

**UPTOWN NEWPORT  
AFFORDABLE HOUSING IMPLEMENTATION PLAN**

**~~November 29~~December 14, 2012**

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## ***I. Introduction***

Uptown Newport consists of 25 acres of developed land located in the City of Newport Beach on the north side of Jamboree Road at the intersection of Fairchild Road. The property was originally developed as part of the Koll Center, and has been used for manufacturing telecommunications equipment and computer chips since the 1970's. The property currently includes two industrial buildings that are leased to multiple tenants including TowerJazz, who manufactures computer chips onsite. The property is currently accessed via two entries on Jamboree Road, a drive access via Birch, and a drive access via Von Karman Avenue.

The City's General Plan allows for infill development and redevelopment of the Airport Business Area including up to 2,200 residential units. In September of 2010, the City approved the Koll-Conexant Integrated Conceptual Development Plan (ICDP), which provides a framework for residential development on both the Koll and Conexant properties within the Airport Business Area. The ICDP allocated a maximum of 1,244 residential units and up to 11,500 square feet of retail to be developed on the Uptown Newport (formerly Conexant) property, and up to 260 residential units to be developed on the Koll property.

## ***II. Project Description***

The Uptown Newport Planned Community Development Plan (PA2011-134) project will include redevelopment of the 25-acre property into a high-density mixed use residential project. Up to 1,244 residential units, 11,500 square feet of retail, and 2 acres of park space are planned as part of the project.

The project is anticipated to be developed in two primary phases. Phase 1 will include demolition of the existing single-story office building at 4311 Jamboree, and development of the westerly portion of the property, including the frontage along Jamboree Road. Phase 1 will include development of up to 680 residential units and up to 11,500 square feet of retail space, and is projected to commence in 2013. Phase 2 will include demolition of the existing TowerJazz fabrication building, and development of approximately 564 residential units on the easterly portion of the property.

The number of residential units planned to be developed is based upon replacement units allocated to the site based on conversion of existing office and industrial uses to residential uses, additive units allocated pursuant to the General Plan, and density bonus units allowed pursuant to Government Code Section 65915-65918 ("State Density Bonus Law") and City of Newport Beach Municipal Code Chapter 20.32 (the "Density Bonus Code").

On the Uptown Newport site, up to 632 units would replace the existing industrial and office uses which are to be demolished, 290 units are additive for a total of 922 units ("Base Units"). Up to 322 additional units can be developed as density bonus units pursuant to the State Bonus Density law and the Density Bonus Code.

Replacement Units	632
Additive Units	<u>290</u>
Subtotal – Base Units	922
Density Bonus Units @ 35%	<u>322</u>
Total Units	1,244

The State Density Bonus Law and the City’s Density Bonus Code provide for an increase in the number of units of up to thirty-five percent (35%) above the maximum number of units allowed by the General Plan provided the project constructs a minimum number of affordable units depending upon what income category is served. At the maximum density bonus of 35%, the Project could accommodate up to 322 additional units above the 922 Base Units for a total of 1,244 total units.

This AHIP is intended to implement affordable housing requirements for the Uptown Newport project pursuant to the State Bonus Density Law, Title 19 Chapter 19.54 of the Newport Beach Municipal Code ( the “Inclusionary Code”), and the Density Bonus Code.

### ***III. Affordable Housing Obligation***

Subdivision projects that result in a net increase of residential units have a requirement to provide affordable housing pursuant to the City’s inclusionary housing requirements that are set forth in chapter 19.54 of the Municipal Code as well as the Density Bonus Code set forth in chapter 20.32 of the Municipal Code (combined, the “Affordability Requirements” or “Affordable Housing Requirements”).

The Owner seeks to achieve the maximum 35% density bonus, and will meet the Affordable Housing Requirements by the construction of affordable housing as follows:

- By providing a minimum of eleven percent (11%) of the Base Units (102 units) for **Very-Low Income households** for rent, or
- By providing a minimum of twenty percent (20%) of the Base Units (185 units) for **Low-Income households** for rent, or
- By providing a minimum of forty percent (40%) of the Base Units (369 units) for **Moderate-Income households** for ownership, or
- By providing a combination of the above.

In the event a combination of the above housing types is constructed, a Very-Low Income unit shall be deemed to be the equivalent of 3.6 Moderate Income units or 1.8 Low-Income units. A Low-Income unit shall be the equivalent of 2 Moderate-Income units. For example, if 30 Very-Low Income units are constructed, either 131 Low-Income or 261 Moderate Income units would be required to complete the affordability requirements. If 89 Low-Income units are constructed, 191 Moderate-Income units are required. For this conversion the required number of units shall be rounded up to the nearest whole number.

In the event that the Project utilizes a density bonus of less than 35%, then the Affordability Requirements would be reduced pro-rata with the reduction of market rate units through an amendment to this AHIP.

#### ***IV. Methods to meet Affordability Requirements***

The Owner shall meet its Affordable Housing Requirements by developing the affordable units on site. Pursuant to section 20.32.070 of the City Municipal Code, affordable units shall be dispersed throughout the Planned Community unless clustering of the affordable units in one or more sections of the Planned Community is approved by the Community Development Director.

#### ***V. Definitions***

The City's Affordability Requirements and Affordable Housing Requirements set out certain definitions and descriptions to assist in the implementation of the requirements, many of which are indicated below. These definitions and descriptions will be utilized in the interpretation of the requirements under this AHIP:

- A. Affordable Housing Agreement (AHA).** Section 20.32.100 of the Density Bonus Code requires that an applicant that seeks a density bonus shall enter into an Affordable Housing Agreement ("AHA") with the City. Section 19.54.020(A) of the Inclusionary Code states that the AHA shall provide legal restrictions by which the affordable units shall be restricted to ensure that the units remains affordable to very low-, low-, or moderate-income households, as applicable. With respect to rental units, rent restrictions shall be in the form of a regulatory agreement recorded against the applicable property. With respect to owner-occupied units, resale controls shall be in the form of resale restrictions, deeds of trust, and/or other similar documents recorded against the applicable property.
- B. Affordable Housing Cost.** Pursuant to State of California Health & Safety Code Section 50052.5, affordable housing costs for any owner-occupied for-sale affordable units shall be as follows:
- a. The affordable housing costs for very low-income households shall not exceed thirty (30) percent of fifty (50) percent of area median income for Orange County adjusted for household size appropriate for the unit.
  - b. For low-income households the affordable housing costs shall not exceed thirty (30) percent of seventy (70) percent of area median income for Orange County adjusted for household size appropriate for the unit. For those low-income households with incomes above seventy (70) percent of area median income the maximum affordable housing cost may be increased to thirty (30) percent of the income of the household.
  - c. For moderate-income households the affordable housing costs shall not be less than twenty-eight (28) percent of the gross income of the household nor exceed thirty-five (35) percent of one hundred ten (110) percent of Orange County area median income adjusted for household size appropriate for the unit. Furthermore, for those moderate-income households with incomes above one hundred ten (110) percent of area

median income the affordable housing costs may be increased to thirty-five (35) percent of the gross income of the household.

- d. Pursuant to sections 19.54.020 (C) and (D) of the City's Municipal Code "Adjusted for household size appropriate for the unit" shall mean a household size based upon two (2) persons per bedroom except for efficiency units where the household size shall be one (1) person.

**C. Affordable Rental Price.** – Municipal Code section 19.54.020(D) defines an affordable rental price as an annual rent that does not exceed thirty (30) percent of the maximum income level for very low-, low-, and moderate-income households, as adjusted for household size. In determining the maximum household income for a given affordable unit, it shall be based upon each bedroom being occupied by two persons, except for efficiency units (one person).

**D. Affordable Unit.** Municipal Code section 19.54.020 (E) defines an Affordable Unit as an ownership or rental-housing unit, including senior housing, affordable to households with very low-, low-, and moderate-incomes as defined herein.

**E. Low-Income.** Municipal Code section 19.54.020 (G) defines low-income as an income between fifty (50) percent and eighty (80) percent of the Orange County median income, adjusted for actual household size, as determined by the California Department of Housing and Community Development ("HCD"). Within this AHIP "low-income" and "lower-income" shall have the same meaning.

**F. Moderate-income.** Municipal Code section 19.54.020 (H) defines moderate-income as an income between eighty (80) percent and one hundred twenty (120) percent of the Orange County median Income, adjusted for actual household size, as determined by the HCD.

**G. Very low-income.** Municipal Code section 19.54.020 (I) defines very low-income to mean income fifty (50) percent or less of the Orange County median income, adjusted for actual household size, as determined by the HCD.

**H. Annual Adjustments.** Orange County Area Median Incomes utilized for setting the Affordable Housing Price, Affordable Housing Costs, and Affordable Rental Price shall be those published annually by HCD.

**I. Permissible Residency.** Whenever an occupancy restriction identifies a particular household category for occupancy, households with less income may also occupy that unit. So, for example, if a unit has a Moderate-Income restriction, Low-Income and Very-Low Income households may occupy that unit. Similarly, if a unit has a Low-Income restriction, Very Low-Income households may occupy that unit.

**J. Rental Income Limits Established.** The permissible rental rates for the affordable units shall not exceed the Affordable Rental Price described earlier in this AHIP.

**K. Affordable Housing Costs Established.** The permissible Affordable Housing Costs for the affordable units shall not exceed the Affordable Housing Costs described earlier in this AHIP.

**L. Term of Affordability Restrictions.**

- a. The affordable rental units provided through the implementation of this AHIP shall be legally restricted to occupancy by, and affordable to, households meeting the income requirements designated herein for a minimum duration of thirty (30) years from the date of the certificate of occupancy for the affordable units.
- b. Any affordable owner-occupied units provided through the implementation of this AHIP will be restricted to occupancy by, and affordable to, moderate income households. The term of the restrictions will run until the earlier of (i) the termination of the affordability restrictions in accordance with the equity sharing provisions described in section c(i) below or (ii) thirty (30) years from the date of the initial Certificate of Occupancy.
- c. The affordability restrictions will be documented by the recording of the following documents against the affected units:
  - i. In the case of owner-occupied for-sale units a Regulatory Agreement, Restrictive Covenant, or equivalent will be recorded against each affordable unit upon the sale to the initial occupant. The new qualified owner will also sign a promissory note with the City as beneficiary in the amount of the City's initial subsidy, which shall be as defined in section 20.32.090 B 2 (a) of the Density Bonus Code. The promissory note will be secured by a trust deed, which will be recorded against the unit and subordinated to conventional financing secured by the buyer, which will be in first position on title. The affordable units shall be subject to the City's equity sharing requirements which are described in section 20.32.090 B of the City's Density Bonus Code.
  - ii. In the case where the restricted units are rental units, a Regulatory Agreement or equivalent will be recorded against the apartment project assuring the continued affordability of the restricted units for a minimum of 30 years. The Regulatory Agreement will be subordinate to any conventional mortgage or bond financing which has a first trust deed position against the apartment project.

**M. Units Applicable against RHNA Requirements.** The City and Owner agree that any affordable units produced through the implementation of this AHIP may be used by the City to meet its Regional Housing Needs Assessments ("RHNA") specified by the Southern California Association of Governments ("SCAG").

**N. Orange County Area Median Income.** Annually HCD publishes area median incomes (“AMI”) for each county in California. HCD revised and updated its 2012 income limits on February 1, 2012. The 2012 income limits for Orange County are as follows:

**Orange County Median Income - 2012**

Household Size	1	2	3	4	5
Income Category:					
Extremely Low Income	\$20,250	\$23,150	\$26,050	\$28,900	\$31,250
Very Low Income	\$33,750	\$38,550	\$43,350	\$48,150	\$52,050
Lower Income	\$53,950	\$61,650	\$69,350	\$77,050	\$83,250
Median Income	\$59,700	\$68,250	\$76,750	\$85,300	\$92,100
Moderate Income	\$71,650	\$81,900	\$92,100	\$102,350	\$110,550

Source: Department of Housing & Community Development, revised 2/1/12

**VI. Assurance of the Development of Affordable Housing.**

1. If the Owner has not commenced the development of affordable units in accordance with the phasing plan described in section VIII below then the City may withhold Certificates of Occupancy for the market rate units under construction until the Owner or successor in interest has commenced or completed the development of the affordable units.
2. For purposes of this section “commence the development” shall mean (i) commence or complete the construction of the affordable units, or (ii) issuance of building permits for or completion of the construction of the affordable units.

**VII. Phasing of the Affordable Housing Production.**

1. Affordable housing shall be constructed in each of the two proposed phases of development. Based upon the current phasing plan where 680 units are proposed for Phase 1 and 544 units are proposed for Phase 2, the minimum number of units to be constructed in Phase 1 shall be 55% and shall not exceed 60% of the total affordable housing obligation for the Uptown Newport project. The remaining affordable housing obligation shall be constructed in Phase 2.
2. Prior to the issuance of a certificate of occupancy for seventy-five (75%) of the market rate units planned within each Phase, the Owner shall commence construction or complete the construction of a minimum of fifty percent (50%) of the affordable units required to be constructed within each Phase.
3. Prior to the issuance of a certificate of occupancy for one hundred percent (100%) of the market-rate units within each Phase, the Owner



shall obtain a certificate of occupancy for all affordable units required to be constructed within each Phase.

- ~~1. The affordable housing required under this AHIP may be produced incrementally along with the market rate units or may be produced in advance of the market rate units. If the units are produced incrementally then the development of the affordable units shall proceed in accordance with the schedule indicated herein.~~
- ~~2. Prior to the issuance of a final certificate of occupancy for fifty percent (50%) of the market rate units, the Owner shall commence construction of or complete a minimum of one-third of the affordable units (i.e. 1/3<sup>rd</sup> of 185 low-income units equals 61 units).~~
- ~~3. Prior to the issuance of building permits for Phase 2, the Owner shall have completed construction on a pro-rata amount of the affordable units within phase 1. Therefore, for example, if Phase 1 is 680 units out of a total project size of 1,244 units, or fifty-five percent (55%), then the owner shall have completed construction on a minimum of 55% of the affordable units or the equivalent of 101 low-income affordable units.~~
- ~~4. Prior to the issuance of a certificate of occupancy for seventy-five percent (75%) of the market rate units, the Owner shall have commenced construction of or completed a minimum of two-thirds of the affordable units (i.e. 2/3rds of 185 low-income units equals 123 units).~~
- ~~5. After the issuance of the certificate of occupancy for seventy-five percent (75%) of the market rate units, the Owner and City shall reconcile the number of market rate units and affordable units to determine the final number of affordable units that will be required.~~
- ~~6. Prior to the issuance of the certificate of occupancy for the final market rate units, the Owner shall have commenced construction of or completed all of the remaining affordable units.~~

VIII. ***Affordable Housing Agreement.*** An AHA referencing the terms of this AHIP shall be executed and recorded between the City and Owner prior to recordation of the Final Map for the project for the complete Project. ~~A short form or memorandum of the AHA may shall also be executed and recorded.~~

IX. ***Amendments of the AHIP.*** This AHIP may be amended by mutual agreement of the parties which will require City Council approval pursuant to section 19.54.060 of the Municipal Code.

X. ***Successors in Interest.*** The obligations and benefits applying to the Owner under this AHIP shall also apply to any successors in interest to the Owner.

XI. ***Right to Assign.*** Owner shall have the right to assign this AHIP, including all benefits, covenants, duties, and obligations contained herein, upon the City's prior approval, which shall not be unreasonably withheld or delayed. Owner shall

notify the City in writing of the assignment at least thirty (30) days prior to completion of the assignment. Owner's notice of assignment to the City shall include the name of, and contact information for the assignee. Upon completion of the assignment, the assignee shall be responsible and liable for the performance of all duties and obligations set forth in this AHIP, excepting only those duties and obligations expressly retained by Owner, if any, as part of the assignment.