

ORDINANCE NO. NS-_____

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 ~~which has not been issued a building permit or paid the in-lieu fee as of November 17, 2021~~, 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 ~~ten~~ 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/ <u>Lots</u>	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 ~~Incentive.~~* 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 in-lieu fee.~~ 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. ~~for fifteen (15) or more units~~ However, ~~if~~ this fee shall be reduced if the developer ~~voluntarily~~ 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 ~~as follows:~~

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 ³⁵ % 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:

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

(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 ~~and should 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, ~~and if so provided, shall also include~~ a minimum of 35% of ~~such labor all work hours~~ 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 _____ day of _____, 2021.

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 _____

NOES: Councilmembers _____

ABSTAIN: Councilmembers _____

NOT PRESENT: Councilmembers _____

CERTIFICATE OF ATTESTATION AND ORIGINALITY

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

Date: _____

Clerk of the Council
City of Santa Ana