

ORDINANCE NO. 4295

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF POMONA, CALIFORNIA, AMENDING ORDINANCE NO. 4006, ALSO KNOWN AS THE POMONA CITY CODE, WITH THE ADDITION OF ARTICLE VIII TO CHAPTER 74 ADOPTING AN INCLUSIONARY HOUSING PROGRAM FOR THE CITY OF POMONA.

WHEREAS, the City Council finds that the City of Pomona faces a serious housing problem and the lack of access to affordable housing has a direct impact upon the health, safety, and welfare of the residents of the City; and

WHEREAS, the California Legislature has consistently recognized the continuing need for affordable housing in California, stating in Government Code Section 65580, that "the availability of housing is of vital statewide importance, and the early attainment of decent housing ... is a priority of the highest order" and, further, that, "local ... governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community"; and

WHEREAS, affordable housing is regulated by a variety of state and local laws, ordinances, and policies, and the Regional Housing Needs Assessment (RHNA) requires the City to provide for the development of a specified number of housing units. The City's Housing Production allocation for the 2014-2021 allocation cycle calls for the development of 2,054 new affordable housing units as follows: 592 units are needed for moderate-income households, 543 units are needed for low-income households and 919 units are needed for very low and extremely low-income households. Further, the draft RHNA allocation for the next Housing Element cycle calls for production of a substantially larger number of affordable housing units, with a current draft allocation for the City of 1,507 units for moderate-income households, 1,336 for low-income households and 2,792 units for very low and extremely low-income households; and

WHEREAS, the City desires to explore and to the extent feasible, use all available tools to meet its mandated regional housing goals; and

WHEREAS, a lack of new units affordable to very-low, low and moderate-income households within the City will have a substantially negative impact because: (1) housing will have to be built far from employment centers, which will increase commuting and negatively impact traffic, air and noise pollution, and (2) the City and employers within the City will find it difficult to recruit and retain employees.

WHEREAS, the City Council considered the findings, recommendations and analysis contained in the report entitled Inclusionary Housing: Policy Recommendations, dated September 9, 2020 and the report entitled Inclusionary Housing: Financial Evaluation, dated September 8, 2020, both prepared by Keyser Marston Associates and received by the City Council on December 7, 2020 and has determined that it is in the furtherance of the public health, safety and welfare to require new residential development to incorporate within their development or otherwise take measure to further the development of affordable housing within the City; and

WHEREAS, the State of California requires each city to develop a general plan establishing policies for future development. As specified in the Government Code, the general plan must: (i) encourage the development of a variety of housing types for all income levels; (ii) assist in the development of adequate housing to meet the needs of low and moderate-income households; and (iii) conserve and improve the condition of the existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action; and

WHEREAS, the implementation of an inclusionary housing requirement in accordance with this ordinance, will provide a mechanism for all residential development containing 3 or more units to provide a contribution to affordable housing consistent with the goals of the City's adopted Housing Element; and the implementation of the ordinance will aid the City in achieving the goal of making affordable housing diverse, dispersed and inclusionary; and

WHEREAS, an affordable inclusionary housing requirement for all new developments containing 3 or more residential units, in the City of Pomona will serve to contribute to meeting the City's overall future need of affordable housing and to help meet its RHNA allocations; and

WHEREAS, the City of Pomona has duly initiated the process of considering this Ordinance;

WHEREAS, the City Council of the City of Pomona has, after giving notice thereof as required by law, held a public hearing on January 4, 2021, concerning this Ordinance; and

WHEREAS, the City Council of the City of Pomona, at its regularly scheduled public meeting on January 4, 2021 approved the introduction and first reading of this Ordinance;

WHEREAS, the City Council has carefully considered all pertinent testimony and the staff report offered in the case as presented at the public hearing.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Pomona as follows:

SECTION 1. The City Council hereby finds that the foregoing recitals are true and correct and are incorporated herein as substantive findings of this Ordinance.

SECTION 2. The City Council of the City of Pomona finds the adoption of this ordinance to be statutorily exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Regulation 15061(b)(3). Under Regulation 15061(b)(3), the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the project is exempt from CEQA. This ordinance will not affect the physical environment by permitting a new use or intensifying an existing use. Instead, the ordinance establishes affordable housing requirements through a range of means for individual projects. There is no potential for the changes to result in a significant effect on the environment.

SECTION 3. The City Council of the City of Pomona hereby approves this Ordinance amending Ordinance No. 4006, also known as the Pomona City Code, with the addition of Article VIII – INCLUSIONARY HOUSING to Chapter 74 of the Pomona Municipal Code, which shall read as follows:

Article VIII – INCLUSIONARY HOUSING

Division 1. – GENERAL PROVISIONS

Sec. 74-346. - Purpose and intent.

The City's purpose and intent in enacting this Article are as follows:

- (a) To ensure the development and availability of decent, affordable housing to a broad range of households with varying income levels throughout the City.
- (b) To promote the City's goal to add affordable housing units to the City's housing stock.
- (c) To ensure the long-term affordability of units and availability for income-eligible households in years to come.
- (d) To ensure that the private sector, in addition to public sector, participates in the provision of affordable housing for current and future residents of the City of Pomona.

(e) To ensure that affordable housing will be dispersed throughout the City and throughout each project and not be segregated from market-rate housing.

Sec. 74-347. - Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

“Affordable Housing Cost” means the housing cost for for-sale inclusionary units as defined by California Health & Safety Code section 50052.5 for owner occupied housing, as applicable to the moderate-income households.

“Affordable Housing Agreement” means a legally binding agreement between an applicant and the City, in a form and substance satisfactory to the City Manager and City Attorney and suitable for recording, setting forth those provisions necessary to ensure that the requirements of this Article are, and will continue to be, satisfied.

“Affordable Rent” means the affordable rent for rental dwelling units as defined in California Health and Safety Code Section 50053.

“Affordable Sales Price” means the maximum sales price for which a for sale inclusionary unit may be sold, that will result in the purchaser paying an affordable housing cost for the for sale inclusionary unit, assuming a benchmark mortgage interest rate and minimum down payment as may be established by the City from time to time.

“Applicant” or *“developer”* means a person, persons, or entity that applies to the City for one or more discretionary or residential permits required for the development of a residential development and also includes the owner or owners of the property if the Applicant does not own the property on which the development is proposed.

“Area Median Income” means the annual median household for Los Angeles County, adjusted for household size, as published periodically in the California Code of Regulations, Title 25, Section 6932, or its successor provision.

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

“Certificate of Occupancy” means the permit issued by the City of Pomona building division authorizing the initial occupancy of a residential unit, including a temporary certificate of occupancy.

“City Manager” means the City of Pomona City Manager or designee.

“Density Bonus Units” mean dwelling units approved in a residential development pursuant to California Government Code section 65915 *et seq.* and the City Density Bonus Ordinance (City of Pomona Zoning Ordinance Section .520) that are in excess of the maximum residential density otherwise permitted by the City of Pomona General Plan or Zoning Ordinance, and any applicable Specific Plan.

“Dwelling Unit” shall have the definition given for dwelling unit in Section .062 of the City of Pomona Zoning Ordinance.

“For-Sale” means any dwelling unit, including but not limited to a condominium, townhome, other attached or detached single family dwelling unit, for which a parcel or tentative and final map is required for the lawful subdivision of the parcel upon which the dwelling unit is located for the creation of the unit in accordance with the Subdivision Map Act (California Government Code section 66410 *et seq.*).

“Household” means one person living alone or two or more persons sharing residency.

“Inclusionary Housing Fund” means the fund established pursuant to Section 74-378 of this Article, which is designated by the City to maintain and account for all funds received pursuant to this Article, including but not limited to all in-lieu fees.

“Inclusionary Housing Plan” means a plan containing all the information specified in and submitted in conformance with Section 74-361 of this Article specifying the manner in which Inclusionary Units will be provided in conformance with this Article.

“Inclusionary Unit” means a dwelling unit that is designated to meet the requirements set forth in this Article, and that must be made available at an affordable housing cost or an affordable rent to eligible moderate-, low- or very low-income households, as applicable to the unit.

“In-lieu Fee” means a fee paid by an applicant into the City’s Inclusionary housing fund in-lieu of constructing inclusionary units pursuant to this Article. Payment of in-lieu fees shall be allowed as an option in accordance with Section 74-357.

“Low-Income Household” means a household whose income does not exceed the qualifying limits for lower income families as established and amended from time to time for Los Angeles County pursuant to Section 8 of the United States Housing Act of 1937. The income limit for low-income households, adjusted for family size, is published periodically in the California Code of Regulations, Title 25, Section 6932.

“Low-income Unit” means a dwelling unit that is required to be sold or rented to a low-income household at an affordable sales price or an affordable rent, as applicable.

“Market-Rate Unit” means a dwelling unit in a residential development that is not an inclusionary unit.

Moderate-Income Household shall have the same definition of “persons and families of low or moderate-income as set forth in California Health & Safety Code Section 50093. The income limit for moderate-income households, adjusted for family size, is published periodically in the California Code of Regulations, Title 25, Section 6932.

“Moderate-Income Unit” means a dwelling unit that is required to be sold or rented to a moderate-income household, or a low-income unit that is able to qualify to rent or purchase the moderate-income unit.

“Rental” mean a dwelling unit that is not a for-sale dwelling unit, and does not include any dwelling unit, whether offered for rental or sale, that may be sold as a result of the lawful subdivision of the parcel upon which the dwelling unit is located or creation of the unit in accordance with the Subdivision Map Act (Government Code section 66410 et seq.).

“Resale Restriction Agreement” means a legally binding agreement between the City and the purchaser of a for-sale inclusionary unit, in a form as approved by the City Attorney, which requires that the inclusionary unit to be occupied by the purchaser for the term of the agreement, or sold to another moderate-income household at an affordable sales price.

“Residential Development” means any development project for which an application for any ministerial or discretionary permit has been submitted to the City, and where the development would create new or additional dwelling units by the construction or alteration of structures, the conversion of a use to residential from any other use, or the conversion of a use to for-sale residential from rental residential use.

“Utilities” means garbage collection, sewer, water, electricity, gas and other heating, cooling, cooking and refrigeration fuels.

“Very Low-income Household” means a household whose income does not exceed the qualifying limits for very low-income families as established and amended from time to time for Los Angeles County pursuant to Section 8 of the United States Housing Act of 1937. The income limits for very low-income households, adjusted for family size, is published periodically in the California Code of Regulations, Title 25, Section 6932.

“Very Low-income Unit” that is required to be rented to a very low-income household at an affordable rent.

Division 2. - INCLUSIONARY HOUSING REQUIREMENTS

Sec. 74-348. - Inclusionary requirement for residential development.

A Residential Development that includes three (3) or more Dwelling Units shall provide for the construction of inclusionary units in accordance with this Article, unless an alternative means of compliance is permitted in accordance with Division 3 of this Article.

(a) *Inclusionary Requirements for For-Sale Dwelling Units.* Residential developments that include for-sale dwelling units shall provide inclusionary units through one of the following means:

(i) Residential developments comprised of for sale single family detached dwelling units shall include for-sale moderate-income units equal to seven percent (7%) of the total number of dwelling units in the residential development.

(ii) Residential developments comprised of for sale townhomes, condominiums or similar attached dwelling units shall include for-sale moderate-income units equal to eleven percent (11%) of the total number of dwelling units in the residential development. If a residential condominium development is developed with the intent to initially rent the dwelling units, the residential development shall comply with the inclusionary requirements for rental dwelling units set forth in subdivision (b) below, and any future sale of the inclusionary units shall be addressed in the affordable housing agreement for the inclusionary units.

(iii) As an alternative to developing for sale inclusionary units within the residential development as set forth above, for sale residential developments of any type may satisfy the requirements of this Article by developing one of the following:

(A) Rental low-income units included within the residential development equal to fifteen percent (15%) of the total number of for-sale and rental dwelling units included in the residential development. The developer may create a separate legal parcel within the residential development upon which the rental low-income units may be located. The developer may, at its discretion, provide very low-income units instead of low-income units.

(B) Rental low-income units located outside the boundaries of the residential development equal to fifteen percent (15%) of the total number of dwelling units in the residential development. The developer may, at its discretion, provide very low-income units instead of low-income units.

(b) *Inclusionary Requirements for Rental Dwelling Units.* Residential developments that are comprised of rental dwelling units shall provide inclusionary units through one of the following means:

(i) Rental moderate-income inclusionary units included within the residential development equal to thirteen percent (13%) of the total number of dwelling units in the residential development.

(ii) Rental low-income units located outside the boundaries of the residential development equal to fifteen percent (15%) of the total number of dwelling units in the residential development. The developer may, at its discretion, provide rental very low-income units instead of low-income units.

(c) *Density Bonus Units.* For purposes of calculating the number of inclusionary units required, any additional units authorized as density bonus units will not be counted in determining the required number of inclusionary units.

(d) *Fractional Units.* If in computing the total number of inclusionary units required in a residential development, there is a fractional unit required, the Applicant shall pay an in-lieu fee in the amount determined pursuant to Section 74-357 of this Article, equal to the amount calculated for that fractional unit on a per dwelling unit basis.

Sec. 74-349. - Residential development with a combination of for-sale single family residential, townhome or condominium, and rental dwelling units.

When a residential development includes a combination of for-sale detached single family residential, townhome/condominium, or rental dwelling units, the number and income levels for inclusionary units required for the residential development shall be calculated for each category of dwelling units (i.e., for-sale detached single family residential, townhome/condominium and rental) individually, and combined to comprise the residential development's total inclusionary housing requirement pursuant to this Article.

Sec. 74-350. – Duration of affordability requirement.

(a) For-sale inclusionary units produced pursuant to this Article must be legally restricted to sale to and occupancy by households of the income levels for which the units were designated for a single cumulative term of 45 years. During that term, the for-sale inclusionary units may only be sold and resold to moderate or low-income households at an affordable sales price for moderate-income households.

(b) Rental units produced pursuant to this Article must be legally restricted to rental to and occupancy by households in the income level for which the inclusionary units are developed for a term of not less than 55 years. At the end of the 55 year term, the restrictions on rental of the inclusionary units may only be removed in the event that the property upon which the rental inclusionary unit or units are located is rezoned and used for a non-residential use.

(c) To ensure compliance with the durational requirement, affordable housing agreements, and resale restriction agreements for for-sale inclusionary units, shall be recorded in the chain of title for every inclusionary unit as provided in Section 74-364 of this Article.

Sec. 74-351. – Development Standards for For-Sale Inclusionary Units

Unless otherwise specified by the City Council, Inclusionary Units shall be developed and incorporated into the applicable residential development in a manner consistent with the following requirements:

(a) For-sale inclusionary units shall be reasonably dispersed throughout a residential development and not clustered in a specific portion of the development, and the location of the for-sale inclusionary units within a residential development shall be designated before issuance of building permits for the development.

(b) The for-sale inclusionary units shall be built concurrently with the market rate units in the residential development. The inclusionary units may be constructed in phases if the market rate units are constructed in phases, provided that the percentage of inclusionary units developed in each phase shall be equivalent to or greater than the total percentage of inclusionary units to be developed as part of the residential development until such time that all the inclusionary units have been built.

(c) For-sale inclusionary units shall be comparable in infrastructure (including sewer, water and other utilities), construction quality and exterior design to the market-rate units.

(d) The bedroom mix for the for-sale inclusionary units must be proportional to the bedroom mix of the market rate units, but the for-sale inclusionary units may be smaller in square footage than the market rate units.

(e) The interior finishes and features for the inclusionary units must be comparable to the base level interior finishes for the market-rate units, and the appliance packages in the for-sale inclusionary units must be the same as the appliance packages provided in the base level market rate units.

Sec. 74-352. – Development Standards for Rental Inclusionary Units within a For-Sale Residential Development.

(a) In the event a developer opts to provide rental inclusionary units within a for-sale residential development, the developer may create a separate legal parcel upon which the rental inclusionary units may be located.

(b) The developer of the for-sale residential development may enter into an agreement with a separate affordable housing developer to construct, own and operate the rental inclusionary units, subject to the following requirements:

(i) The affordable housing developer must have relevant recent experience developing affordable housing, as determined by the City Council in its discretion; and

(ii) The affordable housing developer may not request any financial assistance from the City for the development of the rental inclusionary units.

(c) The bedroom mix for the rental inclusionary units shall not be required to be proportionate to the for-sale residential units, provided that the rental inclusionary units shall be consistent with the following requirements:

(i) No more than 15% of the rental inclusionary units may be studio units.

(ii) At least 40% of the rental inclusionary units must include two or more bedrooms.

(iii) The remaining units must be one or more bedrooms.

Sec. 74-353. – Development Standards for Rental Inclusionary Units in Rental Residential Projects

(a) The rental inclusionary units developed in a rental residential development shall be reasonably dispersed throughout a residential development and not clustered in a specific portion of the development, and the location of the rental inclusionary units within a rental residential development shall be designated before issuance of building permits for the development.

(b) The rental inclusionary units shall be built concurrently with the market rate units in the rental residential development.

(c) The bedroom mix for the rental inclusionary units in a rental residential development must be proportional to the bedroom mix of the market rate units, but the inclusionary units may be smaller in square footage than the market rate units.

(d) The interior improvements for the rental inclusionary units must be consistent with defined housing quality standards as established for inclusionary units by the City. If no such housing quality standards have been established by the City, the improvements shall comply with the standards established or approved by the California Tax Credit Allocation Committee for residential units developed pursuant to the federal low-income housing tax credit program.

Sec. 74-354. – Off-Site Development of Inclusionary Units

Inclusionary units that are constructed to satisfy this Article that are outside the boundaries of the market-rate residential development shall comply with the following requirements:

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- (a) The inclusionary units constructed must be rental dwelling units.
- (b) The parcel upon which the rental inclusionary units are constructed must be constructed within one mile of the boundary of the market rate residential development that is subject to the requirements of this Article.
- (c) The inclusionary units shall not create an over concentration of deed restricted affordable housing units in any specific neighborhood. For purposes of this section, “over concentration” is defined as more than 50 deed restricted very low or low-income dwelling units within ¼ mile of the site of the proposed inclusionary units, or more than 200 of such units within ½ mile of the site of the proposed inclusionary units.
- (d) The developer of the for-sale residential development may enter into an agreement with a separate affordable housing developer to construct, own and operate the rental inclusionary units, subject to the following requirements:
 - (i) The affordable housing developer must have relevant recent experience developing affordable housing, as determined by the City Council in its discretion; and
 - (ii) The affordable housing developer may not request any financial assistance from the City for the development of the rental inclusionary units.
 - (iii) The affordable housing developer may apply to use the density bonus, incentives and concessions available pursuant to Government Code section 65915 and Section .520 of the City of Pomona Zoning Ordinance for the residential development based on the inclusionary units developed outside the boundaries of the residential development as provided in this section.
- (e) Design, building quality and maintenance standards must be consistent with defined housing quality standards as established for inclusionary units by the City. If no such housing quality standards have been established by the City, the improvements shall comply with the standards established or approved by the California Tax Credit Allocation Committee for residential units developed pursuant to the federal low-income housing tax credit program..
- (f) The bedroom mix for the rental inclusionary units shall not be required to be proportionate to the for-sale residential units, provided that the rental inclusionary units shall be consistent with the following requirements:
 - (i) No more than 15% of the rental inclusionary units may be studio units.
 - (ii) At least 40% of the rental inclusionary units must include two or more bedrooms.
 - (iii) The remaining units must be one or more bedrooms.

(g) The rental inclusionary units shall be built prior to or concurrently with the market rate units in the residential development that triggered the requirements for the inclusionary units. If the market rate units are constructed in phases, the rental inclusionary units must be constructed prior to or concurrently with the first phase of the market rate residential development. The developer shall not commence construction on the second phase of the residential development until the required rental inclusionary units are completed

Sec. 74-355. – Access to common amenities.

Residents and tenants of inclusionary units located within the residential development shall be provided the same rights and access to common amenities in the development project as residents and tenants occupying market-rate units.

Sec. 74-356. – Marketing of inclusionary units.

Developer shall use all commercially reasonable efforts to market the inclusionary units to eligible residents of the City of Pomona, including but not limited to (i) no later than ninety (90) days after the issuance of building permits for the first of the inclusionary units, notifying local government and nonprofit agencies serving income qualified households in the City of Pomona (a list of such organizations provided by the City) of the availability of any low or very low-income units and requesting that these organizations assist in publicizing the availability of such units to their members and clients; (ii) placing a sign on the Property advertising the availability of the inclusionary units and providing contact information throughout the marketing period; and (iii) advertising the availability of the inclusionary units on social media outlets and local newspapers in multiple languages, consistent with the direction of the City, that cater to City of Pomona residents (a list of which will be provided by the City); and (iv) in accordance with selection procedures to be developed by the City.

Division 3. – ALTERNATIVE MEANS OF COMPLIANCE

Sec. 74-357. – In-lieu fee.

(a) As an alternative to constructing inclusionary units as required by this Article, all or a portion of the inclusionary housing requirement may be fulfilled through the payment of in-lieu fees pursuant to an in-lieu fee schedule adopted by the City pursuant to this Section.

(b) The developer of a residential development may pay an in-lieu fee instead of developing affordable housing as follows:

(1) In-lieu fees shall be paid for any fractional inclusionary unit required pursuant to the calculation of the required number of inclusionary units in accordance with this Article, unless

the developer voluntarily commits to round the fractional inclusionary unit up to the next whole unit.

(2) Developers of for-sale residential development may pay in-lieu fees in accordance with the schedule of fees adopted by Council pursuant to this section, instead of providing inclusionary units pursuant to this Article.

(3) Rental residential developments of thirty (30) or fewer dwelling units may pay in-lieu fees instead of providing inclusionary units pursuant to this Article.

(4) Rental residential developments of more than thirty (30) units may be permitted to pay in-lieu fees instead of providing inclusionary units pursuant to this Article if the City Council determines, in its discretion, that the requirement to provide the inclusionary units would impose an extreme hardship on the developer.

(b) Prior to the effective date of this Article, and from time to time thereafter, the City Council shall adopt by resolution a schedule of in-lieu fees that shall be levied based on the square footage of the saleable area of for sale residential developments or leaseable area of rental residential developments. The amount of in-lieu fees shall be established by resolution of the City Council. The in-lieu fee schedule shall be updated periodically by the City Council.

(c) The required in-lieu fees shall be paid at the time that the first building permit is obtained for the residential development, except that for phased projects, the developer may pay a pro rata share of the in-lieu fee, based on the number and size of phases in the development, concurrently with the issuance of the first building permit for each phase of the residential development.

(d) All in-lieu fees collected under this section shall be deposited in the Inclusionary housing fund established by the City pursuant to Section 74-378 of this Article.

Sec. 74-358.- Land Dedication.

As an alternative to constructing the required inclusionary units in accordance with this Article, the City Council may, in its discretion, allow an applicant to dedicate real property to the City for the purpose of developing affordable housing, provided that the real property dedicated to the City must satisfy all of the following requirements:

(a) The real property must be conveyed to the City at no cost.

(b) At the time the applicant submits a proposal to dedicate real property to the City pursuant to this Section, the applicant must provide evidence satisfactory to the City that the property meets the following requirements:

(i) The applicant has control over the property through fee ownership, an option to purchase the property, or other property interest demonstrating site control satisfactory to the City, and the real property is free of any monetary liens. In the event that there are any encumbrances or easements that adversely impact title to the property, those encumbrances or easements must be disclosed and factored into the estimated value of the real property interest to be conveyed to the City.

(ii) The applicant must provide evidence satisfactory to the City that the property does not contain any hazardous materials at the time of conveyance; must disclose whether any hazardous materials were previously found on the property; and if hazardous materials were previously remediated from the property, the applicant must provide evidence satisfactory to the City that such hazardous materials were remediated in accordance with all applicable law and regulations.

(iii) The property cannot have been improved with any residential use for at least five years prior to the submission of the proposal for dedication of the property to the City pursuant to this Section.

(iv) The property must be located within one mile of the property upon which the applicant proposes to develop the market rate residential development that has triggered the requirements of this Article.

(v) The construction of inclusionary units on the property must not create an over concentration of deed restricted affordable housing units in any specific neighborhood, as more specifically defined in Section 74-354(c).

(vi) The property must have a general plan designation that authorizes residential uses and is zoned for residential development at a density to accommodate at least a number of dwelling units equal to at least 15% of the number of dwelling units proposed in the Applicant's residential development.

(vii) The property must be suitable for development of inclusionary units equal to at least 15% of the number of dwelling units proposed in the applicant's residential development, in terms of configuration, physical characteristics, location, access, adjacent uses, and other relevant planning and development criteria including, but not limited to, factors such as the cost of construction or development arising from the nature, condition, or location of the property.

(viii) Infrastructure to serve the property, including but not limited to streets and public utilities, must be available at the property line and have adequate capacity to serve the maximum allowable residential development pursuant to zoning regulations.

(c) In order to assist the City in evaluating a proposal by an applicant to dedicate property pursuant to this Section, the applicant shall submit the following documents:

(i) A conceptual site plan and narrative description of a residential development that could be developed on the property.

(ii) An identification of the income and affordability restrictions proposed to be imposed on the property.

(iii) A pro forma analysis that quantifies any financial gap associated with the identified development scope, and describes how this financial gap will be filled.

(iv) If the applicant believes a density bonus would be required pursuant to Government Code section 65915, the terms of the requested density bonus; and the incentives, concessions and development waivers that applicant anticipates will be requested for the development of the property.

(d) Prior to scheduling a proposal for dedication of property pursuant to this Section for consideration by the City Council, City staff will independently evaluate the applicant's proposal and provide the City Council with an analysis of whether the proposal meets the required standards set forth in this Section.

Division 4. – EXEMPTIONS

Sec. 74-359. - Exemptions.

The requirements of this Article do not apply to:

(a) Residential developments of two or fewer housing units.

(b) The reconstruction of any structures that have been destroyed by fire, flood, earthquake or other act of nature provided that the reconstruction of the site does not increase the number of residential units by three or more.

(c) Residential building additions, repairs or remodels; provided that such work does not increase the number of existing units by three or more.

(d) Residential developments that have been deemed complete by the City pursuant to Government Code Section 65589.5 or 65943 as of the effective date of this Article. Further, for residential developments that have been deemed complete by the City pursuant to Government Code Section 65589.5 or 65943 within forty-five (45) days of the effective date of this Article, the inclusionary housing requirement imposed pursuant to Section 74-348 shall be reduced by fifty percent (50%).

Division 5. - COMPLIANCE PROCEDURES

Sec. 74-360. - General.

No residential development subject to this Article shall be approved or deemed approved without approval of an Inclusionary Housing Plan as provided herein.

Sec. 74-361. – Submittal of inclusionary housing plan.

(a) The applicant for a residential project subject to this Article shall submit an inclusionary housing plan in conjunction with its application for discretionary approvals required of the City for the residential development, or if no discretionary approvals are required, in conjunction with the application for the first ministerial permit or approval required for the residential development. The Inclusionary Housing Plan shall in a form as required by the City and must include the following information as applicable based on the applicant's method of compliance with this Article:

1. Whether the residential development is for sale or rental;
2. How the inclusionary housing requirement will be satisfied pursuant to this Article;
3. The number, unit type, tenure, number of bedrooms, approximate location, size and design, construction and completion schedule of all inclusionary units;
4. For rental inclusionary housing that is intended to be developed in conjunction with a for sale residential development, such information as is required to demonstrate compliance with Section 74-352.
5. For off-site development of inclusionary units, such information as is required to demonstrate compliance with Section 74-354.
6. Phasing of inclusionary units in relation to market rate units;
7. The amount of in-lieu fees to be paid by applicant, if applicable.
8. A description of property to be conveyed to the City as a land dedication site, if applicable, and all additional information necessary to demonstrate that the proposed land dedication site meets the requirements of Section 74-358.
9. Any other information reasonably requested by the City Manager to assist with evaluation of the plan under the requirements of this ordinance.
10. Acknowledgement that an instrument as specified by the City restricting the inclusionary unit(s) as affordable shall be recorded against every inclusionary unit and that a recordable

affordable housing agreement shall be entered into by the applicant and any other necessary party, and/or that all required in-lieu fees shall be paid at the time set forth in Section 74-357(c).

Sec. 74-362. - Approval of inclusionary housing plan.

(a) In the event that the residential development requires discretionary approvals in order to be developed, the inclusionary housing plan shall be considered with the application for such inclusionary approvals by the entity responsible for reviewing such discretionary approvals, and may be appealed in accordance with the appeals procedures established for such approvals. except as provided in subsection (c) of this Section 74-362.

(b) In the event that the residential development does not require discretionary approvals in order to be developed, the inclusionary housing plan shall be considered by the City Manager, and must be approved prior to the issuance of any ministerial permits required for the residential development. The City Manager's decision is final unless a written appeal is filed with the City Manager's office within ten days from the date of issuance of the City Manager's decision under this Section. The City Council's decision on appeal shall be final

(c) Notwithstanding the foregoing, in the event the applicant desires to comply with this Article by means of a method that specifically requires City Council approval pursuant to this Article, the inclusionary housing plan shall be considered by the City Council either prior to or concurrently with consideration by the required decision making body for the approvals required for the residential development.

Sec. 74-363. - Form of restrictions.

The forms of the Affordable Housing Agreement and any related declarations, resale restrictions, deeds of trust, and other documents authorized by this section shall be in a general form as prescribed by the City, and shall be approved by the City Manager and approved as to form by the City Attorney prior to being executed with respect to any residential development subject to this program.

Sec. 74-364. - Recording of affordable housing agreements.

(a) An Affordable Housing Agreement in a form approved by the City must be recorded against Inclusionary Units or the Residential Development in its entirety, as deemed appropriate by the City Manager in consultation with the City Attorney, prior to the issuance of any building permit for the Residential Development. The Affordable Housing Agreement shall ensure that the applicant develops the required Inclusionary Housing Units and complies with all other terms of the approved Inclusionary Housing Plan and this Article.

(b) Resale restrictions, deeds of trust, and/or other documents as deemed necessary or appropriate by the City Manager shall be recorded against For-Sale Inclusionary Units to ensure the continued affordability of the For-Sale Inclusionary Units in compliance with this Article.

Sec. 74-365. - Building permits.

The City shall not issue a building permit for a residential development subject to the requirements of this Article without an affordable housing agreement executed by the owner, the applicant (if not the owner) and the City Manager, and approved as to form by the City Attorney, and recorded against the property, or payment of in-lieu fees in accordance with this Article.

Division 6. - REQUIREMENTS FOR FOR-SALE INCLUSIONARY UNITS

Sec. 74-366. - Initial sales price and resale.

The initial sales price and resale price of the for-sale inclusionary unit will be at an affordable sales price that will ensure that the purchaser of the inclusionary unit will pay an affordable housing cost for the unit. The City shall, from time to time, set a benchmark mortgage interest rate and an assumed home buyer down payment amount to be used to calculate the affordable sales price. The City Manager may establish and adjust such benchmark mortgage interest rates, establish an assumed home buyer down payment amount, along with a range of allowable home buyer down payments pursuant to the delegated authority set forth in Section 74-377. Such standards shall be in writing and available to the public upon request.

Sec. 74-367. - Transfer.

A resale restriction agreement will be entered into on each change of ownership of for-sale inclusionary units, to maintain the household income restriction on the inclusionary unit prior to the expiration of the affordability period established pursuant to Section 74-350.

Sec. 74-368. - Owner occupancy required.

All for-sale inclusionary units are subject to the following regulations:

(a) *Principal residence.* The purchaser of the inclusionary unit shall use and occupy the inclusionary unit as purchaser's principal place of residence.

(b) *No rental.* Owner is expressly prohibited from leasing or renting the inclusionary unit unless the City has given its prior written consent to such lease or rental on the basis of a demonstrated hardship by the owner.

(c) *Annual report.* The City from time to time may require certification of continuing occupancy of the inclusionary unit by owner, which shall be verified by owner to the reasonable satisfaction

of the City by means of a written report by owner to the City setting forth the income and family size of the occupants of the Inclusionary Unit. Such report shall be submitted to the City annually. Owner shall not be deemed to be in default of the affordable agreement and this program for any failure to deliver such annual report until 30 days after receipt by owner of written notice from the City requesting such report. The City shall have the option of establishing the type of form to be used for the report.

Division 7. - OCCUPANCY OF RENTAL UNITS

Sec. 74-369. - Occupancy of rentals.

Unless determined otherwise by the City Council, all rental inclusionary units required by this Article shall be only rented to households in the appropriate income category for the inclusionary units, as set forth in this Article.

Sec. 74-370. - Use and occupancy of rental inclusionary units.

The applicant shall designate and offer rental inclusionary units for rent to households in the appropriate income category, based on the approved inclusionary housing plan.

Sec. 74-371. - Establishment of rental rates.

The maximum allowable rent of inclusionary units will be an affordable rent as defined herein, based on the applicable income levels for the inclusionary units, and shall be confirmed by the City on an annual basis.

Sec. 74-372. - Annual report.

The owner shall submit an annual report summarizing the occupancy of each Rental Inclusionary Unit for the year. The City may require additional information if deemed necessary. The owner must obtain and review documents that demonstrate the prospective renter's total income, such as income tax returns or W-2s for the previous calendar year, and submit such information on a form approved by the City.

Division 8. - ADJUSTMENTS, WAIVERS

Sec. 74-373. - General.

The requirements of this ordinance may be adjusted or waived if the applicant demonstrates to the City Manager that applying the requirement of this ordinance would take property in violation of the United States or California Constitutions.

Sec. 74-374. - Timing.

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For an adjustment or waiver to be considered, the applicant must apply for the same at the time of an application for the Residential Development.

Sec. 74-375. - Adjustment or waivers.

If the City Manager determines that applying the requirement of this program, considered together with any variances, or regulatory concessions or incentives that may be applied to the proposed residential project, would take property in violation of the United States or California Constitutions, the requirements of this program shall be modified, adjusted or waived to reduce the obligations but only to the extent necessary to avoid an unconstitutional result. If the City Manager determines no violation of the United States or California Constitutions would occur through application of this ordinance, the requirements of this ordinance remain applicable.

Sec. 74-376. - Decision and further appeal.

The City Manager will determine the adjustment or waiver application and issue a written decision. The City Manager's decision may be appealed to the City Council in the manner and within ten days of issuance of the written decision by the City Manager. In making the (adjustment or waiver) determination, the City Manager or City Council, as applicable shall assume each of the following:

- (a) Application of the inclusionary housing requirement to the residential development;
- (b) Application of any applicable inclusionary or density bonus concessions, incentives or waivers;
- (c) Utilization of the most cost-efficient product type for the Inclusionary Units; and
- (d) The potential for the external funding, including but not limited to, governmental grants, loans, or subsidies of any nature where reasonably likely to occur.

Division 9. - ADMINISTRATION AND ENFORCEMENT

Sec. 74-377. - Program administration.

The City Manager is hereby given authority to initiate any administrative procedures or implementation guidelines as may be necessary to implement and carry out the purpose and intent of this Article. Further, the City Manager may, in the implementation of this program, develop application forms and submittal requirements reasonably related to the implementation of this Article.

Forms or materials needed for implementation of this Article may be introduced and utilized by the City as the City Manager deems may be necessary or desirable. All form changes or administrative procedures initiated by the City Manager, and all administrative determinations or exercises of delegated authority by the City Manager, shall be carried out in a manner consistent with, and reasonably related to, the purposes and intent of this Article, the housing element and all other elements of the City's General Plan, and the furtherance of state and local housing policies and goals, while respecting at all times the rights of property owners and applicants.

Sec. 74-378. – Inclusionary Housing Fund

(a) Unless otherwise required by law, all in-lieu fees and any other funds collected under this Article shall be deposited into a separate account to be designated as the City of Pomona Inclusionary Housing Fund.

(b) The moneys in the inclusionary housing fund and all earnings from investment of the moneys in the inclusionary housing fund shall be expended exclusively to provide housing affordable to extremely low-income, very low-income, low-income, and moderate-income households in the City of Pomona leveraging funds, and administration and compliance monitoring of the Inclusionary Housing Program.

Sec. 74-379. – Enforcement.

(a) The City Attorney shall be authorized to enforce the provisions of this Article and all affordable housing agreements, resale restrictions, deed of trust, and other requirements placed on inclusionary units by civil action and any other proceeding or method permitted by law. The City may, at its discretion, take such enforcement action as is authorized under this code and/or any other action authorized by law or by any regulatory document, restriction, or agreement executed under this Article.

(b) Failure of any official or agency to fulfill the requirements of this Article shall not excuse any applicant or owner from the requirements of this Article. No permit, license, map, or other approval or entitlement for a residential development shall be issued, including without limitation a final inspection or certificate of occupancy, until all applicable requirements of this Article have been satisfied.

(c) The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the city from any other remedy or relief to which it otherwise would be entitled under law or equity.

SECTION 4. The City Clerk shall attest and certify to the passage and adoption of this Ordinance, and shall cause same to be posted as required by law and this Ordinance shall take effect forty-five (45) days after its final adoption.

SECTION 5. If any section, subsection, sentence clause or phrase or word of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction or preempted by state legislation, such decision or legislation shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Pomona hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence clause or phrase or word not declared invalid or unconstitutional without regard to any such decision or preemptive legislation.

PASSED, APPROVED AND ADOPTED this 1st day of February, 2021.

CITY OF POMONA:

Tim Sandoval
Mayor

APPROVED AS TO FORM:

Sonia Carvalho
City Attorney

ATTEST:

Rosalia A. Butler, MMC
City Clerk

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF POMONA

I, ROSALIA A. BUTLER, MMC, CITY CLERK of the City of Pomona do hereby certify that the foregoing Ordinance was introduced for first reading at a regular meeting of the City Council of the City of Pomona held on January 4, 2021 and was adopted at second reading at a regular meeting of the City Council of the City of Pomona held on February 1, 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Rosalia A. Butler, MMC
City Clerk