

CHAPTER 2-3. AFFORDABLE HOUSING IMPLEMENTATION PROCEDURE

Sec. 2-3-1. Intent.

The affordable housing implementation procedure is a means for fulfilling the affordable housing requirements for certain developments or planning areas, as set forth in the General Plan Housing Element (hereinafter the "Housing Element"). The implementation procedure describes the requirements for submitting the affordable housing plan to the City and to ensure that General Plan requirements are met. Except as otherwise provided in the Housing Element, nothing herein is intended, nor does it place any obligation on the City to provide financial incentives or offset the cost of providing affordable housing.

Sec. 2-3-2. Applicability.

The provisions of this chapter shall be applicable to all residential development proposals, regardless of zoning, within the City of Irvine. However, unless stated otherwise in this chapter, the terms "applicant," "application," "project," and "development" relate only to residential developments of two (2) or more units. For the purposes of this chapter, the term "applicant" shall mean and, depending on context, shall include the owner(s), lessee(s) or developer(s) of property, or their authorized agents, with regard to any application for residential property development permits or approvals from the City of Irvine.

Sec. 2-3-3. Submittal requirements.

- A. An applicant whose proposal is subject to meeting affordable housing requirements shall submit an affordable housing plan to the Community Development Department as follows:
 - 1. No application subject to this section shall be deemed complete without submittal of an affordable housing plan. The plan shall be reviewed and approved by the Planning Commission as part of the entitlement process for a proposed project, unless satisfaction of affordable housing obligations under this chapter is addressed through a menu option as defined in Section 2-3-5.B and has been previously approved by the City Council.
 - 2. Other residential projects shall submit an affordable housing plan in conjunction with an application for a General Plan amendment or zone change, or with the conditional use permit or master plan application, if no General Plan amendment or zone change is proposed. No application subject to this section shall be deemed complete without submittal of an affordable housing plan. The plan shall be reviewed and approved by the Planning Commission as part of the entitlement process for a proposed project, unless satisfaction of affordable housing obligations under this chapter is addressed through a menu option as defined in Section 2-3-5.B and has been previously approved by the City Council.
- B. The plan shall include the following components where applicable:
 - 1. A description of the affordable housing units to be provided, including type of occupancy, unit mix, income level served by the affordable housing units, and location of the units.
 - 2. A description of how the affordability of the units will be maintained for the period required by law. The minimum period of affordability for a newly constructed or converted affordable unit is 55 years. The minimum period of affordability for the extension of affordability of an existing affordable unit is 55 years.
 - 3. Whether or not affordable credits are being requested. Guidelines for the affordable credits program are included in Section 2-3-6 of this chapter.
 - 4. Whether or not a menu option pursuant to Section 2-3-5.B is utilized, which menu option, if any, is selected, and how the project qualifies for such menu option.

- C. In conjunction with the submittal of an affordable housing plan, the applicant shall submit a written request to the City for any specific financial and/or processing incentives requested as a subsidy for the provision of affordable units. Financial and/or processing incentives that the City may provide include, but are not limited to, U.S. Department of Housing and Urban Development (HUD) funds, in-lieu fee proceeds, and the waiver of processing fees.
1. If the applicant is seeking financial, processing or other assistance from the City of Irvine, as such assistance is defined in the Housing Element, the following additional information shall be provided:
 - a. The type and level of financial, processing and/or other assistance being requested.
 - b. An explanation of why the assistance is being requested.
 - c. A justification for the type and level of assistance being requested. Such justification shall be in a format acceptable to the City to allow it to determine the validity of the justification.
 - d. A list of any and all other non-City sources for assistance the applicant has received or applied for in conjunction with the project.
 - e. A list of any and all other non-City sources for assistance the applicant has reviewed and a detailed explanation of why each of the other sources is not being used.
- D. The applicant shall make a good faith effort to obtain funding sources to achieve the affordable housing goal. In the event the proposed funding sources are not available or funding is limited for the development within the planning area, satisfaction of the affordable housing goal shall be achieved through selection of alternatives in the menu option defined in Section 2-3-5.B.2.
- E. The City will participate, when possible, in financial partnerships with applicants of affordable housing projects as a means of assisting the applicant's endeavor to secure subsidies and financing for the development of Extremely Low/Very Low, Low, and Moderate Income rental or ownership housing. An applicant receiving financial incentives for affordable housing development projects shall be required to comply with the program monitoring guidelines as defined in Section 2-3-6.

Sec. 2-3-4. Affordable housing requirements defined.

Income level(s): For purposes of determining compliance with the City's Housing Element, income levels are defined pursuant to the following:

- Extremely Low income (Health and Safety Code § 50106);
- Very Low income (Health and Safety Code § 50105);
- Low income (Health and Safety Code § 50079.5, 25 Cal. Code Regs. § 6928); and
- Moderate income (Health and Safety Code § 50093).

Residential projects shall provide a minimum of 15 percent of their total units as affordable units unless otherwise required by this chapter. The 15 percent affordable units shall be allocated in accordance with the following percentages:

- A. *Extremely Low and/or Very Low Income Levels.* Five percent of the actual number of dwelling units shall be affordable as rental or ownership units to Extremely Low and/or Very Low income households as established annually by the California State Department of Housing and Community Development.
 1. To the degree ownership units are provided to Very Low income households, a 2:1 credit will be attributed toward the achievement of the Very Low income goal.
 2. To the degree Extremely Low income units are provided, a 1.6:1 credit is available. However, the number of Extremely Low income units in a specific project is subject to approval by the City.

3. To the degree three-bedroom Extremely Low and/or Very Low income units are provided, a 1.4:1 credit will be attributed toward the achievement of the Extremely Low and/or Very Low income goal.
 4. To the degree four-bedroom Extremely Low and Very Low income units are provided, a 1.6:1 credit will be attributed toward the achievement of the Extremely Low and/or Very Low income goal.
- B. *Low Income Level.* Five percent of the actual number of dwelling units shall be affordable as either rental or ownership units to Low income households established annually by the California State Department of Housing and Community Development.
1. To the degree ownership units are provided to Low income households, a 2:1 credit will be attributed toward achievement of the Low income goal.
 2. To the extent that the affordable units referenced under Section 2-3-4.A, above, are provided with the use of financial and processing incentives in excess of the five percent goal, a 2:1 credit will also be attributed toward the achievement of this goal.
 3. To the degree three-bedroom Low income units are provided, a 1.4:1 credit will be attributed toward the achievement of the Low income goal.
 4. To the degree four-bedroom Low Income units are provided, a 1.6:1 credit will be attributed toward the achievement of the Low income goal.
- C. *Combined Extremely Low, Very Low, and Low Income.* In order to allow projects to compete for County affordable housing funds and because this approach provides a greater overall level of affordability, the City will regard the following as meeting the combined affordability goals for Extremely Low, Very Low, and Low Income, as set forth in Sections 2-3-4.A and 2-3-4.B of this chapter:
1. Projects which provide a minimum of 10 percent of the proposed units affordable to Very Low and/or Extremely Low income households annually defined California State Department of Housing and Community Development.
- D. *Moderate Income Level.* Five percent of the total number of dwelling units shall be affordable as rental or ownership units, with emphasis on ownership units in projects offering ownership housing, to Moderate income households established annually by the California State Department of Housing and Community Development (Health and Safety Code § 50093).
- E. *Varied Affordability Levels.* The approval authority for the affordable housing plan required by this chapter shall have, on a case-by-case basis, the discretion to consider and approve ratios other than the currently required five percent ratios if the approval authority determines that a proposal will provide equivalent or enhanced affordability.

Sec. 2-3-5. Provision of affordable units; menu option.

A. *Location of affordable units.*

1. Unless an applicant is qualified to utilize the menu option listed under Section 2-3-5.B, affordable units must be located within the planning area or on the site of the proposed project. Any affordable units to be developed outside of the planning area shall be proposed and identified as part of the affordable housing plan submitted for the overall development proposal. Provision of units outside of the subject planning area shall count toward the affordable housing goals of the subject planning area, not the planning area receiving the units.
2. The affordable housing units shall be dispersed within the housing development. This requirement also applies to affordable housing units of specific income levels. The number of bedrooms of the affordable units shall be equivalent to the bedroom mix of the market rates of the housing development; except that the applicant may include a larger proportion of affordable units with a

higher bedroom count. The design and appearance of the affordable units shall be compatible with the design of the total housing development. Housing developments shall comply with all applicable development standards, except those which may be modified as provided by Subsection 2-3-10.C below. Notwithstanding the first two sentences of this Subsection, to expand the applicant's opportunities to obtain financial assistance for the provision of affordable housing, a project with up to 100 percent affordability will be considered, and may be approved, by the City. A project application offering to provide affordable housing in excess of the requirements set forth in this chapter, or the Housing Element, may only be denied in accordance with the terms of Government Code § 65589.5(d).

B. *Menu option alternatives.*

1. *Intent of menu option.* The menu option is an alternative to the on-site affordable housing requirements set forth in Sections 2-3-4 and 2-3-5.A.1 of this chapter. The menu option is designed to provide to the City affordable housing benefits and/or opportunities and resources that are equal in value to the actual provision of on-site units in the quantity and quality that would otherwise be provided. Equivalent values will be determined by considering an applicant's ability to reasonably secure financial incentives for the development of affordable units.
2. *Applicability of the menu option.* An applicant may elect to use the menu option if the City determines (i) the fulfillment of the applicant's affordable housing obligations under this chapter are otherwise infeasible, or that the menu option will advance the City's policies and goals related to affordable housing; or (ii) the utilization of a menu option is in the best interests of the City and will result in opportunities and resources that can be used to enhance the City's ability to, directly or indirectly, deliver affordable housing.
 - a. The City will consider the fulfillment of affordable housing requirements set forth in Sections 2-3-4 and 2-3-5.A.1 of this chapter to be "infeasible" under the following circumstances:
 - (1) The applicant proposes development in the hillside Planning Areas 1, 2, 6, 17, 18, 22, or 27 where development of affordable housing is impacted by the increased cost of development in hillside areas; or
 - (2) The applicant proposes a zone change and/or General Plan amendment to change the land use designation from high, medium, or medium-high residential density to low or estate density which would bring the percentage of residential land in the planning area designated for low or estate density to 75 percent or more; or
 - (3) The planning area meets all the following criteria:
 - (i) The planning area is predominately (over 75 percent of the entitlement) developed;
 - (ii) The planning area does not have a City-approved affordable housing program;
 - (iii) The undeveloped residential areas have a zoning designation of estate, low, and/or medium density; or
 - (4) Financial or processing incentives are not available to bridge the gap of developing affordable housing within the planning area. In order to determine whether or not financial and/or processing incentives are available to bridge the gap of developing affordable housing within the project area, the applicant shall submit the following items to the Director of Community Development, who will subsequently provide a written determination regarding the project's ability to utilize the menu option:
 - (i) A list of any and all other non-City sources for assistance the applicant has reviewed and a detailed explanation of why each of the other sources is not being used.
3. *Menu options.* Applicants who qualify to choose a menu option may choose from one of the following "equivalent value" options:
 - a. Convert existing market rate housing to affordable housing for a period of at least 55 years.

- b. Extend the term of affordability for affordable units for a period of at least 55 years.
- c. Payment of in-lieu fees.
- d. Transfer control of units to the City or to a nonprofit organization.
- e. Transfer of off-site credits for affordable units not provided on the site.
- f. Provision of alternative housing.
- g. Dedication of land or resources to be used, directly or indirectly, to advance City affordable housing goals.
- h. An alternative option acceptable to the City.

An applicant may use one or more options to satisfy the affordable housing requirement.

4. *Intentionally omitted.*

5. *Implementation of menu options.* Should the menu option be utilized in achieving the affordability goal, the following criteria shall be utilized to implement each option as respectively listed in Section 2-3-5.B.3:

- a. Convert market rate housing to affordable housing: The purchase cost of owner occupied or the rent for rental units shall be reduced to provide the same number of units at the same income levels as outlined in Section 2-3-4 for a period of at least 55 years.
- b. Extend the term of affordability of existing program affordable units: For bond units or other program affordable units whose affordability will expire within five years of the approval of the affordable housing plan, the existing level of affordability for the designated income households shall be extended for a period of at least 55 years from the existing expiration date for an equivalent or greater number of units than required in Section 2-3-4.
- c. Payment of in-lieu fees: The applicant may pay an in-lieu fee, based on the total number of units being developed, as determined by City Council resolution and based on the in-lieu fee formula. The in-lieu fee shall be determined at the time building permits are issued for development of a project. Applicants may pay an affordable housing in-lieu fee of \$17,000 per unit if an application for a General Plan amendment in the Irvine Business Complex (Planning Area 36) was filed prior to January 1, 2007, and the in-lieu fees are paid and a building permit is pulled by December 31, 2009. Menu option items are designed to generate a value in furtherance of affordable housing that is equivalent or comparable to the actual value of providing such housing in the planning area as defined in Section 2-3-5.B.1.

Fees collected under the in-lieu fee program will be placed in the city's affordable housing fund and will be used to fund projects implementing the City's Housing Element Needs Assessment and/or serving Low income, Very Low income, or Extremely Low income households.

- d. Transfer control of units to a nonprofit organization: Dedicate applicant-owned units to nonprofit organizations in the same ratio and at the same income levels as required in Section 2-3-4.
- e. Transfer of credits for affordable units provided elsewhere in the City: If an applicant has provided affordable housing above the required number of units, the excess units can be used as credit for satisfaction of affordable housing requirements off-site or can be sold to applicants who do not provide sufficient affordable units on-site, subject to the affordable housing credits program guidelines outlined in Section 2-3-6 of this chapter.
- f. Provision of alternative housing: The applicant may propose to provide alternative housing, such as special needs housing, single room occupancy hotels, or resident shelters. The number of units, rooms, or beds provided in alternative housing shall be credited on a one-to-one ratio to the total number of units required for the affordable housing needs goal. The same ratio may be applied to alternative housing provided within the planning area. To the degree Extremely Low-

income units are provided, a 1.6:1 credit is available. Menu option items are designed to generate a value in furtherance of affordable housing that is equivalent or comparable to the actual value of providing such housing in the planning area as defined in Section 2-3-5.B.1.

- g. Dedication of land or resources to be used, directly or indirectly, to advance City affordable housing goals: Transfer control of land or resources to the City or a City-approved nonprofit organization. The value of land or resources dedication, as determined by City, will be equal to or greater than the amount of in-lieu fees that would otherwise be required if the menu option specified in Section 2-3-5.B.3.c were selected. The value shall be calculated based on a City-approved valuation of the land and/or the resources. The land or resources may be used, directly or indirectly, to enhance and expand the provision of affordable housing in the City and/or to advance the City's implementation of the City's Housing Element Needs Assessment and/or to serve Low income, Very Low income, or Extremely Low income households. This menu option is designed to generate a value in furtherance of affordable housing that is equivalent or comparable to the actual value of providing such housing in the planning area as defined in Section 2-3-5.B.1.
- h. Other programs: Alternative programs which provide affordable housing in a manner not specifically described above may be considered by the City provided the requirement of Section 2-3-4 is met either through the provision of units or through the value of the alternative. Multiple credits may be allowed if such programs provide affordable housing in excess of the goals either in terms of the degree of affordability, in the amount of affordable units or both. Such programs may be approved at the discretion of the City as specified in an affordable housing implementation program. This menu option is designed to generate a value in furtherance of affordable housing that is equivalent or comparable to the actual value of providing such housing in the planning area as defined in Section 2-3-5.B.1.

Sec. 2-3-6. Affordable housing credits guidelines.

- A. *Introduction.* The purpose of the affordable credits ("credits") program is to promote the construction of affordable housing units within the City by establishing a system of credits that can be earned by applicants of residential projects which include higher percentages of affordable units than are currently required by the City's inclusionary housing program and in turn sold or transferred to applicants of other residential projects.

Separate credit programs are established for three categories of affordable homes (Extremely/Very Low, Low and Moderate), so that a project can fulfill its affordable requirements on-site at one income level, while using credits to cover its requirement at another income level. The City will maintain a database to keep track of existing credits so that applicants of market-rate projects can be informed of the availability of such credits.

- B. *Defined terms.* The following defined terms are utilized in these guidelines:

Affordable housing credits agreement means an agreement required for any residential development project that is involved in the purchase or sale of credits.

Affordable housing in-lieu fees means fees payable by an applicant of a market-rate project or a mixed project with affordable shortfalls, in lieu of the actual construction of affordable units on the project site.

Affordable project means a residential project that includes only affordable units.

Affordable unit means a residential dwelling unit that is affordable to and rented or sold to a household with an income at or below qualifying income levels defined pursuant to the following:

- Extremely Low income (Health and Safety Code § 50106);
- Very Low income (Health and Safety Code § 50105);

- Low income (Health and Safety Code § 50079.5, 25 Cal. Code Regs. § 6928); and
- Moderate income (Health and Safety Code § 50093).

Agreement means an affordable housing credits agreement.

Applicant means and, depending on context, includes the owner(s), lessee(s) or developer(s) of property, or their authorized agents, with regard to any application for residential property development permits or approvals from the City of Irvine.

City means the City of Irvine.

County median income means the current median income in Orange County as determined by the U.S. Department of Housing and Urban Development.

Credits means affordable housing credits.

Excess affordable units means the number of affordable units in a residential project that fall within a given income level category that exceeds the required affordable component for that income level.

Income level(s): Income levels are defined pursuant to the following:

- Extremely Low income (Health and Safety Code § 50106);
- Very Low income (Health and Safety Code § 50105);
- Low income (Health and Safety Code § 50079.5, 25 Cal. Code Regs. § 6928); and
- Moderate income (Health and Safety Code § 50093).

In-lieu fees means affordable housing in-lieu fees.

Market-rate project means a residential project that only includes market-rate units.

Market-rate units mean residential dwelling units that are not affordable units.

Mixed project means a residential project that includes both affordable units and market-rate units.

Mixed project with affordable shortfall means a mixed project in which there is a shortage of affordable units at one or more income levels. (Please note that it is possible that a mixed project with affordable shortfall at one income level category may have sufficient affordable units or excess affordable units at other income level categories).

Mixed project with excess affordable units means a mixed project in which there are excess affordable units at one or more income levels. (Please note that it is possible that a mixed project with excess affordable units for one income level category may have a shortage of affordable units at other income level categories).

Program means the City affordable housing credits program.

Required affordable component means, for any residential project within the City, the percentages of dwelling units that are required to be affordable to households in each of the three income level categories listed below:

Extremely Low and/or Very Low income: Five percent of project.

Low income: Five percent of project.

Moderate income: Five percent of project.

C. *Guidelines*. The program shall be administered by the City according to the following guidelines:

1. An agreement must be executed prior to the issuance of building permits for those units in a market-rate project or mixed project with affordable shortfall that will be satisfying their required affordable component through the use of credits. The purchaser of credits, the seller of credits and the City shall all be signatories to the agreement. The agreement shall state the number of credits involved and must identify the specific residential projects that will be generating the credits and will be receiving the

- credits. Information on the purchase price or payment arrangements for the credits shall not be required to be disclosed within the agreement.
2. Affordable credits generated by excess affordable units shall become available for use by a market-rate project or mixed project after:
 - (i) Building permits for the excess affordable units have been issued; and
 - (ii) The applicant of the affordable project or mixed project with excess affordable units has posted a bond to assure the construction of the excess affordable units or a certificate of occupancy has been issued for the excess affordable units.
 3. Separate affordable credits shall be issued for excess affordable units in each of the three income level categories (i.e., Extremely Low/Very Low, Low, and Moderate income categories).
 4. Affordable projects and mixed projects that agree to satisfy the required affordable component for one or more income level categories on-site shall not be required to pay in-lieu fees or provide affordable credits for the income level categories anticipated to be provided on-site. Said agreement will be enforced through a condition of the discretionary approval of the project.
 5. Until credits become available, even after the agreement is executed, the applicant of any residential project that is not providing its required affordable component for a given income level category on-site must pay in-lieu fees at the time of building permit issuance for any market-rate units or affordable units not yet covered by credits for that income level category. These in-lieu fees shall be reimbursed to the applicant of the market-rate project and/or the mixed project, without interest, upon availability of the credits listed in the agreement (see guideline #2).
 6. One credit for any income level category shall release 19 dwelling units in a market-rate project or a mixed project with affordable shortfall from their required affordable component for that same income level category.
 7. The following guidelines for granting credits and combining credits for affordable units are summarized in Table 1 below:
 - a. Units that are priced for, sold to and occupied by Extremely Low, Very Low, and Low income households shall receive 2.0 credits in the corresponding income category.
 - b. 1.6 Extremely Low/Very Low income credits shall be granted for each rental excess affordable unit that satisfies the Extremely Low income category requirement.
 - c. 3.2 Extremely Low/Very Low income credits shall be granted for excess affordable units that satisfy Extremely Low income category requirements and are priced for, sold to and occupied by households in the Extremely Low income category.
 - d. 1.4 Very Low/Low income credits shall be granted in the corresponding income level category for rental excess affordable units that include three bedrooms, and 1.6 Very Low/Low income credits shall be granted in the corresponding income level category for rental excess affordable units that include four bedrooms.
 - e. 2.24 Extremely Low/Very Low income credits shall be granted for rental excess affordable units in the Extremely Low income category that include three bedrooms, and 2.56 Extremely Low/Very Low income credits shall be granted for rental excess affordable units in the Extremely Low Income category that include four bedrooms.
 - f. 2.8 Very Low/Low income credits shall be granted for excess affordable units in the corresponding income level categories that include three bedrooms and are priced for, sold to and occupied by households in the corresponding income level category.

- g. 3.2 Very Low/Low income credits shall be granted for excess affordable units in the corresponding income level categories that include four bedrooms and are priced for, sold to and occupied by households in the corresponding income level category.
 - h. 4.48 Extremely Low/Very Low income credits shall be granted for excess affordable units in the Extremely Low income category that includes three bedrooms and are priced for, sold to and occupied by households in the Extremely Low income category.
 - i. 5.12 Extremely Low/Very Low income credits shall be granted for excess affordable units in the Extremely Low income category that include four bedrooms and are priced for, sold to and occupied by households in the Extremely Low income category.
8. All applicants of market-rate projects or mixed projects with affordable shortfalls utilizing the program shall pay for their share of the administration costs related to the application of credits to their project through hourly fees charged by the City. Any administrative costs not covered by the hourly fees shall be paid to the City by the applicant of the market-rate project or mixed project with affordable shortfall prior to the acceptance of the credits for the specific project by the City.
 9. Credits shall be assigned to applicants of affordable projects or mixed projects with excess affordable units, based on the guidelines listed above, for:
 - (i) The conversion of existing market-rate units to affordable units for a period of at least 55 years;
 - (ii) The extension of the term of affordability of existing affordable units by an additional 55 years; and
 - (iii) The construction of accessory dwelling units that meet the City's affordability guidelines.

Credits may be assigned to property owners and applicants in return for the dedication of land for affordable housing use and the construction of special needs housing, with the number of credits assigned based on the City's determination of the value of these types of assistance.
 10. Affordable projects or mixed projects with excess affordable that have received affordable housing in-lieu fees from the City shall have their credits reduced based on the proportion of their affordable units that have been fully or partially assisted with the affordable housing in-lieu fees. The Director shall make all determinations regarding the number of affordable units assisted in this manner.
 11. A database shall be prepared and maintained by the City to keep track of the use and availability of affordable credits within the City. A list of uncommitted excess affordable credits shall also be kept on file by the City to be made available to applicants of market-rate projects and mixed projects with affordable shortfalls who are interested in purchasing credits.

Sec. 2-3-7. Role of financial and processing incentives.

Pursuant to the Housing Element, the purpose of financial and processing incentives is to bridge the gap between the actual cost of construction of a market rate unit and the value of an affordable unit. If financial incentives are not available for on-site construction of affordable units, satisfaction of the affordable housing goal shall be achieved through the selection of alternatives in the menu options outlined in this section. Nothing herein is intended nor does it place any obligation on the City to provide financial incentives or offset the cost of providing affordable housing as required by the Housing Element.

- A. *Financial incentives defined.* Financial incentives mean monetary assistance to the project for the purpose of subsidizing the cost of providing affordable units. The City or another public, private or nonprofit source may provide financial assistance.
- B. *Processing incentives defined.* Processing incentives are any changes to existing land use policies which will increase the applicant's ability to provide affordable housing, such as modifications for setbacks or building height, fee waivers, and density bonuses granted according to the Government Code.

Sec. 2-3-8. Monitoring and tenant placement.

- A. To the fullest extent permitted by law, the affordable housing plan and approvals for projects subject to this chapter shall require that the owner of projects subject to this chapter prioritize affordable housing placements based in accordance with Section 2-3-11.D. This restriction shall be recorded in the same property covenant against the applicable parcel which secures the affordability of such units.
- B. The owner of projects subject to this chapter shall provide the City with an annual report detailing compliance with the adopted affordable housing plan for the project.
- C. Failure to comply with the adopted affordable housing plan may result in the revocation of project entitlements or approvals and other enforcement action by the City to the extent permitted by law.

Sec. 2-3-9. Affordable housing plan requirements for planning areas.

When a project entails the development of an entire planning area, the applicant shall designate the sites on which affordable housing units shall be developed. The designation of affordable housing sites shall be made in conjunction with the submittal of the first subdivision map for the planning area. The applicant may submit a site plan or a letter indicating the sites designated for affordable housing.

- A. The affordable housing sites shall be distributed to prevent undue concentration of affordable housing in any one area.
- B. In order to expand the applicant's opportunities to obtain financial assistance for the provision of affordable housing, a project with up to 100 percent affordability will be considered, and may be approved, by the City. A project application offering to provide affordable housing in excess of the requirements set forth in this chapter, or the Housing Element, may only be denied in accordance with the terms of Government Code § 65589.5(d).

The owner(s) of any of the parcels indicated as a site for affordable housing shall be required to inform any potential purchaser/applicant that this site is to be used to fulfill the City's affordable housing requirements.

Sec. 2-3-10. Residential density bonus standards.

- A. *Purpose and intent.* The purpose of the provisions of this section is to comply with State density bonus standards, which are intended to provide incentives for the production of housing for Very Low income, Low, and Moderate income households, or senior households in accordance with California Government Code §§ 65915 through 65918, as may be amended from time to time or any successor density bonus statute. In enacting this section, it is the intent of the City of Irvine to facilitate the development of affordable housing and to implement the goals, objectives and policies of the City's Housing Element.
- B. *Implementation.* The City shall grant requests for a density bonus and incentives as set forth in Subsection 2-3-10.D, and in accordance with California Government Code §§ 65915—65918, as may be amended from time to time or any successor density bonus statute.
- C. *Development standards.* Target units shall be constructed concurrently with market rate units unless both the City and the applicant agree within the density bonus housing agreement, required pursuant to Subsection 2-3-10.F, to an alternative schedule for development.

In determining the maximum affordable rent or affordable sales price of target units the following household and unit size assumptions shall be used, unless the housing development is subject to different assumptions imposed by other governmental regulations:

SRO (single room occupancy) unit	75% of 1 person
0 bedroom (studio)	1 person
1 bedroom	2 person

2 bedroom	3 person
3 bedroom	4 person
4 bedroom	5 person

Target units shall be built on-site and be dispersed within the housing development. The number of bedrooms of the target units shall be equivalent to the bedroom mix of the market rate units of the housing development; except that the applicant may include a larger proportion of target units with a higher bedroom count. The design and appearance of the target units shall be compatible with the design of the total housing development. Housing developments shall comply with all applicable development standards, except those which may be modified as provided by this Subsection 2-3-10.C.

Circumstances may arise in which the public interest would be served by allowing some or all of the target units associated with one housing development to be produced and operated at an alternative development site. Where the applicant and the City form such an agreement, the resulting linked developments shall be considered a single housing development for purposes of this section. Under these circumstances, the applicant shall be subject to the same requirements of this section for the target units to be provided on the alternative site.

A density bonus housing agreement shall be made a condition of the discretionary planning permits (e.g., tract maps, parcel maps, site plans, planned development or conditional use permits, etc.) for all housing developments pursuant to this section. The agreement shall be recorded as a restriction on the parcel or parcels on which the target units will be constructed. The agreement shall be consistent with Subsection 2-3-10.F.

D. *Development incentives.* Development incentives shall be granted by the City in accordance with California Government Code §§ 65915—65918, as may be amended from time to time or any successor density bonus statute.

Criteria that may be used to evaluate whether an incentive is sufficient to make the affordable units economically feasible may include, but are not limited to, one or more of the following:

1. A development pro forma outlining the capital costs, operating expenses, return on investment, revenues, loan-to-value ratio and the debt-coverage ration including the contribution provided by any applicable subsidy programs, and the economic effect created by the 30-year use and income restrictions of the affordable housing units.
 2. An appraisal report indicating the value of the density bonus and of the incentive(s) and of the value of any other incentives.
 3. Sources and use of funds statement identifying the projected financing gap of the project with the affordable housing units that are the basis for granting the density bonus and incentive(s). The applicant shall establish how much of the gap would be covered by the density bonus, leaving a remainder figure to be covered by additional incentives.
- E. *Application requirements and review.* An application pursuant to this section shall be processed concurrently with any other application(s) required for the housing development. Final approval or disapproval of an application shall be made by the Planning Commission. The approval or disapproval of the proposed development may be subject to the provisions of Government Code § 65589.5, which requires certain findings where the City proposes to:
1. Disapprove, or approve with conditions rendering the affordable housing development infeasible; or
 2. Disapprove, or approve at a lesser density, a housing development proposal which complies with the applicable General Plan, zoning, and development policies in effect at the time the project's application is deemed complete.
- F. *Density bonus housing agreement.* Applicants requesting a density bonus shall (draft and) agree to enter into a density bonus housing agreement with the City, the approval of which shall be ministerial as long as all applicable provisions of this Section 2-3-10 are satisfied. The terms of the draft agreement shall be reviewed

and revised as appropriate by the Director of Community Development. Following execution of the agreement by all parties, the completed density bonus housing agreement, or memorandum thereof, shall be recorded and the resulting conditions filed and recorded on the parcel or parcels designated for the construction of target units.

The approval and recordation shall take place prior to final map approval, or, where a map is not being processed, prior to issuance of building permits for such parcels or units. The density bonus housing agreement shall be binding to all future owners and successors in interest.

The density bonus housing agreement shall include at least the following:

1. The total number of units approved for the housing development, including the number of target units.
2. A description of the household income group to be accommodated by the housing development, as outlined in Subsection 2-3-10.A and the standards for determining the corresponding affordable rent or affordable sales price and housing cost.
3. The location, unit sizes (square feet) and number of bedrooms of target units.
4. Tenure of use restrictions for target units of at least 55 years, in accordance with Government Code §§ 65915—65918, as may be amended from time to time or any successor density bonus statute.
5. A schedule for completion and occupancy of target units.
6. A description of the incentive(s) being provided by the City.
7. A description of remedies for breach of the agreement by either party (the City may identify tenants or qualified purchasers as third party beneficiaries under the agreement).
8. Other provisions to ensure implementation and compliance with this section.

In the case of for-sale housing developments, the density bonus housing agreement shall provide for the following conditions governing the initial sale and use of target units during the applicable use restriction period:

1. Target units shall, upon initial sale, be sold to eligible Very Low, Low or Moderate income households at an affordable sales price and housing cost, or to qualified residents (i.e., maintained as senior citizen housing) as defined in Government Code §§ 65915—65918, as may be amended from time to time or any successor density bonus statute.
2. Target units shall be initially owner-occupied by eligible Very Low, Low or Moderate income households, or by qualified residents in the case of senior citizen housing.
3. The initial purchaser of each target unit shall execute an instrument or agreement approved by the City restricting the sale of the target unit in accordance with this chapter during the applicable use restriction period. Such instrument or agreement shall be recorded against the parcel containing the target unit and shall contain such provisions as the City may require to ensure continued compliance with this ordinance and the State density bonus law.

In the case of rental housing developments, the density bonus housing agreement shall provide for the following conditions governing the use of target units during the use restriction period:

1. The rules and procedures for qualifying tenants, establishing affordable rent, filling vacancies, and maintaining target units for qualified tenants;
2. Provisions requiring owners to verify tenant incomes and maintain books and records to demonstrate compliance with this section;
3. Provisions requiring owners to submit an annual report to the City, which includes the name, address, and income of each person occupying target units, and which identifies the bedroom size and monthly rent or cost of each target unit.

In the case of housing developments that utilize the density bonus provisions associated with child care facilities, the applicant shall comply with Government Code §§ 65915—65918, as may be amended from time to time or any successor density bonus statute.

G. *Density bonus for donation of land in furtherance of affordable housing.* In addition to any other increases in density mandated by any provision of Government Code §§ 65915-65918, when an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to the City or to a nonprofit organization designated in writing by the City to receive such land, and such land is accepted by the City or the City-designated nonprofit organization (whichever is applicable) in accordance with Subsection 2-3-10.G, the applicant shall be entitled to a percentage increase above the otherwise maximum allowable residential density for the entire development equal to one-half of the base density (as defined in Government Code § 65915(o)(6)) of the donated land, subject to the following limitations and conditions.

1. The increase in allowable residential density under this Subsection 2-3-10.G shall be in addition to any increase in density mandated by Government Code § 65915(b), up to a maximum combined mandated density increase of 50 percent if the applicant elects an increase pursuant to both this Subsection 2-3-10.G and Government Code §65915(b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subsection shall be construed to enlarge or diminish the authority of the City to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this Subsection 2-3-10.G only if all of the following conditions are met:

- a. The City has determined that the City or a City-designated nonprofit organization will accept the land.

- b. The land can be used to enhance the City's ability to, directly or indirectly, deliver affordable housing.

- c. The applicant and the City have entered into a binding agreement to transfer the land to the City or the City-designated nonprofit organization, which agreement shall be entered into no later than the date of approval of the last final subdivision map, parcel map, or residential development application for any portion of the proposed development (whichever is later).

- d. The transferred land is at least one-half acre in size or of sufficient size to permit development of at least 20 units, has the appropriate General Plan designation, is appropriately zoned with appropriate development standards for development at the density described in Government Code §65583.2(c)(3), and is or will be served by adequate public facilities and infrastructure.

H. *Density bonus for donation of resources in furtherance of affordable housing.* In lieu of any increases in density mandated by any provision of Government Code §§ 65915-65918, if (i) an applicant for a tentative subdivision map, parcel map, or other residential development approval donates resources to the City or to a nonprofit organization designated in writing by the City to receive such resources, and (ii) such resources are accepted by the City or the City-designated nonprofit organization (whichever is applicable) in accordance with Subsection 2-3-10.H, and (iii) such resources have a value equal or greater than the amount of in lieu fees that would otherwise be required if the menu option specified in Section 2-3-5.B.3.c were selected, then the applicant shall be entitled to a percentage increase above the otherwise maximum allowable residential density for the entire development equal to 35 percent of the base density (as defined in Government Code § 65915(o)(6)) of the donated resources, subject to the following limitations and conditions.

1. The increase in allowable residential density under this Subsection 2-3-10.G shall be in lieu of any increase in density mandated by Government Code § 65915(b), up to a maximum combined mandated density increase of 35 percent of the base density (as defined in Government Code § 65915(o)(6)). All density calculations resulting in fractional units shall be rounded up to the next whole number. An applicant shall be eligible for the increased density bonus described in this Subsection 2-3-10.H only if all of the following conditions are met:

- a. The City has determined that the City or a City-designated nonprofit organization will accept the resources.
- b. The resources can be used to enhance the City's ability to, directly or indirectly, deliver affordable housing, and/or advance the City's implementation of the City's Housing Element Needs Assessment and/or serve Low income, Very Low income, or Extremely Low income households.
- c. The applicant and the City have entered into a binding agreement to transfer the resources to the City or the City-designated nonprofit organization, which agreement shall be entered into no later than the date of approval of the last final subdivision map, parcel map, or residential development application for any portion of the proposed development (whichever is later).

Sec. 2-3-11. Community preference policy.

- A. *Purpose and intent.* Pursuant to Government Code § 7061, it is statewide policy that lower income individuals residing in neighborhoods and communities experiencing significant displacement pressures and gentrification due to rapid growth or increasing housing prices need access to housing that is affordable and that assists those households in avoiding displacement.

To the extent feasible and consistent with other laws, rules, regulations, and funding sources, the purpose of a community preference policy is to create and preserve affordable housing and to support access to housing that will allow households facing or at risk of displacement to remain in the community.

This preference is to be applied only if and to the extent that other laws, rules, regulations, and funding sources permit the preference. Other sources of laws, rules, regulations, and funding may limit the ability to apply preference.

- B. *Defined terms.* The following defined terms are used in this section:

Applicant(s) means and, depending on context, shall include the owner(s), lessee(s), or developer(s) of property, or their authorized agents, with regard to any application for residential property development permits or approvals from the City of Irvine. An applicant in this context *does not* mean an eligible household.

Affordable unit(s) means a residential dwelling unit that is affordable to and rented or sold to an eligible household.

Eligible household(s) means a household whose household income does not exceed the maximum specified for an Extremely Low, Very Low, Low, or Moderate income household as applicable for a given affordable unit.

Household income means the combined adjusted gross income for all adult persons living in a living unit as calculated for Orange County and adjusted for household size that is published for Extremely Low, Very Low, Low, and Moderate income annually in Title 25 of the California Code of Regulations, Section 6932 (or its successor provision), by the State of California Department of Housing and Community Development (HCD).

Irvine Resident means that the eligible household has at least one member whose principal place of residence is physically located within the City. To verify Irvine Resident preference, an eligible household may be required to submit a current driver's license, voter registration, utility bill, vehicle registration, or other evidence reflecting a local address as appropriate.

Waiting list means a list of eligible Irvine Residents and/or Irvine Workers compiled and maintained by the City, for use in prioritizing access to affordable units. The process for maintaining the waiting list and for placing Irvine Residents and/or Irvine Workers on the waiting list shall be established by the City Manager or their designee.

Irvine Worker means that the eligible household has at least one member whose principal place of work is or will be at least 20 hours per week at a business located within the City of Irvine and licensed and permitted by the City. To verify Irvine Worker status, an eligible household may be required to submit proof of work in

the form of pay stubs, employer certification, job offer letters, business licenses, or other evidence reflecting a local business or job training program as appropriate.

- C. *Community preference.* Subject to the limitations identified below, community preference is a live/work local preference to be applied in the selling or leasing of affordable units to eligible households with at least one member that is an Irvine Resident or Irvine Worker. Eligible households with preferences are selected from the waiting list and shall receive an opportunity for an available affordable unit earlier than those who do not have a preference.
- D. *Implementation.* The City shall compile and maintain the waiting list. Applicants shall utilize the waiting list and prioritize eligibility to occupy affordable units based solely on the priority established by the waiting list. The City retains the authority to set qualification standards and verify eligibility.
 - 1. *Implementing guidelines.* The Chief Health and Wellness Director may adopt guidelines to implement this section, which will be maintained with other supporting materials on the dedicated webpage required by Government Code § 7061.2.
- E. *Limitations.* This preference is to be applied to affordable units for the duration of the affordability term only if and to the extent that other laws, rules, regulations, and funding sources permit the preference. Preferences affect only the order of those on the waiting list. All pre-occupancy activities must be undertaken in a manner that does not discriminate on the basis of protected class, including, but not limited to, race, color, national origin, sex, religion, disability, familial status, or any other protected class. Preferences do not make a household eligible that was not otherwise eligible, and do not change the right to adopt and enforce screening criteria. While Irvine Residents and Irvine Workers may be placed in a priority position on the wait list for available units, residency/employment status for other members of the household is not a requirement for occupancy.
- F. *Severability.* If any subsection, sentence, clause, phrase, or word of this section, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the section or chapter.
- G. *Undertaking for the general welfare.* In enacting and implementing this section, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.