

ORDINANCE NO. 1661

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FONTANA, CALIFORNIA, AMENDING ORDINANCE NO. 1649, ARTICLE IV OF CHAPTER 14 OF THE FONTANA MUNICIPAL CODE RELATING TO INCLUSIONARY HOUSING AND AFFORDABLE HOUSING IMPACT FEE REQUIREMENTS REMOVING LANGUAGE REGARDING REDEVELOPMENT AGENCIES AND EXTENDING THE EFFECTIVE DATE.

THE CITY COUNCIL OF THE CITY OF FONTANA DOES ORDAIN AS FOLLOWS:

**Section 1.** This Ordinance, due to its length and the corresponding costs of publication, will be published by title and summary as permitted by Section 5 of this Ordinance. The approved summary of this Ordinance reads as follows:

**“Summary**

(1) The purpose of this Ordinance is to achieve a diverse and balanced community with housing available for households of all income levels. This Ordinance requires that new residential ownership projects include a share of adequate, safe and sanitary housing that is affordable to very low, low, and moderate income households.

(2) This Ordinance would require that at least ten percent (10%) of the newly constructed units within a residential ownership development be affordable to very low, low, and moderate income households. The Ordinance provides three (3) alternatives to constructing the required dwelling units on the primary development site. The three alternatives include: (1) the construction of the affordable units on another site, (2) the payment of a fee in lieu of building the affordable units, or (3) the development of a reduced number of inclusionary units at greater affordability.

(3) This Ordinance also requires developers of new residential rental projects and non-residential development projects to pay an affordable housing impact fee to assist in the development of affordable housing. It is intended to supplement other programs that assist and encourage affordable housing in the City. The requirements would apply to residential projects of five (5) or more dwelling units or parcels, and to non-residential projects of 5,000 square feet or more.

(4) In addition, the Ordinance provides certain exemptions for projects that, among other things, are subject to the requirements of certain specified agreements.”

**Section 2.** A new Article IV is hereby added to Chapter 14 of the Fontana Municipal Code to read as follows:

**"Article IV**

**INCLUSIONARY HOUSING AND AFFORDABLE IMPACT FEE REQUIREMENTS**

**Sections:**

<b>14-69</b>	<b>Purpose.</b>
<b>14-70</b>	<b>Findings.</b>
<b>14-71</b>	<b>Definitions.</b>
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<b>14-74</b>	<b>General requirements.</b>
<b>14-75</b>	<b>Inclusionary unit provision and specifications.</b>
<b>14-76</b>	<b>Affordable housing plan submittal and review.</b>
<b>14-77</b>	<b>Contents of affordable housing plan.</b>
<b>14-78</b>	<b>Covenant agreements.</b>
<b>14-79</b>	<b>Conflict of interest.</b>
<b>14-80</b>	<b>Enforcement.</b>
<b>14-81</b>	<b>Appeals.</b>
<b>14-82</b>	<b>Waivers.</b>
<b>14-83</b>	<b>Regulations.</b>
<b>14-84</b>	<b>Affordable housing trust fund, low and moderate income housing fund.</b>

**Section 14-69      Purpose.**

The purpose of this Article is to:

A. Enhance the public welfare and assure that future housing and non-residential development contributes to the attainment of the City's affordable housing goals by increasing the production of residential units affordable to households of very low, low, and moderate income, and by providing funds for the development of very low, low, and moderate income housing.

B. Offset the demand on housing created by new development and mitigate environmental and other impacts that accompany new residential and non-residential development by protecting the economic diversity of the

City's housing stock, reducing traffic, transit and other related impacts, promoting jobs/housing balance and reducing the demands placed on transportation infrastructure in the region.

C. Establish a feasible means by which developers of residential and non-residential development projects assist in increasing the supply of affordable housing. The affordable housing requirements contained in this Ordinance are designed to create a rational relationship between the amount of housing created by development and the affordable housing requirement, taking into account the impact of such requirements on housing construction costs and economic feasibility.

D. Support the Housing Element goal of assuring that a wide range of housing units by location, type of unit, and price are provided in the City, in order to meet the future needs of the City's residents.

E. Support the Housing Element goal of promoting equal opportunity for all residents of the City to reside in the housing of their choice.

F. Support the Housing Element goal of increasing the supply of sound housing at prices affordable by all segments of the community through the rehabilitation of substandard housing units.

G. Support the Housing Element goal of maintaining the supply of sound and affordable housing in the City through conservation of the currently sound housing stock.

H. Meet the housing needs identified by the Housing Element.

#### **Section 14-70      Findings.**

A. On November 17, 2010 the City Council adopted an updated Housing Element for the City of Fontana General Plan. The Housing Element provides for the provision of additional housing for all sectors of the City's population to accommodate the housing demands of new residents who are attracted to the City by increased employment. According to the Housing Element, sixty

percent (60%) of the City's households earn less than one-hundred and twenty percent (120%) of the Area Median Income, and that sixty-six percent (66%) of the very low and low income households in the City overpay (more than thirty percent (30%) of their household income) for housing.

B. Lack of access to affordable housing has a direct impact upon the health, safety and welfare of the residents of the City. The City will not be able to contribute to the attainment of State housing goals or to retain a healthy environment without additional affordable housing. The housing problem has an impact upon a broad range of income groups including many who are not impoverished by standards other than those applicable to California's and the City's housing markets, and no single housing program will be sufficient to meet the housing need.

C. Federal and State funds for the construction of new affordable housing are insufficient to fully address the problem of affordable housing within the City and the private housing market has failed to provide adequate housing opportunities affordable to very low, low, and moderate income households.

D. The City recognizes the need to provide developers with alternative means to comply with the City's inclusionary housing requirement. Should a developer choose an alternative method of compliance, various options will best serve the City, including off-site construction and payment of in-lieu fees.

E. The City Council shall encourage the construction and availability of affordable housing in multifamily rental projects by providing incentives and reducing constraints on such development in the community.

F. The City recognizes that the desirability of the City as a bedroom community for workers in the greater Los Angeles, San Bernardino, and Riverside area labor markets results from good schools, low crime, good parks, good quality of life and open space policies. This desirable living environment in turn makes available affordable housing even more difficult to achieve for local residents who work in local industries.

G. The City has prepared residential and non-residential nexus studies to establish a linkage between the fees it wishes to impose and the impact of new developments within the City. These studies are included as Exhibits A and B to this ordinance.

1. Findings within the residential nexus study prepared in conjunction with the drafting of this Ordinance show that production of new market rate housing units in the City generates a need for affordable housing units. Specifically the consumer spending from households renting or purchasing new residential units increases jobs in the community, a portion of which are low-wage, thus requiring housing affordable for those employees in the very low, low, and moderate income categories. The residential nexus study found that the development of 100 market rate rental units created the need for 1.4% very low, 5.8% low, and 3.1% moderate, for a cumulative need of 10.3% affordable units. The residential nexus also showed that the development of 100 market rate condominiums or single family homes created the need for between 12.0% and 16.2% affordable units, depending on the size and sales prices of the units.

2. The residential nexus study identified the maximum impact fee for units in new rental developments which are equal to the affordability gaps identified in Exhibit A, Residential Nexus Study & Fee Analysis..

3. Findings within the non-residential nexus study prepared in conjunction with the drafting of this Ordinance show that production of non-residential buildings will create the need for new affordable housing units. Specifically some of the jobs within those new non-residential buildings will be low-wage, thus requiring housing that is affordable to those employees in the very low, low, and moderate income categories. The non-residential nexus study identified the maximum impact fees for each non-residential building type, based on the affordability gaps identified in the non-residential nexus study. The maximum impact fees per building square foot are identified in Exhibit B, Non-Residential Nexus Study & Fee Analysis.

## **Section 14-71        Definitions.**

For the purposes of this Article, certain words and phrases shall be interpreted as set forth in this section unless it is apparent from the context that a different meaning is intended.

**“Administrator”:** Means the Housing Manager of the City or other person designated by the City Manager.

**“Affordable Housing Agreement”:** A legally binding written agreement between a Project Owner and City or Redevelopment Agency, in form and substance satisfactory to the Housing Manager and the City Attorney, setting forth those provisions necessary to ensure that the requirements of this Article, whether through the provision of Inclusionary Units or the payment of Affordable Housing Impact Fees, are satisfied.

**“Affordable Housing Impact Fee”:** A fee paid to the City by an Applicant for a Residential Rental or Non-Residential project in the City, as required by this Article.

**“Affordable Housing Plan”:** A plan submitted by the Project Owner to the Housing Manager as part of the City development application (e.g., design review, planned unit development, etc.) stating the method by which the requirements of this Article are proposed to be met, as provided by Section 14-76.

**“Affordable Housing Trust Fund”:** Shall have the meaning set forth in Section 14-84.

**“Affordable Rent”:** A monthly rent calculated per Health and Safety Code Section 50053(b) (including an allowance for utilities as determined by a schedule prepared by the City Housing Authority), which does not exceed:

For very low income households, one-twelfth of fifty percent of area median income, adjusted for assumed household size based on unit size, multiplied by thirty percent.

For low income households, one-twelfth of sixty percent of area median income, adjusted for assumed household size based on unit size, multiplied by thirty percent.

For moderate income households, one-twelfth of one-hundred ten percent of area median income, adjusted for assumed household size based on unit size, multiplied by thirty percent.

The Housing Manager, on or about May 1 of each calendar year, shall publish the maximum "Affordable Rent," adjusted for household size, as calculated in accordance with California Health and Safety Code Section 50053 (b).

"Affordable Sales Price": A sales price of an Inclusionary Unit which results in a monthly affordable housing cost (including principal and interest, property taxes, homeowner's insurance, homeowner's association fees, and an allowance for utilities) which does not exceed:

For very low income households, one-twelfth of fifty percent of area median income, adjusted for assumed household size based on unit size, multiplied by thirty percent.

For low income households, one-twelfth of seventy percent of area median income, adjusted for assumed household size based on unit size, multiplied by thirty percent.

For very low income households, one-twelfth of one-hundred ten percent of area median income, adjusted for assumed household size based on unit size, multiplied by thirty-five percent.

The Housing Manager, on or about May 1 of each calendar year, shall publish the maximum monthly affordable housing costs and estimated "Affordable Sales Price," adjusted for household size, as calculated in accordance with California Health and Safety Code Section 50052.5(b).

"Affordable Unit": A Dwelling Unit which is rented at an Affordable Rent pursuant to an Agreement with the City or ~~Redevelopment Agency~~ in-lieu of paying the Affordable Housing Impact Fee associated with a Multifamily Rental Project.

**“Amenities”:** Interior features which are not essential to the health and safety of the resident, but provide visual or aesthetic appeal, or are provided as conveniences rather than as necessities. Interior amenities may include, but are not limited to, fireplaces, garbage disposals, dishwashers, cabinet and storage space and bathrooms in excess of one. Amenities shall in no way include items required by City building codes or other ordinances that are necessary to ensure the safety of the building and its residents.

**“Applicant”:** Any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks City permits and approvals for a Project. The Applicant may also include the Project Owner.

**“Area Median Income for San Bernardino County”:** The annual median gross annual income adjusted for household size in San Bernardino County as determined by HUD and published by HCD in the California Code of Regulations, Title 25, Section 6932, or its successor provision.

**“City”:** The City of Fontana or its designee or any entity with which the City contracts to administer this Article.

**“County”:** The County of San Bernardino, California.

**“Covenant Agreement”:** An affordable housing agreement, declaration of covenants, conditions, and restrictions, and memorandum of right of first refusal filed with the San Bernardino County Auditor Controller-Recorder restricting the occupancy of Inclusionary Units to households of Very Low, Low, and Moderate income for forty-five (45) years for ownership units and fifty-five (55) years for rental units.

**“Development Agreement”:** An agreement entered into between the City ~~or Redevelopment Agency~~ and a Developer pursuant to Section 65865 of the California Government Code.

**“Dwelling Unit”:** A dwelling designed for occupancy by one Household.

**“HCD”:** The California Department of Housing and Community Development or its successor.

“HUD”: The United States Department of Housing and Urban Development or its successor.

“Household”: One person living alone or two (2) or more persons sharing residency whose incomes shall be considered collectively for the purpose of determining housing payments.

“Household Income”: The combined gross annual income of all adult persons residing in a Dwelling Unit, as defined by HUD and HCD.

“Housing Manager”: The City’s Housing Manager, or his/her designee.

“In-Lieu Fee”: A fee paid to the City by an Applicant pursuant to an Agreement with the City ~~or Redevelopment Agency~~ for a Residential Ownership Project in the City in lieu of providing the Inclusionary Units, as required by this Article.

“Inclusionary Unit”: A Dwelling Unit which is rented at an Affordable Rent pursuant to an Agreement with the City ~~or Redevelopment Agency~~, or sold at an Affordable Sales Price (as defined by this Article) to a Very Low, Low, or Moderate Income Household as part of a Residential Ownership Development as required by this Article.

“Inclusionary Unit Credits”: Credits approved by the Housing Manager in accordance with the credit schedule listed in the Regulations approved by the City Council in the event a Project exceeds the greater of the total number of Inclusionary Units required by this Article or the regulatory requirements of any applicable local, state, or federal housing funding or financing program. Inclusionary Unit Credits may be used by the Project Owner to meet the affordable housing requirements of another Project subject to approval by the City Council.

“Life of the Inclusionary Unit”: The term during which the affordability provisions for Inclusionary Units shall remain applicable. The affordability provisions for the Inclusionary Units shall be for a period of at least 45 years for ownership units and 55 years for rental units from the date of occupancy, which shall be the date a Covenant Agreement is recorded with the County.

**“Low and Moderate Income Housing Fund”:** The low and moderate income housing fund established by ***the City of*** Fontana ~~Redevelopment Agency~~ pursuant to Health & Safety Code Section 33334.2 for the purpose of increasing, improving and preserving the City’s supply of low and moderate income housing.

**“Low Income Household”:** Means a Household whose income does not exceed eighty percent (80%) of the Area Median Income for San Bernardino County, adjusted for family size in accordance with adjustment factors adopted by the United States Department of Housing and Urban Development in establishing income limits for lower income families.

**“Market Rate Unit”:** Means a new Dwelling Unit in a Residential Project which is not designated as an Inclusionary Unit.

**“Moderate Income Household”:** Means a Household whose income does not exceed one hundred and twenty percent (120%) of the Area Median Income for San Bernardino County, adjusted for family size in accordance with adjustment factors adopted by the United States Department of Housing and Urban Development in establishing income limits for lower income families.

**“Multifamily Rental Project”:** A Residential Project consisting of apartments, and similar rental dwelling units (attached or detached) comprised of five (5) or more Dwelling Units including multiple units located on a single parcel of land under common ownership.

**“Non-Residential Project”:** For purposes of this Article, any new non-residential development, including hotel/motel, warehouse/distribution, office, manufacturing/industrial, hospital/medical, retail/entertainment, or any other commercial development. Buildings such as public schools, government buildings, or public hospitals are not included in this definition.

**“Off-site Inclusionary Units”:** Inclusionary Units constructed within the City of Fontana on a site other than the site where the Applicant intends to construct Market Rate Units.

**“Partial Unit Fee”:** A fee based on a fractional percentage of the In-Lieu Fee for Residential Ownership Developments to be charged if the number of Dwelling Units in a Residential Ownership Development results in a fraction of less than 0.5. The fractional percentage less than 0.5 will be multiplied by the per unit In-Lieu fee for Residential Ownership Development, as adopted by the City Council, in order to determine the Partial Unit Fee.

**“Project”:** Means any development which requires a building permit or permits as described on the precise plan submitted for approval to the City. The term “Project” includes Residential and Non-Residential Project(s).

**“Project Owner”:** Any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which holds fee title to the land on which the Project is located.

**“Redevelopment Agency”:** ~~The Fontana Redevelopment Agency.~~

**“Redevelopment Agreement”:** ~~An Owner Participation Agreement, Disposition and Development Agreement, Redevelopment Loan Agreement or similar agreement entered into between the Fontana Redevelopment Agency and a Project Owner.~~

**“Regulations”:** The Regulations adopted by the City Council pursuant to Section 14-83 for the implementation and enforcement of the provisions of this Article.

**“Regulatory Agreement”:** A legally binding written agreement, in form and substance satisfactory to the Housing Manager and the City Attorney executed and recorded against the Inclusionary Unit at the time of the initial sale or lease to a Very Low, Low or Moderate Income Household pursuant to the terms of this Article and the Regulations.

**“Rental Units”:** Units which the Applicant intends to be rented or leased or which are customarily offered for lease or rent.

**“Residential Ownership Project”:** A Residential Project at one location or site comprised of five (5) or more units and

consisting of dwelling units (attached or detached) intended for separated individual ownership of each unit, for which permits have been applied for or approved.

The term "Residential Ownership Project" includes, without limitation, single family dwelling units, multiple family dwelling units, paired or duplex or townhouse dwelling units, planned unit developments, and units located within condominium developments, cooperative developments, and mixed-used developments that include single family Dwelling Units.

"Residential Project": A Multifamily Rental Project or a Residential Ownership Project.

"Substantial Rehabilitation" or "Substantially Rehabilitated": The rehabilitation of a Dwelling Units that have substantial building and other code violations or have been vacant for at least six (6) months, such that the Dwelling Units are returned to the City's housing supply as decent, safe, and sanitary housing, and the cost of such work exceeds Twenty-Five Thousand Dollars (\$25,000) per Dwelling Unit, as that amount may be adjusted for inflation pursuant to the Regulations.

"Unit Type": Various Dwelling Units within a Project which are distinguished by number of bedrooms and/or the type of construction (e.g., detached single-family, duets, townhomes, and condominiums).

"Very Low Income Household": Means a Household whose income does not exceed fifty percent (50%) of the Area Median Income for San Bernardino County, adjusted for family size in accordance with adjustment factors adopted by the United States Department of Housing and Urban Development in establishing income limits for lower income families.

## **Section 14-72      Inclusionary housing requirements.**

Any proposed Project including Non-Residential Projects of five-thousand (5,000) square feet or more, and Residential Projects of five (5) or more residential parcels or Dwelling Units intended for permanent occupancy shall comply with all of the following requirements. The requirements of this Article shall be imposed only once on a given Project.

## **Section 14-73        Applicability.**

**A.      Applicability.** All new Projects as described in this Section shall be subject to the provisions of this Article:

1.      All new Residential Projects of five (5) or more Dwelling Units or parcels;

2.      All new Non-Residential Projects of more than five-thousand (5,000) square feet as defined in Section 14-71.

**B.      Exemptions.** The following are exempt from the provisions of this Article.

1.      An approved tentative tract map that also has a complete design review application submitted to the City prior to **February 9 May 24**, 2012 is exempt from this ordinance. If such design review application is disapproved by the Planning Commission, or expires after approval by the Planning commission but before a building permit has been issued for the project, any new application of the project will be subject to this ordinance.

2.      Residential developments of less than five (5) Dwelling Units or parcels.

3.      Public buildings/facilities.

4.      Residential or Non-Residential Projects for which a building permit is obtained prior to **February 9 May 24**, 2012, the effective date of this Ordinance.

5.      Any existing building to be remodeled or reconstructed so long as:

a.      The Project consists of the reconstruction of structures which have been damaged by fire, flood, wind, earthquake or other calamity and the size of the Non-Residential structure is no more than one-hundred twenty-five percent (125%) of the pre-rehabilitation square footage or the number of residential units has not been increased; or

b. The Project consists of the remodeling or expansion of a single-family residence; or

c. The Housing Manager, in his or her sole discretion, has determined that such remodeling or reconstruction project is exempt from the requirements of this Article.

6. Market Rate Units produced as a density bonus.

7. ~~Residential developments for which the Redevelopment Agency enters into a Redevelopment Agreement so long as the Redevelopment Agreement is in full force and effect at the time the residential development would otherwise be required to comply with the requirements of this Article, and there is no uncured breach of the Redevelopment Agreement prior to the issuance of a certificate of occupancy for the residential development.~~

8. 7. Residential care facilities with Dwelling Units that are non-self-sufficient units (i.e., they do not contain kitchen facilities). If a Project includes both self-sufficient and non-self-sufficient Dwelling Units, only the latter is exempt.

## **Section 14-74 General requirements.**

### **14-74.1 Residential ownership projects.**

A. Creation of inclusionary units. A minimum of ten percent (10%) of all newly constructed Dwelling Units in Residential Ownership Projects shall be developed, offered to and sold to Very Low, Low, and Moderate Income Households at a sales price in accordance with the Affordable Housing Agreement and this Article. The Inclusionary Units shall be governed by the terms of a Covenant Agreement, and if applicable, a Regulatory Agreement.

B. Allocation of the inclusionary units to income levels. Inclusionary Units as required by this Article shall be allocated as follows:

Very low Income Households	40% of 10% = 4%
Low Income Households	40% of 10% = 4%

Moderate Income Households 20% of 10% = 2%

The first Inclusionary Unit within a Residential Ownership Project shall be a Low Income Unit, the second Inclusionary Unit shall be a Moderate Income Unit, and the third Inclusionary Unit shall be a Very low Income Unit. Any Inclusionary Unit requirements in excess of three units shall continue in the same order.

C. Calculation of inclusionary units.

1. In the event the calculation for the number of Inclusionary Units results in a fraction of an Inclusionary Unit, the fraction of which is 0.5 or more, the Project Owner shall provide an additional full Inclusionary Unit within the Residential Ownership Project. In the event the calculation for the number of Inclusionary Units results in a fraction of an Inclusionary Unit, the fraction of which is less than 0.5, the Project Owner shall have the option of either (i) providing an additional full Inclusionary Unit within the Residential Ownership Project; or (ii) paying a Partial Unit Fee to the Affordable Housing Trust Fund or the Low and Moderate Income Housing Fund, at the City's discretion, in an amount equal to the percentage represented by the fractional unit multiplied by the In-Lieu Fee in the fee schedule in the Regulations adopted by the City Council

2. The number of Inclusionary Units required for a particular Residential Ownership Project shall be determined at the time a land use application is filed by the Applicant for a Residential Ownership Project with the City's Housing Manager. If a change in the subdivision design results in a change in the total number of Dwelling Units, the number of Inclusionary Units required will be recalculated to coincide with the final approved Residential Ownership Project.

3. For purposes of calculating the number of Inclusionary Units required by this Section, any additional units authorized as a density bonus under Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code will not be counted in determining the required number of Inclusionary Units.

4. In the event a Residential Ownership Project exceeds the total number of Inclusionary Units required, the Project Owner may request Inclusionary Unit Credits, which may be used to meet the affordable housing requirements of another project of the Project Owner. Inclusionary Unit Credits will be granted in the event the Residential Ownership Project exceeds the greater of the total number of Inclusionary Units required by this Article or the regulatory requirements of any applicable local, state, or federal housing funding or financing program.

**14-74.2 Multifamily rental projects.**

A. Affordable housing impact fee. All Applicants shall pay an Affordable Housing Impact Fee. The amount of such payment to be paid by the Applicant pursuant to this Section shall be the applicable Affordable Housing Impact Fee set forth in the fee schedule in the Regulations adopted by the City Council and shall be deposited into the Affordable Housing Trust Fund or the Low and Moderate Income Housing Fund, at the City's discretion.

B. Payment of affordable housing impact fee. The Affordable Housing Impact Fee for Multi-Family Rental Projects shall be paid as follows:

1. The entirety of the Affordable Housing Impact Fee required by this subsection shall be paid prior and as a condition precedent to issuance of a building permit for all or any part of the Multifamily Rental Project.

2. The Affordable Housing Impact Fee collected shall be deposited in the Affordable Housing Trust Fund or the Low and Moderate Income Housing Fund, at the City's discretion.

3. No certificate of occupancy shall be issued for any corresponding Market Rate Units in a Multifamily Rental Project unless the Affordable Housing Impact Fee required under this Section has been paid in full to the City.

**14-74.3 Non-Residential Projects.**

A. Affordable housing impact fee. All Applicants for new Non-Residential Projects shall pay an Affordable Housing Impact Fee. The amount of such payment to be

paid by Applicant pursuant to this Section shall be the applicable Affordable Housing Impact Fee set forth in the fee schedule adopted by the City Council.

B. Payment of affordable housing impact fee. The Affordable Housing Impact Fee for Non-Residential Projects shall be paid as follows:

1. The entirety of the Affordable Housing Impact Fee required by this subsection shall be paid prior and as a condition precedent to issuance of a building permit for all or any part of the Non-Residential Project.

2. The Affordable Housing Impact Fee collected shall be deposited in the Affordable Housing Trust Fund or the Low and Moderate Income Housing Fund, at the City's discretion.

#### 14-74.4 Alternatives for residential ownership projects.

A. Builder proposal. The Applicant may propose alternative means of compliance in an Affordable Housing Plan required by Section 14-76 according to the following provisions. The Applicant may also partner with a nonprofit affordable housing provider to meet its Inclusionary Unit obligations through one of the alternatives set forth in this section.

1. Provision of a greater level of affordability. The Applicant may propose a greater level of affordability than required under this Article and reduce the total number of units otherwise required.

2. Offsite construction. Inclusionary Units may be proposed off-site within the City limits if it can be demonstrated that the offsite construction proposal would result in a minimum of ten percent (10%) more total Inclusionary Units than required by this Article and if the Inclusionary Units will be located in an area within the city limits where, based on the availability of affordable housing, the Administrator finds that the need for such units is greater than the need in the area of the proposed development. If the Applicant proposes to provide rental offsite Inclusionary Units in place of ownership onsite Inclusionary Units, the rental Off-Site Inclusionary Units shall meet the affordability and other requirements specified in this Article. Off-Site

Inclusionary Units shall meet or exceed minimum quality standards specified in conditions of approval and may include any combination of new dwelling units, new dwelling units created in existing structures, or conversion of existing market rate units to Inclusionary Units. The following information, to the satisfaction of the Administrator, is required for submittal of a proposal for offsite Inclusionary Units:

a. If the Off-Site Inclusionary Units will not be constructed concurrently with the market rate units, the Applicant shall specify the security to be provided to the City to ensure that the Inclusionary Units will be constructed in a timely manner, including evidence of ownership or control of any sites proposed for the Inclusionary Units, to the satisfaction of the Administrator, and clear and convincing evidence that financing has been secured for the offsite Inclusionary Units.

b. For conversion of existing Market Rate Units to Inclusionary Units:

(i) Existing rent or appraised value of each unit on the property to be converted, proposed rents or sales prices after conversion, and any existing rent limits, resale price restrictions, or other affordability restrictions imposed by any public agency, nonprofit agency, land trust, or other body.

(ii) Size of the households occupying each unit on the property to be converted, vacancy rates for each month during the past two (2) years, and existing tenant incomes.

(iii) A property inspection report prepared by a housing inspector approved by the City and a termite report, both prepared no more than sixty (60) days before the filing of the application. The property inspection report shall include a full examination of all common and private areas within the existing dwelling units for compliance with applicable building codes.

(iv) Plans and a written description of rehabilitation to be completed, including correction of all code violations and completion of all termite repairs described in the property inspection report and

termite report; cost of rehabilitation; and the appraised value of the property, including land, buildings, and all other improvements, after rehabilitation.

(v) Description of benefits to be offered to existing Very Low, Low, or Moderate Income tenants, including but not limited to right of first refusal to remain in the unit, and required relocation assistance for existing tenants.

3. Preservation of historically significant structures. Adjustments may be made to the required number and affordability level of the Inclusionary Units based on the economics associated with preservation of historically significant structures as identified under guidelines as set forth by the California Environmental Quality Act ("CEQA").

4. In-lieu fees. The Applicant for a Residential Ownership Project may request a waiver of the requirement to build an Inclusionary Unit or inclusionary Units in exchange for the payment of an In-Lieu Fee for each unit. An application for payment of In-Lieu Fees shall include a detailed analysis, to the satisfaction of the Administrator, demonstrating economic infeasibility to construct the Inclusionary Units.

If approved the In-Lieu Fee for Residential Ownership Projects shall be paid as follows:

a. The entirety of the In-Lieu Fee required by this subsection shall be paid prior and as a condition to issuance of a building permit for all or any part of the Residential Ownership Project.

b. The In-Lieu Fee collected shall be deposited in the Affordable Housing Trust Fund or the Low and Moderate Income Housing Fund, at the City's discretion.

c. No certificate of occupancy shall be issued for any corresponding Inclusionary Units or Market Rate Units in a Residential Ownership Development unless the In-Lieu Fee required under this Section has been paid in full to the City.

~~5. Fontana redevelopment project areas.~~  
~~If the Residential Ownership Project is located within any of the Fontana redevelopment project areas, any alternative proposed pursuant to this section shall provide equivalent redevelopment affordable housing production credit under Health and Safety Code Section 33413(2)(A)(ii) as would be obtained if the Applicant provided on site Inclusionary Units as required by Section 14-74.1.~~

B. Combination. The City Council may accept any combination of the above options.

**14-74.5 Alternative for residential rental projects.**

Affordable housing agreement. The Applicant for a Multifamily Rental Project may choose to enter into an Affordable Housing Agreement with the City or Agency and provide Inclusionary Units onsite, rather than pay the Affordable Housing Impact Fee. If the Applicant chooses this alternative then at least ten percent (10%) of the total units within the Multifamily Rental Project shall be Inclusionary Units, which shall be allocated pursuant to Section 14-74.1(B). To ensure compliance with the Costa-Hawkins Act (Civ. Code, §§ 1954.50 *et seq.*), the City shall only approve a proposal to rent Inclusionary Units if the Applicant and City agree in an Affordable Housing Agreement to restrict the Inclusionary Units to an Affordable Rent in consideration for a direct financial contribution from the City or any other form or assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.

**14-74.6 Approval of alternatives.**

Findings. The City Council for the first approval may approve, conditionally approve, or reject any alternative proposed by an Applicant as part of an Affordable Housing Plan. Any approval or conditional approval shall be based on the following findings:

(i) That the purposes of this Article would be better served by implementation of the proposed alternative(s) and that the proposal meets the greatest community needs at the time the alternative is reviewed. As one of the factors determining whether the purposes of this Article would be better served under the

proposed alternative, the decision-making body should consider whether implementation of an alternative would overly concentrate Inclusionary Units within any specific area of the project or any specific area within the city limits and, if so, shall reject the alternative unless the concentration of Inclusionary Units is offset by other identified benefits that flow from implementation of the alternative at issue.

(ii) For payment of In-Lieu Fees, that the Applicant has sufficiently demonstrated that construction of the Inclusionary Units is economically infeasible and cannot be mitigated through the other alternatives outlined in subsection A of this section.

**Section 14-75 Inclusionary unit provision and specifications.**

A. Inclusionary Units shall be reasonably dispersed throughout the Project unless otherwise approved by the City.

B. Inclusionary Units shall be constructed with identical exterior materials and an exterior architectural design that is consistent with the Market Rate Units in the Project. The Inclusionary Units shall also be comparable with Market Rate Units in terms of base design and infrastructure (including sewer, water and utilities), construction quality and finished quality.

C. Inclusionary Units may be smaller in aggregate size than the Market Rate Units in the Project and have different interior finishes, features and amenities. In addition, Inclusionary Units may have fewer interior amenities than the Market Rate Units in the Project. However, the interior features must be durable and of good quality and consistent with the contemporary standards for new housing. The number of bedrooms must be the same as those in Market Rate Units. However, Inclusionary Units need not be more than four (4) bedrooms; in the event Market Rate Units are more than four (4) bedrooms the corresponding Inclusionary Unit(s) may be reduced to four bedrooms. The City may require that the Inclusionary Units meet certain minimum standards. These standards shall be set forth in the Affordable Housing Agreement for the Project.

D. Inclusionary Units in Residential Ownership Projects shall remain affordable for a period of at least forty-five (45) years from the date of occupancy through recordation of a Covenant Agreement. If the Applicant of a Multifamily Rental Project chooses to construct Inclusionary Units pursuant to an Affordable Housing Agreement in lieu of paying the Affordable Housing Impact Fee, those rental units shall remain affordable for a period of at least fifty-five (55) years from the date of occupancy through recordation of a Covenant Agreement as described in Section 14-78 of this Article.

E. All Inclusionary Units on-site or off-site shall be constructed concurrently with or prior to the construction of the Project's Market Rate Units.

F. For purposes of calculating the Affordable Rent of an Inclusionary Unit, the following household size assumptions appropriate for the Inclusionary Unit shall be used for each applicable Dwelling Unit type:

Unit Size	By Household Size
Studio unit	1 person
1 bedroom unit	2 persons
2 bedroom unit	3 persons
3 bedroom unit	4 persons
4 bedroom unit	5 persons

#### **Section 14-76 Affordable housing plan submittal and review.**

A. An Affordable Housing Plan shall be submitted to the Planning Division as part of the first approval of any Non-Residential Project or Residential Project in a form approved by the City Manager or his/her designee. The City Manager or his/her designee may waive the requirement for submittal of an Affordable Housing Plan for Projects approved prior to the effective date of this Ordinance or Projects that have affordable housing requirements included as part of a Development Agreement or ~~Redevelopment Agreement~~.

B. No application for a first approval for any Non-Residential Project or Residential Project shall be deemed

complete unless an Affordable Housing Plan is submitted, conforms to the provisions of this Article and is approved by the City Manager or his/her designee pursuant to the requirements of this Section.

C. Upon submittal of the Affordable Housing Plan and as part of the first approval, the City Manager, or his/her designee, shall determine whether the Affordable Housing Plan is complete and conforms to the provisions of this Article. The Affordable Housing Plan shall be approved if it conforms to the provisions of this Article. The City Manager or his/her designee shall issue to the Applicant, within ten (10) business days of the City Manager or his/her designee's decision on the Affordable Housing Plan, the City's notice of decision by first-class mail, postage prepaid. The decision of the City Manager, or his/her designee, may be appealed to the City Council in accordance with Section 14-81.

D. The City shall attach to the first approval of any Residential Ownership Project or applicable Multifamily Rental Project a condition, which requires execution and recordation of a Covenant Agreement described in Section 14-78 prior to the approval of any final or parcel map or building permit for the Project.

#### **Section 14-77      Contents of affordable housing plan.**

A. The Affordable Housing Plan shall establish the method and terms by which the Applicant shall comply with the requirements of this Article.

B. The Affordable Housing Plan shall state the methodology for determining an Inclusionary Unit's initial and ongoing rent, occupancy requirements, eligibility requirements, the administrative process for monitoring unit management to assure ongoing affordability and other matters related to the development and retention of the Inclusionary Units.

C. The Affordable Housing Plan shall set forth any request for a waiver of the Inclusionary Unit requirement or Affordable Housing Impact Fee pursuant to Section 14-82. For Projects which meet the affordability threshold with units designed to house Very Low and/or Low Income Households, all Dwelling Units in the Project shall be eligible

for a waiver of the Affordable Housing Impact Fee or Inclusionary Unit requirement.

### **Section 14-78      Covenant agreements.**

To assure affordability over the Life of the Inclusionary Unit, the City shall prepare a Covenant Agreement providing for implementation of the Affordable Housing Plan and consistent with the Regulations adopted pursuant to Section 14-83. The Covenant Agreement shall be recorded against the entire property, in a form approved by the City Attorney, to ensure that the Covenant Agreement is enforceable upon any successor in interest. The Covenant Agreement shall include affordability restrictions for all Inclusionary Units to ensure that such Inclusionary Units are available only to Moderate, Low or Very Low Income Households at an Affordable Rent. The Covenant Agreement shall also require every qualified household occupying an Inclusionary Unit to certify, in a form reasonably acceptable to the City, that such unit will be occupied as a primary residence. In the event an Inclusionary Unit is affordable by design the Affordable Housing Plan shall stipulate the method for assuring that the Inclusionary Units retain their affordability as the housing market changes. Prior to the approval of any final or parcel map or issuance of any building permit for a Residential Ownership Project or applicable Multifamily Rental Project subject to this Article, the Covenant Agreement shall be executed by the City and the Applicant and recorded against the entire property.

### **Section 14-79      Conflict of interest.**

The following individuals are ineligible to purchase or rent an Inclusionary Unit: (a) City officials and employees (and their immediate family members) who have policymaking authority or influence regarding City housing programs; (b) the Project Applicant and its officers and employees (and their immediate family members); and (c) the Project Owner and its officers and employees (and their immediate family members).

### **Section 14-80      Enforcement.**

A. The City Manager, or his/her designee, is designated as the enforcing authority. The City Manager, or his/her designee, may suspend or revoke any building permit or approval upon finding a violation of any provision of this Article. The provisions of this Article shall apply to all agents, successors and assigns of an Applicant proposing a Project. No building permit or final inspection shall be issued, nor any development approval be granted which does not meet the requirements of this Article.

B. It shall be a misdemeanor to violate any provision of this Article. Without limiting the generality of the foregoing, it shall also be a misdemeanor for any person to sell or rent to another person an Inclusionary Unit created pursuant to this Article at a price or rent exceeding the maximum allowed under this Article or to sell or rent an Inclusionary Unit to a Household which does not meet the eligibility requirements as set forth in this Article. In the event that it is determined that rents in excess of those allowed by operation of this Article have been charged to a tenant residing in an Inclusionary Unit, the City may take appropriate legal action to recover, and the Project Owner shall be obligated to pay to the tenant, or to the City in the event the tenant cannot be located, any excess rents charged. Recovered amounts shall be deposited into the Inclusionary Housing Trust Fund or the Low and Moderate Income Housing Fund. It shall further be a misdemeanor for any person to provide false or materially incomplete information to the City or to a seller or lessor of an Inclusionary Unit to obtain occupancy of housing for which he or she is not eligible.

C. The City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this Article, including but not limited to: (1) actions to revoke, deny or suspend any permit, including a building permit, certificate of occupancy, or discretionary approval; (2) civil actions for injunctive relief or damages; (3) actions to recover from any violator of this Article civil fines, restitution to prevent unjust enrichment, and/or enforcement costs; and (4) any other action, civil or criminal, authorized by law or by any regulatory document, restriction, or agreement under this Article.

D. In any action to enforce this Article or an Affordable Housing Plan recorded hereunder, the City shall

be entitled to recover its reasonable attorney's fees and costs.

E. Failure of any official or agency to fulfill the requirements of this Article shall not excuse any person, owner, Applicant, Project Owner or Household from the requirements of this Article.

F. 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 would otherwise be entitled under law or equity.

#### **Section 14-81 Appeals.**

A. Any person aggrieved by any action or determination of the City Manager or his/her designee under this Article, may appeal such action or determination to the City Council. An appeal stays proceedings until a determination of the appeal has been made.

B. The aggrieved party shall submit a notice of appeal in writing and file such appeal with the Planning Division upon forms provided by the City. An appeal of any action in the administration or enforcement of this Article shall indicate specifically the reasons for appeal.

C. Any appeal shall be filed within ten (10) calendar days from the date of the City Manager or his/her designee's notice of decision. Upon the filing of appeal, the Planning Division shall transmit a copy of the appeal to the City Clerk and City Manager or his/her designee.

D. Upon receipt of the notice of appeal, the City Council shall set a date for hearing of the matter and give notice of the date, time and place of the hearing to the aggrieved party at least ten (10) days prior to the date of the hearing. Prior to such hearing, the City Manager or his/her designee shall transmit to the City Clerk a report of his or her findings and shall present all documents on file at the hearing.

E. Upon appeal from the City Manager or his/her designee's decision, the City Council shall consider the record and such additional evidence as may be offered and may affirm, reverse or modify, in whole or in part, the order,

requirement, decision, determination, interpretation or ruling appealed from or make and substitute such other or additional decision or determination as it may find warranted under the provisions of this Article. Where new evidence is submitted that affects or has a direct bearing on the appeal that previously was not considered because such evidence could not be presented, the City Council may return the matter to the City Manager or his/her designee for action to be taken in light of such new evidence. The decision of the City Council may be made either at the time of the appeal hearing or at a continued public meeting held within 30 days of the appeal hearing date.

#### **Section 14-82        Waivers.**

A. Notwithstanding any other provision of this Article, the requirements of this Article may be waived, adjusted, or reduced if the Applicant shows, based on substantial evidence, that there is no reasonable relationship between the impact of a proposed Project and the requirements of this Article, or that applying the requirements of this Article would take a property in violation of the United States or California Constitutions.

B. A request for a waiver, adjustment, or reduction under this Section shall be submitted to the Planning Division concurrently with the Affordable Housing Plan required by Section 14-76. The request for a waiver, reduction, or adjustment shall set forth in detail the factual and legal basis for the claim.

C. The City Manager, or his/her designee, shall review the request for a waiver, adjustment, or reduction in the same manner and at the same time as the Affordable Housing Plan. In making a determination on an application for waiver, adjustment, or reduction, the Applicant shall bear the burden of presenting substantial evidence to support the claim. Substantial evidence shall include, but not be limited to, economic information and other evidence necessary to establish that the application of this Article to the Project would constitute a taking of a property in violation of the United States or California Constitutions.

D. If the City Manager, or his/her designee, determines that the application of this Article to the Project would constitute a taking of a property, the City shall only

grant a waiver, adjustment, or reduction to the extent necessary to avoid an unconstitutional result, after adoption of written findings, based on substantial evidence, supporting the determinations required by this Section. If it is determined no taking would occur through application of this Article to the Project, the requirements of this Article remain applicable.

### **Section 14-83        Regulations.**

The City Council shall by resolution establish regulations for the implementation of this Article.

### **Section 14-84        Affordable housing trust fund, low and moderate income housing fund.**

There is hereby established a separate fund of the City, to be known as the Affordable Housing Trust Fund. Monies collected pursuant to Sections 14-74 or 14-80 shall be deposited in the Affordable Housing Trust Fund. Additional monies from other sources may be deposited in the Affordable Housing Trust Fund or the Low and Moderate Income Housing Fund. The monies deposited in the Affordable Housing Trust Fund shall be subject to the following conditions:

A. Monies deposited in to the Affordable Housing Trust Fund must be used to increase and improve the supply of housing affordable to Moderate, Low and Very Low Income Households in the City. Monies may also be used to cover reasonable administrative or related expenses associated with the administration of this Article.

B. The fund shall be administered by the Housing Manager, or his or her designee, who may develop procedures to implement the purposes of the Affordable Housing Trust Fund consistent with the requirements of this Article and any adopted budget of the City.

C. Monies deposited in accordance with this Section shall be used in accordance with the City's Housing Element, ~~Redevelopment Agency's redevelopment plan~~, or subsequent plan adopted by the City Council to construct, rehabilitate or subsidize affordable housing or assist other government entities, private organizations or individuals to do so. Permissible uses include, but are not limited to,

assistance to housing development corporations, equity participation loans, grants, pre-home ownership co-investment, pre-development loan funds, participation leases or other public-private partnership arrangements. The Affordable Housing Trust Fund may be used for the benefit of both rental and owner-occupied housing.

D. The Housing Manager shall report to the City Council and Planning Commission on the status of activities undertaken with the Affordable Housing Trust Fund as provided by California Government Code Section 66006(b). The report shall include a statement of income, expenses and disbursements and other used of the Affordable Trust Housing Fund. The report should also state the number and type of affordable units constructed or assisted during that year and the amount of such assistance. The report may also evaluate the efficiency of this Article in mitigating the City's shortage of affordable housing and recommend any changes to this Article necessary to carry out its purposes, including any adjustments to the number of units required."

**Section 3. Severability.** If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

**Section 4. Effective Date.** This Ordinance shall become effective thirty (30) days following its adoption.

**Section 5. Publication.** The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published within fifteen (15) days after adoption in a newspaper of general circulation, printed and published within the City of Fontana, California.

**Section 6. Codification.** Section 2 of this Ordinance shall be codified in the City of Fontana Municipal Code. Sections 1, 3, 4 and 5 of this Ordinance shall not be codified in the City of Fontana Municipal Code.

APPROVED AND ADOPTED this 8<sup>th</sup> day of May, 2012.

**READ AND APPROVED AS TO LEGAL FORM:**

  
\_\_\_\_\_  
City Attorney

I, Tonia Lewis, City Clerk of the City of Fontana, and Ex-Officio Clerk of the City Council, do hereby certify that the foregoing Ordinance is the actual Ordinance adopted by the City Council and was introduced at a regular meeting on the 24<sup>th</sup> day of April, 2012, and was finally passed and adopted not less than five days thereafter on the 8<sup>th</sup> day of May, 2012, by the following vote to wit:

**AYES:** Mayor Warren and Council Members Roberts, Tahan, Slowik and Wibert.  
**NOES:** None.  
**ABSENT:** None.  
**ABSTAIN:** None.

  
\_\_\_\_\_  
City Clerk of the City of Fontana  
  
\_\_\_\_\_  
Mayor of the City of Fontana

**ATTEST:**

  
\_\_\_\_\_  
City Clerk of the City of Fontana

## CERTIFICATION

STATE OF CALIFORNIA )  
COUNTY OF SAN BERNARDINO ) ss.  
CITY OF FONTANA )

I, Tonia Lewis, City Clerk of the City of Fontana, do hereby certify that the foregoing is a true copy of Ordinance No. 1661, introduced at a regular meeting of the City Council of the City of Fontana, California held the 24th day of April, 2012, and duly adopted by the City Council of the City of Fontana, California at a regular meeting thereof held the 8th day of May, 2012.

WITNESS my hand and official seal of the City of Fontana this 8<sup>th</sup> day of May, 2012.

Tonia Lewis  
Tonia Lewis, City Clerk