authorization to Obtain Credit History

Each Adult Household member shall authorize the City to obtain reports from credit reporting agencies. The Program Director will determine when it is necessary to obtain one or more credit report(s) per individual. Such reports will be used only to confirm applicant information such as current and previous addresses, current and previous employers, marital status, loan history, income to debt ratio, etc.

Mortgage Pre-Qualification Letter and Loan Application Packet

Prospective Homebuyers must submit a copy of a pre-qualification letter and full application packet from a Participating Lender. The application packet shall include, but shall not be limited to, the signed fully completed mortgage application, loan underwriting analysis, income verification, and credit verification.

The Program Director shall use the mortgage loan application packet to verify the following: residency history, employment history, income, liabilities, assets (including real estate ownership), United States residency status, and down payment/mortgage financing amounts.

Checking, Savings, and Investment Account Statements

Applicants must submit copies of the three most recent months of statements for all accounts, including checking, savings, or other investment accounts owned in part or full by all Adult Household members. These account statements must demonstrate evidence of funds for the identified down payment amount. These statements must also demonstrate current period and year-to-date income earned on each account through interest and/or dividends.

Income Tax Returns

All Adult Household members will be required to provide signed copies of their most recent federal income tax return. This return must include all schedules and attachments. Applicants unable to provide copies of a federal income tax return will be required to obtain a tax history printout from the Internal Revenue Service. Applicants may be requested to sign an authorization for release of information to the City from the Internal Revenue Service for further verification of income. Referrals to the Internal Revenue Service may be made for confirmation of the income statement on a case-by-case basis.

Applicants are required to submit the identified income tax returns. Applicants that are unable to provide tax information for any reason will not be eligible to participate in the program.

The City shall use income tax returns to verify the following: residency history, family composition, income history (including amounts and types of income), and real estate ownership.

A-3. INCOME VERIFICATION

Employment Income

In the order of preference, the following employment income verification sources will be considered acceptable. The documentation must specify the amount and type of pay (i.e. wages, overtime wages, commissions, and bonuses), frequency of pay, and year to date earnings:

1. Check stubs or earning statements showing employee's gross pay per pay period and frequency of pay. The check stubs should include the year-end statement for the last full year of employment, and the most recent four pay periods; or
2. Letter from the applicant's employer on company letterhead and signed by an authorized company representative.

Future income related to overtime, commissions and bonuses can be difficult to accurately predict. If necessary, these forms of income may be estimated based on historical amounts.

Income from a Business

Net income from a business owned in part or full by an applicant will be considered when determining income eligibility. Net income is defined as business receipts or sales less cash expenses that are essential for the operation of the business.

To estimate current net business income, the City will require the most recent two federal income tax returns and two full years of business and personal checking, savings, and other investment account statements for all business owners/partners. Applicants with fewer than two full years of verifiable business income history will not be considered for eligibility to purchase an Inclusionary Unit.

Applicants must itemize gross business receipts or sales for the period covered by the most recent two federal income tax returns and forecast gross business receipts or sales for the year beyond the time of application. The applicants must also itemize the cash expenses that were applied to determine net business income for both periods.

The Program Director will analyze all the submitted information when determining net business income. Applicants that are unable to provide satisfactory evidence of business income or expenses will be denied eligibility for purchase of an Inclusionary Unit.

Social Security, Pensions, Supplementary Security Income (SSI), Welfare, Disability Income

Applicants must submit a copy of their most recent award or benefit notification letter prepared and signed by the authorizing agency. At the Program Director's sole discretion, checks or bank deposit slips that show only net amounts remaining after deductions for SSI or Medicare may be accepted when award letters cannot be obtained.

Alimony or Child Support

Verification of alimony or child support income will be considered acceptable in the order listed:

1. Copy of a separation of settlement agreement or a divorce decree stating amount and type of support and payment schedules.
2. A notarized letter from the person paying the support attesting to the amount and terms of support payments.

V-B. Residential Purchase Agreement

The Developer must submit a copy of the Residential Purchase Agreement that is anticipated to be entered into by the Homebuyer and the Developer for the purchase and sale of the Inclusionary Unit. The Program Director will review the agreement to verify the total purchase price, the Primary Mortgage terms and the Homebuyer down payment amount. The City has approval rights over any material amendments to the Residential Purchase Agreement made after it has been reviewed and approved by the Program Director.

Specific terms that the City will not allow include, but are not limited to, the following:

1. The escrow period cannot exceed 90 days.
2. Homebuyers cannot be required to pay any extraordinary fees.
3. Homebuyers cannot be required to make any payments to the Developer that are not disclosed in the Residential Purchase Agreement.
4. No financing can be carried back by the Developer.

V-C. Disclosure Documents

Addendum to the Residential Purchase Agreement

For each Inclusionary Unit, the Developer must submit an executed copy of an Addendum to the Residential Purchase Agreement, which has been signed by both the Developer and the Homebuyer. The Addendum to the Residential Purchase Agreement must include the exact language approved by the City and provided in Attachment E - 1 to this Administrative Procedures Manual.

Certificate of Purchaser

The Developer is required to submit an original, fully completed and signed Certificate of Purchaser on the form approved by the City and provided in Attachment E -2 to this Administrative Procedures Manual. This document summarizes the proposed purchase transaction, identifies the Homebuyer's gross income and the number of persons that will occupy the Inclusionary Unit. The document includes an acknowledgement by the Homebuyer that the Regulatory Agreement will be recorded on legal title to the Inclusionary Unit.

Special Disclosures

The Developer is required to submit an original, fully completed and signed Special Disclosures document on the form approved by the City and provided in Attachment E - 3 to this Administrative Procedures Manual. This document includes an acknowledgement by the Homebuyer that the Regulatory Agreement imposes restrictions on the Inclusionary Unit being purchased.

VI. AFFORDABLE SALES PRICE CALCULATION METHODOLOGY

VI-A. General Policy

Inclusionary Units must be sold at no more than the defined Affordable Sales Price, as adjusted on the first day of each calendar quarter. This price will be calculated based on the specific covenants, conditions of approval, and other applicable use restrictions recorded on the Inclusionary Unit. The Affordable Sales Price is likely to be lower than the Fair Market Value of the Inclusionary Unit.

VI-B. Affordable Sales Price Calculations

The Affordable Sales Price is equal to the Supportable Mortgage plus the Benchmark Down Payment. The Supportable Mortgage and the Benchmark Down Payment amounts will be calculated quarterly, and provided to the Developers of active Ownership Housing Developments.

The following sections of this Administrative Procedures Manual illustrate the Affordable Sales Price calculation methodology, which is based on identified variables. As these variables change, the Affordable Sales Price can increase or decrease. Developers and prospective Homebuyers should be informed that the Affordable Sales Price can increase or decrease, and that the Affordable Sales Price is in no way tied to unrestricted Market Rate Unit home prices.

It is also possible that the Affordable Sales Price of an Inclusionary Unit may decrease over time. This may result in a situation where the allowable resale value of the Inclusionary Unit is less than the original purchase price paid by the Homebuyer.

B-1. HOUSEHOLD SIZE

The household income applied in the Affordable Housing Cost calculation is set based on the Household Size Appropriate for the Unit. This does not represent an occupancy cap or a floor; it is simply a benchmark used to create a consistent methodology for calculating the Affordable Housing Cost.³

³ As defined, the Household Size Appropriate for the Unit is equal to the number of bedrooms in the Inclusionary Unit plus one. For example, this equates to a benchmark of four persons for a three-bedroom Inclusionary Unit.

B-2. HOUSEHOLD INCOME

Section 41-1901 sets the household income used to calculate the Affordable Housing Cost for a Moderate Income Household at 120% of the AMI for the Household Size Appropriate for the Unit. These measurements are only used for the purposes of setting the Affordable Sales Prices. A Household that meets the following qualifications would qualify to reside in an Inclusionary Unit located in an Ownership Housing Development:

1. The Household's actual Gross Income is less than or equal to limit established by HSC Section 50093 for the actual number of people included in the Household; and
2. The number of people included in the Household comports with the Household Unit Size Compatibility test described in Section IV of this Administrative Procedures Manual.

B-3. INCOME ALLOCATED TO HOUSING RELATED EXPENSES

Section 41-1901 allocates 30% of the household income identified in "B-2" to housing related expenses.

B-4. HOUSING RELATED EXPENSES

Non-mortgage related expenses will be calculated based on standards defined by the City. The expenses and standards are:

1. Utilities: The Program Director will estimate a utility cost allowance based on data published annually by the County of Orange Housing Authority.
2. HOA Fees: The HOA fees will be based on an estimate provided by the Developer of the fees that will be charged upon full buildout of the Ownership Housing Development.
3. Property Maintenance and Repairs: The Program Director will apply a nominal cost allowance to cover the costs Homeowners will typically bear for maintaining their property over a one-year period.
4. Property Tax and Assessments: The tax rate applied to determine the annual property tax cost will be set at 1.16% of the Affordable Sales Price for an Inclusionary Unit.

B-5. SUPPORTABLE MORTGAGE AMOUNT

The Supportable Mortgage amount is determined based on the mortgage that can be supported given the income available after the other housing related expenses are paid:

1. The mortgage interest rate used in the Affordable Housing Cost calculation are based on the following metrics:
 - a. The calculations will be performed during the first week of each calendar quarter.
 - b. The source is the Freddie Mac website.
 - c. The estimate is based on the average annual percentage rate (APR) for fully-amortizing, fixed-interest rate loans.
2. The applicable interest rate will be based on the rate established for the quarter in which the Homebuyer and the Developer enter into a Residential Purchase Agreement.

B-6. BENCHMARK DOWN PAYMENT

The Benchmark Down Payment used by the City to establish the Affordable Sales Price is set at 5% of the Affordable Sales Price. The actual down payment amount contributed by Homebuyers will vary from unit-to-unit.

As discussed previously, the actual down payment contributed by a Homebuyer can fall within a range of 3% to 20% of the Affordable Sales Price for an Inclusionary Unit. However, this variance in the actual down payment amount does not impact the dollar amount of the Affordable Sales Price. Rather, it impacts the maximum allowable dollar amount of the Primary Mortgage.

VII. COMPLAINTS AND APPEALS

Complaints concerning the Ordinance should be made in writing and addressed to the Program Director. Complaints will be accepted only if they are in writing and are received within 30 days from the event giving rise to the complaint. In an attempt to resolve the matter, the Program Director shall contact the complainant. If the complaint involves, pertains or relates to the Inclusionary Unit, or the prescreening and/or loan qualification process and procedures of the Developer, the Program Director shall contact the Developer prior to responding to the complainant. A written response from the Program Director will be made to the complainant and Developer within 10 business days of contacting the last person(s) required to be notified and contacted concerning the complaint.

If a complainant is not satisfied with the written response, a request for an appeal may be filed with the Executive Director. The written request must set forth the reasons for the appeal, and must be received by the Executive Director within 15 days from the date of the Program Director's written response. In the event the request does not meet these requirements, the complainant will be notified that the request is denied; otherwise, the complainant will be invited to meet with the Executive Director to allow the complainant to advocate his/her position and to resolve the matter. If the appeal of the Program Director's response involves, pertains or relates to the Inclusionary Unit, or the prescreening and/or loan qualification process and procedures of the Developer, the Developer shall be notified in advance of the meeting with the Executive Director, and shall have the right to appear at the meeting and respond any claims or allegations concerning Developer's practices and procedures. The Executive Director's response will be made in writing and served on the complainant and Developer within 10 business days following the meeting.

Any decisions or responses made by the Program Director and/or the Executive Director to a complaint shall be supported by reasonable inferences of admissible facts and shall be consistent and compliant with the provisions of the Ordinance, Inclusionary Housing Agreement, Regulatory Agreement and the Administrative Procedures Manual.

VIII. MONITORING AND ENFORCEMENT

City staff will maintain a high level of awareness to indicators of possible abuse and fraud by applicants and Households residing in Inclusionary Units.

VIII-A. File Audits Upon Close of Purchase

Upon the close of a purchase transaction, the City will obtain the following information from the escrow company:

1. The original Regulatory Agreement executed by the Homebuyer and recorded on legal title to the Inclusionary Unit; and
2. A copy of the final buyer and seller settlement statements and a copy of the Homebuyer's title insurance policy.

The Program Director will review these documents to ensure that the Regulatory Agreement was properly completed, executed, and recorded on legal title to the property. The Program Director will also ensure that the financial terms of the purchase transaction are consistent with those that were approved at the time of the application.

VIII-B. Referrals, Complaints, or Tips

The Program Director will follow up on referrals from other agencies, companies, or individuals that are received by email, facsimile, mail, telephone, or in person, which allege that an prospective Homebuyer is non-compliant or otherwise violating program rules. Such follow up will be made providing that the referral contains at least one item of information that is independently verifiable.

VIII-C. Internal File Review

The Program Director will investigate instances where it discovers, as a result of administering the program, information or facts that conflict with previous file data or any knowledge of the prospective Homebuyer, or vary in any way with statements made by the prospective Homebuyer.

ATTACHMENT A

2021 AFFORDABLE HOUSING OPPORTUNITY AND CREATION ORDINANCE SANTA ANA MUNICIPAL CODE ARTICLE XVIII.I OF CHAPTER 41: INCLUSIONARY HOUSING

ORDINANCE NO. NS-3019

ZONING ORDINANCE AMENDMENT NO. 2021-03 AN
ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
SANTA ANA REPEALING AND REENACTING IN ITS
ENTIRETY ARTICLE XVIII.I. OF CHAPTER 41 OF THE
SANTA ANA MUNICIPAL CODE REGARDING 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.I. – Housing Opportunity Ordinance" ("Housing Opportunity Ordinance") 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 the production of more affordable housing.
- 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. On March 2, 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 September 7, 2021, the City Council further considered this matter and provided additional direction to staff regarding proposed amendments to the Housing Opportunity Ordinance.
- G. At the City Council meeting of October 5, 2021, staff received direction to initiate the adoption hearing in order for the City Council to consider the changes recommended by the Housing Ad Hoc Committee.
- H. On October 25, 2021, the Planning Commission held a duly noticed public hearing on the proposed amendments and considered the staff report, recommendations by staff, and public testimony concerning the proposed Ordinance. The Planning Commission recommended that the City Council adopt the proposed Ordinance.
- I. The Request for City Council Action for this Ordinance dated November 16 and December 7, 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. Furthermore, the proposed Ordinance falls within the "common sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." Adoption of this Ordinance will not have a significant effect on the environment because the proposed changes will only modernize, update, and clarify existing affordable and inclusionary housing requirements responding to the current economic and housing trends in the City and will not cause a physical change in the environment.

Section 3. Article XVIII.I of Chapter 41 of the Santa Ana Municipal Code is hereby repealed in its entirety.

Section 4. Article XVIII.I. of Chapter 41 of the Santa Ana Municipal Code is hereby reenacted and amended to read in its entirety as follows:

ARTICLE XVIII.I. - 2021 AFFORDABLE HOUSING OPPORTUNITY AND CREATION ORDINANCE

Sec. 41-1900. Purpose.

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

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.

Base Density means the maximum number of dwelling units allowed per acre of land within each land use category designated in the General Plan.

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.

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 households, at an affordable housing cost, in compliance with this article.

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

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.

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

(a) *Applicability.* The requirements of this article shall apply to any new project comprised of five (5) or more residential lots or residential units, including new construction and condominium conversions, which meets one or all of the 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 the permitted residential 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.

(3) Increase of the permitted percentage of residential development allowed for a mixed-use development above the percentage permitted under the zoning classification at the time of application.

(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 units beyond that which is allowed as prescribed in Subsection (a) above.

(c) *Units for sale.* If the new residential project consists of units for sale, then a minimum of five (5) percent of the total number of units in the project shall be sold to moderate-income households.

(d) *Rental units.* If the new residential project consists of rental units, the inclusionary units shall be constructed as follows:

(1) A minimum of fifteen (15) percent of the units shall be rented to low-income households, or

(2) A minimum of ten (10) percent shall be rented to very low-income households, or

(3) A minimum of five (5) percent shall be rented to extremely low-income households, or

(4) A minimum of ten (10) percent shall be available at an affordable housing cost of which five (5) percent rented to low-income households, three (3) percent rented to very low-income households, and two (2) 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 extremely low, very low and/or low-income household(s) shall be required to provide on-site inclusionary units as required by this article.

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

Sec. 41-1903. Exempt projects.

The following are exempt from the requirements of this article:

(a) *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, 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.

(b) *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.

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

(d) *Development Projects Approved Under the Provisions of Ordinance No. NS-2994 Adopted on September 1, 2020.* A development project that has received entitlement approvals by city council action prior to November 16, 2021 to construct new residential units is hereby determined to have vested the right to carry out the completion and construction of the project under the regulations and provisions of Ordinance No. NS-2994. The vested regulations and provisions in accordance with this section shall terminate if any or all of the entitlement approvals become invalid for any reasons or have expired under the various applicable time limits established in the Santa Ana Municipal Code. A list of these projects and the vested right(s) under Ordinance No. NS-2994 are attached hereto as Exhibit A and is incorporated herein by reference.

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 41-1902 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) *Five (5) or more units.* For a residential project comprised of five (5) or more 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 in section 41-1904(c)(1)(i) multiplied by 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

Units/Lots	Fee Per Square Foot of Habitable Area
5 – 9	\$6.00
10 – 14	\$9.00
15 – 19	\$12.00
20 or more	\$15.00

(ii) *Local Skilled and Trained Workforce.* The use of a local skilled and trained workforce shall be phased in over time and shall only apply to a development project proposing twenty (20) or more lots or units opting to exercise the in-lieu fee payment option. The implementation of this subsection shall be phased as follows:

(A) Between November 16, 2021 and December 31, 2025, a project proposing twenty (20) or more lots or units exercising the option to pay the \$15 per square foot in-lieu fee amount shall not be required to utilize a local skilled and trained workforce for completing the construction of the project. However, this fee shall be reduced if the developer provides the City with an executed enforceable commitment to use a “Skilled and Trained Workforce” as defined in Public Contract Code section 2601 to complete the construction of the project as specified in the table below:

Use of Skilled and Trained Workforce	Fee Per Square Foot of Habitable Area
--------------------------------------	---------------------------------------

30% of workforce utilizing 2 or more construction trades	\$10.00
60% of workforce utilizing 3 or more construction trades	\$5.00
A minimum of 20% of the above work-hours shall be performed in accordance with local hire policies approved by the City Council.	

(B) Effective January 1, 2026 and thereafter, a project proposing twenty (20) or more lots or units exercising the option to pay the \$15 per square foot in-lieu fee amount shall be required to provide the City with an executed enforceable commitment that 30 percent of the workforce utilized to complete the construction of the project be derived from a "Skilled and Trained Workforce" as defined in Public Contract Code section 2601; and that a minimum of 35 percent of the required skilled and trained workforce total work-hours shall be performed in accordance with local hire policies approved by the City Council. This fee shall be reduced when the developer commits to a higher utilization level as specified in the table below:

Use of Skilled and Trained Workforce	Fee Per Square Foot of Habitable Area
60% of workforce	\$10.00
90% of workforce	\$5.00
A minimum of 35% of the above work-hours shall be performed in accordance with local hire policies approved by the City Council.	

(2) *Timing of payment.* The total fee amount for the entirety of a project is calculated, determined, and set at the time of issuance of the first building permit for the project. All in-lieu fees allowed by this section shall be paid no later than prior to issuance of the first occupancy approval for any construction which adds net residential units. If the city approves a phased project, a proportional share of the required fee shall be paid within each phase of the residential project. The in-lieu fees collected by the city are city funds over which the city has complete and absolute discretion.

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

(4) The provisions of Section 41-1904(c)(1) may only be modified by the affirmative vote of at least five (5) members of the City Council.

Sec. 41-1904.1. Inclusionary housing development incentives for production of units.

(a) In order to make the production of new inclusionary units on-site or off-site or off-site rehabilitated units, certain incentives, standards and concessions shall be allowed and prescribed as set forth herein below. Such concessions shall not be available to those developers that choose to pay an in lieu fee rather than build the units. The developer may opt to take advantage of up to two (2) concessions among the following possible concessions:

(1) *Parking concession.* One on-site parking space for each zero to one bedroom unit; two (2) on-site parking spaces for each two (2) to three (3) bedroom unit; two and one-half (2½) parking spaces for each four (4) or more bedroom unit.

(2) Concession on one of the following Zoning Code site development standards:

(i) Setback reduction of up to twenty-five (25) percent reduction on subject property;

(ii) Height increase of up to twenty (20) additional feet.

(b) A developer of a for sale residential project proposing to provide on-site moderate income units and a surrounding community benefit may opt to take advantage of up to three (3) of the above concessions. The surrounding community benefit will include but not be limited to park improvements, urban community gardens, developer-funded down payment assistance, or subsidy of services, activities or programs.

(1) *Local Density Bonus.* For each 1 percent increase above 5 percent in the percentage of for-sale units affordable to moderate income households, the base density shall be increased by 1.5 percent up to a maximum of 35 percent.

Sec. 41-1905. Housing plan and housing agreement.

(a) *Submittal and execution.* The developer shall comply with the following requirements:

(1) *Inclusionary housing plan.* The developer shall submit an inclusionary housing plan in a form specified by the executive director, detailing how the provisions of this article will be implemented for the proposed residential project. The inclusionary housing plan and its supportive documents, plans, and details shall be submitted at the same time as the site plan and application materials for the original project. All inclusionary housing plans shall be subject to the approval of the executive director and subject to appeal processes and procedures set forth in the Santa Ana Municipal Code.

(2) *Inclusionary housing agreement.* The developer shall execute and cause to be recorded an inclusionary housing agreement. The inclusionary housing agreement

shall be a legally binding agreement between the developer and the city, executed by the city manager, or his or her designee, and in a form and substance satisfactory to the executive director and the city attorney, and containing those provisions necessary to ensure that the requirements of this article are satisfied, whether through the provision of inclusionary units or through an approved alternative method.

(b) *Discretionary approvals.* No discretionary approval shall be issued for a residential project subject to this article until the developer has submitted an inclusionary housing plan.

(c) *Issuance of building permit.* No building permit shall be issued for a residential project subject to this article unless the executive director has approved the inclusionary housing plan, and any required inclusionary housing agreement has been recorded.

(d) *Issuance of certificate of occupancy.* A certificate of occupancy shall not be issued for a residential project subject to this article unless the approved inclusionary housing plan has been fully implemented.

Sec. 41-1906. Standards.

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

- (1) Reasonably dispersed throughout the residential project;
- (2) Proportional, in number of bedrooms, gross floor area of habitable space, and location, to the market rate units;
- (3) Comparable to the market rate units included in the residential project in terms of design, materials, finished quality, and appearance; and
- (4) Permitted the same access to project amenities and recreational facilities, as are market rate units.

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

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

- (1) The sum-total area (in habitable square feet) of all the newly constructed off-site inclusionary units shall be the same number of habitable square feet of inclusionary area as required by this ordinance. For the purpose of the calculation of the

number of square feet of required inclusionary housing, the total gross habitable square feet of the housing units of the original market rate project shall be used, as measured from exterior walls to exterior walls of the market units provided as the base for calculation. The common areas, exterior hallways, stairways, patios, and balconies shall not be calculated in determining the number of required square feet of inclusionary housing production. All new or rehabilitated units must meet all current zoning and general plan standards.

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

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

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

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

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

(e) *Units for sale.*

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

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

(3) *Resale price control.* In order to maintain the availability of inclusionary units required by this article, the resale price of an owner occupied inclusionary unit shall be limited to the lesser of the fair market value of the unit as established by a licensed real

estate agent based upon three (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.

(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.

Sec. 41-1907. Reserved.

Sec. 41-1908. Enforcement.

(a) *Violation.* Any violation of this article constitutes a misdemeanor.

(b) *Forfeiture of funds.* Any individual who sells an inclusionary unit in violation of this article shall be required to forfeit any money in excess of the affordable housing cost at such time. Any individual who rents an inclusionary unit in violation of this article shall be required to forfeit all money so obtained. Recovered funds shall be deposited into the inclusionary housing fund.

(c) *Legal actions.* The city may institute any appropriate legal actions or proceedings necessary to ensure compliance with this article, including actions:

- (1) To disapprove, revoke, or suspend any permit, including a building permit, certificate of occupancy, or discretionary approval; and
- (2) For injunctive relief or damages.

(d) *Recovery of costs.* In any action to enforce this article, or an inclusionary housing agreement recorded hereunder, the city shall be entitled to recover its reasonable attorney's fees and costs.

Sec. 41-1909. Inclusionary housing fund.

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

(1) Monies deposited into the inclusionary housing fund must be used to increase and improve the supply of housing affordable to moderate, low, very low, and extremely low income households in the city as specified in the city's affordable housing funds policies and procedures. A priority will be on the creation of affordable housing opportunities or units from the existing market rate housing stock rather than construction of new affordable housing units and on the creation of new affordable housing

opportunities for large families currently living in the City. This includes, but is 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.

(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 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 to negotiate in good faith to provide the City with an enforceable commitment that a minimum 30% of the labor utilizing 2 or more construction trades be performed by a "Skilled and Trained Workforce" as defined in Public Contract Code section 2601 to complete the construction of the project. If so provided, a minimum of 35% of such labor for the project shall be performed in accordance with local hire policies approved by the City Council.

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 as needed.

(b) *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.

(c) *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 ensure 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.

Secs. 41-1911—41-1999. Reserved.

Section 5. 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 6. This Ordinance shall become effective thirty (30) days after its adoption.

Section 7. 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 19th day of April, 2022.



Vicente Sarmiento
Mayor

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

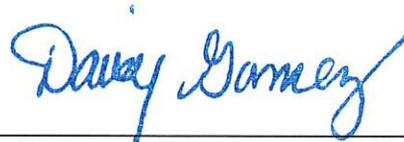
By: John M. Funk
John M. Funk
Sr. Assistant City Attorney

AYES: Councilmembers Hernandez, Lopez, Phan, Sarmiento (4)
NOES: Councilmembers Mendoza, Penaloza, Bacerra (3)
ABSTAIN: Councilmembers None (0)
NOT PRESENT: Councilmembers None (0)

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Daisy Gomez, Clerk of the Council, do hereby attest to and certify the attached Ordinance No. NS-3019 to be the original ordinance adopted by the City Council of the City of Santa Ana on April 19, 2022, and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: 4/20/2022



Daisy Gomez
Clerk of the Council
City of Santa Ana

2021 List of Entitled Projects Vested Under the Regulations and Provisions of Ordinance No. NS-2994

The development projects listed in Table 1 have received entitlement approvals by Planning Commission and/or City Council action prior to November 16, 2021, to construct new residential units and are hereby determined to have vested the right to carry out the completion and construction of the project under the regulations and provisions of Ordinance No. NS-2994 (HOO). The vested regulations and provisions shall automatically terminate if any or all of the entitlement approvals become invalid for any reasons or have expired under the various applicable time limits established in the Santa Ana Municipal Code or any applicable State Covid-19 pandemic relief or other applicable time extension provisions. Ordinance No. NS-2994 is incorporated herein by reference.

Table 1. Entitled Projects Vested Under the Regulations and Provisions of Ordinance No. NS-2994

No.	Project Address	Project Name	Number of Dwelling Units	HOO Compliance Requirements
1.	1122 N. Bewley Street	Bewley Townhomes	10	Provide inclusionary units as required under NS-2994 or payment of in-lieu of \$5/sf
2.	301 N. Mountain View Street	Mountain View Townhomes	8	Provide inclusionary units as required by NS-2994 or payment of in-lieu of \$5/sf
3.	200 N. Cabrillo Park Drive	The Madison	260	Provide inclusionary units as required by NS-2994 or payment of in-lieu of \$5/sf
4.	1109 N. Broadway	One Broadway Plaza	415	\$15/sf in-lieu payment under a project Mutual Declaration
5.	3025 W. Edinger Avenue	Haphan Townhomes	17	Provide inclusionary units as required by NS-2994 or payment of in-lieu of \$5/sf
6.	2800 N. Main Street/Specific Plan No. 4	MainPlace Mall Transformation 1,900 residential units	1,900	Provide inclusionary units as required by NS-2994 or payment of in-lieu of \$5/sf
7.	419 N. Harbor Boulevard (previously 421 N. Harbor Boulevard)	Fifth and Harbor Mixed Use Apartments	94	Provide inclusionary units as required by NS-2994 or payment of in-lieu of \$5/sf
8.	3417 W. Fifth Street	West Fifth Villas	8	Provide inclusionary units as required by NS-2994 or payment of in-lieu of \$5/sf

The development projects listed in Table 2 have received entitlement approvals by Planning Commission or City Council action prior to November 16, 2021, but did not trigger HOO provisions and have been identified herein for implementation clarity.

Table 2. Entitled Projects Not Triggering HOO requirements

No.	Project Address	Project Name	Number of Dwelling Units	HOO Compliance Requirements
1.	201 W. Third Street	3rd and Broadway	171	HOO provisions not applicable to project
2.	409 E. Fourth Street and 509 E. Fourth Street	4th and Mortimer	169	HOO provisions not applicable to project
3.	1801 E. Fourth Street	Central Pointe	644	HOO provisions not applicable to project
4.	200 E. First American Way	Legado at the Met	278	HOO provisions not applicable to project
5.	114 E. Fifth Street and 115 E. Fifth Street	Rafferty (4 th + Main)	220	HOO provisions not applicable to project

ATTACHMENT B

INCLUSIONARY HOUSING PLAN APPLICATION

INCLUSIONARY HOUSING PLAN

2021 AFFORDABLE HOUSING OPPORTUNITY AND CREATION ORDINANCE

OWNERSHIP HOUSING DEVELOPMENT PROJECT

INCLUSIONARY HOUSING PLAN NUMBER: _____

City of Santa Ana

20 Civic Center Plaza (M-26), Santa Ana, California 92701

714.667.2241

Development Site Characteristics and Contact Information	
Project Address:	_____
Assessor Parcel Number(s):	_____
Site Dimensions:	_____
Site Size (Square Feet):	_____
Property Owner's Name:	_____
Address:	_____
Telephone Number:	_____ Email: _____
Applicant's Name:	_____
Telephone Number:	_____ Email: _____

City Approvals (if applicable)

Approve

Deny

Signature: _____

Date: _____

I. DEFINED TERMS

Capitalized terms included in the instructions for completing an Inclusionary Housing Plan have the meanings defined in the Administrative Procedures Manual.

II. PROJECT DESCRIPTION

Please provide the information pertaining to the characteristics of the proposed Project in the following table:

Description of the Proposed Project				
Plan	Number of Units	Number of Bedrooms	Habitable Area Per Unit ¹	Total Habitable Area: Each Plan
Totals	<input type="text"/>			<input type="text"/>

Will the project be constructed in phases? Yes ___ No ___

Is a California Government Code Section 65915 et seq. (Section 65915) density bonus being requested? Yes ___ No ___

¹ Habitable Area defined as the portion of the residential unit measured from exterior walls to exterior walls. The calculation excludes exterior hallways, common areas, landscapes, open space, and exterior stairways.

III. INCLUSIONARY HOUSING REQUIREMENTS

The Ordinance imposes a requirement that at least 5% of the units in an Ownership Housing Development Project must be set aside at an Affordable Sales Price for Moderate Income Households.² The Ordinance offers the following four options for fulfilling the obligation:

1. On-site development of Moderate Income ownership units; or
2. Off-site development of Moderate Income ownership units; or
3. Off-site rehabilitation of existing units; or
4. Payment of a fee in lieu of producing affordable units.

If the calculation of the Inclusionary Unit obligation results in a fraction, the obligation is rounded up to the next whole number. However, as an alternative, the Developer can choose to pay an in-lieu fee for the fractional unit obligation. This option can be applied to each of the three affordable housing production alternatives.

Please select the applicable alternative(s) to indicate how the Project will comply with the Inclusionary Unit requirement:

_____ On-Site Construction of Moderate Income Inclusionary Units

_____ Off-Site Construction of Moderate Income Inclusionary Units

Rehabilitation of Existing Units

_____ In a Target Area

_____ Not in A Target Area

_____ In-Lieu Fee Payment to Fulfill the Entire Inclusionary Housing Obligation

_____ In-Lieu Fee Payment to Fulfill a Fractional Inclusionary Unit Obligation

² Any additional units authorized under the Section 65915 density bonus shall not be counted in determining the number of Inclusionary Units required by the Ordinance.

Inclusionary Housing Production Options

For Projects that opt to use one of the Inclusionary Housing production options, please complete the following tables.

DO NOT COMPLETE THE FOLLOWING THREE TABLES IF AN IN-LIEU FEE IS PROPOSED TO BE PAID TO FULFILL THE ENTIRE INCLUSIONARY HOUSING OBLIGATION

Inclusionary Housing Production Obligation		
	Number of Units	Habitable Area (Square Feet)
Total Units in the Market Rate Project	_____	_____
Inclusionary Housing Percentage	5%	5%
Total Inclusionary Housing Obligation	_____	_____

Inclusionary Housing Production Option (Circle One)				
	On-Site Development	Off-Site Development	Rehabilitation	
Plan	Number of Moderate Income Units	Number of Bedrooms	Habitable Area Per Unit	Total Habitable Area: Each Plan
Totals	<input type="text"/>			<input type="text"/>

For Projects that choose to pay an in-lieu fee to fulfill a fractional Inclusionary Unit obligation, calculate the fractional in-lieu fee obligation in the following table:

Fractional In-Lieu Fee Calculation	
Fractional Unit Obligation	_____
Total Habitable Area (Square Feet)	_____
In-Lieu Fee Per Square Foot of Habitable Area (See Section IV of this application)	_____
Total Fractional In-Lieu Fee	_____

IV. DEVELOPMENT STANDARDS

On-Site Construction of Inclusionary Units to Fulfill the Inclusionary Housing Obligation

1. The Inclusionary Units must be reasonably dispersed throughout the project.
2. The Inclusionary Units must be proportional in the number of bedrooms, the gross Habitable Area, and location to the Market Rate units in the project.
3. The Inclusionary Units must be comparable to the Market Rate units in the project in terms of design, materials, finished quality and appearance.

Off-Site Construction of Inclusionary Units to Fulfill the Inclusionary Housing Obligation

1. The off-site development project must comport with the current zoning and general plan standards imposed on the development site.
2. The Inclusionary Housing obligation is equal to at least 5% multiplied times the sum total of the Habitable Area in the proposed Market Rate Project.
3. The total square footage standard will be based on the obligation stated above. However, the number of units, bedroom mix, and other amenities shall be approved by the City’s review authority. The standards will be established based on the size and type of units most in demand at the time the application is submitted.

4. The Inclusionary Units must be substantially comparable to the units included in the proposed Market Rate Project in terms of quality of design, materials and finishes.

Rehabilitation of Existing Units to Fulfill the Inclusionary Housing Obligation

1. The Inclusionary Housing obligation is calculated as follows:
 - a. For units in a defined Target Area, the obligation is equal to at least 5% multiplied times the sum total of the Habitable Area in the proposed Project.
 - b. For units that are not located within a defined Target Area, the obligations is equal to 7.5% multiplied times total of the Habitable Area in the proposed Market Rate Project.
2. The total square footage standard will be based on the obligation stated above. However, the number of units, bedroom mix, and other amenities shall be approved by the City’s review authority. The standards will be established based on the size and type of units most in demand at the time the application is submitted.
3. The Inclusionary Units must be substantially comparable to the units included in the Market Rate Project in terms of quality of design, materials and finishes.

In-Lieu Fee Payment to Fulfill the Entire Inclusionary Housing Obligation

The in-lieu fee payment obligation is calculated against the entire Habitable Area of the proposed Market Rate Project. The in-lieu fee schedule included in the Ordinance is presented in the following table:

In-Lieu Fee Schedule – 2021 Ordinance ³	
Units/Lots	Fee Per Square Foot of Habitable Area
5-9	\$6.00
10-14	\$9.00
15-19	\$12.00
20 or More	\$15.00

³ The in-lieu fee calculation per square foot of Habitable Area shall be subject to City Council review and consideration as needed.

For Projects that choose to pay an in-lieu fee to fulfill a the entire Inclusionary Housing obligation for the Project, calculate the in-lieu fee obligation in the following table:

In-Lieu Fee Calculation	
Total Habitable Area (Square Feet)	
In-Lieu Fee Per Square Foot of Habitable Area in the Project	
Total In-Lieu Fee	

A requirement to use a local skilled and trained workforce will be phased in over time for projects with 20 or more units. If these projects are willing to fulfill defined local and skilled labor requirements they shall be entitled to pay a discounted in-lieu fee. The timing of the requirements and the reduced in-lieu fee payment amounts are described in the Administrative Procedures Manual.

V. TIMING

All Inclusionary Units in an Ownership Housing Development Project shall be constructed concurrently with, or prior to, the construction of the Market Rate units. If the Ownership Housing Development is proposed to be constructed in phases, the Inclusionary Units required by the Ordinance shall be constructed in proportion to the total number of units included in each phase.

For projects that choose to pay an in-lieu fee to fulfill the entire Inclusionary Housing obligation or a fractional in-lieu fee obligations the in-lieu fee must be paid prior to the City’s issuance of a Certificate of Occupancy. If the Market Rate Project is proposed to be developed in phases, the in-lieu fee shall be constructed in proportion to the total number of units included in each phase.

VI. REQUIRED EXHIBITS TO THE INCLUSIONARY HOUSING PLAN

Please submit the following documents as attachments to this Inclusionary Housing Plan:

- A. Project Description (see Development Project – Review application). Include a description of proposed off-site construction of Inclusionary Units or rehabilitation, if applicable.
- B. Legal Description of the Project.
- C. Site plan of the entire Project detailing the location of proposed Inclusionary Units (minimum size 11" x 17").
- D. If applicable, a phasing plan that provides for the proportionate number of the total Inclusionary Unit requirement to be built in each phase of the Project.
- E. Application Fee.

VII. PROPERTY OWNER’S AFFIDAVIT

I hereby certify that I am the legally authorized owner of all property involved in this application or have been empowered to sign as the property owner on behalf of a corporation, partnership, business, etc., as evidenced by separate instrument attached herewith. I hereby grant to the applicant submitting this form full power to sign all documents related to this application, including any conditions or litigation measures as may be deemed necessary.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on (Date) _____ at _____, California

Property Owner’s Signature _____

Printed Name _____

VIII. APPLICANT’S AFFIDAVIT

I hereby certify that the statements furnished above and in the attached exhibits represent the data and information required for this initial evaluation and that the facts, statements and information presented are true and correct to the best of my knowledge and belief. Further, should the stated information be found false or insufficient, I agree to the return of this form for appropriate revisions, understanding the City of Claremont cannot process this form until all applicable information is corrected or provided by the applicant. I hereby certify that I have been legally authorized by the property owner to present this application and to sign on behalf of all documents related to this application, including any conditions or litigation measures as may be deemed necessary.

Note: When the applicant is a corporation, partnership, business, etc., a separate document verifying the authorization to sign for such applicant is required.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on (Date) _____ at _____, California

Applicant’s Signature _____

Applicant’s Printed Name _____

ATTACHMENT C

HOME BUYER SELECTION PROCEDURES

HOMEBUYER SELECTION PROCEDURES

Developers of Inclusionary Units are required to complete all the facets of the Homebuyer Selection Procedures detailed in this Attachment. Activities that must be undertaken by Developers include, but are not limited to, the following:

1. Adhering to the selection procedures set forth by the City;
2. Marketing the Inclusionary Units;
3. Identifying prospective Homebuyers for the Inclusionary Units;
4. Providing prospective Homebuyers with a prescreening application that will allow them to determine whether they meet the basic qualifications to purchase an Inclusionary Unit;
5. Accepting purchase applications from prospective Homebuyers, and referring these Homebuyers to Participating Lenders to commence the underwriting process;
6. Notifying prospective Homebuyers of the Program Director's pre-approval or denial decisions; and
7. Entering into sales transactions with the Homebuyers that receive final approval from the Executive Director.

DEFINITIONS

As used in this Attachment, the terms set forth below shall have the following meanings:

“Administrative Procedures Manual” means this Administrative Procedures Manual: Ownership Housing Development and attachments that have been prepared by the City for the implementation and administration of Chapter 41. Each Developer of an Ownership Housing Development that is subject to the Chapter 41 requirements will be provided with a copy of the Administrative Procedures Manual when an Inclusionary Housing Agreement is executed. In the event the Administrative Procedures Manual is modified prior to the sale of the last Inclusionary Unit in an Ownership Housing Development, the modified Administrative Procedures Manual will apply to the sale of the remaining Inclusionary Units.

“Adult” means a person 18 years of age or older.

“Affordable Sales Price” means the maximum price that can be charged for the Inclusionary Unit. The Affordable Sales Price is equal to the lesser of:

1. The sum of the Supportable Mortgage plus the Benchmark Down Payment; or
2. The purchase price prospective buyers are willing to pay in return for purchasing a home that is subject to restrictive covenants.

“Benchmark Down Payment” shall be set at 5% of the Affordable Sales Price for the Inclusionary Unit being purchased by the Homebuyer. The Benchmark Down Payment is used solely for the purposes of calculating the Affordable Sales Price of an Inclusionary Unit. It does not represent a cap on the down payment amount that can be contributed by a Homebuyer.

“City” means the City of Santa Ana, California.

“City Performance Deed of Trust” means a deed of trust that secures the Homebuyer’s obligations imposed by the Regulatory Agreement. The City Performance Deed of Trust is recorded on legal title to the Inclusionary Unit.

“Developer” means any association, corporation, firm, joint venture, partnership, person, or any entity or combination of entities, which seeks approval for all or part of an Ownership Housing Development.

“Eligible Purchaser” means a prospective purchaser who meets the eligibility criteria set forth in Section IV of the Administrative Procedures Manual.

“Executive Director” is the Executive Director of Community Development for the City. The Executive Director has the ultimate authority to evaluate appeals submitted in relation to this Administrative Procedures Manual.

“Homebuyer” means the purchaser of an Inclusionary Unit as vested on legal title to the Inclusionary Unit. The Homebuyer shall enter into a Regulatory Agreement and City Performance Deed of Trust.

“Homeowner” means the owner of an Inclusionary Unit as vested on legal title to the Inclusionary Unit.

“Inclusionary Unit” means a dwelling unit that will be offered for sale to Moderate Income Households, at an Affordable Housing Cost, in compliance with Chapter 41.

“Lender Checklist” identifies the documents required by the Program Director and the timing of events during the escrow period for the sale of each Inclusionary Unit. The Lender Checklist is found in Attachment F to the Administrative Procedures Manual: Ownership Housing Development.

“Ordinance” means the 2021 Affordable Housing Opportunity and Creation Ordinance adopted by the City Council on April 19, 2022 as Ordinance No. NS-3019. The Ordinance is codified in Article XVIII.I of Chapter 41.

“Participating Lender” is a Primary Lender that has executed an agreement affirming that they understand the requirements imposed by the Regulatory Agreement and the City Performance Deed of Trust.

“Program Director” has day-to-day authority for making determinations related to the requirements imposed by Chapter 41 and this Administrative Procedures Manual. The Program Director will be appointed by the Executive Director to undertake the following duties:

1. Assist in administering the selection process for potential Homebuyers.
2. As needed, provide assistance to potential Homebuyers in the completion of the Pre-Application Checklist.
3. Evaluating the documentation submitted by the Primary Lender for a potential Homebuyer to determine whether or not the potential Homebuyer is an Eligible Purchaser.
4. Referring Eligible Purchasers back to the Developer for the commencement of the negotiations that are intended to result in a sales transaction.
5. Submitting the Regulatory Agreement to escrow for execution.
6. Monitoring the Homebuyers’ compliance with Regulatory Agreement requirements.
7. Administering the activities related to transfers of Inclusionary Units, and the resale procedures set forth in the Regulatory Agreement.

“Primary Lender” means a bank, savings and loan association, insurance company, pension fund, publicly traded real estate investment trust, governmental agency, charitable organization or other governmentally regulated entity regularly engaged in making residential real estate loans.

“Program Summary & Pre-Application Checklist” is a form created by the City that is to be used as a preliminary self-qualification tool by prospective Homebuyers. The Program Summary & Pre-Application Checklist shall be updated quarterly, and provided to Developers with active Ownership Housing Developments that are subject to the requirements imposed by Chapter 41.

“Regulatory Agreement” means an agreement between the City or the Santa Ana Community Development Agency and the Homebuyer, that governs how the Homebuyer shall comply with the requirements imposed by the Ordinance. The Regulatory Agreement is secured by the City Performance Deed of Trust.

“Supportable Mortgage” means the Primary Mortgage amount that can be supported by a Moderate Income Household based on the Affordable Housing Cost calculations. The mortgage calculation is based on the prevailing market interest rate for a 30-year fully amortizing mortgage with a fixed interest rate.

MARKETING THE INCLUSIONARY UNITS

The Developer must adhere to the following marketing requirements:

1. The Developer must implement a local preference in the resident selection criteria and marketing policies that meet guidelines established by the Executive Director.
2. The Developer’s marketing plan must comply with all applicable fair housing laws. Specifically, the Developer shall not discriminate on account of race, color, sex, religion, sexual orientation, creed, ancestry, national or ethnic origin, age, family or marital status, handicap or disability.

IDENTIFYING PROSPECTIVE HOMEBUYERS

The Developer must accept primary responsibility for identifying Eligible Purchasers for the Inclusionary Units. The Developer may use prescreening and/or pre-qualification process and procedures including, but not limited to, pre-qualifying interested Homebuyers through the Developer’s preferred lender.

SELECTION PROCEDURES

Homebuyer Requirements

The Developer and prospective Homebuyers must complete the following activities:

1. The Developer must provide prospective Homebuyers with the Program Summary & Pre-Application Checklist.
2. A prospective Homebuyer that has completed the Program Summary & Pre-Application Checklist, and believes they meet the requirements to be an Eligible Purchaser can submit an application to the Developer to purchase an Inclusionary Unit.
3. The Developer must provide the prospective Homebuyer with a list of Participating Lenders to contact to commence the underwriting process. If a prospective Homebuyer wishes to use a Primary Lender that is not a Participating Lender, that Primary Lender must contact the Program Director and complete the activities required to be designated as a Participating Lender.
4. The prospective Homebuyer must make an appointment to attend a Homebuyer Education Course online or in person. The prospective Homebuyer must complete the Course prior to the close of escrow on the purchase of the Inclusionary Unit.

Pre-Approval Process

The Developer, the prospective Homebuyer, the Participating Lender and the Program Director must complete the following activities in order to provide pre-approval for a prospective Homebuyer:

1. The Participating Lender must submit the Phase I documents identified in the Lender Checklist to the Program Director.
2. The Program Director will review the Participating Lender's submittals for completeness and will notify the Participating Lender of any missing information and/or documents. The Participating Lender will be given 10 business days to provide the missing information and/or documents. Failure to provide the requested information and/or documents will be cause for denying the prospective Homebuyer's request to purchase an Inclusionary Unit.
3. The Program Director will review the completed Phase I documents and provide a pre-approval or denial recommendation.
4. The Developer will be responsible for informing prospective Homebuyers of the results of the pre-approval process.

The Developer may continue to accept applications for the purchase of an Inclusionary Unit until a prospective Homebuyer receives pre-approval from the Program Director. The Developer shall be required to make good faith efforts to enter into a sales transaction with the first prospective Homebuyer to receive pre-approval. However, the Developer may accept back-up offers from other prospective Homebuyers as long as they had submitted a purchase application prior to the date on which the first pre-approval was provided.

The Developer may only commence negotiations with a prospective Homebuyer that has submitted a back-up offer if:

1. The pre-approved Homebuyer is unable to obtain a mortgage that complies with the requirements imposed by Section IV of the Administrative Procedures Manual: Ownership Housing Development; and / or
2. If the pre-approved Homebuyer will not agree to the requirements imposed by the Regulatory Agreement and the City Performance Deed of Trust that the Homebuyer will be required to execute in order to purchase an Inclusionary Unit.

Final Approval Process

At the completion of the underwriting process, the Participating Lender must submit to the Program Director the Phase II documents identified in the Lender Checklist. Upon receipt of a complete set of Phase II documents, the Program Director will recommend final approval of the proposed sale of the Inclusionary Unit.

COMPLAINTS AND APPEALS

Complaints concerning the Homebuyer selection process should be made in writing and addressed to the Program Director. Complaints will be accepted only if they are in writing and are received within 30 days from the event giving rise to the complaint. The resolution process can be described as follows:

1. The Program Director shall contact the complainant to confirm receipt of the complaint.
2. If the complaint involves, pertains or relates to the Inclusionary Unit, or the prescreening and/or loan qualification process and procedures of the Developer, the Program Director shall contact the Developer prior to providing a written response to the complainant.

3. A written response from the Program Director will be made to the complainant and Developer within 10 business days of contacting the last person(s) required to be notified and contacted concerning the complaint.

If a complainant is not satisfied with the written response, a request for an appeal may be filed with the Executive Director. The appeal process can be described as follows:

1. The appeal request must be submitted in writing by the complainant.
2. The written request must set forth the reasons for the appeal and must be received by the Executive Director within 15 days from the date of the Program Director's written response.
3. In the event the request does not meet these requirements, the complainant will be notified that the request is denied; otherwise, the complainant will be invited to meet with the Executive Director to allow the complainant to advocate his/her position and to resolve the matter.
4. If the appeal of the Program Director's response involves, pertains or relates to the Inclusionary Unit, or the prescreening and/or loan qualification process and procedures of the Developer, the Developer shall be notified in advance of the meeting with the Executive Director, and shall have the right to appear at the meeting and respond any claims or allegations concerning the Developer's practices and procedures.
5. The Executive Director's response will be made in writing and served on the complainant and Developer within 10 business days following the meeting.

Any decisions or responses made by the Program Director and/or the Executive Director to a complaint shall be supported by reasonable inferences of admissible facts and shall be consistent and compliant with the provisions of the Ordinance, Regulatory Agreement, and the Administrative Procedures Manual: Ownership Housing Development.

ATTACHMENT D

NO INCOME CERTIFICATION

**NO INCOME CERTIFICATION FOR
HOUSEHOLD MEMBER**

I, _____ (NAME) certify that as of _____ (DATE), I am not receiving any type of income including, but not limited to, wages and salaries, overtime pay, commissions, fees, tips, bonuses, or any other compensation for personal services, net income from the operation of a business or profession, dividends or interest, net income from any kind of real or personal property, Social Security, annuities, retirement funds, pensions, death or disability benefits, unemployment or disability compensation, workers compensation, severance pay, welfare or other public assistance, alimony, or child support.

By this Certification, I declare under penalty of perjury that all of the foregoing information is true and correct. Misrepresentation or misstatement may be a violation of law that could result in a fine, criminal penalty or a default on the Inclusionary Housing Covenants Declaration and City Performance Deed of Trust made in conjunction with the purchase of this Inclusionary Unit.

Signature

Print Name

Date

ATTACHMENT E

DISCLOSURE DOCUMENTS

ATTACHMENT E – 1

ADDENDUM TO THE RESIDENTIAL PURCHASE AGREEMENT

ADDENDUM TO THE RESIDENTIAL PURCHASE AGREEMENT

The following language must be inserted exactly as written below into an Addendum to the Residential Purchase Agreement signed by both the seller and the buyer and attached to the Residential Purchase Agreement.

The subject property is an affordable housing unit in the City of Santa Ana Inclusionary Housing Program. The City of Santa Ana has established an Affordable Sales Price for this unit, and the purchase price in the Residential Purchase Agreement does not exceed this amount. All consideration for the purchase of the subject property has been fully disclosed and described in the Residential Purchase Agreement, which will be submitted to the City of Santa Ana for approval. Buyer and seller acknowledge that there may be no agreement separate from the Residential Purchase Agreement between buyer and seller or any other parties related in any manner to the purchase of the subject property, which would include payment for personal property, upgrades to the subject property, gifts, or other arrangements that might circumvent the Affordable Sales Price established by the City of Santa Ana.

ATTACHMENT E – 2

CERTIFICATE OF PURCHASER

CITY OF SANTA ANA
2021 AFFORDABLE HOUSING OPPORTUNITY AND CREATION ORDINANCE
CERTIFICATE OF PURCHASER

Applicant(s) / Co-Applicant(s) _____

Inclusionary Unit Address _____

Any Applicant(s) and Co-Applicant(s) are collectively referred to as the "Applicant". The Applicant hereby certifies the following:

- A. Applicant is buying the Inclusionary Unit shown above with the intent to occupy the home as the Applicant's Primary Residence, and with the understanding that the home cannot be rented or leased.
- B. The total purchase price of the Inclusionary Unit is \$_____.
- C. Applicant's combined annual Household Gross Income from all sources totals \$_____.
- D. The number of persons that will occupy the Inclusionary Unit is _____.
- E. Applicant has read the Special Disclosure form attached hereto and understands the information contained therein.
- F. Applicant acknowledges and understands that a Inclusionary Housing Covenants Declaration and City Performance Deed of Trust are recorded on title to the Inclusionary Unit.

All persons taking title to the Inclusionary Unit must sign this Certificate of Purchaser.

Applicant / Co-Applicant

Applicant / Co-Applicant

Signature

Signature

Print Name

Print Name

Date

Date

ATTACHMENT E – 3

SPECIAL DISCLOSURES

CITY OF SANTA ANA
AFFORDABLE HOUSING OPPORTUNITY AND CREATION ORDINANCE
SPECIAL DISCLOSURES

Applicant(s) / Co-Applicant(s) _____

Inclusionary Unit Address: _____

Any Applicant(s) and Co-Applicant(s) are collectively referred to as the “Applicant”. The undersigned “Applicant” who is buying the Inclusionary Unit shown above, acknowledges and understands that a Regulatory Agreement and a City Performance Deed of Trust are recorded on legal title to the Inclusionary Unit, and that the restrictions contained therein relate to the transfer and use of the Inclusionary Unit.

The Applicant specifically acknowledges the following restrictions. All persons taking title to the Inclusionary Unit must initial each item below:

_____ The Applicant is responsible for selecting a mortgage lender. The City does not endorse any mortgage lender, and the Applicant is under no obligation to choose any particular mortgage lender.

_____ The Applicant must obtain a Primary Loan that complies with the mortgage requirements defined in Section IV of the Administrative Procedures Manual: Ownership Housing Development.

_____ The Applicant must pay at least one percent (3%) of the Affordable Sales Price from the Applicant’s own funds, except as otherwise permitted by the City.

_____ The City shall not be held responsible for any costs associated with the Inclusionary Unit that the Applicant purchases.

_____ The Inclusionary Unit must be the Primary Residence of each member of the Household.

_____ No part of the Inclusionary Unit may be rented or leased to any individual or household; this includes renting or leasing to family members of the Homeowner.

_____ Refinancing existing debt on the Inclusionary Unit must be approved in advance by the City. The City may establish limits on the amount of debt that may be secured by the Inclusionary Unit.

_____ Ownership of the Inclusionary Unit may not be amended or transferred without prior approval by the City.

_____ The Homebuyer has executed agreements which secure the City's interests in the income and affordability that are imposed on the Inclusionary Unit. These income and affordability covenants will remain in place for a minimum of one cumulative 55-year period following the issuance date of a tentative or final Certificate of Occupancy for an Inclusionary Unit .

_____ The Homeowner may not discriminate against potential subsequent buyers based on their race, color, religion, sex, marital status, sexual orientation, national origin, or ancestry.

The undersigned has taken the requirements included in the Regulatory Agreement, as partially described in this Special Disclosure, into account prior to determining to purchase the Inclusionary Unit.

All persons taking title to the home must sign this Special Disclosure.

Applicant / Co-Applicant

Applicant / Co-Applicant

Signature

Signature

Print Name

Print Name

Date

Date

ATTACHMENT F

LENDER CHECKLIST

LENDER CHECKLIST REQUIRED DOCUMENTS

Homebuyer's Name:

Property Address:

Developer:

Affordable Sales Price:

Market Rate Sales Price

Primary Loan Amount:

Interest Rate:

PHASE I DOCUMENTS: REQUIRED TO BE SUBMITTED BY THE PRIMARY LENDER TO THE PROGRAM DIRECTOR FOR PRE-APPROVAL OF THE PROSPECTIVE HOMEBUYER

- Submittal Requirements identified in Section V-A of the Administrative Procedures Manual: Ownership Housing Development
- Credit Reports for the Homebuyer, and if applicable for the spouse or domestic partner of the Homebuyer irrespective of whether or not they will be included as a party to the Primary Loan
- Form 1003 – Loan application for the Primary Loan

LENDER CHECKLIST REQUIRED DOCUMENTS (CONTINUED)

PHASE II DOCUMENTS: REQUIRED TO BE SUBMITTED BY THE PRIMARY LENDER TO THE PROGRAM DIRECTOR FOR THE FINAL APPROVAL OF THE PROPOSED SALE OF THE INCLUSIONARY UNIT

- Residential Purchase Agreement
- Disclosure Documents provided in Attachment E to the Administrative Procedures Manual: Ownership Housing Development
- Approval of the Primary Loan by the Primary Lender
- Loan Estimate for Primary Loan
- Closing Disclosure for the Primary Loan
- Estimated Settlement Statement for the Primary Loan
- Verification of Employment for all Adult Household members
- Preliminary Title Report with Wire Instructions
- Escrow instructions with vesting information
- Appraisal for the Inclusionary Unit

LENDER CHECKLIST - PHASE I TIMELINE

Program Director receives Phase I Documents from the Primary Lender.	90 day escrow period commences
Program Director identifies missing information.	Up to 5 business days
Primary Lender submits missing information.	Up to 10 business days
Program Director informs the Developer of the pre-approval or denial of the applicant after a complete set of Phase I Documents are submitted.	Up to 5 business days
Developer informs the applicant in writing of the pre-approval or denial of the application.	Up to 5 business days
Developer commences good-faith negotiations with the pre-approved applicant. Developer may accept back-up offers from prospective applicants that submitted applications prior to receipt of the first pre-approval notice.	

LENDER CHECKLIST - PHASE II TIMELINE

Program Director receives Phase II Documents from the Primary Lender and transmits final approval to the Developer.	Up to 5 business days
City Attorney's office prepares the Regulatory Agreement and City Performance Deed of Trust and transmits to the Program Director.	Up to 5 business days
Program Director obtains the necessary signatures from pertinent City representatives.	Up to 3 business days
Program Director submits a request to the Primary Lender to draw up the Primary Loan documents.	Up to 2 business days
Primary Lender submits Primary Loan documents to escrow.	Up to 6 business days

LENDER CHECKLIST – ESCROW CLOSING TIMELINE

Program Director submits executed Regulatory Agreement and City Performance Deed of Trust to Escrow	Up to 2 business days
Homebuyer signs Primary Loan documents, Disclosure Documents, Regulatory Agreement, and City Performance Deed of Trust.	Up to 2 business days
Primary Lender funds the Primary Loan	Up to 2 business days
Escrow records and closes.	No later than 90 days after escrow was opened
Program Director receives copies of the recording documents and completes the file for the Inclusionary Unit.	4 to 6 weeks after the close of escrow