

**CALIFORNIA COASTAL COMMISSION**

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February 23, 2012

**W12a****TO: COMMISSIONERS AND INTERESTED PERSONS****FROM: SHERILYN SARB, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT  
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT  
TONI ROSS, COASTAL PROGRAM ANALYST, SAN DIEGO COAST  
DISTRICT****SUBJECT: STAFF RECOMMENDATION ON CITY OF CARLSBAD MAJOR LCP  
AMENDMENT CAR-MAJ-3-10A (Inclusionary Housing) for Commission Meeting  
of March 7-9, 2012**

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**SYNOPSIS**

The subject LCP implementation plan amendment was submitted and filed as complete on January 26, 2011. A one-year time extension was granted on April 13, 2011. The last date for Commission action on this item is April 26, 2012. This is the first component of two unrelated items submitted as LCP Amendment No. 3-10 to be heard by the Commission. The second component, LCPA 3-10B (Golf Course Revisions), which involves both land use plan and implementing ordinance revisions, is also scheduled for the March, 2012 hearing.

**SUMMARY OF AMENDMENT REQUEST**

The City of Carlsbad is proposing to revise its zoning ordinance in order to comply with recent case law regarding inclusionary housing. Primarily, the zoning amendment will clarify that inclusionary housing requirements apply to projects proposing rental units only if the developer receives direct financial assistance, offsets, or any incentive specified in density bonus law and agrees by contract to limit rents. The proposed amendment would only affect the application of inclusionary requirements to rental projects; the application of inclusionary housing standards to ownership projects, including conversion of apartments into condominiums would not change. The proposed amendment additionally includes "housekeeping" revisions to the existing inclusionary housing language. The intent and major policies and/or standards will not otherwise be modified.

**SUMMARY OF STAFF RECOMMENDATION**

Staff is recommending approval of the amendment as submitted. The proposed changes can be found consistent with the City's certified land use plan and will not result in

impacts to coastal resources or public access. It can therefore be found consistent with, and adequate to carry out, the land use plan as submitted.

The appropriate resolution and motion may be found on Page 4. The findings for approval of the Implementation Plan Amendment as submitted also begin on Page 4.

### **BACKGROUND**

In 2009, a Los Angeles developer won a case challenging the city's inclusionary requirement. The court concluded that unless a developer has received some sort of benefit for providing affordable housing, requiring reduced rate rental units conflicts with, and is preempted by, the rent control provisions of the Costa-Hawkins Rental Housing Act ("Costa-Hawkins"), which allows residential landlords to set rent levels at the commencement of a tenancy. *Palmer/Sixth St. Properties v. City of Los Angeles*, 175 Cal.App.4th 1396 (2009),

### **ADDITIONAL INFORMATION**

Further information on the City of Carlsbad LCP Amendment 3-10A may be obtained from Toni Ross, Coastal Planner, at (619) 767-2370.

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## **PART I. OVERVIEW**

### **A. LCP HISTORY**

The City of Carlsbad'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 segments except Agua Hedionda. The Agua Hedionda Lagoon LCP segment is a deferred certification area until an implementation plan for that segment is certified. The proposed amendment is a citywide ordinance revision and will therefore affect all six LCP segments.

### **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 LCP Amendment No. 3-10A as submitted.*

**STAFF RECOMMENDATION OF CERTIFICATION AS SUBMITTED:**

Staff recommends a **NO** 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 TO CERTIFY IMPLEMENTATION PROGRAM AMENDMENT AS SUBMITTED:**

The Commission hereby certifies the Implementation Program Amendment for the City of Carlsbad as submitted and adopts the findings set forth below on grounds that the Implementation Program Amendment conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan, and certification of the Implementation Program Amendment will meet the requirements of the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Implementation Program.

**PART III. FINDINGS FOR APPROVAL OF THE CITY OF CARLSBAD IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED**

**A. AMENDMENT DESCRIPTION**

The City of Carlsbad is proposing to revise its zoning ordinance in order to comply with recent case law regarding inclusionary housing. Primarily, the zoning amendment will clarify that inclusionary housing requirements apply to projects proposing rental units only if the developer receives direct financial assistance, offsets, or any incentive specified in density bonus law and agrees by contract to limit rents. The proposed amendment would only affect the application of inclusionary requirements to rental projects; the application of inclusionary housing standards to ownership projects, including conversion of apartments into condominiums would not change. The proposed

amendment additionally includes “housekeeping” revisions to the existing inclusionary housing language. The intent and major policies and/or standards will not otherwise be modified.

**B. FINDINGS FOR APPROVAL**

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP.

a) **Purpose and Intent of the Ordinance.** The purpose of the Inclusionary Housing Ordinance - Chapter 21.85, is 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.

b) **Major Provisions of the Ordinance.** As currently certified, the major provisions of the ordinance require that fifteen percent of all residential development be restricted to and affordable to lower-income households. The ordinance additionally requires that development proposals with greater than 10 units also provide at least ten percent of the lower-income units with three or more bedrooms. The ordinance also permits, under certain conditions, alternatives or in-lieu fees in place of inclusionary housing requirements.

c) **Adequacy of the Ordinance to Implement the Certified LUP Segments.** The purpose of the LCP amendment stems from a July 2009 Court of Appeal decision in *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles (Palmer)*. In this case, the court determined that local inclusionary requirements for rental units are pre-empted by State law regarding rent control, unless the developer agrees by contract to limit rent in exchange for “direct financial contribution” or any other forms of assistance specified in density bonus law.

Therefore, the subject LCP amendment proposes modifications to its existing ordinance pertaining to the provision of inclusionary housing. As modified, the ordinance requires that 15 percent of ownership and *qualifying rental units* be restricted for lower-income housing. As modified, the inclusionary housing requirements would apply to rental units only when the developer receives direct financial assistance, offsets, or any incentive of the type specified in density bonus law pursuant to the provisions of the City’s density bonus ordinance (Chapter 21.86), and that the developer agrees by contract to limit rents for below market-rate rental units. The general provisions pertaining to density bonuses and the associated inclusionary housing requirements are not being modified. In addition, the proposed revisions do not modify the availability of either inclusionary or density bonus measures for these units.

The City of Carlsbad’s certified Land Use Plan(s) do not contain any policy pertaining to inclusionary housing and therefore, the proposed modification can be found consistent with the City’s certified Land Use Plan. The certified land use plan segments do contain

policies that support maximum public access to the shoreline; and, although the Coastal Act no longer contains housing provisions, inclusionary housing supports access for all incomes in the coastal zone. Further, the amendment does not conflict with any coastal zone regulations, land use designations, or policies with which development must comply. Thus, proposed amendment can be found consistent with and adequate to implement the City's LCP, and it can therefore be approved as submitted.

It is important to note, however, that in the process of reviewing the subject LCP amendment, it came to light that a previous LCP amendment (1-06D/Density Bonus Revisions), had not been accurately incorporated into the City's certified Implementation Plan. In that amendment, the City proposed modifications to two chapters of its zoning code, Chapter 21.85 (Inclusionary Housing) and 21.86 (Density Bonus). The Commission reviewed the City's submittal and certified the amendment with three revisions to the City's proposed language. These revisions included that, for development located in the coastal zone, any offsets provided associated with inclusionary housing or density bonus shall be consistent with the City's certified LCP. Additionally, the Commission revised the language to include that development on constrained lands identified as undevelopable shall be excluded from the total areas of the project site when calculating maximum density. All of these revisions were included to help protect any sensitive habitat that could be impacted by relaxed development standards associated with inclusionary housing and density bonuses. The City certified the Commission's revisions on May 13, 2008 through Ordinance No. NS-889. However, the revisions have not yet been included in the City's published zoning document. These revisions have also not been incorporated into the City's zoning ordinance that is available on its website. Commission staff has notified the City of this issue, and they have indicated that this oversight will be corrected immediately.

#### **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 a LCP submittal or, as in this case, a LCP amendment submittal, to find that the approval of the proposed LCP, or LCP, as amended, conforms to CEQA provisions, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. 14 C.C.R. §§ 13542(a), 13540(f), and 13555(b). The proposed zoning amendments will not result in adverse impacts on coastal resources or public access. The

Commission finds that there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the LCP amendment may have on the environment. Therefore, in terms of CEQA review, the Commission finds that approval of the LCP amendment will not result in any significant adverse environmental impacts.

RESOLUTION NO. 2010-231

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, APPROVING A LOCAL COASTAL PROGRAM AMENDMENT TO MAKE MINOR TEXT CHANGES TO ZONING ORDINANCE CHAPTER 21.85.

CASE NAME: INCLUSIONARY HOUSING  
CASE NO.: LCPA 10-02

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

WHEREAS, pursuant to the provisions of the Municipal Code, the Planning Commission did on July 21, 2010, hold a duly noticed public hearing as prescribed by law to consider the Zone Code Amendment (ZCA 10-03), as referenced in Planning Commission Resolution No. 6712, and Local Coastal Program Amendment (LCPA 10-02), as referenced in Planning Commission Resolution No. 6713; and

WHEREAS, the Planning Commission adopted Planning Commission Resolutions No. 6712 and 6713 recommending to the City Council that ZCA 10-03 and LCPA 10-02 be approved; and

WHEREAS, the City Council of the City of Carlsbad, on the 28th day of September 2010, held a duly noticed public hearing to consider the Zone Code 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 Zone Code Amendment and Local Coastal Program Amendment.

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

1. That the above recitations are true and correct.
2. That the findings of the Planning Commission in Planning Commission Resolutions No. 6712 and 6713 constitute the findings of the City Council in this matter.
3. That the amendment to the Local Coastal Program (LCPA 10-02), is approved as shown in Planning Commission Resolution No. 6713, on file with the City Clerk and incorporated herein by reference.

EXHIBIT #1
Resolution of Approval
LCPA # <del>310A</del> Inclusionary Housing
 California Coastal Commission

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ORDINANCE NO. CS-109

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, APPROVING A ZONE CODE AMENDMENT TO MAKE MINOR MODIFICATIONS TO THE INCLUSIONARY HOUSING REQUIREMENTS OF ZONING ORDINANCE CHAPTER 21.85  
CASE NAME: INCLUSIONARY HOUSING  
CASE NO.: ZCA 10-03

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

Section I: 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 Severability.

Section II: That Section 21.85.010 A. 1. (Purpose and Intent) is amended as follows:

- 1. Require that a minimum of fifteen percent of all approved ownership and qualifying rental units as set forth in Section 21.85.030 A be restricted to and affordable to lower-income households; subject to adjustment based on the granting of an inclusionary credit;

Section III: That Section 21.85.020 (Definitions) is amended as follows:

21.85.020 Definitions.

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

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EXHIBIT #2
Ordinance of Approval
LCPA #30A Inclusionary Housing California Coastal Commission

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

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

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

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

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

7 B. "Affordable housing agreement" means a legally binding agreement between a  
8 developer and the city to ensure that the inclusionary requirements of this chapter are satisfied.  
9 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.

10 C. "Allowable housing expense" means the total monthly or annual recurring  
11 expenses required of a household to obtain shelter. For an ownership unit, allowable housing  
12 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  
13 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  
14 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  
15 charges, or service charges assessed by the lessor and payable by the tenant.

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

18 E. "Combined inclusionary housing project" means separate residential  
19 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.

20 F. "Conversion" means the change of status of a dwelling unit from an ownership  
21 unit to a rental unit or vice versa and/or a market-rate unit to a unit affordable to lower-income  
households.

22 G. "Development revision" means revisions to development permits, entitlements,  
23 and/or related maps.

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

25 I. "Extremely low-income household" means those households whose gross  
26 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.

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

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

8 L. "Incentives or concessions" shall have the same meaning as defined in Section  
9 21.86.020(A)(12) of this title.

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

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

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

19 P. "Income" means any monetary benefits that qualify as income in accordance with  
20 the criteria and procedures used by the city of Carlsbad housing and redevelopment department  
21 for the acceptance of applications and recertifications for the tenant based rental assistance  
22 program, or its successor.

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

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

S. "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.

T. "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.

U. "Ownership Unit" means a residential unit with a condominium or other  
subdivision map allowing units to be sold individually.

V. "Rental Unit" means a residential unit with no condominium or other subdivision  
map allowing units to be sold individually.

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

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

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

13           Z. "Very low-income household" means a household earning a gross income equal  
14 to fifty percent or less of the median income for San Diego County as determined annually by  
15 the U.S. Department of Housing and Urban Development.

16           Section IV: That Section 21.85.030 A (Inclusionary Housing Requirements) is amended  
17 as follows:

18           A. This chapter shall apply to all residential market-rate dwelling units resulting from  
19 new construction of ownership units, including the conversion of apartments to condominiums  
20 and to new construction of rental units where the developer receives direct financial assistance,  
21 offsets, or any incentive of the type specified in density bonus law pursuant to the provisions of  
22 Chapter 21.86 of this code, and the developer agrees by contract to limit rents for below market-  
23 rate rental units. Any developer not receiving direct financial assistance, offsets, or other  
24 incentives may voluntarily agree to provide inclusionary rental units.

25           Section V: That Section 21.85.030 B (Inclusionary Housing Requirements) is amended  
26 as follows:

27           B. For any residential development or development revision of seven or more units  
28 as set forth in Section 21.85.030 A, 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.

          Section VI: That Section 21.85.030 D (Inclusionary Housing Requirement) is amended  
as follows:

          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;

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

2           5.     Second dwelling units not constructed to fulfill inclusionary housing requirements  
and developed in accordance with Section 21.10.030 of this code;

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

4           7.     Any rental unit where the developer does not obtain direct financial assistance,  
offset, or any other incentive or concession of the type specified in density bonus law, although  
5 a mandatory density bonus may have been applied pursuant to the provisions of Chapter 21.86  
of this code; and

6           8.     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  
7 this chapter.

8           Section VII: That Section 21.85.040 A (Affordable Housing Standards) is amended as  
9 follows:

10           A.     All qualifying residential developments pursuant to Section 21.85.030 A are  
subject to and must satisfy the inclusionary housing requirements of this chapter,  
11 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  
12 (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  
13 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  
14 requirements of this chapter.

15           Section VIII: That Section 21.85.040 D (Affordable Housing Standards) is amended as  
16 follows:

17           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  
18 assets may also be used as a factor in determining eligibility for rental or ownership units.  
Notwithstanding anything to the contrary in this chapter, no inclusionary unit shall be rented for  
19 an amount which exceeds ninety percent of the actual rent charged for a comparable market  
unit in the same development, if any.

20           Section IX: That Section 21.85.040 E (Affordable Housing Standards) is amended as  
21 follows:

22           E.     After the initial sale of the inclusionary ownership units at a price affordable to the  
23 target income level group, inclusionary ownership units shall remain affordable to subsequent  
income eligible buyers pursuant to a resale restriction with a term of thirty years or ownership  
24 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  
25 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  
26 assisting other eligible households with home purchases at affordable prices. To the extent  
possible, projects using ownership units to satisfy inclusionary requirements shall be designed  
27 to be compatible with conventional mortgage financing programs including secondary market  
requirements.

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1 Section X: That Section 21.85.070 A (Alternatives to construction of inclusionary units)  
2 is amended as follows:

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

8 Section XI: That Section 21.85.110 A (In-lieu fees) is amended as follows:

9 A. For any qualifying residential development or development revision pursuant to  
10 Section 21.85.030 A. of less than seven units, the inclusionary requirements may be satisfied  
11 through the payment to the city of an in-lieu fee.

11 Section XII: That Section 21.85.110 B (In-lieu fees) is amended as follows:

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

16 Section XIII: That Section 21.85.170 A (Enforcement) is amended as follows:

17 A. The provisions of this chapter shall apply to all developers and their agents,  
18 successors and assigns proposing a qualifying residential development governed by this  
19 chapter pursuant to Section 21.85.030 A. No building permit or occupancy permit shall be  
20 issued, nor any entitlement granted, for a project which is not exempt and does not meet the  
21 requirements of this chapter. All inclusionary units shall be rented or owned in accordance with  
22 this chapter.

21 Section XIV: That the title only of Section 21.85.190 (Separability of provisions) is  
22 amended as follows:

22 21.85.190 Severability.

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EFFECTIVE DATE: This ordinance shall be effective thirty days after its adoption, and the City Clerk shall certify to the adoption of this ordinance and cause it to be published at least once in a publication of general circulation in the City of Carlsbad within fifteen days after its adoption. Notwithstanding the preceding, this ordinance shall not be effective until approved by the California Coastal Commission.

INTRODUCED AND FIRST READ at a regular meeting of the Carlsbad City Council on the 28th day of September 2010, and thereafter.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Carlsbad on the 5th day of October 2010, by the following vote, to wit:

- AYES: Council Members Lewis, Kulchin, Hall, Packard and Blackburn.
- NOES: None.
- ABSENT: None.
- ABSTAIN: None.

APPROVED AS TO FORM AND LEGALITY

*Signature on file*  
\_\_\_\_\_  
RONALD R. BALL, City Attorney  
*10/6/10*

*Signature on file*  
\_\_\_\_\_  
CLAUDE A. LEWIS, Mayor  
*CL*

ATTEST: *1 n*  
*Signature on file*  
\_\_\_\_\_  
LORRAINE M. WOOD, City Clerk  
(SEAL)



**ZCA 10-03/LCPA 10-02 – Inclusionary Housing  
~~strike-out~~/underline Version of Proposed Text Changes**

Zoning Ordinance Chapter 21.85 is proposed to be amended as follows:

**Chapter 21.85**

**INCLUSIONARY HOUSING**

Sections:

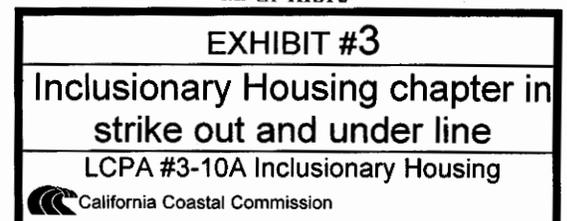
- 21.85.010 Purpose and intent.
- 21.85.020 Definitions.
- 21.85.030 Inclusionary housing requirement.
- 21.85.035 New master plans or specific plans.
- 21.85.040 Affordable housing standards.
- 21.85.050 Calculating the required number of inclusionary units.
- 21.85.060 Inclusionary credit adjustment.
- 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~~Severability.

**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 ownership residential development and qualifying rental units as set forth in Section 21.85.030 A 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.

**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~~ ownership units: the product of thirty percent times thirty percent of the county median income, adjusted for household size;
2. Very low-income, rental and ~~for-sale~~ ownership units: the product of thirty percent times fifty percent of the county median income, adjusted for household size;
3. Low-income, ~~for-sale~~ ownership units: the product of thirty percent times eighty percent of the county median income, adjusted for household size; and
4. Low-income, rental units: the product of thirty percent times seventy 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~~ an ownership 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 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 an ownership purchased unit to a rental unit or vice versa and/or a market-rate unit to a unit affordable to lower-income households.

G. "Development revision" means revisions to development permits, entitlements, and/or related maps.

G-H. "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)( 12-7) 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 applications 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.

QR. "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.

RS. "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.

ST. "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.

U. "Ownership Unit" means a residential unit with a condominium or other subdivision map allowing units to be sold individually.

V. "Rental Unit" means a residential unit with no condominium or other subdivision map allowing units to be sold individually.

FW. "Residential development" means any new residential construction of ~~rental or for sale~~ ownership or rental 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.

UX. "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.

Y. "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.

WZ. "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.

#### **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 ownership units, as well as including the conversion of apartments to condominiums, and to new construction of rental units where the developer receives direct financial assistance, offsets, or any incentive of the type specified in density bonus law pursuant to the provisions of Chapter 21.86 of this code, and the developer agrees by contract to limit rents for below market-rate rental units. Any developer not receiving direct financial assistance, offsets, or other incentives may voluntarily agree to provide inclusionary rental units.

B. For any residential development or development revision of seven or more units as set forth in Section 21.85.030 A, 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 ~~030~~ of this code;

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. Any rental unit where the developer does not obtain direct financial assistance, offset, or any other incentive or concession of the type specified in density bonus law, although a mandatory density bonus may have been applied pursuant to the provisions of Chapter 21.86 of this code; and

~~78.~~ 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.

#### **21.85.040 Affordable housing standards.**

The affordable housing standards are as follows:

A. All qualifying residential developments pursuant to Section 21.85.030 A 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~~ ownership units. Notwithstanding anything to the contrary in this chapter, no inclusionary unit shall be 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~~ ownership units at a price affordable to the target income level group, inclusionary ~~for-sale~~ ownership units shall remain affordable to subsequent income eligible buyers pursuant to a resale restriction with a term of thirty years or ~~for-sale~~ ownership 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~~ ownership 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.

#### **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-rate

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.

#### **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 qualifying residential development or development revision pursuant to Section 21.85.030 A 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~~ ownership 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 development, 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.

**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 qualifying residential development governed by this chapter pursuant to Section 21.85.030 A. 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.

**21.85.190 ~~Separability of provisions~~ Severability.**

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.