

ORDINANCE NO. 2010-9

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
NEWPORT BEACH INCORPORATING A NEW
INCLUSIONARY HOUSING CHAPTER (CHAPTER 19.54)
INTO TITLE 19 OF THE NEWPORT BEACH MUNICIPAL
CODE.**

WHEREAS, the City of Newport Beach ("City") is a charter city, governed by a charter adopted by the citizens of the City; and

WHEREAS, it is a public purpose of the City and a policy of the State to achieve a diverse and balanced community with housing available for households of all income levels; and

WHEREAS, economic diversity fosters social and environmental conditions that protect and enhance the social fabric of the City and is beneficial to the health, safety and welfare of its residents; and

WHEREAS, the lack of affordable housing has a direct impact upon the health, safety and welfare of the residents of the City;

WHEREAS, State law pertaining to General Plans and the Housing Element of the City General Plan require that City ordinances regulate land use development and that the City otherwise use its authority in a manner that provides an adequate supply of housing for all economic segments of the community; and

WHEREAS, the City is experiencing a shortage of housing affordable to very low-, low- and moderate-income households and will not be able to fully contribute to the attainment of the State housing goals or to retain a healthy environment without additional affordable housing; and

WHEREAS, new residential development generally does not provide housing opportunities for very low-, low- and moderate-income households due to the high cost of land in the City; and

WHEREAS, an increasing number of persons in very low-, low, and moderate-income households live in overcrowded or substandard housing and devote an overly large percentage of their income to pay for housing; and

WHEREAS, the amount of land in the City available for residential development is limited; and

WHEREAS, the consumption of this remaining land for residential development without providing housing affordable to persons of all income levels would be contrary to housing, environmental and planning policies and have a substantial negative impact on

the environment and economic climate because (i) housing will have to be built elsewhere, far from employment centers and, therefore, commutes will increase, causing increased traffic and transit demand and consequent noise and air pollution; and (ii) City businesses will find it more difficult to attract and retain the workers they need; and

WHEREAS, new residential development in the City that does not provide for affordable units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land, reducing the supply of land for affordable housing and increasing the price of the remaining residential land; and

WHEREAS, at the same time, new residential development contributes to the demand for goods and services in the City, increasing local service employment at wage levels which often do not permit employees to afford housing in the City; and

WHEREAS, Federal and State funds for the construction of new affordable housing are insufficient to fully address the problem of affordable housing within the City; and

WHEREAS, the private housing market has failed to provide adequate housing opportunities for very low-, low-, and moderate- income households; and

WHEREAS, the City is aware that there may be times when the inclusionary housing requirements make market-rate housing more expensive; and

WHEREAS, in weighing all the factors, including the significant need for affordable housing, the City Council has made the decision that the community's interests are best served by the adoption of inclusionary housing regulations; and

WHEREAS, to implement the City's General Plan, to carry out the policies of the State and Federal law and policy, and to ensure the benefits of economic diversity of the residents of the City, it is essential that new residential development in the remaining new growth areas of the City contain housing opportunities to households of very low-, low- and moderate-income, and that the City provide a regulatory framework which ensures development of an adequate supply and mix of new housing to meet the future housing needs of all income segments of the community; and

WHEREAS, in July of 2006, the City Council adopted an update to the City's General Plan, which includes a Housing Element that addresses issues, goals, and policies related to ensuring an adequate supply of housing opportunities for all residents; and

WHEREAS, with the intent of achieving the City's Regional Housing Needs Assessment (RHNA) construction goals and to encourage the housing development industry to respond to the housing needs of the community and demand for affordable

housing, the City updated its longstanding inclusionary housing program and incorporated it into the 2006 Housing Element Update (Housing Program 2.2.1); and

WHEREAS, Housing Program 2.2.1 is a statement of the City's inclusionary housing policy and requires the preparation of an Affordable Housing Implementation Plan (or the payment of an in-lieu fee) when the construction of new units are proposed; and

WHEREAS, the City Council finds that it is necessary to adopt an inclusionary housing ordinance to implement Housing Program 2.2.1 and to address the City's housing shortage; and

WHEREAS, notice of this hearing was made by posting the Council Agenda on the City's official notice bulletin board and posting the agenda and report on the City's Website. Notice of the time and place of the hearing, including the address where the information could be reviewed, was also posted on the City's official notice bulletin board, and mailed to the Building Industry Association of Southern California, Orange County Chapter per their written request not less than 14 days prior to the hearing. In addition, an e-mail notification of this meeting was sent to all interested parties on the City's Housing Interest List.

NOW THEREFORE, the City Council of the City of Newport Beach, California, hereby ordains as follows:

SECTION 1: Chapter 19.54 of the Newport Beach Municipal Code is hereby added to Title 19 to read as shown in Exhibit 1, which is attached hereto and incorporated by reference into this ordinance. All other provisions of Title 19 of the Newport Beach Municipal Code shall remain unchanged.

SECTION 2: If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

SECTION 3: The proposed action is not defined as a project and does not require environmental review under the California Environmental Quality Act (CEQA) because it involves general policy and procedure making activities not associated with a project and does not have the potential for resulting in a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment (Section 15378 of the CEQA Guidelines); and

SECTION 4: The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. This Ordinance shall be published once in the official newspaper of the City, and the same shall become effective thirty (30) days after the date of its

adoption.

SECTION 5: This Ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 27th day of April, 2010, and adopted on the 11th day of May, 2010, by the following vote, to wit:

AYES, COUNCIL MEMBERS Selich, Rosansky, Webb, Gardner

NOES, COUNCIL MEMBERS Daigle, Mayor Curry

ABSENT, COUNCIL MEMBERS Henn



Mayor

ATTEST:



City Clerk



APPROVED AS TO FORM,
OFFICE OF CITY ATTORNEY:



Leonie Mulvihill, Acting City Attorney
for the City of Newport Beach

STATE OF CALIFORNIA }
COUNTY OF ORANGE } ss.
CITY OF NEWPORT BEACH }

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing ordinance, being Ordinance No. 2010-9 was duly and regularly introduced on the 27th day of April, 2010, and adopted by the City Council of said City at a regular meeting of said Council, duly and regularly held on the 11th day of May, 2010, and that the same was so passed and adopted by the following vote, to wit:

Ayes: Selich, Rosansky, Webb, Gardner

Noes: Daigle, Mayor Curry

Absent: Henn

Abstain: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 12th day of May, 2010.



(Seal)

City Clerk
City of Newport Beach, California

CERTIFICATE OF PUBLICATION

STATE OF CALIFORNIA }
COUNTY OF ORANGE } ss.
CITY OF NEWPORT BEACH }

I, LEILANI I. BROWN, City Clerk of the City of Newport Beach, California, do hereby certify that Ordinance No. 2010-9 has been duly and regularly published according to law and the order of the City Council of said City and that same was so published in *The Daily Pilot*, a daily newspaper of general circulation on the following dates:

Introduced Ordinance: May 1, 2010
Adopted Ordinance: May 15, 2010

In witness whereof, I have hereunto subscribed my name this _____ day of _____
2010.

City Clerk
City of Newport Beach, California

EXHIBIT 1

CHAPTER 19.54

INCLUSIONARY HOUSING

Sections:

- 19.54.010 Purpose
- 19.54.020 Definitions
- 19.54.030 Applicability
- 19.54.040 Regulations
- 19.54.050 In Lieu Fees
- 19.54.060 Affordable Housing Implementation Plan (AHIP)
- 19.54.070 Alternatives to On-Site Construction
- 19.54.080 Affordable Housing Agreement
- 19.54.090 Affordable Housing Fund
- 19.54.100 Adjustments, Waivers

19.54.010 Purpose

The purpose of this Chapter is to:

- A. Provide a balanced residential community comprised of a variety of housing types and opportunities for all social and economic segments, including very low-, low-, and moderate-income households;
- B. Promote the City's goal to add affordable housing units to the City's housing stock in proportion to the overall increase in new housing units;
- C. Offset the demand on housing that is created by residential development and mitigate environmental and other impacts that accompany residential development by protecting the economic diversity of the City's housing stock, reducing traffic, transit and related air quality impacts, promoting jobs/housing balance and reducing the demands placed on transportation infrastructure in the region; and
- D. Ensure that the limited remaining developable land in the City's planning area is utilized in a manner consistent with the Housing Element.

19.54.020 Definitions

For the purposes of this Chapter and this Title, the following terms shall have the meanings indicated:

- A. Affordable Housing Agreement. The agreement entered into in compliance with Section 19.54.080 which provides legal restrictions by which the affordable units shall be restricted to ensure that the unit 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 Implementation Plan (AHIP). A plan prepared in compliance with Section 19.54.060 which provides a description of the residential subdivision and method of satisfying the affordable housing requirement.
- C. Affordable Housing Price. A sales price that is no more than 3 times the maximum income level for very low-, low-, and moderate-income households. In determining the maximum household income for a given affordable unit, it shall be assumed that each bedroom is occupied by two persons, except for efficiency units (one person).
- D. Affordable Rental Price. An annual rent that does not exceed 30 percent of 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 assumed that each bedroom is occupied by two persons, except for efficiency units (one person).
- E. Affordable Unit. An ownership or rental-housing unit, including senior housing, affordable to households with very low-, low-, and moderate-incomes as defined in this Chapter.
- F. Conversion. A change of a dwelling unit to a condominium, cooperative, or a similar form of ownership, or to a nonresidential use.
- G. Low-income. Income between 50% and 80% of the Orange County median income, adjusted for actual household size, as determined by the California Department of Housing and Community Development.
- H. Moderate-income. Income between 80% and 120% of the Orange County median income, adjusted for actual household size, as determined by the California Department of Housing and Community Development.
- I. Very low-income. Income 50% or less of the Orange County median income, adjusted for actual household size, as determined by the California Department of Housing and Community Development.

19.54.030 Applicability

Residential subdivision projects that result in a net increase in the number of units on the property shall comply with the requirements of this Chapter, unless granted an adjustment or waiver in compliance with Section 19.54.100 (Adjustments, Waivers). The provisions of this Chapter shall not apply to nonresidential subdivisions, nor to condominium projects or stock cooperatives which consist of the subdivision of air space in an existing apartment building which, at the time of tentative map filing, is five or more years old.

19.54.040 Regulations

A. Affordability Requirement.

1. Residential subdivision projects subject to this Chapter shall include the construction of 15% of the net increase number of dwelling units within the residential development project as affordable units restricted for occupancy by very low-, low- or moderate-income households. Notwithstanding the construction requirements, alternatives to on-site construction may be provided pursuant to Section 19.54.070 (Alternatives to On-Site Construction). A lower percent of affordable units may be approved as part of an AHIP if the project includes units for very low-income households.
2. The affordability requirement shall apply only to the net increase of residential units on the property. In the event that the residential subdivision project includes the demolition or conversion of existing residential units, except as provided in Chapter 20.86 of the Zoning Code (Low and Moderate Income Housing within the Coastal Zone), the affordability requirement shall only apply to the net increase of residential units on the property.
3. Affordable units required to be replaced under the provisions of Chapter 20.86 of the Zoning Code (Low and Moderate Income Housing within the Coastal Zone) shall not be eligible for fulfilling the number of affordable units required under the provisions of this Chapter.
4. The number of affordable units required for a residential subdivision project shall be determined by the review authority prior to tentative or parcel map approval.
5. To determine the number of units required when new affordable units are to be provided, any decimal fraction less than 0.50 shall be rounded down to the nearest whole number, and any fraction greater than or equal to 0.50 shall be rounded up to the next whole number. Provided, in no case shall the affordability requirement be zero.

B. For-Sale Price, Rent, of Affordable Units. For affordable for-sale units provided in compliance with this Chapter, the applicant shall sell the units at a housing price affordable for moderate-income households. If the applicant chooses to provide affordable rental units to comply with this Chapter, the applicant shall rent the units at a rental price affordable for very low- or low-income households.

C. Duration of Affordability Requirement. Affordable units required by this Section shall be legally restricted to occupancy by, and affordable to, households of the income levels for which the affordable units were designated for a minimum duration of 30 years, or as provided in an approved AHIP.

- D. Timing. Affordable units shall be provided and offered for occupancy concurrently with or prior to the occupancy of the market-rate units. For projects that are phased over time, affordable units shall be provided in accordance with an approved AHIP.

19.54.050 In Lieu Fees

A. General Requirements.

1. For residential subdivision projects of 50 or fewer dwelling units, the requirements of this Chapter may be satisfied by paying a fee in lieu of providing all or a portion of the affordable units, unless otherwise provided by an approved AHIP.
2. For residential subdivision projects of 51 dwelling units or more, the applicant may not pay a fee in lieu of constructing the required affordable units, unless otherwise provided by an approved AHIP.

- B. In-Lieu Fee Payment. When a fee is being paid in lieu of providing affordable units, the in-lieu fee shall be paid for each market-rate unit within the residential subdivision project.

- C. Timing of Payment. Payment of the in-lieu fee shall be made prior to the issuance of a Building Permit, unless otherwise provided by an approved AHIP.

- D. Amount of Fee. The amount of the in-lieu fee shall be set by resolution of the Council.

19.54.060 Affordable Housing Implementation Plan (AHIP)

A. When Required.

1. Residential subdivision projects of 51 dwelling units or more shall be required to submit an AHIP.
2. Residential subdivision projects of 50 or fewer dwelling units shall have the option of submitting an AHIP or paying an in-lieu fee.

B. Contents. The AHIP shall contain the following information:

1. A description of the residential subdivision, including the number of market rate and affordable units proposed, and the basis for the calculation of the number of required affordable units;
2. The method of satisfying the affordable housing requirement, including the income level(s) and tenure of the affordable units to be provided;
3. A phasing plan, if the applicant proposes a phased project, that provides for the timing of development of the affordable units;

4. Information necessary to establish compliance with criteria provided in Subsection 19.54.070.B (Off-Site Renovation Projects) or Subsection 19.54.070.C (Land Dedication), if applicable; and
5. Any additional information requested by the Planning Director to assist in the evaluation of the AHIP.

C. Approval.

1. The review authority for the project shall approve, conditionally approve, or deny the AHIP on the basis of the application, plans, materials, and testimony submitted.
2. If the AHIP proposes the dedication of land in compliance with Subsection 19.54.070.C (Land Dedication) the City Council shall be the final review authority. In these cases, the Planning Commission shall first recommend and the City Council shall approve, conditionally approve, or deny the AHIP.

D. Appeal of review authority's decision. The decision of the review authority may be appealed in compliance with Chapter 20.95 (Appeals).

19.54.070 Alternatives to On-Site Construction

The following alternative means of compliance with this Chapter may be considered as part of an AHIP.

- A. Off-Site Construction Projects. An applicant may propose to construct some or all of the affordable units required by this Chapter at a location not physically within the residential subdivision project; however, the affordable units shall be located within the City boundaries.
- B. Off-Site Renovation Projects. An applicant may propose to renovate and convert existing off-site units in the City to affordable units in lieu of constructing some or all of the affordable units required by this Chapter. The proposed units shall meet the following requirements:
 1. The interiors and exteriors of the units shall be substantially renovated to improve the livability and aesthetics of the units for the duration of the affordability period.
 2. The units shall be returned to the City's housing supply as decent, safe and sanitary housing and meet all applicable housing and building code requirements.
 3. Renovations shall include energy conserving retrofits that will contribute to reduced housing costs for future occupants of the units.

4. The units shall not already be subject to affordability income restrictions unless such restrictions are set to expire in 3 years or less. In such cases, the affordability covenant shall provide for 30 years in addition to any existing covenant time.
- C. Land Dedication. An applicant may propose to dedicate land to the City or to a City-designated housing developer for the provision of affordable units in lieu of constructing some or all of the affordable units required by this Chapter. The dedicated land shall meet the following site suitability requirements:
1. The dedicated land shall be useable for its intended purpose and have the appropriate General Plan and zoning designation for the development of affordable housing, be free of toxic substances and contaminated soils, be fully improved with infrastructure and adjacent utilities necessary to serve the project, and shall have no title restrictions that would prevent the development of the required number of affordable units.
 2. Title to the dedicated land, or lease hold for the useful life of the housing improvements, shall be conveyed to the City or City-designated housing developer before a Building Permit is issued for any portion of the residential subdivision project.
 3. All property taxes, special taxes, fees, or other assessments shall be current before the title is conveyed.
 4. The dedicated land shall be sufficient in size to construct the number of affordable units that the applicant would otherwise be required to construct.
- D. Findings and Decision. The review authority may approve or conditionally approve, an AHIP that proposes alternative means of compliance with the requirements of this Chapter after first finding all of the following:
1. The purpose of this Chapter would be served by the implementation of the proposed alternative;
 2. The units provided are located within the City and are consistent with the requirements of this Chapter; and
 3. It would not be feasible or practical to construct the units on-site.

19.54.080 Affordable Housing Agreement.

An applicant that chooses any option for satisfying the affordability requirements of the Chapter, with the exception of the payment of in-lieu fees, shall enter into an affordable housing agreement with the City. The affordable housing agreement shall be executed in a recordable form prior to the issuance of a Building Permit for any portion of a residential subdivision project subject to the requirements of this Chapter.

- A. Contents. Affordable housing agreements shall include the following where applicable:
1. A description of the residential subdivision project, how the affordable housing requirements will be met by the applicant, and whether the affordable units will be rented or owner-occupied;
 2. The number, size, and location of each affordable unit;
 3. Incentives provided by the City (if any) for density bonus;
 4. Limits on income, rent and sales price of affordable units;
 5. Procedures for tenant selection and the process for qualifying prospective households for income eligibility;
 6. Provisions and/or documents for resale restrictions, deeds of trust, rights of first refusal for owner-occupied units, or restrictions for rental units;
 7. Provisions for monitoring the ongoing affordability of the units;
 8. Performance guarantees (e.g., a cash deposit, bond, or letter of credit) as required by the review authority; and
 9. Provisions for the enforcement and penalties for violation of the agreement.
- B. Recording of Agreement. Affordable housing agreements in a form acceptable to the City Attorney shall be recorded against the owner-occupied affordable units and the projects containing rental affordable units. Additional rental or resale restrictions, deeds of trust, rights of first refusal and/or other documents shall also be recorded against owner-occupied affordable units. In cases where the requirements of this Chapter are satisfied through the development or renovation of off-site units, the affordable housing agreement shall simultaneously be recorded against the property where the off-site units are located.

19.54.090 Affordable Housing Fund

- A. Fund Revenues. The fund shall receive all in-lieu fees paid under Section 20.34.050 (In-Lieu fees) and may also receive monies from other sources.
- B. Purpose and Limitations. Affordable Housing Fund monies shall be used in compliance with the General Plan Housing Element and this Chapter to construct, rehabilitate, or subsidize affordable housing or assist other governmental entities, private organizations or individuals to provide or preserve affordable housing. The fund may be used for the benefit of both rental and owner-occupied housing. Allowed uses of fund monies include:
1. Assistance to housing development corporations;

2. Equity participation loans;
3. Grants;
4. Pre-home ownership co-investment;
5. Predevelopment loan funds;
6. Participation leases;
7. Other public-private partnership arrangements;
8. The acquisition of property and property rights;
9. Construction of affordable housing including costs associated with planning, administration, and design, as well as actual building or installation;
10. Costs of rehabilitation and maintenance of existing affordable housing when needed to preserve units that are at risk of going to a market rate or at risk of deterioration;
11. Other costs associated with the construction or financing of affordable housing;
13. Reasonable administrative charges or related expenses; and
14. Reasonable consultant and legal expenses related to the establishment and/or administration of the fund.

19.54.100 Adjustments, Waivers

The City Council may waive, wholly or partially, the requirements of this Chapter and approve alternative methods of compliance with this Chapter if the applicant demonstrates, and the City Council finds that either:

- A. Taking. There is no reasonable relationship between the impact of a proposed development and the requirements of this Chapter and applying the requirements of this Chapter would take property in violation of the United States or California Constitutions; or

- B. Special circumstances. There are special circumstances unique to the residential development that justify the granting of an adjustment or waiver; the residential development would not be feasible without the modifications; a specific and financial hardship would occur if the modification was not granted; and no alternative means of compliance are available that would be effective in attaining the purpose of this Chapter than the relief requested.