

CALIFORNIA COASTAL COMMISSION

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Th 6a

Addendum

February 25, 2008

To: Commissioners and Interested Persons

From: California Coastal Commission
 San Diego Staff

Subject: Addendum to **Item Th 6a, (Carlsbad LCP Amendment No. 1-06D)**, for the Commission Meeting of 3/6/08

After consultation with the City and staff counsel, staff recommends the following changes be made to the above-referenced staff report. Additions are shown in underline and omitted language is shown in ~~strike-through~~. City staff requested the deletion of Suggested Modification #4 altogether because they feel it is inconsistent with the structure of their ordinance, contradictory to other findings and they believe the City Attorney's office would assure that adequate findings are adopted. In addition, with regard to Suggested Modification #2, they requested a re-phrasing to avoid redundancy in their findings.

After consultation with Commission staff counsel, staff has agreed with the City's requested revisions with one clarification. In the re-drafting of Sug. Mod. #2, the reference will be to "all" applicable requirements of the certified LCP. Please incorporate the following changes and make corollary changes within the findings:

1. On Page 2 of the Staff Report, the second paragraph shall be revised as follows:

Therefore, Suggested Modification #1 provides that for development located in the coastal zone, any offset provided pursuant to this section shall be consistent with the applicable provisions of the certified Carlsbad Local Coastal Program Land Use Plan(s) (with the exception of density). Similarly, Suggested Modification #2 provides that for development located in the coastal zone, ~~(a) the requested density bonus does not exceed the density permitted under Government Code section 65915 and is consistent with all applicable requirements of the certified Carlsbad Local Coastal Program Land Use Plan(s), with the exception of density, and (b) the~~ and any requested incentive(s), concession(s), and/or waiver(s) or reduction(s) of development standards are consistent with all applicable requirements of the certified Carlsbad Local Coastal Program Land Use Plan(s), with the exception of density. Suggested Modification #3 makes it clear that all environmentally constrained lands identified as non-developable in the general plan, local coastal program, and zoning ordinance shall be excluded from the total area of the project site when calculating maximum density. ~~A last concern is that the Coastal Act~~

~~provides that if the density sought by the applicant cannot feasibly be accommodated on the site in a manner that is in conformity with Chapter 3, the permit issuing authority may reject such a request for a density bonus, etc. However, there is no language in the City's ordinance to this effect. Therefore Suggested Modification #4 identifies the necessary findings to reject the granting of an offset, incentive or concession to support a density bonus if it can't be found consistent with and adequate to implement the certified LUPs.~~

On Page 5, Suggested Modification #2, as originally drafted, shall be revised as follows:

6. For development located in the coastal zone, the requested density bonus, ~~does not exceed the density permitted under Government Code section 65915 and is consistent with all requirements of the certified Carlsbad Local Coastal Programs Land Use Plan(s), with the exception of density, and (b) the any~~ requested incentive(s), concession(s), and/or waivers or reduction(s) of development standards, are consistent with all applicable requirement(s) of the certified Carlsbad Local Coastal Program Land Use Plan(s), with the exception of density.

On Page 5, Suggested Modification #4 shall be deleted in its entirety as follows:

~~A. For development located in the coastal zone, if the requested density bonus is not granted, the following finding shall be made and shall be based on substantial evidence in the record: the requested density bonus cannot feasibly be accommodated in a manner that is in conformity with the requirements of the certified Carlsbad Local Coastal Program.~~

CALIFORNIA COASTAL COMMISSION

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Thu 6a

February 14, 2008

TO: COMMISSIONERS AND INTERESTED PERSONS

**FROM: SHERILYN SARB, DEPUTY DIRECTOR SAN DIEGO COAST DISTRICT
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT
LAURINDA OWENS, COASTAL PLANNER, SAN DIEGO COAST DISTRICT**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF CARLSBAD MAJOR LCP
AMENDMENT 1-06D (Density Bonus Revisions) For Commission Meeting of
March 5-7, 2008**

SYNOPSIS

The subject amendment request revises the certified Carlsbad Mello II LCP Implementation Program. On July 14, 2006, the City of Carlsbad Local Coastal Program Amendment No. 1-06 was submitted in the San Diego District office. The LCP amendment includes four separate components (A, B, C and D). The entire LCP package was filed as of May 22, 2007 and a one-year extension was granted in August, 2007. However, staff separated out this component for action. The subject component (D) addresses changes to the Density Bonus regulations. It only involves an amendment to the implementation plan. Components A and B address the Habitat Management Plan (HMP) Implementation Plan and HMP Hardline Land Use Map and Zone Changes to Open Space. Component C addresses Conditional Use Permit (CUP) code revisions and was approved in January, 2006. Components A and B will be reviewed separately at a later date.

SUMMARY OF AMENDMENT REQUEST

The subject amendment request proposes to (A) amend the term “density bonus program” in the Glossary of the Land Use Element of the General Plan to ensure consistency with the State definition of “density bonus”; (B) amend Chapter 21.86 (Density Bonus) to ensure consistency with State law; and (C) amend Chapter 21.85 (Inclusionary Housing) to ensure there is no conflict with the provisions of Chapter 21.86 (Density Bonus). The purpose of the amendment is to ensure that the General Plan, Local Coastal Program and Zoning Ordinance are consistent with recent amendments that were made to the State’s density bonus law (Government Code Section 65915) which became effective on 1/1/05 and 1/1/06.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending first that the LCP amendment be rejected and then approval with suggested modifications. The proposed revisions to the City's Inclusionary Housing and Density Bonus regulations raise several issues. In particular, there is a general concern that in the provision of inclusionary housing or the granting of density bonuses that potential impacts to coastal resources could result (i.e., reduced parking requirements, building setbacks, impacts on public views, etc.) as a result of the incentives and concessions for housing developments that will be permitted. These could also result in potential impacts to sensitive habitat by reductions in building setbacks or buffers adjacent to environmentally sensitive habitat areas or encroachment into such areas. More intense development permitted as a result of density bonuses could also adversely affect public views (high rises) or public access (congestion or traffic). In particular, such types of development should be concentrated in areas able to support it and in close proximity to public transit to alleviate traffic congestion and impacts on public access. Another concern was that it appeared the City struck language from the ordinance that made it clear that environmentally constrained lands were to be deducted from the total acreage of a subject property such that these lands were not included in the density calculation because they are considered non-developable.

Therefore, Suggested Modification #1 provides that for development located in the coastal zone, any offset provided pursuant to this section shall be consistent with the applicable provisions of the certified Carlsbad Local Coastal Program Land Use Plan(s) (with the exception of density). Similarly, Suggested Modification #2 provides that for development located in the coastal zone, (a) the requested density bonus does not exceed the density permitted under Government Code section 65915 and is consistent with all requirements of the certified Carlsbad Local Coastal Program Land Use Plan(s), with the exception of density, and (b) the requested incentive(s), concession(s), and/or waiver(s) or reduction(s) of development standards are consistent with all requirements of the certified Carlsbad Local Coastal Program Land Use Plan(s). Suggested Modification #3 makes it clear that all environmentally constrained lands identified as non-developable in the general plan, local coastal program, and zoning ordinance shall be excluded from the total area of the project site when calculating maximum density. A last concern is that the Coastal Act provides that if the density sought by the applicant cannot feasibly be accommodated on the site in a manner that is in conformity with Chapter 3, the permit issuing authority may reject such a request for a density bonus, etc. However, there is no language in the City's ordinance to this effect. Therefore Suggested Modification #4 identifies the necessary findings to reject the granting of an offset, incentive or concession to support a density bonus if it can't be found consistent with and adequate to implement the certified LUPs.

The appropriate resolutions and motions begin on Page 4. The suggested modifications begin on Page 5. The findings for denial of the Implementation Plan Amendment, as submitted, begin on Page 8. The findings for approval of the Implementation Plan Amendment, if modified, begin on Page 13.

BACKGROUND

The proposed revisions will implement several land use plan segments—all of which were approved in the years between 1980 through 1988 pursuant to the original certification of the LCP and various LCPAs. The proposed amendment will result in several changes to the density bonus provisions, along with necessary revisions to the inclusionary housing program.

ADDITIONAL INFORMATION

Further information on the LCP Amendment No. 1-06D (Density Bonus Revisions) may be obtained from Laurinda R. Owens, Coastal Planner, at (619) 767-2370.

PART I. OVERVIEW

A. LCP HISTORY

Carlsbad Local Coastal Program (LCP)

The City's certified LCP contains six geographic segments as follows: Agua Hedionda, Mello I, Mello II, West Batiquitos Lagoon/Sammis Properties, East Batiquitos Lagoon/Hunt Properties and Village Redevelopment. Pursuant to Sections 30170(f) and 30171 of the Public Resources Code, the Coastal Commission prepared and approved two portions of the LCP, the Mello I and II segments in 1980 and 1981, respectively. The West Batiquitos Lagoon/ Sammis Properties segment was certified in 1985. The East Batiquitos Lagoon/Hunt Properties segment was certified in 1988. The Village Redevelopment Area LCP was certified in 1988; the City has been issuing coastal development permits there since that time. On October 21, 1997, the City assumed permit jurisdiction and has been issuing coastal development permits for all remaining segments except Agua Hedionda. The Agua Hedionda Lagoon LCP segment remains as a deferred certification area until an implementation plan is certified. Portions of the City's zoning code comprise the bulk of the City's certified implementation plan.

B. STANDARD OF REVIEW

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

C. PUBLIC PARTICIPATION

The City has held Planning Commission and City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS

Following a public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to each resolution.

- I. MOTION:** *I move that the Commission reject the Implementation Program Amendment for the City of Carlsbad Implementation Plan Amendment #1-06D (Density Bonus Revisions), as submitted.*

Staff Recommendation

Staff recommends a **YES** vote. Failure of this motion will result in certification of the Implementation Program Amendment as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Resolution I

The Commission hereby denies certification of the Implementation Plan amendment to the City of Carlsbad's Local Coastal Program on the grounds that the amendment does not conform with, and is not adequate to carry out, the provisions of the certified land use plan. There are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impacts which the approval would have on the environment.

- II. MOTION II** *I move that the Commission approve the City of Carlsbad Implementation Plan Amendment #1-06 D, if modified.*

Staff Recommendation

Staff recommends a **YES** vote and the adoption of the following resolution and findings. An affirmative vote by a majority of the Commissioners present is needed to pass the motion.

Resolution II

The Commission hereby approves certification of the implementation amendment, as approved with suggested modifications, to the City of Carlsbad's Local Coastal Program on the grounds that the amendment does conform with, and is adequate to carry out, the provisions of the certified land use plan. There are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impacts, which the approval would have on the environment.

PART III. SUGGESTED MODIFICATIONS

1. Sub-section G. shall be added to Section 21.85.100 (Inclusionary Ordinance) of the Carlsbad Municipal Code and read as follows:

G. For development located in the coastal zone, any offset provided pursuant to this section shall be consistent with the applicable provisions of the certified Carlsbad Local Coastal Program Land Use Plan(s) (with the exception of density).

2. Sub-section A.6. shall be added to Section 21.86.120 (Density Bonus Ordinance) of the Carlsbad Municipal Code and read as follows:

6. For development located in the coastal zone, (a) the requested density bonus does not exceed the density permitted under Government Code section 65915 and is consistent with all requirements of the certified Carlsbad Local Coastal Program Land Use Plan(s), with the exception of density, and (b) the requested incentive(s), concession(s), and/or waiver(s) or reduction(s) of development standards are consistent with all requirements of the certified Carlsbad Local Coastal Program Land Use Plan(s).

3. Section 21.86.020 (Definitions) shall be revised as follows:

~~(18) 17. “Maximum allowable residential density yield” means the maximum density of the density range allowed by the residential general plan designation(s) applicable to a project site. All environmentally constrained lands identified as undevelopable in the general plan, local coastal program, and zoning ordinance shall be excluded from the total area of the project site when calculating maximum density. ~~number of residential units permitted on the project site, which number of units is calculated by multiplying the net developable acreage of the project site times growth management control point(s) for the project site’s applicable residential general plan designation(s). Within the coastal zone, all environmentally constrained lands identified pursuant to the coastal zoning ordinances and local coastal programs are considered to be non-developable and shall be deducted from the total number of areas of a subject property.~~~~

4. Section 21.86.130 (Required Findings) shall be added to the Density Bonus Ordinance of the Carlsbad Municipal Code as follows:

A. For development located in the coastal zone, if the requested density bonus is not granted, the following finding shall be made and shall be based on substantial evidence in the record: the requested density bonus cannot feasibly be accommodated in a manner that is in conformity with the requirements of the certified Carlsbad Local Coastal Program.

**PART III. FINDINGS FOR REJECTION OF THE CITY OF CARLSBAD
IMPLEMENTATION PLAN AMENDMENT #1-06D, AS SUBMITTED**

A. AMENDMENT DESCRIPTION

The primary purpose of the proposed amendment is to ensure that the existing Density Bonus and Inclusionary Housing provisions in the City's certified LCP (zoning ordinance) are revised so that they are consistent with recent changes to state law. In so doing, changes will be made to two chapters in the zoning code: 1) Chapter 21.85 (Inclusionary Housing) and Chapter 21.86 (Residential Density Bonus and Incentives or Concessions).

State density bonus law requires the City to grant a density bonus if a developer seeks and agrees to provide a specified percentage of units for senior housing, or as affordable units to lower, very low or moderate-income households. On January 1, 2005, an amendment (SB 1818) to the State's density bonus law (Government Code Section 65915) became effective. Following the enactment of SB 1818, a second amendment was introduced (SB 435) to further clarify the provisions of State density bonus law. SB 435 was approved and became effective on January 1, 2006.

The changes in the density bonus law, established by SB 1818 and SB 435, require a substantial amendment to the City's density bonus regulations to ensure consistency with State law. The primary changes in the State's density bonus law include: 1) a reduction from 15% to 10% for the affordable housing required in order to qualify for a density bonus, 2) new provisions for granting additional density bonuses up to a specified maximum (35%), and 3) new criteria that define the number of concessions a project is entitled to based on the amount of affordable housing provided.

Another change to the city's regulations that has resulted from the changes to State density bonus law is in how the density bonus regulations relate to the City's inclusionary housing requirements. Based on the analysis of SB 435, prepared by State Housing and Community Development dated 8/18/05, City staff is recommending that if an applicant seeks a density bonus per state law, then the affordable dwelling units provided to qualify for a state density bonus will not count toward satisfying the City's inclusionary housing requirements. In other words, in order to qualify for a state density bonus, the applicant will be required to provide affordable dwelling units in addition to those required by the inclusionary housing requirements.

BACKGROUND

In 1993, the Inclusionary Housing Ordinance became effective to implement the City of Carlsbad's Inclusionary Housing Program and the ordinance was incorporated into the LCP through Local Coastal Program Amendment (LCPA) No. 1-96G (August, 1996). The City's Inclusionary Housing Program requires that 15 percent of all residential units developed within Carlsbad be affordable to lower income households, specifically to those households with gross household incomes equal to or less than 80% of the San Diego County Area Median Income (AMI).

In implementing the Inclusionary Housing Ordinance, the City found the proposed revisions would facilitate the practical implementation of the Inclusionary Housing Program. The City also found the proposed revisions to the Inclusionary Housing Ordinance would assist in the City's effort to qualify for self-certification of its housing program since the revisions parallel self-certification policies. Finally, the City found some alternatives for providing affordable housing, such as second dwelling units, have been the subject of much debate and required resolution through revisions to the Inclusionary Housing Ordinance. Regarding consistency with the Local Coastal Program, the City found the proposed revisions to inclusionary requirements are consistent with and will not change the regulations that guide development and protect the coastal environment.

In LCPA #1-96G, the Commission approved new standards addressing affordable housing in all six certified land use plan segments, and modified several associated portions of the certified Implementation Program as well. The LUP amendments enabled the City to grant density increases above the maximum allowable under the certified LCP, along with other types of incentives. Two entirely new ordinances to implement its affordable housing program citywide were proposed to be added to the certified LCP through LCPA #1-96G.

Chapter 21.85 (Inclusionary Housing) was proposed to ensure that master and specific planned communities and residential subdivisions provide a range of housing opportunities for all economic segments of the population by requiring that 15 percent of all approved residential units be restricted to and affordable to lower-income households. Chapter 21.85 as certified in 1996 did not itself authorize density increases or regulatory concessions to encourage the development of affordable housing, though it did provide for financial assistance and incentives in the form of modifications to the City's inclusionary housing requirements. It provided that density bonuses and other regulatory concessions would be available to eligible projects pursuant to Chapter 21.86 of the Zoning Code regarding the City's statutorily required density bonus program.

Chapter 21.86 (Residential Density Bonus or In-Lieu Incentives) was proposed to promote housing in the City that is affordable to its low income and senior citizens and to provide density bonuses and other incentives to developers in order to implement the goals of the City's Housing Element and Sections 65915-65917 of the California Government Code. It provided the mechanism for providing density bonuses, regulatory concessions or financial assistance to eligible affordable housing developments pursuant to the requirements of Government Code Sections 65915-65918. The ordinance, as proposed, did not provide for a project's consistency with the certified LCP.

The Commission adopted suggested modifications addressing several aspects of the overall amendment, to further define and clarify the various mandates for affordable housing programs, including senior housing, density bonuses, inclusionary housing and second dwelling units, as they relate to Coastal Act concerns. The Commission found that affordable housing projects that incorporate a density increase and incentives could be found consistent with the policies of Chapter 3 of the Coastal Act provided they are found consistent with all policies and ordinances of the LCP, with the exception of density. The Commission found densities beyond the otherwise maximum allowable density were acceptable because the other provisions of the certified LCP are sufficient to

protect the coastal resources in Carlsbad. The City of Carlsbad adopted the Commission's suggested modifications.

In November, 2000, the City's implementation plan was subsequently amended (LCPA #1-2000B/C) to authorize the City to provide discretionary "offsets", when necessary to enable residential projects to provide a "preferable product type or affordability" beyond what is required by the Inclusionary Housing Ordinance. The LCPA was approved with a suggested modification that required that any affordable housing project in the coastal zone be consistent with all certified local coastal program provisions, with the exception of density. The language clarified that any offsets granted in the coastal zone must also be consistent with all LCP provisions with the exception of the base density. An additional change in that LCPA amendment package was the definition of "basements" in the municipal code.

B. FINDINGS FOR REJECTION

Chapter 21.85 Inclusionary Housing and Chapter 21.86 Residential Density Bonus and Incentives or Concessions

a) Purpose and Intent of the Ordinance. The purpose of this provision (Section 21.85.060 Inclusionary Housing) is to require that a minimum of fifteen (15%) of all approved residential development be restricted to and affordable to lower-income households; subject to adjustment based on the granting of an inclusionary credit.

The purpose of this ordinance (Section 21.86 Residential Density Bonus and Incentives or Concessions) is to address the public good in the city by addressing housing which is appropriate for the needs of and affordable for all people who reside within the city. Among other needs, the City of Carlsbad needs housing that is affordable to lower-income households and senior citizens. Therefore, it is in the public interest for the city to promote the construction of such additional housing through the exercise of its powers and the utilization of its resources. It is the purpose of this chapter to provide a means for granting density bonuses and incentives or concessions to developers for the production of housing affordable to lower and moderate-income households and senior citizens. It is also the purpose of this chapter to implement the goals and objectives of the housing element of the city's general plan. In addition, there are specific findings that nothing in this chapter shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act.

b) Major Provisions of the Ordinance. The major provisions of Chapter 21.86 addressing inclusionary housing include the details of approving an inclusionary credit which include, in part, affordable housing standards, calculating the required number of inclusionary units, alternatives to construction of inclusionary units, in-lieu fees, collection of fees, expiration of affordability tenure, enforcement, etc. The City's current in-lieu fee is \$4,515 per market-rate dwelling unit.

The proposed amendment revises the existing inclusionary housing provisions by changing the reference to granting of certain incentives to “granting of an inclusionary credit” in the purpose and intent of the ordinance. In addition, the terms “incentives or concessions” shall have the same meaning as defined in the ordinance. Other changes are proposed which include lowering the percentage for extremely low-income households. Pursuant to subsection (H), extremely low-income households means those households whose gross income is equal to or less than 30% of the median income for San Diego County as determined by the U.S. Department of Housing and Urban Development (HUD). Prior to changes in state law, this requirement was 35%. Other changes are also proposed. For example, all references to the term “incentive credit adjustment” will be changed to “inclusionary credit adjustment”. Another important change is that language is being added to this section of the ordinance such that if an applicant seeks to construct affordable housing to qualify for a density bonus in accordance with the provisions of this chapter (Residential Density Bonus), those affordable dwelling units that qualify for a residential development for a density bonus are in addition to, and do not count toward satisfying, the inclusionary housing requirements of this chapter.

The major provisions of Chapter 21.86 addressing Residential Density Bonus and Incentives or Concessions include the definitions related to density bonuses and incentives and in particular, the terminology for affordable housing and various income ranges that are described in the ordinance. Other provisions of the ordinance include the details of the inclusionary housing regulations. Specifically, the regulations for new residential construction, including the minimum number of units that need to be restricted as affordable, etc., are stated.

The proposed amendment substantially revises the existing ordinance by making it consistent with State Law. Specifically, the definitions have been expanded. There is now a new definition for “extremely low-income”, “rental” and “for-sale units” when previously the lowest income range was described as “very low-income”. One of the changes is that previously a housing development was defined as a new residential development that consisted of a new residential development or conversion of existing residential buildings of five or more units. The definition has been expanded to allow more types of options available for developers to create affordable housing. For example, as revised, the ordinance now includes as options for new residential construction the following: a subdivision or common interest development consisting of 5 or more residential units or unimproved lots; or a project to either substantially rehabilitate and convert an existing commercial building to residential use, or substantially rehabilitate an existing two-family or multiple-family dwelling structures(s) where the result of rehabilitation would be a net increase in available residential units.

In addition, previously the ordinance required that density bonuses be granted for housing developments of a minimum of five units, if an applicant agreed to construct the following: A minimum of 20% of the total units are restricted and affordable to low-income households; or that 10% of the total units are restricted and affordable to very low-income households or that a minimum of 50% of the units are restricted to senior residents. The revised ordinance now provides that a density bonus can be provided to a housing development of at least five units where the applicant agrees to provide at least

one of the following: a minimum of 10% of the units be restricted and affordable to lower-income households, a minimum of 5% of the total units of the housing development be restricted and affordable to very low-income households or that a senior housing development as defined elsewhere in the California Civil Code or mobile home park that limits residency based on age requirements for housing for older persons pursuant to sections in the California Civil Code; or a minimum of 10% of the total units in a common interest development be restricted and affordable to moderate-income households, provided that all units in the development are offered to the public for purchase. The ordinance also contains a number of tables showing the percentage of low-income units proposed and the density bonus to be granted, etc.

c) Adequacy of the Ordinance to Implement the Certified LUP Segments. The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified Land Use Plan(s) (LUP) (i.e., Mello I, Mello II, Agua Hedionda, Village Redevelopment Area, East Batiquitos Lagoon and West Batiquitos Lagoon LUPs).

Many policies of the respective LUPs for the City of Carlsbad contain policies that address protection of public views, preservation of community character and the provision of adequate parking. The proposed revisions to both the inclusionary housing and density bonus regulations raise several issues. Specifically, offsets or concessions granted to development as well as higher intensity of development typically approved through density bonuses could result in impacts to sensitive habitat/habitat management plan areas. In addition, higher intensity development should be concentrated in areas able to support such development and should be tied to alternative transit to alleviate any potential impacts on congestion and traffic and reduce impacts to public access. In the case of the proposed amendment addressing the inclusionary housing chapter of the City's Municipal Code, several minor changes are proposed to assure consistency with the density bonus regulations.

With regard to the proposed changes to the chapter addressing density bonuses, several incentives or concessions will be permitted to encourage developers to provide affordable housing. Specifically, pursuant to a new proposed section of the zoning ordinance (Section 21.86.050), several incentives and concessions for housing developments will be permitted. According to the proposed language, the decision-making body may grant certain incentives and concessions provided that they are required in order to provide for the affordable housing. In addition, the granting of such incentives or concessions are permitted even if they would have a specific adverse impact upon public health and safety or the physical environment, or affect historical resources for which there is no feasible method to satisfactorily mitigate or avoid adverse impacts. The ordinance specifically indicates that the applicant shall receive the following number of incentives or concessions:

1. A reduction in site development standards or a modification of zoning code or architectural design requirements (excluding State Building Standards), that results in identifiable, financially sufficient, and actual cost reductions. A reduction/modification to standards or requirements may include, but is not

limited to, a reduction in minimum lot size, setback requirements, and/or in the ratio of vehicular parking spaces that would otherwise be required.

2. Approval of mixed use zoning in conjunction with the housing development if i) commercial, office, industrial, or other land uses will reduce the cost of the housing development; and ii) the commercial, office, industrial, or other land uses are compatible with the housing development and the existing or planned future development in the area where the proposed project will be located;
3. Other regulatory incentives or concessions that result in identifiable, financially sufficient, and actual cost reductions.

Section 21.86.060 Waiver or reduction of development standards

- A. In addition to the incentives or concessions permitted by Section 21.86.050, an applicant may seek a waiver or reduction of development standards that will have the effect of precluding the construction of a housing development meeting the criteria of Section 21.86.040.A at the densities or with the incentives or concessions permitted by this Chapter.
 1. The applicant shall show that the requested waiver or reduction of development standards is necessary to make the housing units economically feasible.
 2. The applicant shall provide evidence that the development standards(s) requested to be waived or reduced will have the effect of precluding the construction of a housing development at the densities or with the incentives or concessions permitted by this Chapter; and
- B. The decision-making body shall grant the requested waiver or reduction of development standards, unless, based upon substantial evidence, any of the following findings are made in writing:
 1. The waiver or reduction of development standards is not necessary to make the housing units economically feasible.
 2. The development standards requested to be waived or reduced will not have the effect of precluding the construction of a housing development at the densities or with the incentives or concessions permitted by this Chapter.
 3. The requested waiver or reduction of development standards would have a specific adverse impact upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

The proposed revisions to the inclusionary housing and density bonus provisions of the City's certified LCP raise a few concerns. The first concern with regard to these revisions is that the granting of a density bonus above the density permitted in the zoning ordinance could, for example, adversely affect coastal resources by allowing a

development that could impact public views (high rises), or permitting a development that could adversely affect public access (congestion or traffic due to a higher intensity type of project). In addition, the proposed offsets or concessions that may be granted to encourage affordable housing could also result in adverse impacts to coastal resources. For example, if offsets, concessions or deviations were granted to new development there is the possibility that development could encroach onto environmentally sensitive habitat areas (i.e., wetlands) or result in reduced buffers next to such habitat areas. If offsets were provided to the required height limit, coastal views may be impacted. If offsets were granted for a reduction in parking, potential impacts to public access could occur. Therefore, absent language that specifically states that the granting of density bonuses, as well as offsets or concessions, to encourage affordable housing, shall be consistent with the respective Land Use Plans, the LCP amendment cannot be found consistent with, or adequate to carry out the policies of the respective land use plans in the certified Carlsbad LCP.

A second concern raised is that sub-section 18 of Section 21.86.010 of the density bonus regulations has been struck. This section of the City's Municipal Code basically stated that within the coastal zone, all environmentally constrained lands identified pursuant to the coastal zoning ordinances and local coastal programs are considered to be non-developable and shall be deducted from the total acreage of a property when calculating density. The purpose of this language is to assure that these lands are not calculated in the density requirements because they are considered non-developable. Absent language that makes this clear, the LCP amendment cannot be found consistent with, or adequate to implement the policies of the respective land use plans in the certified Carlsbad LCP.

Another group of concerns are with regard to inclusionary housing credits adjustments, how the money on the for-sale programs gets reinvested, and the terms of affordability in the granting of density bonuses. With regard to the first issue, there is a feature of the City's inclusionary housing program that allows developers to receive additional (more than one unit) credit for each of the affordable units provided, thereby reducing the total inclusionary housing requirement to less than 15% of all the residential units approved. A schedule is also provided illustrating how the credit can be earned. In response to a staff inquiry of how this credit works or examples of how it has been used, the City has indicated that the credit adjustment is based on a credit schedule which permits developers to reduce their total inclusionary housing obligation to less than 15% if the developers provide a more desirable product or otherwise make a proposal which goes above and beyond the intent of the ordinance in terms of product type or affordability of those units. However, the City has only given credit to one project so far; the project received a two-unit credit. The inclusionary requirement for the project was 12 units which were affordable to low-income households, but, the requirement was reduced to 10 affordable units because the developer agreed to make those ten units affordable to very low income households instead of low income. These adjustments seem appropriate for the City which will be constantly re-evaluating its housing efforts.

With regard to the for-sale program, there is a concern that when units are developed, exceptions may be granted such that the units are not restricted and protected to remain affordable in perpetuity. However, the City has indicated that such monies get reinvested and the City currently requires that for-sale units be resold to other low income

households during the first 15 years of their affordability term. Based on documentation in the City's submittal and regulations, rental units are restricted to a term of 55 years which is reasonable; however, the for-sale units could be sold at any time and the affordability provisions could be lost. This raises a concern that affordable housing provided in conjunction with density exceptions and deviations in the coastal zone may not be protected. City staff has indicated that they believe the proposed ordinance, as submitted, provides for a reasonable and beneficial affordable housing program.

Specifically, the City has stated that currently for-sale units are required to be resold to other low income households during the first 15 years of their affordability terms. Because such units that have been constructed under this program are still in their initial 15-year terms for re-sale, the City does not have any information as to how these monies or subsidies are reinvested. However, they did indicate that there are some older units that do not have a 15-year requirement and which were sold at market rate. The funding goes back into the Housing Trust Fund (HTF) to reinvest in affordable housing, both for-sale and rental programs. The entire HTF is used as a source of funding for other affordable developments and their homebuyer assistance programs. To date, the City has spent about \$27 million on affordable housing developments throughout the City. They also have about 1,800 units that have been built and another 700 currently under construction or in the planning process. Again, at this time, the City's efforts are noteworthy, but long-term affordability of this housing should be reviewed over time.

PART IV. FINDINGS FOR APPROVAL OF THE CITY OF CARLSBAD IMPLEMENTATION PLAN AMENDMENT, IF MODIFIED

The proposed Inclusionary Housing and Density Bonus Revisions will continue to maintain visual resources by assuring that the requested density bonus does not exceed the density permitted under Government Code Section 65915 and is consistent with all requirements of the City of Carlsbad's respective Land Use Plans other than density, and that the requested incentive(s), concession(s), and/or waiver(s) or reduction(s) of development standards are consistent with all requirements of the certified LUPs. As such, proposed development will continue to be provided consistent with the goals and policies of the certified LUPs. In addition, the proposed suggested modifications will also assure that the density bonus revisions will not adversely affect visual resources. As such, the proposed changes are consistent with, and adequate to carry out, the provisions of the certified Carlsbad Local Coastal Program Land Use Plans.

With regard to consistency with policies in the LUP that address parking and coastal access, many of the policies of the various Land Use Plans for the City of Carlsbad contain similar recommendations and goals that state parking supplies need to be improved. While the proposed offsets, etc., do allow for reductions in development standards which *may* include a reduction in parking, etc., such offsets cannot be permitted if they will result in impacts to coastal resources (i.e., adversely affect parking in nearshore areas or usurp parking for beach visitors, etc.). Specifically, language has been added that states that for development located in the coastal zone, the requested density bonus does not exceed the density permitted under Government Code section 65915 and is consistent with all requirements of the City of Carlsbad's respective Land

Use Plans other than density, and that the requested incentive(s), concession(s), and/or waiver(s) or reduction(s) of development standards are consistent with all requirements of the certified LUPs. In addition, in the granting of density bonuses, such development should be located near transit centers to foster less dependence on automobiles which will reduce traffic and congestion especially in light of the fact that such development proposals permit development to be much more intense. Language that encourages the siting of such development projects in close proximity to public transit and the trolley lines, which are ideal locations for the concentration of development and construction of affordable housing, is consistent with the public access policies of the City's certified LUP. The City's ordinance specifically states that inclusionary units should be located on sites that are in proximity to or will provide access to employment opportunities, urban services, or major roads or other transportation and commuter rail facilities and that they are compatible with adjacent land uses. Other language in the inclusionary housing regulations also states that alternative transit is considered as a basis for alternative options for providing on-site inclusionary housing. In other words, an offsite option might be approved if, among other measures, it provides location advantage such as proximity to jobs, schools, transportation and services, etc. Therefore, the City has adequately addressed this concern. As such, adequate parking will continue to be provided consistent with the goals and policies of the certified LUPs.

The proposed density bonus revisions will not result in any adverse impacts to coastal resources. For example, through the granting of offsets, deviations or concessions, no reductions in setbacks will be permitted that would result in encroachment into environmentally sensitive habitat areas or reductions in buffers, for example, adjacent to wetlands, etc.

In addition, to address the concern raised regarding the proposed removal of language from the density bonus regulations that struck language stating that in the coastal zone environmentally constrained lands are considered non-developable and are deducted from the total number of acres of a property, the City has proposed alternative language. Specifically, the City indicated that the way the code language was currently written, density is calculated the same inside and outside of the Coastal Zone (CZ). By stating that "in the Coastal Zone" environmentally constrained lands identified in the zoning ordinance and LCP are not included, it implies that when not in the CZ, those lands *are* included. The City has suggested a revision to clarify that the density is calculated the same inside the CZ as well as outside of the CZ. With the suggested revision, this language is found adequate to implement the certified LUPs.

In addition, if the City is not able to grant a density bonus because it cannot be feasibly accommodated without violating LUP requirements other than density, a suggested modification has been added to make the requisite findings. The City will need to make a finding that states, based on the substantial evidence in the record, the requested density bonus cannot feasibly be accommodated in a manner that is in conformance with the requirements of the respective certified land use plans other than density. This is largely proposed for the City's benefit. With such language, the proposed density bonus revisions are found consistent with, and adequate to implement, the certified LUPs.

In summary, the various housing projects that will be permitted through the Inclusionary Housing Density Bonus regulations will comply with the land use policies of their respective segments of the certified LCP. Therefore, the proposed LCP amendment will have no significant adverse impacts on coastal resources and the proposed amendment request is found to be consistent with the respective certified LUPs and are adequate to carry them out.

PART IV. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP, as amended, does conform with CEQA provisions. The Commission finds that approval of the proposed ordinance amendments, as submitted, would result in significant impacts under the meaning of the California Environmental Quality Act. However, with the inclusion of the suggested modifications, implementation of the revised ordinances would not result in significant impacts to the environment within the meaning of the California Environmental Quality Act. Therefore, the Commission finds that approval of the LCP amendment will not result in any significant adverse environmental impacts.

RESOLUTION NO. 2006-065

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, ADOPTING A NEGATIVE DECLARATION AND ADDENDUM FOR A GENERAL PLAN AMENDMENT, ZONE CODE AMENDMENT AND LOCAL COASTAL PROGRAM AMENDMENT; AND APPROVING SAID GENERAL PLAN AMENDMENT IN CONCEPT AND LOCAL COASTAL PROGRAM AMENDMENT.
CASE NAME: DENSITY BONUS AMENDMENT
CASE NO.: GPA 05-14/ZCA 04-10/LCPA 04-17

The City Council of the City of Carlsbad, California, does hereby resolve as follows:


WHEREAS, the Planning Commission did on February 1, 2006, hold a duly noticed public hearing as prescribed by law to consider the Negative Declaration and Addendum, General Plan Amendment (GPA 05-14), Zone Code Amendment (ZCA 04-10) and Local Coastal Program Amendment (LCPA 04-17) to amend the term "density bonus program" in the Glossary of the Land Use Element of the General Plan, and amend the density bonus and inclusionary housing regulations in the Zoning Ordinance to achieve consistency between the General Plan, Zoning Ordinance, Local Coastal Program, and State Law.

WHEREAS, the Planning Commission adopted Planning Commission Resolutions No. 5878, 5880, and 6022 recommending to the City Council that the Negative Declaration and Addendum be adopted, and GPA 05-14, and LCPA 04-17 be approved; and

WHEREAS, the City Council did on the 21st day of March 2006 hold a duly noticed public hearing as prescribed by law to consider the Negative Declaration and Addendum, General Plan Amendment and Local Coastal Program Amendment, and;

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the City Council considered all factors relating to the Negative Declaration and Addendum, General Plan Amendment and Local Coastal Program Amendment;

NOW, THEREFORE, the City Council of the City of Carlsbad, California does hereby resolve as follows:

EXHIBIT #1
Resolutions of Approval
LCPA #1-06D City of Carlsbad Density Bonus Revisions
 California Coastal Commission

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1. That the above recitations are true and correct.

2. That the findings of the Planning Commission in Planning Commission Resolutions No. 5878, 5880 and 6022 constitute the findings of the City Council in this matter.

3. That the Negative Declaration and Addendum are adopted as shown in Planning Commission Resolution No. 5878 on file with the City Clerk and incorporated herein by reference.

4. That the amendment to the General Plan (GPA 05-14), as shown in Planning Commission Resolution No. 6022, on file with the City Clerk and incorporated herein by reference, is hereby accepted, approved in concept, and shall formally be approved with GPA Batch No. 1 of 2006.

5. That the amendment to the Local Coastal Program (LCPA 04-17), is approved as shown in Planning Commission Resolution No. 5880, on file with the City Clerk and incorporated herein by reference.

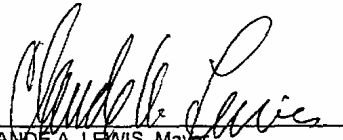
6. That the approval of LCPA 04-17 shall not become effective until it is approved by the California Coastal Commission and the California Coastal Commission's approval becomes effective.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Carlsbad on the 21st day of March 2006, by the following vote, to wit:

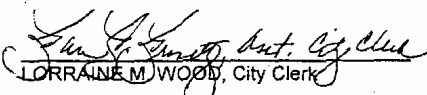
AYES: Council Members Lewis, Hall, Kulchin, Packard, Sigafoose

NOES: None

ABSENT: None


CLAUDE A. LEWIS, Mayor

ATTEST:


LORRAINE M. WOOD, City Clerk

(SEAL)



PLANNING COMMISSION RESOLUTION NO. 5880

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CARLSBAD, CALIFORNIA, RECOMMENDING APPROVAL OF A LOCAL COASTAL PROGRAM AMENDMENT TO AMEND THE DENSITY BONUS AND INCLUSIONARY HOUSING REGULATIONS IN THE ZONING ORDINANCE TO ENSURE THE DENSITY BONUS REGULATIONS ARE CONSISTENT WITH STATE LAW, AND THAT THE DENSITY BONUS AND INCLUSIONARY HOUSING REGULATIONS ARE COMPATIBLE.

CASE NAME: DENSITY BONUS AMENDMENT

CASE NO.: LCPA 04-17

WHEREAS, the Planning Director has prepared an amendment to Title 21 of the Municipal Code (Zoning Ordinance) relating to density bonus and inclusionary housing regulations; and

WHEREAS, the Zoning Ordinance is the implementing ordinance for the City of Carlsbad Local Coastal Program; and

WHEREAS, California State law requires that the Local Coastal Program and Zoning Ordinance be in conformance, and therefore, an amendment to the Local Coastal Program is required in conjunction with an amendment to the Zoning Ordinance (implementing ordinance) to ensure consistency between the two documents; and

WHEREAS, the City of Carlsbad, "Applicant," has filed a verified application for an amendment to the Local Coastal Program; and

WHEREAS, said verified application constitutes a request for a Local Coastal Program Amendment as shown on Exhibit "X," dated February 1, 2006, attached to Planning Commission Resolution No. 5879 and incorporated herein by reference, as provided for in Public Resources Code Section 30514 and Article 15, Subchapter 2, Chapter 8, Division 5.5 of Title 14 of the California Code of Regulations (California Coastal Commission Regulations); and

WHEREAS, the Planning Commission did on the 1st day of February 2006, hold a duly noticed public hearing as prescribed by law to consider said request; and

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WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, analyzing the information submitted by staff, and considering any written comments received, the Planning Commission considered all factors relating to the Local Coastal Program Amendment; and

WHEREAS, in accordance with California Coastal Commission requirements, the Local Coastal Program Amendment was subject to a six-week public review period, starting on March 11, 2005 and ending on April 22, 2005, and the Planning Commission considered all comments received, if any.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Planning Commission as follows:

- A) That the foregoing recitations are true and correct.
- B) That based on the evidence presented at the public hearing, the Planning Commission hereby RECOMMENDS APPROVAL of DENSITY BONUS AMENDMENT - LCPA 04-17, based on the following findings:

Findings:

1. That the proposed Local Coastal Program Amendment meets the requirements of, and is in conformity with, the policies of Chapter 3 of the Coastal Act and all applicable policies of the Mello I, Mello II, Agua Hedionda Lagoon, East Batiquitos Lagoon and West Batiquitos Lagoon segments of the Carlsbad Local Coastal Program not being amended by this amendment, in that it ensures consistency with the Carlsbad Zoning Ordinance, and does not conflict with any coastal zone regulations, land use designations or policies, with which development must comply.
2. That the proposed amendment to the Carlsbad Local Coastal Program is required to ensure consistency with the proposed Zone Code Amendment (ZCA 04-10).

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PASSED, APPROVED AND ADOPTED at a regular meeting of the Planning Commission of the City of Carlsbad, California, held on the 1st day of February 2006, by the following vote, to wit:

AYES: Chairperson Montgomery, Commissioners Baker, Cardosa, Segall, and Whitton

NOES:


ABSENT: Commissioner Dominguez and Heineman

ABSTAIN:



MARTELL B. MONTGOMERY, Chairperson
CARLSBAD PLANNING COMMISSION

ATTEST:



DON NEU
Assistant Planning Director

Chapter 21.85

INCLUSIONARY HOUSING

Sections:

- 21.85.010 Purpose and intent.
- 21.85.020 Definitions.
- 21.85.030 Inclusionary housing requirement.
- 21.85.035 New master plans or specific plans.
- 21.85.040 Affordable housing standards.
- 21.85.050 Calculating the required number of inclusionary units.
- 21.85.060 Inclusionary credit adjustment.
- 21.85.070 Alternatives to construction of inclusionary units.
- 21.85.080 Combined inclusionary housing projects.
- 21.85.090 Creation of inclusionary units not required.
- 21.85.100 Offsets to the cost of affordable housing development.
- 21.85.110 In-lieu fees.
- 21.85.120 Collection of fees.
- 21.85.130 Preliminary project application and review process.
- 21.85.140 Affordable housing agreement as a condition of development.
- 21.85.145 Agreement processing fee.
- 21.85.150 Agreement amendments.
- 21.85.155 Expiration of affordability tenure.
- 21.85.160 Pre-existing approvals.
- 21.85.170 Enforcement.
- 21.85.180 Savings clause.
- 21.85.190 Separability of provisions.

21.85.010 Purpose and intent.

The purpose and intent of this chapter is as follows:

A. It is an objective of the city, as established by the housing element of the city's general plan, to ensure that all residential development, including all master planned and specific planned communities

and all residential subdivisions provide a range of housing opportunities for all identifiable economic segments of the population, including households of lower and moderate income. It is also the policy of the city to:

1. Require that a minimum of fifteen percent of all approved residential development be restricted to and affordable to lower-income households; subject to adjustment based on the granting of an inclusionary credit;
2. Require that for those developments which provide ten or more units affordable to lower-income households, at least ten percent of the lower-income units shall have three or more bedrooms;
3. Under certain conditions, allow alternatives to on-site construction as a means of providing affordable units; and
4. In specific cases, allow inclusionary requirements to be satisfied through the payment of an in-lieu fee as an alternative to requiring inclusionary units to be constructed.

B. It is the purpose of this chapter to ensure the implementation of the city objective and policy stated in subsection A.


C. Nothing in this chapter is intended to create a mandatory duty on the part of the city or its employees under the Government Tort Claims Act and no cause of action against the city or its employees is created by this chapter that would not arise independently of the provisions of this chapter. (Ord. NS-794 § 2, 2006; Ord. NS-535 § 1 (part), 2000)

21.85.020 Definitions.

Whenever the following terms are used in this chapter, they shall have the meaning established by this section:

A. "Affordable housing" means housing for which the allowable housing expenses paid by a qualifying household shall not exceed a specified fraction of the county median income, adjusted for household size, as follows:

1. Extremely low-income, rental or for-sale units: the product of thirty percent times thirty percent of the county median income, adjusted for household size;

EXHIBIT #2
Inclusionary Housing Regulations (full text of existing regulations with revisions)
LCPA #1-06D City of Carlsbad Density Bonus Revisions
 California Coastal Commission

21.85.020

2. Very low-income, rental and for-sale units: the product of thirty percent times fifty percent of the county median income, adjusted for household size;

3. Low-income, for-sale units: the product of thirty percent times seventy percent of the county median income, adjusted for household size; and

4. Low-income, rental units: the product of thirty percent times sixty percent of the county median income, adjusted for household size.

B. "Affordable housing agreement" means a legally binding agreement between a developer and the city to ensure that the inclusionary requirements of this chapter are satisfied. The agreement establishes, among other things, the number of required inclusionary units, the unit sizes, location, affordability tenure, terms and conditions of affordability and unit production schedule.

C. "Allowable housing expense" means the total monthly or annual recurring expenses required of a household to obtain shelter. For a for-sale unit, allowable housing expenses include loan principal and interest at the time of initial purchase by the homebuyer, allowances for property and mortgage insurance, property taxes, homeowners' association dues and a reasonable allowance for utilities as defined by the Code of Federal Regulations (24CFR982). For a rental unit, allowable housing expenses include rent and a utility allowance as established and adopted by the city of Carlsbad housing authority, as well as all monthly payments made by the tenant to the lessor in connection with use and occupancy of a housing unit and land and facilities associated therewith, including any separately charged fees, utility charges, or service charges assessed by the lessor and payable by the tenant.

D. "Affordable housing policy team" shall consist of the community development director, planning director, housing and redevelopment director, administrative services director/finance director and a representative of the city attorney's office.

E. "Combined inclusionary housing project" means separate residential development sites which are linked by a contractual relationship such that some or all of the inclusionary units which are asso-

ciated with one development site are produced and operated at a separate development site or sites.

F. "Conversion" means the change of status of a dwelling unit from a purchased unit to a rental unit or vice versa.

G. "Density bonus" shall have the same meaning as defined in Section 21.86.020(A)(7) of this title.

H. "Extremely low-income household" means those households whose gross income is equal to or less than thirty percent of the median income for San Diego County as determined by the U.S. Department of Housing and Urban Development.

I. "Financial assistance" means assistance to include, but not be limited to, the subsidization of fees, infrastructure, land costs, or construction costs, the use of redevelopment set-aside funds, community development block grant (CDBG) funds, or the provision of other direct financial aid in the form of cash transfer payments or other monetary compensation, by the city of Carlsbad.

J. "Growth management control point" shall have the same meaning as provided in Chapter 21.90, Section 21.90.045 of this title.

K. "Incentives or concessions" shall have the same meaning as defined in Section 21.86.020(A)(7) of this title.

L. "Inclusionary credit" means a reduction in the inclusionary housing requirement granted in return for the provision of certain desired types of affordable housing or related amenities as determined by the city council.

M. "Inclusionary housing project" means a new residential development or conversion of existing residential buildings which has at least fifteen percent of the total units reserved and made affordable to lower-income households as required by this chapter.

N. "Inclusionary unit" means a dwelling unit that will be offered for rent or sale exclusively to and which shall be affordable to lower-income households, as required by this chapter.

O. "Income" means any monetary benefits that qualify as income in accordance with the criteria and procedures used by the city of Carlsbad housing and redevelopment department for the acceptance of ap-

21.85.020

plications and recertifications for the tenant based rental assistance program, or its successor.

P. "Low-income household" means those households whose gross income is more than fifty percent but does not exceed eighty percent of the median income for San Diego County as determined annually by the U.S. Department of Housing and Urban Development.

Q. "Lower-income household" means low-income, very low-income and extremely low-income households, whose gross income does not exceed eighty percent of the median income for San Diego County as determined annually by the U.S. Department of Housing and Urban Development.

R. "Market-rate unit" means a dwelling unit where the rental rate or sales price is not restricted either by this chapter or by requirements imposed through other local, state, or federal affordable housing programs.

S. "Offsets" means concessions or assistance to include, but not be limited to, direct financial assistance, density increases, standards modifications or any other financial, land use, or regulatory concession which would result in an identifiable cost reduction enabling the provision of affordable housing.

T. "Residential development" means any new residential construction of rental or for-sale units; or development revisions, including those with and without a master plan or specific plan, planned unit developments, site development plans, mobile home developments and conversions of apartments to condominiums, as well as dwelling units for which the cost of shelter is included in a recurring payment for expenses, whether or not an initial lump sum fee is also required.

U. "Target income level" means the income standards for extremely low, very low and low-income levels within San Diego County as determined annually by the U.S. Department of Housing and Urban Development, and adjusted for family size.

V. "Total residential units" means the total units approved by the final decision-making authority. Total residential units are composed of both market-rate units and inclusionary units.

W. "Very low-income household" means a household earning a gross income equal to fifty percent or less of the median income for San Diego County as determined annually by the U.S. Department of Housing and Urban Development. (Ord. NS-794 § 3, 2006; Ord. NS-535 § 1 (part), 2000)

21.85.030 Inclusionary housing requirement.

The inclusionary housing requirements of this chapter shall apply as follows:

A. This chapter shall apply to all residential market-rate dwelling units resulting from new construction of rental and "for-sale" projects, as well as the conversion of apartments to condominiums.

B. For any residential development or development revision of seven or more units, not less than fifteen percent of the total units approved shall be constructed and restricted both as to occupancy and affordability to lower-income households.

C. For those developments which are required to provide ten or more units affordable to lower-income households, at least ten percent of the lower-income units shall have three or more bedrooms.

D. This chapter shall not apply to the following:

1. Existing residences which are altered, improved, restored, repaired, expanded or extended, provided that the number of units is not increased, except that this chapter shall pertain to the subdivision of land for the conversion of apartments to condominiums;

2. Conversion of a mobile home park pursuant to Section 21.37.120 of the code;

3. The construction of a new residential structure which replaces a residential structure that was destroyed or demolished within two years prior to the application for a building permit for the new residential structure, provided that the number of residential units is not increased from the number of residential units of the previously destroyed or demolished residential structure;

4. Any residential unit which is accessory as defined in Section 21.04.020 of this code; or

5. Second dwelling units not constructed to fulfill inclusionary housing requirements and developed in accordance with Section 21.10.015 of this code;

21.85.030

6. Any project or portion of a project which is a commercial living unit as defined in Section 21.04.093 of this code; and

7. Those residential units which have obtained affordable housing approvals prior to the effective date of the ordinance codified in this chapter, as set forth in Section 21.85.160 of this chapter. (Ord. NS-535 § 1 (part), 2000)

21.85.035 New master plans or specific plans.

New master plans and specific plans shall submit an inclusionary housing plan as follows:

A. All master plans and specific plans approved on or after the effective date of the ordinance codified in this chapter are required by this chapter to provide an inclusionary housing plan within the master plan or specific plan document. This inclusionary housing plan will include appropriate text, maps, tables, or figures to establish the basic framework for implementing the requirements of this chapter. It shall establish, as a minimum, but not be limited to, the following:

1. The number of market-rate units in the master plan or specific plan;
2. The number of required inclusionary units for lower-income households over the entire master plan or specific plan;
3. The designated sites for the location of the inclusionary units, including but not limited to any sites for locating off-site inclusionary housing projects or combined inclusionary housing projects;
4. A general provision stipulating that an affordable housing agreement shall be made a condition of all future discretionary permits for development within the master or specific plan area such as tentative maps, parcel maps, planned unit developments and site development plans. The provision shall establish that all relevant terms and conditions of any affordable housing agreement shall be filed and recorded as a restriction on the project as a whole and those individual lots, units or projects which are designated as inclusionary units. The affordable housing agreement shall be consistent with Section 21.85.140 of this chapter.

B. The location and phasing of inclusionary dwelling units may be modified as a minor amendment to the master plan pursuant to Section 21.38.120 of this title if the city council authorizes such modifications when approving the master plan.

C. All existing master plans or specific plans proposed for major amendment, pursuant to Section 21.38.120 of this code, shall incorporate into the amended master plan or specific plan document an inclusionary housing plan, consistent with this section of this chapter. (Ord. NS-535 § 1 (part), 2000)

21.85.040 Affordable housing standards.

The affordable housing standards are as follows:

A. All residential developments are subject to and must satisfy the inclusionary housing requirements of this chapter, notwithstanding a developer's request to process a residential development under other program requirements, laws or regulations, including but not limited to Chapter 21.86 (Residential Density Bonus) of this code. If an applicant seeks to construct affordable housing to qualify for a density bonus in accordance with the provisions of Chapter 21.86 (Residential Density Bonus), those affordable dwelling units that qualify a residential development for a density bonus are in addition to, and do not count toward satisfying, the inclusionary housing requirements of this chapter.

B. Whenever reasonably possible, inclusionary units should be built on the residential development project site.

C. The required inclusionary units shall be constructed concurrently with market-rate units unless both the final decision-making authority of the city and developer agree within the affordable housing agreement to an alternative schedule for development.

D. Inclusionary rental units shall remain restricted and affordable to the designated income group for fifty-five years. In addition to the income of a targeted group, limitations on assets may also be used as a factor in determining eligibility for rental or for-sale units. Notwithstanding anything to the contrary in this chapter, no inclusionary unit shall be

21.85.040

rented for an amount which exceeds ninety percent of the actual rent charged for a comparable market unit in the same development, if any.

E. After the initial sale of the inclusionary for-sale units at a price affordable to the target income level group, inclusionary for-sale units shall remain affordable to subsequent income eligible buyers pursuant to a resale restriction with a term of thirty years or for-sale units may be sold at a market price to other than targeted households provided that the sale shall result in the recapture by the city or its designee of a financial interest in the units equal to the amount of subsidy necessary to make the unit affordable to the designated income group and a proportionate share of any appreciation. Funds recaptured by the city shall be used in assisting other eligible households with home purchases at affordable prices. To the extent possible, projects using for-sale units to satisfy inclusionary requirements shall be designed to be compatible with conventional mortgage financing programs including secondary market requirements.

F. Inclusionary units should be located on sites that are in proximity to or will provide access to employment opportunities, urban services, or major roads or other transportation and commuter rail facilities and that are compatible with adjacent land uses.

G. The design of the inclusionary units shall be reasonably consistent or compatible with the design of the total project development in terms of appearance, materials and finished quality.

H. Inclusionary projects shall provide a mix of number of bedrooms in the affordable dwelling units in response to affordable housing demand priorities of the city.

I. No building permit shall be issued, nor any development approval granted for a development which does not meet the requirements of this chapter. No inclusionary unit shall be rented or sold except in accordance with this chapter. (Ord. NS-794 § 4, 2006; Ord. NS-535 § 1 (part), 2000)

21.85.050 Calculating the required number of inclusionary units.

Subject to adjustments for an inclusionary credit, the required number of lower-income inclusionary units shall be fifteen percent of the total residential units, approved by the final decision-making authority. If the inclusionary units are to be provided within an off-site combined or other project, the required number of lower-income inclusionary units shall be fifteen percent of the total residential units to be provided both on-site and/or off-site. Subject to the maximum density allowed per the growth management control point or per specific authorization granted by the planning commission or city council, fractional units for both market rate and inclusionary units of 0.5 will be rounded up to a whole unit. If the rounding calculation results in a total residential unit count which exceeds the maximum allowed, neither the market rate nor the inclusionary unit count will be increased to the next whole number.

Example 1: Total residential units = fifteen percent inclusionary units plus eighty-five percent market-rate units. If the final decision-making authority approves one hundred total residential units, then the inclusionary requirement equals fifteen percent of the "total" or fifteen units ($100 \times .15 = 15$). The allowable market-rate units would be eighty-five percent of the "total" or eighty-five units.

Example 2: If the inclusionary units are to be provided off-site, the total number of inclusionary units shall be calculated according to the total number of market-rate units approved by the final decision-making authority. If one hundred market-rate units are approved, then this total is divided by .85 which provides a total residential unit count ($100 \div .85 = 117$). The fifteen percent requirement is applied to this "total" (one hundred seventeen units) which equals the inclusionary unit requirement ($117 \times .15 = 17.6$ units). (Ord. NS-794 § 5, 2006; Ord. NS-535 § 1 (part), 2000)

21.85.060 Inclusionary credit adjustment.

Certain types of affordable housing are relatively more desirable in satisfying the city's state-mandated affordable housing requirement as well as the city's

21.85.060

housing element goals, objectives and policies, and these may change over time.

To assist the city in providing this housing, developers may receive additional (more than one unit) credit for each of such units provided, thereby reducing the total inclusionary housing requirement to less than fifteen percent of all residential units approved. A schedule of inclusionary housing credit specifying how credit may be earned shall be adopted by the city council and made available to developers subject to this chapter. (Ord. NS-794 § 6, 2006; Ord. NS-535 § 1 (part), 2000)

21.85.070 Alternatives to construction of inclusionary units.

Notwithstanding any contrary provisions of this chapter, at the sole discretion of the city council, the city may determine that an alternative to the construction of new inclusionary units is acceptable.

A. The city council may approve alternatives to the construction of new inclusionary units where the proposed alternative supports specific housing element policies and goals and assists the city in meeting its state housing requirements. Such determination shall be based on findings that new construction would be infeasible or present unreasonable hardship in light of such factors as project size, site constraints, market competition, price and product type disparity, developer capability, and financial subsidies available. Alternatives may include, but not be limited to, acquisition and rehabilitation of affordable units, conversion of existing market units to affordable units, construction of special needs housing projects or programs (shelters, transitional housing, etc.), and the construction of second dwelling units.

B. Second dwelling units constructed to satisfy an inclusionary housing requirement shall be rent restricted to affordable rental rates, and renters shall be income-qualified, as specified in the applicable affordable housing agreement. In no event shall a developer be allowed to construct more than a total of fifteen second dwelling units in any given development, master plan, or specific plan, to satisfy an inclusionary requirement.

C. Contribution to a special needs housing project or program may also be an acceptable alternative based upon such findings. The requisite contribution shall be calculated in the same manner as an in-lieu fee per Section 21.85.110. (Ord. NS-535 § 1 (part), 2000)

21.85.080 Combined inclusionary housing projects.

An affordable housing requirement may be satisfied with off-site construction as follows:

A. When it can be demonstrated by a developer that the goals of this chapter and the city's housing element would be better served by allowing some or all of the inclusionary units associated with one residential project site to be produced and operated at an alternative site or sites, the resulting linked inclusionary project site(s) is a combined inclusionary housing project.

B. It is at the sole discretion of the city council to authorize the residential site(s) which form a combined inclusionary housing project. Such decision shall be based on findings that the combined project represents a more effective and feasible means of implementing this chapter and the goals of the city's housing element. Factors to be weighed in this determination include: the feasibility of the on-site option considering project size, site constraints, competition from other projects, difficulty in integrating due to significant price and product type disparity, and lack of capacity of the on-site development entity to deliver affordable housing. Also to be considered are whether the off-site option offers greater feasibility and cost effectiveness, particularly regarding potential local public assistance and the city's affordable housing financial assistance policy, location advantages such as proximity to jobs, schools, transportation, and services, diminished impact on other existing developments, capacity of the development entity to deliver the project, and satisfaction of multiple developer obligations that would be difficult to satisfy with multiple projects.

C. All agreements between parties to form a combined inclusionary housing project shall be made a part of the affordable housing agreement required

21.85.080

for the site(s), which affordable housing agreement(s) shall be approved by council.

D. Location of the combined inclusionary housing project is limited to sites within the same city quadrant in which the market-rate units are located, or sites which are contiguous to the quadrant in which the market-rate units are proposed. (Ord. NS-535 § 1 (part), 2000)

21.85.090 Creation of inclusionary units not required.

Inclusionary units created which exceed the final requirement for a project may, subject to city council approval in the affordable housing agreement, be utilized by the developer to satisfy other inclusionary requirements for which it is obligated or market the units to other developers as a combined project subject to the requirements of Section 21.85.080. (Ord. NS-535 § 1 (part), 2000)

21.85.100 Offsets to the cost of affordable housing development.

The city shall consider making offsets available to developers when necessary to enable residential projects to provide a preferable product type or affordability in excess of the requirements of this chapter. Offsets will be offered by the city to the extent that resources and programs for this purpose are available to the city and approved for such use by the city council, and to the extent that the residential development, with the use of offsets, assists in achieving the city's housing goals. To the degree that the city makes available programs to provide offsets, developers may make application for such programs. Evaluation of requests for offsets shall be based on the effectiveness of the offsets in achieving a preferable product type and/or affordability objectives as set forth within the housing element; the capability of the development team; the reasonableness of development costs and justification of subsidy needs; and the extent to which other resources are used to leverage the requested offsets. Nothing in this chapter establishes, directly or through implication, a right to receive any offsets from the city or any other party or agency to enable the developer to meet the obliga-

tions established by this chapter. Any offsets approved by the city council and the housing affordability to be achieved by use of those offsets shall be set out within the affordable housing agreement pursuant to Section 21.85.140 of this chapter or, at the city's discretion in a subsequent document. Furthermore, developers are encouraged to utilize local, state or federal assistance, when available, to meet the affordability standards set forth in Sections 21.85.030 and 21.85.040 of this chapter. (Ord. NS-794 § 7, 2006; Ord. NS-535 § 1 (part), 2000)

21.85.110 In-lieu fees.

Payment of a fee in lieu of construction of affordable units may be appropriate in the following circumstances:

A. For any residential development or development revision of less than seven units, the inclusionary requirements may be satisfied through the payment to the city of an in-lieu fee.

B. The in-lieu fee to be paid for each market-rate dwelling unit shall be fifteen percent of the subsidy needed to make affordable to a lower-income household one newly constructed, typical attached-housing unit. This subsidy shall be based upon the city council's determination of the average subsidy that would be required to make affordable typical, new two-bedroom/one bath and three-bedroom/two-bath for-sale units and rental units, each with an assumed affordability tenure of at least fifty-five years.

C. The dollar amount and method of payment of the in-lieu fees shall be fixed by a schedule adopted, from time to time, by resolution of the city council. Said fee shall be assessed against the market-rate lots/units of a development.

D. All in-lieu fees collected hereunder shall be deposited in a housing trust fund. Said fund shall be administered by the city and shall be used only for the purpose of providing funding assistance for the provision of affordable housing and reasonable costs of administration consistent with the policies and programs contained in the housing element of the general plan.

E. At the discretion of the city council, where a developer is authorized to pay a fee in lieu of devel-

21.85.110

opment, an irrevocable dedication of land or other non-monetary contribution of a value not less than the sum of the otherwise required in-lieu fee may be accepted as an alternative to paying the in-lieu fee if it is determined that the non-monetary contribution will be effectual in furthering the goals and policies of the housing element and this chapter. The valuation of any land offered in-lieu shall be determined by an appraisal made by an agent mutually agreed upon by the city and the developer. Costs associated with the appraisal shall be borne by the developer.

F. Where a developer is authorized to pay a fee in lieu of development of affordable housing units, any approvals shall be conditioned upon a requirement to pay the in-lieu fee in an amount established by resolution of the city council in effect at the time of payment.

G. As an alternative to paying an in-lieu fee(s), inclusionary housing requirements may be satisfied either through a combined inclusionary housing project, pursuant to Section 21.85.080 of this chapter or new construction of inclusionary units subject to approval of the final decision-making authority. (Ord. NS-535 § 1 (part), 2000)

21.85.120 Collection of fees.

All fees collected under this chapter shall be deposited into a housing trust fund and shall be expended only for the affordable housing needs of lower-income households, and reasonable costs of administration consistent with the purpose of this chapter. (Ord. NS-535 § 1 (part), 2000)

21.85.130 Preliminary project application and review process.

The preliminary project application/review process shall be as follows:

A. A developer of a residential development not subject to a master plan or specific plan, proposing an inclusionary housing project shall have an approved site development plan prior to execution of an affordable housing agreement for the project. The developer may submit a preliminary application to the housing and redevelopment director prior to the submittal of any formal applications for such housing

development. The preliminary application shall include the following information if applicable:

1. A brief description of the proposal including the number of inclusionary units proposed;

2. The zoning, general plan designations and assessors parcel number(s) of the project site;

3. A site plan, drawn to scale, which includes: building footprints, driveway and parking layout, building elevations, existing contours and proposed grading; and

4. A letter identifying what specific offsets and/or adjustments are being requested of the city. Justification for each request should also be included.

B. Within thirty days of receipt of the preliminary application by the planning director for projects not requesting offsets or inclusionary credit adjustments, or ninety days for projects requesting offsets or inclusionary credit adjustments, the department shall provide to an applicant, a letter which identifies project issues of concern, the offsets and inclusionary credit adjustments that the community development director can support when making a recommendation to the final decision-making authority, and the procedures for compliance with this chapter. The applicant shall also be provided with a copy of this chapter and related policies, the pertinent sections of the California codes to which reference is made in this chapter and all required application forms. (Ord. NS-794 § 8, 2006; Ord. NS-535 § 1 (part), 2000)

21.85.140 Affordable housing agreement as a condition of development.

This chapter requires the following:

A. Developers subject to this chapter shall demonstrate compliance with this chapter by executing an affordable housing agreement prepared by the city housing and redevelopment director and submitted to the developer for execution. Agreements which conform to the requirements of this section and which do not involve requests for offsets and/or an inclusionary credit, other than those permitted by right, if any, shall be reviewed by the affordable housing policy team and approved by the community development director or his designee. Agreements which involve requests for offsets

21.85.140

and/or an inclusionary credit, other than those permitted by right, shall require the recommendation of the housing commission and action by the city council as the final decision-maker. Following the approval and execution by all parties, the affordable housing agreement with approved site development plan shall be recorded against the entire development, including market-rate lots/units and the relevant terms and conditions therefrom filed and subsequently recorded as a separate deed restriction or regulatory agreement on the affordable project individual lots or units of property which are designated for the location of affordable units. The approval and execution of the affordable housing agreement shall take place prior to final map approval and shall be recorded upon final map recordation or, where a map is not being processed, prior to the issuance of building permits for such lots/units. The affordable housing agreement may require that more specific project and/or unit restrictions be recorded at a future time. The affordable housing agreement shall bind all future owners and successors in interest for the term of years specified therein.

B. An affordable housing agreement, for which the inclusionary housing requirement will be satisfied through new construction of inclusionary units, either on-site or off-site, shall establish, but not be limited to, the following:

1. The number of inclusionary dwelling units proposed, with specific calculations detailing the application of any inclusionary credit adjustment;
2. The unit square footage, and number of bedrooms;
3. The proposed location of the inclusionary units;
4. Amenities and services provided, such as daycare, after school programs, transportation, job training/employment services and recreation;
5. Level and tenure of affordability for inclusionary units;
6. Schedule for production of dwelling units;
7. Approved offsets provided by the city;
8. Where applicable, requirements for other documents to be approved by the city, such as marketing, leasing and management plans; financial as-

sistance/loan documents; resale agreements; and monitoring and compliance plans;

9. Where applicable, identification of the affordable housing developer and agreements specifying their role and relationship to the project.

C. An affordable housing agreement, for which the inclusionary housing requirement will be satisfied through payment to the city of any in-lieu contributions other than fee monies, such as land dedication, shall include the method of determination, schedule and value of total in-lieu contributions.

D. An affordable housing agreement will not be required for projects which will be satisfying their inclusionary housing requirement through payment to the city of an in-lieu fee. (Ord. NS-794 §§ 9, 10, 2006; Ord. NS-535 § 1 (part), 2000)

21.85.145 Agreement processing fee.

The city council may establish by resolution, fees to be paid by the developer at the time of preliminary project application to defray the city's cost of preparing and/or reviewing all inclusionary housing agreements. (Ord. NS-535 § 1 (part), 2000)

21.85.150 Agreement amendments.

Any amendment to an affordable housing agreement shall be processed in the same manner as an original application for approval, except as authorized in Section 21.85.035(B). Amendments to affordable housing agreements initially approved prior to the effective date of the ordinance codified in this chapter shall be entitled to consideration under the ordinance provisions superseded by the ordinance codified in this chapter. (Ord. NS-535 § 1 (part), 2000)

21.85.155 Expiration of affordability tenure.

The city or its designee shall have a one-time first right of refusal to purchase any project containing affordable units offered for sale at the end of the minimum tenure of affordability for rental projects. The first right of refusal to purchase the rental project shall be submitted in writing to the housing and redevelopment director. Within ninety days of its receipt, the city shall indicate its intent to exercise the first

21.85.155

right of refusal for the purpose of providing affordable housing. (Ord. NS-535 § 1 (part), 2000)

21.85.160 Pre-existing approvals.

Any residential developments for which a site development plan for the affordable housing component of the development was approved prior to the effective date of the ordinance codified in this chapter shall be subject to the ordinance in effect at the time of the approval. (Ord. NS-535 § 1 (part), 2000)

21.85.170 Enforcement.

Enforcement provisions are as follows:

A. The provisions of this chapter shall apply to all developers and their agents, successors and assigns proposing a residential development governed by this chapter. No building permit or occupancy permit shall be issued, nor any entitlement granted, for a project which is not exempt and does not meet the requirements of this chapter. All inclusionary units shall be rented or owned in accordance with this chapter.

B. The city may institute any appropriate legal actions or proceedings necessary to ensure compliance with this chapter, including but not limited to actions to revoke, deny or suspend any permit or development approval.

C. Any individual who sells or rents a restricted unit in violation of the provisions of this chapter shall be required to forfeit all monetary amounts so obtained. Such amounts shall be added to the city's housing trust fund. (Ord. NS-535 § 1 (part), 2000)

21.85.180 Savings clause.

All code provisions, ordinances, and parts of ordinances in conflict with the provisions of this chapter are repealed. The provisions of this chapter, insofar as they are substantially the same as existing code provisions relating to the same subject matter shall be construed as restatements and continuations thereof and not as new enactments. With respect, however, to violations, rights accrued, liabilities accrued, or appeals taken, prior to the effective date of the ordinance codified in this chapter, under any chapter, ordinance, or part of an ordinance shall be deemed to

remain in full force for the purpose of sustaining any proper suit, action, or other proceedings, with respect to any such violation, right, liability or appeal. (Ord. NS-535 § 1 (part), 2000)

21.85.190 Separability of provisions.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the remainder of the chapter and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby. (Ord. NS-535 § 1 (part), 2000)

ORDINANCE NO. NS-794

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA AMENDING TITLE 21 OF THE MUNICIPAL CODE BY AMENDING THE DENSITY BONUS AND INCLUSIONARY HOUSING REGULATIONS IN THE ZONING ORDINANCE TO ENSURE THE DENSITY BONUS REGULATIONS ARE CONSISTENT WITH CALIFORNIA GOVERNMENT CODE SECTIONS 65915 THROUGH 65917, AND THAT THE DENSITY BONUS AND INCLUSIONARY HOUSING REGULATIONS DO NOT CONFLICT.

CASE NAME: DENSITY BONUS AMENDMENTS

CASE NO.: ZCA 04-10

The City Council of the City of Carlsbad, California does ordain as follows:

SECTION 1: That the list of sections at the beginning of Chapter 21.85 is amended to read as follows:


Sections:

- 21.85.010 Purpose and intent.
- 21.85.020 Definitions.
- 21.85.030 Inclusionary housing requirement.
- 21.85.035 New master plans or specific plans.
- 21.85.040 Affordable housing standards.
- 21.85.050 Calculating the required number of inclusionary units.
- 21.85.060 Inclusionary credit adjustment.
- 21.85.070 Alternatives to construction of inclusionary units.
- 21.85.080 Combined inclusionary housing projects.
- 21.85.090 Creation of inclusionary units not required.
- 21.85.100 Offsets to the cost of affordable housing development.
- 21.85.110 In-lieu fees.
- 21.85.120 Collection of fees.
- 21.85.130 Preliminary project application and review process.
- 21.85.140 Affordable housing agreement as a condition of development.
- 21.85.145 Agreement processing fee.
- 21.85.150 Agreement amendments.
- 21.85.155 Expiration of affordability tenure.
- 21.85.160 Pre-existing approvals.
- 21.85.170 Enforcement.
- 21.85.180 Savings clause.
- 21.85.190 Separability of provisions.

SECTION 2: That Section 21.85.010.A.1 of the Carlsbad Municipal Code is amended to read as follows:

1. Require that a minimum of fifteen (15%) percent of all approved residential development be restricted to and affordable to lower-income households; subject to adjustment based on the granting of an inclusionary credit;

SECTION 3: That Section 21.85.020 of the Carlsbad Municipal Code is amended to read as follows:

EXHIBIT #3
Inclusionary Housing Regulations (partial text of revised sections only)/ Density Bonus Regulations (full text with revisions)
LCPA #106D City of Carlsbad Density Bonus Revisions
 California Coastal Commission

- 1 21.85.020 Definitions.
2 Whenever the following terms are used in this chapter, they shall have the meaning
3 established by this section:
4 A. "Affordable housing" means housing for which the allowable housing expenses
5 paid by a qualifying household shall not exceed a specified fraction of the county median
6 income, adjusted for household size, as follows:
7 1. Extremely low-income, rental or for-sale units: the product of 30% times 30% of
8 the county median income, adjusted for household size;
9 2. Very low-income, rental and for-sale units: the product of 30% times 50% of the
10 county median income, adjusted for household size;
11 3. Low-income, for-sale units: the product of 30% times 70% of the county median
12 income, adjusted for household size; and
13 4. Low-income, rental units: the product of 30% times 60% of the county median
14 income, adjusted for household size.
15 B. "Affordable housing agreement" means a legally binding agreement between a
16 developer and the city to ensure that the inclusionary requirements of this chapter are satisfied.
17 The agreement establishes, among other things, the number of required inclusionary units, the
18 unit sizes, location, affordability tenure, terms and conditions of affordability and unit production
19 schedule.
20 C. "Allowable housing expense" means the total monthly or annual recurring
21 expenses required of a household to obtain shelter. For a for-sale unit, allowable housing
22 expenses include loan principal and interest at the time of initial purchase by the homebuyer,
23 allowances for property and mortgage insurance, property taxes, homeowners association dues
24 and a reasonable allowance for utilities as defined by the Code of Federal Regulations
25 (24CFR982). For a rental unit, allowable housing expenses include rent and a utility allowance
26 as established and adopted by the city of Carlsbad housing authority, as well as all monthly
27 payments made by the tenant to the lessor in connection with use and occupancy of a housing
28 unit and land and facilities associated therewith, including any separately charged fees, utility
charges, or service charges assessed by the lessor and payable by the tenant.
D. "Affordable housing policy team" shall consist of the community development
director, planning director, housing and redevelopment director, administrative services
director/finance director, and a representative of the city attorney's office.
E. "Combined inclusionary housing project" means separate residential
development sites which are linked by a contractual relationship such that some or all of the
inclusionary units which are associated with one development site are produced and operated
at a separate development site or sites.
F. "Conversion" means the change of status of a dwelling unit from a purchased
unit to a rental unit or vice versa.
G. "Density bonus" shall have the same meaning as defined in Section
21.86.020.A.7 of this title.
H. "Extremely low-income household" means those households whose gross
income is equal to or less than thirty (30%) percent of the median income for San Diego County
as determined by the U.S. Department of Housing and Urban Development.
I. "Financial assistance" means assistance to include, but not be limited to, the
subsidization of fees, infrastructure, land costs, or construction costs, the use of redevelopment
set-aside funds, community development block grant (CDBG) funds, or the provision of other
direct financial aid in the form of cash transfer payments or other monetary compensation, by
the city of Carlsbad.
J. "Growth management control point" shall have the same meaning as provided in
Chapter 21.90, Section 21.90.045 of this title.
K. "Incentives or concessions" shall have the same meaning as defined in Section
21.86.020.A.7 of this title.

1 L. "Inclusionary credit" means a reduction in the inclusionary housing requirement
2 granted in return for the provision of certain desired types of affordable housing or related
amenities as determined by the city council.

3 M. "Inclusionary housing project" means a new residential development or
conversion of existing residential buildings which has at least fifteen (15%) percent of the total
units reserved and made affordable to lower-income households as required by this chapter.

4 N. "Inclusionary unit" means a dwelling unit that will be offered for rent or sale
exclusively to and which shall be affordable to lower-income households, as required by this
chapter.

5 O. "Income" means any monetary benefits that qualify as income in accordance with
6 the criteria and procedures used by the city of Carlsbad housing and redevelopment department
for the acceptance of applications and recertifications for the Tenant Based Rental Assistance
Program, or its successor.

7 P. "Low-income household" means those households whose gross income is more
8 than fifty (50%) percent but does not exceed eighty (80%) percent of the median income for San
Diego County as determined annually by the U.S. Department of Housing and Urban
Development.

9 Q. "Lower-income household" means low-income, very low-income and extremely
10 low-income households, whose gross income does not exceed eighty (80%) percent of the
median income for San Diego County as determined annually by the U.S. Department of
Housing and Urban Development.

11 R. "Market-rate unit" means a dwelling unit where the rental rate or sales price is not
12 restricted either by this chapter or by requirements imposed through other local, state, or federal
affordable housing programs.

13 S. "Offsets" means concessions or assistance to include, but not be limited to, direct
14 financial assistance, density increases, standards modifications or any other financial, land use,
or regulatory concession which would result in an identifiable cost reduction enabling the
provision of affordable housing.

15 T. "Residential development" means any new residential construction of rental or
16 for-sale units; or development revisions, including those with and without a master plan or
specific plan, planned unit developments, site development plans, mobilehome developments
and conversions of apartments to condominiums, as well as dwelling units for which the cost of
shelter is included in a recurring payment for expenses, whether or not an initial lump sum fee is
also required.

17 U. "Target income level" means the income standards for extremely low, very low
18 and low-income levels within San Diego County as determined annually by the U.S. Department
of Housing and Urban Development, and adjusted for family size.

19 V. "Total residential units" means the total units approved by the final decision
20 making authority. Total residential units are composed of both market rate units and inclusionary
units.

21 W. "Very low-income household" means a household earning a gross income equal
22 to fifty (50%) percent or less of the median income for San Diego County as determined
annually by the U.S. Department of Housing and Urban Development.

23 SECTION 4: That Section 21.85.040.A of the Carlsbad Municipal Code is
24 amended to read as follows:

25 A. All residential developments are subject to and must satisfy the inclusionary
26 housing requirements of this chapter, notwithstanding a developer's request to process a
residential development under other program requirements, laws or regulations, including but
27 not limited to Chapter 21.86 (Residential Density Bonus) of this code. If an applicant seeks to
construct affordable housing to qualify for a density bonus in accordance with the provisions of
28

1 Chapter 21.86 (Residential Density Bonus), those affordable dwelling units that qualify a
2 residential development for a density bonus are in addition to, and do not count toward
satisfying, the inclusionary housing requirements of this chapter.

3 SECTION 5: That Section 21.85.050 of the Carlsbad Municipal Code is amended
4 to read as follows:

5 21.85.050 Calculating the required number of inclusionary units.

6 Subject to adjustments for an inclusionary credit, the required number of lower-income
7 inclusionary units shall be fifteen (15%) percent of the total residential units, approved by the
8 final decision-making authority. If the inclusionary units are to be provided within an offsite
9 combined or other project, the required number of lower income inclusionary units shall be
10 fifteen (15%) percent of the total residential units to be provided both onsite and/or offsite.
Subject to the maximum density allowed per the growth management control point or per
specific authorization granted by the planning commission or city council, fractional units for
both market rate and inclusionary units of .5 will be rounded up to a whole unit. If the rounding
calculation results in a total residential unit count which exceeds the maximum allowed, neither
the market rate nor the inclusionary unit count will be increased to the next whole number.

11 Example 1: Total residential units = 15% Inclusionary units plus 85% Market rate units. If
the final decision making authority approves 100 total residential units, then the Inclusionary
12 requirement equals 15% of the "Total" or 15 units ($100 \times .15 = 15$). The allowable market rate
units would be 85% of the "Total" or 85 units.

13 Example 2: If the inclusionary units are to be provided offsite, the total number of
14 inclusionary units shall be calculated according to the total number of market rate units
approved by the final decision-making authority. If 100 market rate units are approved, then this
total is divided by .85 which provides a total residential unit count ($100 \div .85 = 117$). The 15%
15 requirement is applied to this "Total" (117 units) which equals the inclusionary unit requirement
($117 \times .15 = 17.6$ units).

16 SECTION 6: That Section 21.85.060 of the Carlsbad Municipal Code is amended
17 to read as follows:

18 21.85.060 Inclusionary credit adjustment.

19 Certain types of affordable housing are relatively more desirable in satisfying the city's
20 state-mandated affordable housing requirement as well as the city's housing element goals,
objectives and policies, and these may change over time.

21 To assist the city in providing this housing, developers may receive additional (more than
one unit) credit for each of such units provided, thereby reducing the total inclusionary housing
22 requirement to less than fifteen (15%) percent of all residential units approved. A schedule of
inclusionary housing credit specifying how credit may be earned shall be adopted by the city
council and made available to developers subject to this chapter.

23 SECTION 7: That Section 21.85.100 of the Carlsbad Municipal Code is amended
24 to read as follows:

25 21.85.100 Offsets to the cost of affordable housing development.

26 The city shall consider making offsets available to developers when necessary to enable
27 residential projects to provide a preferable product type or affordability in excess of the
requirements of this chapter. Offsets will be offered by the city to the extent that resources and
28 programs for this purpose are available to the city and approved for such use by the city council,

1 and to the extent that the residential development, with the use of offsets, assists in achieving
2 the city's housing goals. To the degree that the city makes available programs to provide
3 offsets, developers may make application for such programs. Evaluation of requests for offsets
4 shall be based on the effectiveness of the offsets in achieving a preferable product type and/or
5 affordability objectives as set forth within the housing element; the capability of the development
6 team; the reasonableness of development costs and justification of subsidy needs; and the
7 extent to which other resources are used to leverage the requested offsets. Nothing in this
8 chapter establishes, directly or through implication, a right to receive any offsets from the city or
9 any other party or agency to enable the developer to meet the obligations established by this
10 chapter. Any offsets approved by the city council and the housing affordability to be achieved
11 by use of those offsets shall be set out within the affordable housing agreement pursuant to
12 Section 21.85.140 or, at the city's discretion in a subsequent document. Furthermore,
13 developers are encouraged to utilize local, state or federal assistance, when available, to meet
14 the affordability standards set forth in Sections 21.85.030 and 21.85.040.

15
16 SECTION 8: That Section 21.85.130.B of the Carlsbad Municipal Code is
17 amended to read as follows:

18 B. Within thirty days of receipt of the preliminary application by the planning director
19 for projects not requesting offsets or inclusionary credit adjustments, or ninety days for projects
20 requesting offsets or inclusionary credit adjustments the department shall provide to an
21 applicant, a letter which identifies project issues of concern, the offsets and inclusionary credit
22 adjustments that the community development director can support when making a
23 recommendation to the final decision-making authority, and the procedures for compliance with
24 this chapter. The applicant shall also be provided with a copy of this chapter and related
25 policies, the pertinent sections of the California codes to which reference is made in this chapter
26 and all required application forms.

27 SECTION 9: That Section 21.85.140.A of the Carlsbad Municipal Code is
28 amended to read as follows:

A. Developers subject to this chapter shall demonstrate compliance with this
chapter by executing an affordable housing agreement prepared by the city housing and
redevelopment director and submitted to the developer for execution. Agreements which
conform to the requirements of this section and which do not involve requests for offsets and/or
an inclusionary credit, other than those permitted by right, if any, shall be reviewed by the
affordable housing policy team and approved by the community development director or his
designee. Agreements which involve requests for offsets and/or an inclusionary credit, other
than those permitted by right, shall require the recommendation of the housing commission and
action by the city council as the final decision-maker. Following the approval and execution by
all parties, the affordable housing agreement with approved site development plan shall be
recorded against the entire development, including market-rate lots/units and the relevant terms
and conditions therefrom filed and subsequently recorded as a separate deed restriction or
regulatory agreement on the affordable project individual lots or units of property which are
designated for the location of affordable units. The approval and execution of the affordable
housing agreement shall take place prior to final map approval and shall be recorded upon final
map recordation or, where a map is not being processed, prior to the issuance of building
permits for such lots/units. The affordable housing agreement may require that more specific
project and/or unit restrictions be recorded at a future time. The affordable housing agreement
shall bind all future owners and successors in interest for the term of years specified therein.

1 SECTION 10: That Section 21.85.140.B.1 of the Carlsbad Municipal Code is
2 amended to read as follows:

3 1. The number of inclusionary dwelling units proposed, with specific calculations
4 detailing the application of any inclusionary credit adjustment;

5 SECTION 11: That Chapter 21.86 of the Carlsbad Municipal Code is amended to
6 read as follows:

7 Chapter 21.86
RESIDENTIAL DENSITY BONUS AND INCENTIVES OR CONCESSIONS

- 8 Sections:
- 9 21.86.010 Purpose and intent.
 - 10 21.86.020 Definitions.
 - 11 21.86.030 Inclusionary housing.
 - 12 21.86.040 Density bonus for housing developments.
 - 13 21.86.050 Incentives and concessions for housing developments.
 - 14 21.86.060 Waiver or reduction of development standards.
 - 15 21.86.070 Density bonus and incentives for condominium conversions.
 - 16 21.86.080 Housing developments with child day care centers.
 - 17 21.86.090 Density bonus housing standards.
 - 18 21.86.100 Affordability tenure.
 - 19 21.86.110 Application process.
 - 20 21.86.120 Findings for approval.
 - 21 21.86.130 Density bonus housing agreement.
 - 22 21.86.140 Agreement processing fee.
 - 23 21.86.150 Separability of provisions.

24 21.86.010 Purpose and intent.
25 A. The public good is served when there exists in a city, housing which is
26 appropriate for the needs of and affordable to all members of the public who reside within that
27 city. Among other needs, there is in Carlsbad a need for housing affordable to lower-income
28 households and senior citizens. Therefore, it is in the public interest for the city to promote the
construction of such additional housing through the exercise of its powers and the utilization of
its resources.

B. It is the purpose of this chapter to provide a means for granting density bonuses
and incentives or concessions to developers for the production of housing affordable to lower-
and moderate-income households, and senior citizens.

C. It is the purpose of this chapter to implement the goals, objectives, and policies of
the housing element of the city's general plan.

D. It is the purpose of this chapter to implement Sections 65915 through 65917 of
the California Government Code.

E. Nothing in this chapter is intended to create a mandatory duty on behalf of the
city or its employees under the Government Tort Claims Act and no cause of action against the
city or its employees is created by this chapter that would not arise independently of the
provisions of this chapter.

F. Nothing in this chapter shall be construed to supersede or in any way alter or
lessen the effect or application of the California Coastal Act.

21.86.020 Definitions.

- 1 A. Whenever the following terms are used in this chapter, they shall have the
2 meaning established by this section:
- 3 1. "Affordable housing" means housing for which the allowable housing expenses
4 paid by a qualifying household shall not exceed a specified fraction of the county median
5 income, adjusted for household size, as follows:
- 6 a. Extremely low-income, rental and for-sale units: the product of 30% times 30% of
7 the county median income, adjusted for household size.
 - 8 b. Very low-income, rental and for-sale units: the product of 30% times 50% of the
9 county median income, adjusted for household size.
 - 10 c. Low-income, rental units: the product of 30% times 60% of the county median
11 income, adjusted for household size.
 - 12 d. Low-income, for-sale units: the product of 30% times 70% of the county median
13 income, adjusted for household size.
 - 14 e. Moderate-income, for-sale units: allowable housing expenses shall not be less
15 than 28% of the gross income of the household, nor exceed the product of 35% times 110% of
16 the county median income, adjusted for household size.
- 17 2. "Allowable housing expense" means the total monthly or annual recurring
18 expenses required of a household to obtain shelter. For a for-sale unit, allowable housing
19 expenses include loan principal and interest at the time of initial purchase by the homebuyer,
20 allowances for property and mortgage insurance, property taxes, homeowners association dues
21 and a reasonable allowance for utilities as defined by the Code of Federal Regulations
22 (24CFR982). For a rental unit, allowable housing expenses include rent and a utility allowance
23 as established and adopted by the city of Carlsbad housing authority, as well as all monthly
24 payments made by the tenant to the lessor in connection with use and occupancy of a housing
25 unit and land and facilities associated therewith, including any separately charged fees, utility
26 charges, or service charges assessed by the lessor and payable by the tenant.
- 27 3. "Child day care center" shall have the same meaning as defined in Section
28 21.83.020.D of this title.
4. "Common interest development" means any of the following (as defined in
Section 1351 of the California Civil Code):
- a. A community apartment project.
 - b. A condominium project.
 - c. A planned development.
 - d. A stock cooperative.
5. "Conversion" means the change of occupancy of a dwelling unit from owner-
occupied to rental or vice versa.
6. "Density bonus" means an increase over the maximum allowable residential
density as specified by the land use element of the general plan in effect at the time of
application submittal.
7. "Density bonus dwelling units" means those residential units granted pursuant to
the provisions of this chapter, which are above the maximum allowable residential density of the
project site.
8. "Density bonus housing agreement" means a legally binding agreement between
a developer and the city to ensure that the density bonus requirements of this chapter are
satisfied. The agreement establishes, among other things, the number of target dwelling units
and density bonus dwelling units, the unit sizes, location, affordability tenure, terms and
conditions of affordability and unit production schedule.
9. "Development standard" means site or construction conditions/requirements that
apply to a housing development pursuant to any ordinance, general plan element, master or
specific plan, or other city requirement, law, policy, resolution or regulation.
10. "Extremely low-income household" means those households whose gross
income is equal to or less than 30% of the median income for San Diego County as determined
annually by the U.S. Department of Housing and Urban Development.

- 1 11. "Housing development" means one or more groups of projects for residential
units, consisting of the following:
- 2 a. The construction of 5 or more residential units; or
- 3 b. A subdivision or common interest development consisting of 5 or more residential
units or unimproved lots; or
- 4 c. A project to either substantially rehabilitate and convert an existing commercial
building to residential use, or substantially rehabilitate an existing two-family or multiple-family
dwelling structure(s), where the result of rehabilitation would be a net increase in available
5 residential units.
- 6 12. "Incentives or concessions" means such regulatory incentives or concessions as
stipulated in State Government Code Section 65915(l), to include, but not be limited to, the
7 reduction of site development standards or zone code requirements, approval of mixed use
zoning in conjunction with the housing project, or any other regulatory incentive which would
8 result in identifiable, financially sufficient, and actual cost reductions to enable the provision of
housing affordable to the designated income group or qualified (senior) resident.
- 9 13. "Income" means any monetary benefits that qualify as income in accordance with
the criteria and procedures used by the city of Carlsbad housing and redevelopment department
10 for the acceptance of applications and recertifications for the Tenant Based Rental Assistance
Program, or its successor.
- 11 14. "Low-income household" means those households whose gross income is more
than 50% but does not exceed 80% of the median income for San Diego County as determined
annually by the U.S. Department of Housing and Urban Development.
- 12 15. "Lower-income household" means low-income, very low-income and extremely
low-income households, whose gross income does not exceed 80% of the median income for
13 San Diego County as determined annually by the U.S. Department of Housing and Urban
Development.
- 14 16. "Market-rate unit" means a dwelling unit where the rental rate or sales price is not
restricted either by this chapter or by requirements imposed through other local, state, or federal
15 affordable housing programs.
- 16 17. "Maximum allowable residential density" means the maximum density of the
density range allowed by the residential general plan designation(s) applicable to a project site.
- 17 18. "Moderate-income household" means those households whose gross income is
more than 80% but does not exceed 120% of the median income for San Diego County as
determined annually by the U.S. Department of Housing and Urban Development.
- 18 19. "Qualifying resident" means a resident as defined in Chapter 21.84 of this title
and Section 51.2 of the California Civil Code.
- 19 20. "Target dwelling unit" means a dwelling unit that will be offered for rent or sale
exclusively to and which shall be affordable to the designated income group or qualified (senior)
20 resident, as required by this chapter.
- 21 21. "Total units" means the number of dwelling units in a housing development,
excluding the density bonus dwelling units.
- 22 22. "Very low-income household" means a household earning a gross income equal
to 50% or less of the median income for San Diego County as determined annually by the U.S.
23 Department of Housing and Urban Development.
- 24 21.86.030 Inclusionary housing.
- 25 A. All housing development projects are required to provide affordable housing units
in accordance with chapter 21.85 (Inclusionary Housing). If an applicant seeks to construct
26 affordable housing to qualify for a density bonus in accordance with the provisions of this
chapter, those affordable dwelling units that qualify a housing development for a density bonus
are in addition to, and do not count toward satisfying the Inclusionary Housing requirements of
27 chapter 21.85.
- 28

- 1 21.86.040 Density bonus for housing developments.
 A. The decision-making body shall grant one density bonus, as specified in Section
 2 21.86.040.B, and incentives or concessions, as set forth in Section 21.86.050, when an
 applicant of a housing development of at least 5 units seeks and agrees to construct at least
 3 any one of the following:
 1. A minimum of 10% of the total units of the housing development as restricted and
 4 affordable to lower-income households; or
 2. A minimum of 5% of the total units of the housing development as restricted and
 5 affordable to very low-income households; or
 3. A senior citizen housing development as defined in Section 21.84.030.A.7 of this
 6 title and Section 51.3 of the California Civil Code, or mobilehome park that limits residency
 based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of
 7 the California Civil Code; or
 4. A minimum of 10% of the total units in a common interest development restricted
 8 and affordable to moderate-income households, provided that all units in the development are
 offered to the public for purchase.
 B. When an applicant seeks and agrees to construct a housing development
 9 meeting the criteria specified in Section 21.86.040.A, the decision-making body shall grant a
 density bonus subject to the following:
 10 1. The amount of density bonus to which a housing development is entitled shall
 11 vary according to the amount by which the percentage of affordable housing units exceeds the
 percentages established in Section 21.86.040.A, as follows:
 12 a. For housing developments meeting the criteria of Section 21.86.040.A.1, the
 density bonus shall be calculated as follows:
 13

14 **TABLE A**
DENSITY BONUS FOR HOUSING DEVELOPMENTS WITH UNITS AFFORDABLE TO LOW-
INCOME HOUSEHOLDS

Percentage of Low-Income Units (Minimum 10% required)	Percentage of Density Bonus to be Granted (Additional 1.5% density bonus for each 1% increase above the 10% minimum)
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
16	29
17	30.5
18	32
19	33.5
20	35

- 22 b. For housing developments meeting the criteria of Section 21.86.040.A.2, the
 23 density bonus shall be calculated as follows:

24 **TABLE B**
DENSITY BONUS FOR HOUSING DEVELOPMENTS WITH UNITS AFFORDABLE TO VERY
LOW-INCOME HOUSEHOLDS

Percentage of Very Low-Income Units	Percentage of Density Bonus to be Granted
5	20
6	22.5
7	25
8	27.5

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9	30
10	32.5
11	35

c. For housing developments meeting the criteria of Section 21.86.040.A.3, the density bonus shall be 20%.

d. For housing developments meeting the criteria of Section 21.86.040.A.4, the density bonus shall be calculated as follows:

TABLE C
DENSITY BONUS FOR COMMON INTEREST DEVELOPMENTS WITH UNITS AFFORDABLE TO MODERATE-INCOME HOUSEHOLDS

Percentage of Moderate-Income Units	Percentage of Density Bonus to be Granted
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

2. The amount of density bonus to which a housing development is entitled shall not exceed 35%.

3. The applicant may elect to accept a lesser percentage of density bonus than specified in Section 21.86.040.B.

4. If a housing development includes a combination of target dwelling unit types that meet two or more of the criteria specified in Section 21.86.040.A, the applicant shall elect one applicable density bonus.

C. When an applicant for a tentative subdivision map, parcel map, or other housing development approval donates land to the city, as provided for in this subsection, the applicant shall be entitled to a density bonus for the entire development, as follows:

TABLE D
DENSITY BONUS FOR LAND DONATION

Percentage of Very Low-Income Units	Percentage of Density Bonus to be Granted
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32
28	33
29	34
30	35

1. A density bonus granted pursuant to this subsection shall not exceed 35%.
2. If an applicant seeks both the density bonus required pursuant to this subsection and Section 21.86.040.A, both density bonuses shall be granted up to a maximum combined density bonus of 35%.
3. An applicant shall be eligible for the density bonus described in this subsection only if all of the following conditions are met:
 - a. The land is donated and transferred to the city no later than the date of approval of the final subdivision map, parcel map, or housing development application.
 - b. The developable acreage, zoning classification and general plan land use designation of the land being donated are sufficient to permit construction of the units affordable to very low-income households in an amount not less than 10% of the number of residential units of the proposed development.
 - c. The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate zoning classification and general plan land use designation, and is or will be served by adequate public facilities and infrastructure.
 - d. The land shall have appropriate zoning and development standards to make the development of the affordable units feasible.
 - e. No later than the date of approval of the final subdivision map, parcel map, or housing development, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low-income housing units on the transferred land, except that the city may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 of the California Government Code if the design is not reviewed by the city prior to the time of transfer.

1 f. The transferred land and the affordable units shall be subject to a deed restriction
2 ensuring continued affordability of the units consistent with Section 21.86.100, which shall be
recorded on the property at the time of dedication.

3 g. The land is transferred to the city or to a housing developer approved by the city.
4 The city may require the applicant to identify and transfer the land to the developer.

5 h. The transferred land shall be within the boundary of the proposed development
or, if the city agrees, within one-quarter mile of the boundary of the proposed development.

6 F. In cases where an applicant requests a density bonus of more than what is
7 specified in this section, the city council may grant the requested additional density bonus,
subject to the following:

8 1. The project meets the requirements of this chapter.

9 2. The additional density bonus shall be considered an incentive, in accordance
with Section 21.86.050 of this chapter.

10 3. The city council may require some portion of the additional density bonus units
to be designated as target dwelling units.

11 G. The city council may grant a proportionately lower density bonus than what is
specified by this section for developments that do not meet the requirements of this chapter.

12 H. The density bonus dwelling units granted pursuant to this chapter shall not be
included when determining the number of housing units required by this chapter to be reserved
for income restricted households.

13 I. When calculating the density bonus, or the required number of target dwelling
units, any calculations resulting in fractional units shall be rounded up to the next whole unit.

14 J. For the purposes of calculating a density bonus, the residential units in a housing
development do not have to be based upon individual subdivision maps or parcels.

15 K. The density bonus units shall be permitted in geographic areas of the housing
development other than the areas where the units for lower-income households are located.

16 L. A density bonus housing agreement shall be made a condition of the
discretionary permits (i.e., tentative maps, parcel maps, planned unit developments,
condominium permits, site development plans and redevelopment permits) for all housing
developments that request a density bonus and incentives or concessions. The relevant terms
and conditions of the density bonus housing agreement shall be filed and recorded as a deed
restriction on those individual lots or units of a project development which are designated for
the location of target dwelling units. The density bonus housing agreement shall be consistent with
Section 21.86.130 of this chapter.

18 21.86.050 Incentives and concessions for housing developments.

19 A. When an applicant requests a density bonus pursuant to Section 21.86.040.A,
the decision-making body shall grant incentives or concessions, subject to the following:

20 1. An applicant shall submit a proposal for any specific incentives or concessions
requested pursuant to this section.

21 2. The decision-making body shall grant the incentive(s) or concession(s) requested
by the applicant unless, based upon substantial evidence, either of the following findings are
made in writing:

22 a. The incentive or concession is not required in order to provide for affordable
housing as defined in Section 21.86.020.A.1.

23 b. The incentive or concession would have a specific adverse impact upon public
24 health and safety or the physical environment, or on any real property that is listed in the
California Register of Historical Resources, and for which there is no feasible method to
25 satisfactorily mitigate or avoid the specific adverse impact. As used in this paragraph, and as
26 defined in paragraph (2) of subdivision (d) of Section 65589.5 of the California Government
Code, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable
27 impact, based on objective, identified written public health or safety standards, policies, or
conditions as they existed on the date the application was deemed complete.

28

- 1 3. The applicant shall receive the following number of incentives or concessions:
 - 2 a. One incentive or concession for projects that include at least 10% of the total
 - 3 units for lower-income households, at least 5% for very low-income households, or at least 10%
 - 4 for persons and families of moderate-income in a common interest development.
 - 5 b. Two incentives or concessions for projects that include at least 20% of the total
 - 6 units for lower-income households, at least 10% for very low-income households, or at least
 - 7 20% for persons and families of moderate-income in a common interest development.
 - 8 c. Three incentives or concessions for projects that include at least 30% of the total
 - 9 units for lower-income households, at least 15% for very low-income households, or at least
 - 10 30% for persons and families of moderate-income in a common interest development.
 - 11 4. An incentive or concession may include any of the following:
 - 12 a. A reduction in site development standards or a modification of zoning code or
 - 13 architectural design requirements (excluding State Building Standards), that results in
 - 14 identifiable, financially sufficient, and actual cost reductions. A reduction/modification to
 - 15 standards or requirements may include, but is not limited to, a reduction in minimum lot size,
 - 16 setback requirements, and/or in the ratio of vehicular parking spaces that would otherwise be
 - 17 required.
 - 18 b. Approval of mixed use zoning in conjunction with the housing development if i)
 - 19 commercial, office, industrial, or other land uses will reduce the cost of the housing
 - 20 development; and ii) the commercial, office, industrial, or other land uses are compatible with
 - 21 the housing development and the existing or planned future development in the area where the
 - 22 proposed project will be located.
 - 23 c. Other regulatory incentives or concessions that result in identifiable, financially
 - 24 sufficient, and actual cost reductions.
 - 25 d. The city council may, but is not required to, provide direct financial incentives,
 - 26 including the provision of publicly owned land, or the waiver of fees or dedication requirements.
 - 27 5. The applicant shall show that the requested incentive(s) or concession(s) will
 - 28 result in identifiable, financially sufficient, and actual cost reductions.
- 21.86.060 Waiver or reduction of development standards.
- A. In addition to the incentives or concessions permitted by Section 21.86.050, an applicant may seek a waiver or reduction of development standards that will have the effect of precluding the construction of a housing development meeting the criteria of Section 21.86.040.A at the densities or with the incentives or concessions permitted by this Chapter.
 - 1. The applicant shall show that the requested waiver or reduction of development standards is necessary to make the housing units economically feasible.
 - 2. The applicant shall provide evidence that the development standard(s) requested to be waived or reduced will have the effect of precluding the construction of a housing development at the densities or with the incentives or concessions permitted by this Chapter; and
 - B. The decision-making body shall grant the requested waiver or reduction of development standards, unless, based upon substantial evidence, any of the following findings are made in writing:
 - 1. The waiver or reduction of development standards is not necessary to make the housing units economically feasible.
 - 2. The development standard(s) requested to be waived or reduced will not have the effect of precluding the construction of a housing development at the densities or with the incentives or concessions permitted by this Chapter.
 - 3. The requested waiver or reduction of development standards would have a specific adverse impact upon public health and safety or the physical environment, or on any real property that is listed in the California Register of Historical Resources, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. As used in this subsection, and as defined in paragraph (2) of subdivision (d) of Section 65589.5 of the

1 California Government Code, a "specific, adverse impact" means a significant, quantifiable,
2 direct, and unavoidable impact, based on objective, identified written public health or safety
standards, policies, or conditions as they existed on the date the application was deemed
complete.

3 21.86.070 Density bonus and incentives for condominium conversions.

4 A. When an applicant proposes to convert apartments to condominiums, the
5 decision-making body shall grant either a density bonus or other incentives of equivalent
financial value, as set forth in Section 21.86.050.A., if the applicant agrees to provide the
following:

6 1. A minimum of 33% of the total units of the proposed condominium conversion
project as restricted and affordable to low-income or moderate-income households; or

7 2. A minimum of 15% of the total units of the proposed condominium conversion
project as restricted and affordable to lower-income households.

8 B. For purposes of this section "density bonus" means an increase in units of 25%
9 over the number of apartments, to be provided within the existing structure or structures
proposed for conversion.

10 C. For purposes of this section, "other incentives of equivalent financial value" shall
not be construed to require the city to provide monetary compensation, but may include the
waiver or reduction of requirements that might otherwise apply to the proposed condominium
conversion project.

11 D. The density bonus dwelling units shall not be included when determining the
12 number of housing units required to be reserved for income restricted households.

13 E. When calculating the density bonus, or the required number of target dwelling
units, any calculations resulting in fractional units shall be rounded up to the next whole unit.

14 F. Nothing in this section shall be construed to require that the city approve a
proposal to convert apartments to condominiums.

15 G. An applicant/developer proposing to convert apartments to condominiums shall
16 be ineligible for a density bonus or other incentives under this section if the apartments
proposed for conversion constitute a housing development for which a density bonus or other
incentives were provided under Sections 21.86.040 and 21.86.050.

17 H. A density bonus housing agreement shall be made a condition of the
18 discretionary permits (tentative maps, parcel maps, planned unit developments and
condominium permits) for all condominium conversion proposals that request a density bonus or
19 other incentives. The relevant terms and conditions of the density bonus housing agreement
shall be filed and recorded as a deed restriction on those individual lots or units of a project
20 development which are designated for the location of target dwelling units. The density bonus
housing agreement shall be consistent with Section 21.86.130 of this chapter.

21 21.86.080 Housing developments with child day care centers.

22 A. When an applicant proposes to construct a housing development that conforms
to the requirements of Section 21.86.040.A, and includes a child day care center that will be
located on the premises of, as part of, or adjacent to, the project, the following provisions shall
23 apply:

24 1. The decision-making body shall grant either of the following:

25 a. An additional density bonus that is an amount of square feet of residential space
that is equal to or greater than the amount of square feet in the child day care center; or

26 b. An additional incentive or concession that contributes significantly to the
economic feasibility of the construction of the child day care center.

27 2. The decision-making body shall require, as a condition of approval of the housing
development, that the following occur:

28

1 a. The child day care center shall remain in operation for a period of time that is as
2 long as or longer than the period of time during which the target dwelling units are required to
remain affordable, pursuant to Section 21.86.100; and

3 b. Of the children who attend the child day care center, the children of very low-,
4 lower-, or moderate-income households shall equal a percentage that is equal to or greater than
the percentage of dwelling units that are required for very low-, lower-, or moderate-income
households pursuant to Section 21.86.040.A.

5 3. Notwithstanding any requirement of this section, the decision-making body shall
6 not be required to provide an additional density bonus, incentive or concession for a child day
care center if it finds, based on substantial evidence, that the community has an adequate
number of child day care centers.

7 21.86.090 Density bonus housing standards.

8 A. Required target dwelling units shall be constructed concurrent with market rate
9 dwelling units unless both the final decision-making authority of the city and the
developer/applicant agree within the density bonus housing agreement to an alternative
schedule for development.

10 B. Whenever feasible, target dwelling units and density bonus dwelling units should
be built on-site (within the boundary of the proposed development) and, whenever reasonably
possible, be distributed throughout the project site.

11 C. Whenever feasible, target dwelling units should be located on sites that are in
12 proximity to, or will provide access to, employment opportunities, urban services, or major roads
or other transportation and commuter rail facilities (i.e., freeways, bus lines) and that are
compatible with adjacent land uses.

13 D. Whenever feasible, target dwelling units should vary in size and number of
bedrooms, in response to affordable housing demand priorities of the city.

14 E. Density bonus projects shall comply with all applicable development standards,
15 except those which may be modified as an incentive or concession, or as otherwise provided for
in this chapter. In addition, all units must conform to the requirements of the applicable building
16 and housing codes. The design of the target dwelling units shall be reasonably consistent or
compatible with the design of the total project development in terms of appearance, materials
and finished quality.

17 F. No building permit shall be issued, nor any development approval granted, for a
18 development which does not meet the requirements of this chapter. No target dwelling unit
shall be rented or sold except in accordance with this chapter.

19 G. Upon the request of the applicant, the parking ratio (inclusive of handicap and
20 guest parking) for a housing development that conforms to the requirements of Section
21.86.040.A shall not exceed the ratios specified in Table E, below. If the applicant does not
21 request the parking ratios specified in Table E or the project does not conform to the
requirements of Section 21.86.040.A, the parking standards specified in Chapter 21.44 shall
apply.

22 1. If the total number of parking spaces required for a development is other than a
whole number, the number shall be rounded up to the next whole number.

23 2. For purposes of this section, a housing development may provide "on-site"
parking through tandem parking or uncovered parking, but not through on-street parking.

24 3. The applicant may request additional parking incentives or concessions beyond
those provided in this section, subject to the findings specified in Section 21.86.050.A.2.

25 TABLE E
26 PARKING RATIO FOR HOUSING DEVELOPMENTS

Dwelling Unit Size	On-Site Parking Ratio
0-1 bedrooms	1 space per unit
2-3 bedrooms	2 spaces per unit

16

4 or more bedrooms	2.5 spaces per unit
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21.86.100 Affordability tenure.

A. All low- and very low-income dwelling units that qualified the housing project for a density bonus shall remain restricted and affordable to the designated group for a period of at least 30 years, or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

B. All moderate-income dwelling units directly related to the receipt of a density bonus for a common interest development shall be subject to the following:

1. The initial occupant(s) of the target dwelling unit(s) shall be persons and families of moderate-income, and the units shall be offered at an affordable housing cost that does not exceed the allowable housing expenses for a moderate-income household.

2. Unless in conflict with the requirements of another public funding source or law, the target dwelling unit(s) shall be subject to an equity sharing agreement that specifies:

a. Upon resale, the seller of the unit shall retain the value of any improvements, the down payment, and the seller's proportionate share of appreciation.

b. Upon resale, the city shall recapture any initial subsidy and its proportionate share of appreciation, which shall then be used within 3 years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote homeownership.

i. For the purposes of this subsection, the city's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any down payment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

ii. For the purposes of this subsection, the city's proportionate share of appreciation shall be equal to the ratio of the initial subsidy to the fair market value of the home at the time of initial sale.

3. If the city provides a direct financial contribution to a common interest development through participation in cost of infrastructure, write-down of land costs, or subsidizing the cost of construction, the target dwelling unit(s) shall remain affordable to the designated income group for at least 30 years.

C. For rental projects, the city or its designee shall have a one-time first right of refusal to purchase any project containing affordable units offered for sale at the end of the minimum tenure of affordability. The first right of refusal to purchase the rental project shall be submitted in writing to the housing and redevelopment director. Within 90 days of its receipt, the city shall indicate its intent to exercise the first right of refusal for the purpose of providing affordable housing.

21.86.110 Application process.

A. The granting of a density bonus, incentive or concession, pursuant to this chapter, shall not be interpreted, in and of itself, to require a general plan amendment, zone code amendment, local coastal plan amendment, zone change, or other discretionary approval.

B. Preliminary Application. A preliminary application may be submitted prior to the submittal of any formal development application for a housing project that includes a request for a density bonus, incentive(s) or concession(s). The preliminary application should include the following information:

1. A brief description of the proposal including the number of target dwelling units and density bonus units proposed;

2. The zoning, general plan designations and assessors parcel number(s) of the project site;

3. A site plan, drawn to scale, which includes: building footprints, driveway and parking layout, existing contours and proposed grading; and

1 4. A letter identifying what specific density bonus, incentives or concessions (e.g.,
2 standards modifications, additional density bonus, or fee waiver, etc.) are being requested of the
3 city.

4 5. The planning department shall provide to an applicant/developer, a letter that
5 identifies project issues of concern and the procedures for compliance with this chapter.

6 C. Formal application. A request for a density bonus, incentive(s) or concession(s),
7 pursuant to this chapter, does not require a discretionary approval. The request shall be
8 processed as part of the development applications for a housing development, as otherwise
9 required in other sections of this code (e.g., site development plan, tentative map, parcel map,
10 planned unit development, conditional use permit, redevelopment permit, etc.).

11 1. If the project involves a request for direct financial incentives from the city, then
12 any action by the planning commission on the application shall be advisory only, and the city
13 council shall have the authority to make the final decision on any discretionary permits related to
14 the project.

15 2. The following information shall be included with the development application(s)
16 required for the project:

17 a. A legal description of the total site proposed for development of the target
18 dwelling units including a statement of present ownership and present and proposed zoning;

19 b. A letter signed by the present owner stating what specific density bonus,
20 incentives, or concessions (e.g., standards modifications, additional density bonus, or fee
21 waiver, etc.) are being requested from the city;

22 c. A detailed vicinity map showing the project location and such details as the
23 location of the nearest commercial retail, transit stop, potential employment locations, park or
24 recreation facilities or other social or community service facilities;

25 d. Site plans, designating the total number of units proposed on the site, including
26 the number and location of target dwelling units and density bonus dwelling units, and
27 supporting plans per the application submittal requirements;

28 e. In the case of a request for any incentive(s) or concession(s), a pro forma for the
proposed project to justify the request, in accordance with the provisions of section 21.86.050;

f. In the case of a request for a waiver or reduction of development standards,
pursuant to section 21.86.060, a pro forma for the proposed project showing that the waiver or
reduction is necessary to make the housing units economically feasible, and evidence that the
development standard being waived or reduced will have the effect of precluding the
construction of the development at the densities or with the concessions or incentives permitted
by this chapter.

g. In the case of a condominium conversion request, a report documenting the
following information for each unit proposed to be converted:

i. the monthly income of tenants of each unit throughout the prior year, and

ii. the monthly rent for each unit throughout the prior year, and

iii. vacancy information for each unit throughout the prior year.

21.86.120 Findings for approval.

A. When a project involves a request for a density bonus, incentive(s) or
concession(s), the following findings shall be made as part of the approval of the development
application(s) required for the project:

1. The project is consistent with the provisions of this chapter.

2. The requested incentive(s) or concession(s) will result in identifiable, financially
sufficient, and actual cost reductions;

3. In cases where an applicant requests a waiver or reduction of development
standards, pursuant to section 21.86.060, the requested waiver or reduction of development
standard(s) is necessary to make the housing units economically feasible.

4. The requested incentive(s) or concession(s), and/or waiver(s) or reduction(s) of
development standards, if any, will not result in an adverse impact, as defined in paragraph (2)

1 of subdivision (d) of Section 65589.5 of the California Government Code, to the public health
2 and safety, the environment, or on any real property that is listed in the California Register of
3 Historical Resources; or, if the request will result in an adverse impact, then the request may be
4 approved if the following finding is made:

5 a. There is no feasible method to satisfactorily mitigate or avoid the specific adverse
6 impact.

7 5. In cases where an applicant requests to convert apartment units to
8 condominiums, the condominium conversion project shall not result in a reduction in the
9 affordable housing stock for lower-income groups, as of most recent inventory.

10 21.86.130 Density bonus housing agreement.

11 A. Applicants/developers, requesting a density bonus, incentives or concessions
12 pursuant to this chapter, shall demonstrate compliance with this chapter by executing a density
13 bonus housing agreement prepared by the city housing and redevelopment director and
14 submitted to the developer for signature.

15 B. Density bonus housing agreements for projects involving a request for direct
16 financial incentives from the city shall be subject to city council approval; otherwise, the
17 agreement shall be subject to the approval of the community development director.

18 C. Following the approval and the signing by all parties, the completed density
19 bonus housing agreement, with approved site development plan, shall be recorded against the
20 entire development, including market-rate lots/units; and the relevant terms and conditions
21 therefrom filed and recorded as a deed restriction or regulatory agreement on those individual
22 lots or units of a property which are designated for the location of target dwelling units.

23 D. The approval and signing by all parties of the density bonus housing agreement
24 shall take place prior to final map approval, and the agreement shall be recorded concurrent
25 with the final map recordation or, where a map is not being processed, prior to issuance of
26 building permits for such lots or units.

27 E. The density bonus housing agreement shall be binding to all future owners and
28 successors in interest.

F. A density bonus housing agreement for a housing development or condominium
conversion project processed pursuant to this chapter shall include, but not be limited to, the
following:

1. The number of density bonus dwelling units granted;
2. The number and type (e.g., restricted to lower- or moderate-income households)
of target dwelling units proposed;
3. The unit size(s) (square footage) of target dwelling units and the number of
bedrooms per target dwelling unit;
4. The proposed location of the target dwelling units;
5. Schedule for production of target dwelling units;
6. Incentives or concessions provided by the city;
7. Where applicable, tenure and conditions governing the initial sale of for-sale
target units; and
8. Where applicable, tenure and conditions establishing rules and procedures for
qualifying tenants, setting rental rates, filling vacancies, and operating and maintaining units for
rental target dwelling units.
9. Where applicable, requirements for other documents to be approved by the city,
such as marketing, leasing and management plans; financial assistance/loan documents; resale
agreements; and monitoring and compliance plans.

21.86.140 Agreement processing fee.

A. The city council may establish by resolution, fees to be paid by the applicant to
defray the city's cost of preparing and/or reviewing all density bonus housing agreements.

1 21.86.150 Separability of provisions.
2 A. If any provision of this chapter or the application thereof to any person or
3 circumstances is held invalid, the remainder of the chapter and the application of the provision
4 to other persons not similarly situated or to other circumstances shall not be affected thereby.

5 SECTION 12: That the findings of the Planning Commission as set forth in
6 Planning Commission Resolution No. 5879 constitute the findings of the City Council.

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1 EFFECTIVE DATE: This ordinance shall become effective thirty (30) days after
 2 its adoption, and the City Clerk shall certify to the adoption of this ordinance and cause it to be
 3 published at least once in a publication of general circulation in the City of Carlsbad within
 4 fifteen days after its adoption. *(Notwithstanding the preceding, this ordinance shall not become*
 5 *effective within the City's Coastal Zone until LCPA 04-17 is approved by the California Coastal*
 6 *Commission.)*

7 INTRODUCED AND FIRST READ at a regular meeting of the Carlsbad City
 8 Council on the 21st day of March 2006, and thereafter.

9 PASSED AND ADOPTED at a regular meeting of the City Council of the City of
 10 Carlsbad on the 28th day of March 2006, by the following vote, to wit:


11 AYES: Council Members Lewis, Kulchin, Packard, Sigafosse

12 NOES: None

13 ABSENT: Council Member Hall

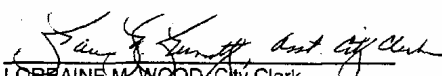
14 ABSTAIN: None

15
 16 APPROVED AS TO FORM AND LEGALITY

17 
 18 RONALD R. BALL, City Attorney *3/29/06.*

19 
 20 CLAUDE A. LEWIS, Mayor

21
 22 ATTEST:

23 
 24 LORRAINE M. WOOD, City Clerk

25 (SEAL)

