

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA  
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**W29c**

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 original staff report

**Addendum**

March 9, 2015

To: Commissioners and Interested Persons

From: California Coastal Commission  
 San Diego Staff

Subject: Addendum to **Item W29c**, City of Imperial Beach LCP Amendment  
**#LCP-6-IMB-14-0838-1 (Affordable Housing Density Bonus and  
 Special Needs Housing)**, for the Commission Meeting of March 11, 2015

Staff recommends the following changes be made to the above-referenced staff report, dated February 26, 2015, (text in underline format indicates text to be added, and text in ~~striketrough~~ format indicates text to be deleted):

1. On Page 7, Suggested Modification #2, Section 19.65.100, Other Affordable Housing Incentives or Concessions, shall be revised as follows:

Applications for affordable housing projects not qualifying for or requesting a density bonus may be considered for incentives or concessions at the discretion of the City Council. The City may require an affordable housing agreement to ensure the availability of the targeted units for low and moderate income households for a period of 30 years and may execute such other provisions as may be necessary to implement the agreement.

For development within the City's LCP jurisdiction, any housing development approved shall be consistent, to the maximum extent feasible and in a manner most protective of coastal resources, with all of the City's otherwise applicable certified Local Coastal Program policies and standards.

2. On Page 13, in the first full sentence of the paragraph beginning at the top of the page, please modify the proposed findings as follows:

[...] In addition, under newly proposed Section 19.65.100 (Other Affordable Housing Incentives or Concessions), the City is proposing to offer incentives and concessions to other affordable housing projects beyond those proposals seeking or qualifying for a density bonus. This new sub-section fails to include language that development under this category and in the City's LCP jurisdiction shall be consistent with all applicable requirements of the City's certified LCP. Since the

City's proposed change is for incentives or concessions beyond the state's density bonus mandate, the need to protect coastal resources should be reinforced. Without modification, such projects located in the City's LCP jurisdiction could potentially receive incentives or concessions that would have adverse impacts on coastal resources; this could include reduced buffers near environmentally sensitive habitat areas (i.e. wetlands) or public view corridors encroachments. If parking reductions were granted, potential impacts to public access could occur. Therefore, absent language that specifically states that the consideration of granting certain incentives or concessions to encourage affordable housing shall be consistent with the City's LCP; the current amendment cannot be found consistent with, or adequate to carry out, the policies of the certified land use plan.

**CALIFORNIA COASTAL COMMISSION**

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February 26, 2015

**W29c****TO: COMMISSIONERS AND INTERESTED PERSONS****FROM: SHERILYN SARB, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT  
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT  
KERI ROBINSON, COASTAL PLANNER, SAN DIEGO COAST DISTRICT****SUBJECT: STAFF RECOMMENDATION ON CITY OF IMPERIAL BEACH LCP  
AMENDMENT No. LCP-6-IMB-14-0838-1 (Affordable Housing Density Bonus  
and Special Needs Housing) for Commission Meeting of March 11-13, 2015**

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**SYNOPSIS**

The subject LCP implementation plan amendment was submitted and filed as complete on October 3, 2014. A one-year time extension was granted on November 14, 2014. As such, the last date for Commission action on this item is the November 2015 hearing. This report addresses the City's entire submittal.

**SUMMARY OF AMENDMENT REQUEST**

The City of Imperial Beach is proposing to revise the City's certified zoning code (IP) to implement Housing Element Programs 12 (Affordable Housing Density Bonus) and 13 (Special Needs Housing) to comply with state and federal laws.

Housing Element Program 12 amends Chapter 19.65 to include updated mandatory provisions pursuant to state law where a density bonus of up to 35 percent over the otherwise maximum allowable residential density would be available to developers who, in their projects, provide affordable housing and are also entitled to at least one concession or incentive. In addition, the City expanded this housing program to add a section authorizing the granting of incentives or concessions for affordable housing projects not qualifying for or requesting a density bonus.

Housing Element Program 13 amends: 1) the provisions of multi-unit residential zoning to allow manufactured homes pursuant to state law; 2) the provisions of the C/MU-1 (General Commercial/Mixed-Use) Zone to allow transitional/supportive housing, single-room occupancy units, and employee housing pursuant to state law; and, 3) the definition of "senior citizen housing development" to comply with state law. Housing Element Program 13 also adds a new zoning ordinance section that makes reasonable accommodations to allow disabled persons an equal opportunity to enjoy and use a residence pursuant to state and federal law; the definitions associated with reasonable accommodations, the process of requesting a reasonable accommodation, the procedures

for reviewing the requests, the findings necessary to approve or deny a reasonable accommodation, and the appeal process for any decision granting/denying a request for reasonable accommodations is also detailed in this element. The proposed LCP amendment only involves changes to the certified implementation plan and will apply citywide.

### **SUMMARY OF STAFF RECOMMENDATION**

The Commission can only reject such amendments where it can be shown that the amendment would be inconsistent with the certified LUP and/or render the IP inadequate to carry out the LUP. Staff is recommending first that the LCP amendment be rejected as proposed and then approved with five suggested modifications.

Although the affordable housing provisions of the Coastal Act were substantially modified several years ago, the Commission continues to support the development of affordable housing projects as a means of promoting coastal access in the coastal zone. However, as local governments and statewide housing mandates have encouraged the use of density bonuses and other regulatory relief measures to grant incentives for the development of affordable housing, the Commission must also ensure that such efforts still protect coastal resources. Increased densities can be focused on areas with no sensitive habitat or inland areas away from the immediate shoreline. Incentives and concessions may be considered for certain elements, other than critical resource protection measures of a certified LCP, to accommodate affordable housing projects. Historically, there have been potential issues associated with the granting of incentives, concessions, or waivers of development standards, such as reduced wetland buffers, public view corridor encroachments, or reduced bluff top setbacks, to support affordable housing projects or provide reasonable accommodations that would then conflict with the critical resource protection measures established in a certified local coastal program.

Housing Element Program 12, which amends Chapter 19.65 (Affordable Housing Density Bonus) in the City's zoning code (IP), establishes requirements and procedures to encourage development of moderate income, low income, and very low income affordable housing as well as senior housing by offering a density bonus and incentives/concessions to qualified developers. Overall, this program includes sections which state that development in the City's LCP jurisdiction must follow the policies and standards listed in the City's certified LCP, but two sections in particular fail to include this language and are reasons for rejection of the amendment as proposed. When reviewing the definition of "maximum allowable residential density" in Section 19.65.020, it reads that if there were any density inconsistencies between the zoning ordinance and land use element of the general plan, the general plan's density would prevail; this language fails to mention the City's certified LCP, so **Suggested Modification #1** includes language that recognizes the density listed in the general plan or, if the proposed density is within the coastal zone subject to the City's LCP authority, the City's certified LCP as the prevailing density standard. In Housing Element Program 12, the City included language in Section 19.65.030, sub-section C that states how the chapter will not alter or lessen the effect or application of the California Coastal Act of 1976; this indicates that in the City's LCP jurisdiction, the density bonus will be

calculated based on the applicable zoning ordinance and certified LUP's otherwise maximum allowable residential density as applied to a site. All site-specific environmental development constraints identified in the coastal zoning ordinances and LUP will apply to the density bonus calculations, indicating that adverse impacts to coastal resources as a result of a density bonus should be avoided. In addition, sub-section D of Section 19.65.030 also establishes that any housing development in the City's LCP jurisdiction shall be consistent with all otherwise certified LCP policies and development standards. This policy is also consistent with the Coastal Act by making development in the coastal zone accountable to the certified LCP policies. Section 19.65.060, sub-section B.3 also refers to development in the City's LCP jurisdiction by stating that any incentives must be consistent and most protective of coastal resources, to the maximum extent feasible, within LCP policies and standards; priority for incentives that are most protective of coastal resources are also established. This language mirrors the prior density bonus language by making incentives also accountable to certified LCP policies. The Commission commends the City of Imperial Beach for including this language and strengthening the review of LCP policies with density bonus and incentive/concession provisions. However, the addition of Section 19.65.100 (Other Affordable Housing Incentives or Concessions), which authorizes incentives or concessions for other affordable housing projects not qualifying or requesting a density bonus, fails to include language that development under this category and in the City's LCP jurisdiction shall be consistent with all applicable requirements of the City's certified LCP. **Suggested Modification #2** includes this language to have the amendment consistent with the City's certified land use plan. Without modification, affordable housing projects located in the City's LCP jurisdiction could potentially receive incentives or concessions that would have adverse impacts on coastal resources; this could possibly include reduced buffers near wetlands or interference with public view corridors.

Housing Element Program 13 amends the City's zoning code (IP) to include provisions for manufactured homes, transitional/supportive housing, single-room occupancy units, and employee housing to comply with state law; this program also amends the definition of "senior citizen housing development" pursuant to state law. These amendments are found to be consistent with the Coastal Act. In addition, this housing program also adds Section 19.02.070, which provides reasonable accommodations to disabled persons or developers of housing for persons with disabilities by allowing flexibility in land, zoning, and building regulations, policies, practices, and procedures. Portions of this section state that the nature of the City's land use, zoning, or building regulation, policy, practice, or procedures would not be fundamentally altered by any relief granted for reasonable accommodation, but sub-section A, which defines reasonable accommodations, is missing this language. **Suggested Modification #3** includes this language and also adds the nature of the City's certified LCP as an element that cannot be fundamentally altered. **Suggested Modification #4** adds language to sub-section G to make it clear that developers of housing for individuals with disabilities, along with individual applicants, must still comply with all other applicable regulations that are not at issue. Lastly, **Suggested Modification #5** adds the City's LCP under sub-section L.4. to ensure that findings for approval or denial of reasonable accommodations will take into account if the request proposes a fundamental alteration of the nature of the City's certified LCP.

**The appropriate resolutions and motions begin on Page 6. The suggested modifications begin on Page 7. The findings for denial of the Implementation Plan Amendment as submitted begin on Page 9. The findings for approval of the plan, if modified, begin on Page 14.**

**ADDITIONAL INFORMATION**

Further information on the City of Imperial Beach LCP Amendment No. LCP-6-IMB-14-0838-1 may be obtained from **Keri Robinson**, Coastal Planner, at (619) 767-2370.

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## **PART I. OVERVIEW**

### **A. LCP HISTORY**

On June 30, 1981, the City of Imperial Beach formally submitted its Land Use Plan (LUP) for Commission approval. The plan, as originally submitted, comprised the City's entire General Plan (10 elements and a policy plan). Since the plan contained a large volume of material that was not coastal-related and policies addressing coastal issues were found throughout many of the elements, staff summarized the coastal policies into one document. This policy summary along with the Land Use Element was submitted to the Commission as the LCP Land Use Plan.

On September 15, 1981, the Commission found substantial issue with the LUP, as submitted, denied and then conditionally approved the LUP with recommended policy changes for all policy groups. The City resubmitted the LCP Land Use Plan in early 1982, incorporating most of the Commission's suggested policy modifications. This included modification language related to the preservation and protection of Oneonta Slough/Tijuana River Estuary and South San Diego Bay, preservation and enhancement of coastal access and the provision for visitor-serving commercial uses in the Seacoast District. On March 16, 1982, the Commission certified the City of Imperial Beach LCP Land Use Plan as submitted. The Commission on November 18, 1982 effectively certified the land use plan. In 1983, prior to certification of the Implementation Plan, the Commission approved an amendment to the LUP to correct a mapping error.

On August 15, 1983, the City began issuing coastal development permits pursuant to Section 30600.5 (Hannigan provisions) of the Coastal Act based on project compliance with its certified LUP. The City then submitted its entire Zoning Ordinance in order to implement the provisions of the certified Land Use Plan. The zoning ordinance was completely rewritten in order to implement the LUP. On September 26, 1984, the Commission approved the LCP/Implementation Plan as submitted. As of February 13, 1985, the City has been issuing coastal development permits under a certified local coastal program. Subsequent to the Commission's actions on the land use plan and implementation plan, there have been approximately thirty-two amendments to the certified local coastal program.

### **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**

Section 30503 of the Coastal Act requires local governments to provide the public with maximum opportunities to participate in the development of the LCP amendment prior to

its submittal to the Commission for review. The City has held at least two 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:** *I move that the Commission reject the Implementation Program Amendment No. LCP-6-IMB-14-0838-1 for the City of Imperial Beach as submitted.*

**STAFF RECOMMENDATION OF REJECTION:**

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Program Amendment 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 DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AMENDMENT AS SUBMITTED:**

The Commission hereby denies certification of the Implementation Program Amendment submitted for the City of Imperial Beach and adopts the findings set forth below on grounds that the Implementation Program Amendment as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Program Amendment would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program Amendment as submitted.

- II. MOTION II:** *I move that the Commission certify the Implementation Program Amendment No. LCP-6-IMB-14-0838-1 for the City of Imperial Beach if it is modified as suggested in this staff report.*

**STAFF RECOMMENDATION:**

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Implementation Program Amendment with suggested modifications 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 THE IMPLEMENTATION PROGRAM  
AMENDMENT WITH SUGGESTED MODIFICATIONS:**

The Commission hereby certifies the Implementation Program Amendment for the City of Imperial Beach if modified as suggested and adopts the findings set forth below on grounds that the Implementation Program Amendment, with the suggested modifications, conforms with and is adequate to carryout the certified Land Use Plan. Certification of the Implementation Program Amendment if modified as suggested complies with 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 and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

**PART III. SUGGESTED MODIFICATIONS**

Staff recommends the following suggested revisions to the proposed Implementation Plan Amendment be adopted. The underlined sections represent language that the Commission suggests be added, and the ~~struck-out~~ sections represent language which the Commission suggests be deleted from the language as originally submitted.

1. Modify Section 19.65.020. Definitions as follows:

“Maximum allowable residential density” means the density allowed under the zoning ordinance and land use element of the general plan, or if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. Where the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan or, if the proposed density is in an area subject to the City’s certified Local Coastal Program, the City’s certified Local Coastal Program, the general plan or the City’s certified Local Coastal Program density shall prevail.

2. Modify Section 19.65.100. Other Affordable Housing Incentives or Concessions as follows:

Applications for affordable housing projects not qualifying for or requesting a density bonus may be considered for incentives or concessions at the discretion of the City Council. The City may require an affordable housing agreement to ensure the availability of the targeted units for low and moderate income households for a period of 30 years and may execute such other provisions as may be necessary to implement the agreement.

For development within the City’s LCP jurisdiction, any housing development approved shall be consistent, to the maximum extent feasible and in a manner most protective of coastal resources, with all of the City’s otherwise applicable certified Local Coastal Program policies and standards.

3. Modify Section 19.02.070. Reasonable Accommodation for Persons with Disabilities, sub-section A, as follows:
  - A. Reasonable accommodation in the land use and zoning context means providing individuals with disabilities or developers of housing for people with disabilities, flexibility in the application of land use and zoning and building regulations, policies, practices and procedures or even waiving certain requirements, when it is necessary to eliminate barriers to housing opportunities so long as the requested flexibility or waiver would not require a fundamental alteration in the nature of the city's land use and zoning and building regulations, policies, practices, procedures, and the City's certified Local Coastal Program.
4. Modify Section 19.02.070. Reasonable Accommodation for Persons with Disabilities, sub-section G, as follows:
  - G. A request for reasonable accommodation in regulations, policies, practices and procedures may be filed at any time that the accommodation may be necessary to ensure equal access to housing. A reasonable accommodation does not affect the obligations of an individual's or a developer of housing for an individual with disabilities ~~obligations~~ to comply with other applicable regulations not at issue in the requested accommodation.
5. Modify Section 19.02.070. Reasonable Accommodation for Persons with Disabilities, sub-section L, as follows:
  - L. The written decision to grant, grant with modifications, or deny a request for reasonable accommodation shall be consistent with fair housing laws and based on the following factors:
    - (1) Whether the housing, which is the subject of the request for reasonable accommodation, will be used by an individual with disabilities protected under fair housing laws;
    - (2) Whether the requested accommodation is necessary to make housing available to an individual with disabilities protected under the fair housing laws;
    - (3) Whether the requested accommodation would impose an undue financial or administrative burden on the jurisdiction and;
    - (4) Whether the requested accommodation would require a fundamental alteration in the nature of the jurisdiction's land use and zoning or building program and the City's certified Local Coastal Program.

**PART IV. FINDINGS FOR REJECTION OF THE CITY OF IMPERIAL BEACH  
IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED**

**A. AMENDMENT DESCRIPTION**

Currently, the City's LCP includes density bonus and affordable housing provisions but lacks a standard for reasonable accommodations. The City has adopted a new ordinance (Ordinance 2014-1146 – Housing Element Zoning Implementation for the 2013-2021 Housing Element) and, with this proposal, is seeking to incorporate the ordinance into its certified Implementation Plan (IP) in order to comply with state and federal laws. This request follows the adoption of the City's Housing Element, which is one of the seven mandated elements of General Plan, by the City Council and certification by the California Department of Housing and Community Development (HCD) in 2013. The Commission lacks authority to certify the Housing Element since the Local Coastal Program (LCP) is not required to include housing policies and programs pursuant to Section 30500.1 of the Coastal Act; however, pursuant to Section 30513 of the Coastal Act, the Commission is required to review and certify the IP, which includes zoning ordinances, zoning maps, implementing actions, or their amendments, to see if the IP conforms with or carries out the provisions of the certified Land Use Plan (LUP).

Specifically, the City's amendment includes the details of approving a bonus in allowable density, details that include, in part, the density bonus agreement between a developer/property owner and the City, affordable housing standards, calculating the required number of affordable units, as well as provisions for concessions, incentives, waivers of development standards, and parking requirements. In addition, the proposed ordinance also adds a section for affordable housing projects not qualifying for or requesting a density bonus to allow them to still be considered for incentives or concessions.

In order to comply with state law, the amendment also amends zoning provisions to allow manufactured homes, transitional/supportive housing, and single-room occupancy units. The ordinance amendment also revises the definition of senior housing.

This ordinance also establishes procedures and regulations governing requests for reasonable accommodations by people with disabilities. Specifically, Ordinance 2014-1146 includes: 1) definitions associated with reasonable accommodations; 2) the process to request a reasonable accommodation; 3) establishing the review authority and procedure to review such requests; 4) the findings necessary to approve or deny a reasonable accommodation; and, 5) the appeal procedures for any decision granting/denying a request for reasonable accommodations.

**B. FINDINGS FOR REJECTION**

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 proposed ordinance is to amend and establish policies that facilitate the development of affordable housing to serve a variety of economic needs within the City and to encourage the provision of very low, low and moderate priced housing, as well as senior housing, by providing qualifying developers/property owners density bonuses and additional incentives.

In addition, the City's intent of the proposed new ordinance is to provide some flexibility in the application of land use, zoning, and building codes regulations, policies, practices, and procedures for projects that require approval of permits and/or other entitlements in order to provide reasonable accommodations for people with disabilities. The City is proposing these changes in response to State and Federal laws (including the federal Americans with Disabilities Act) that require cities to provide reasonable accommodations for people with disabilities.

b) **Major Provisions of the Ordinance.** Major provisions of the ordinance, specifically from Housing Element Program 12, include the granting of a density bonus when the project includes: 1) 10% or greater of proposed units are designated as low income housing; 2) 5% or greater of proposed units are designated as very low income housing; 3) 10% or greater of proposed units are designated as moderate income housing; or 4) a senior citizen housing development. Additional provisions include: application of density bonus; description and application of potential concessions/incentives; waivers or reductions in development standards; modifications to vehicular parking ratios; a mandatory update to comply with state law where a density bonus of up to 35 percent over the otherwise maximum allowable residential density would be available to developers who, in their projects, provide affordable housing and are also entitled to at least one concession or incentive; and, allowing affordable housing projects not qualifying for or requesting a density bonus to be considered for incentives or concessions.

Provisions established from Housing Element Program 13, which is found in this proposed ordinance, include: 1) the provisions of multi-unit residential zoning to allow manufactured homes pursuant to state law; 2) the provisions of the C/MU-1 (General Commercial/Mixed-Use) Zone to allow transitional/supportive housing, single-room occupancy units, and employee housing pursuant to state law; and, 3) the definition of "senior citizen housing development" to comply with state law. Housing Element Program 13 also adds a new zoning ordinance section that makes reasonable accommodations to allow disabled persons an equal opportunity to enjoy and use a residence pursuant to state and federal law; the definitions associated with reasonable accommodations, the process of requesting a reasonable accommodation, the procedures for reviewing the requests, the findings necessary to approve or deny a reasonable accommodation, and the appeal process for any decision granting/denying a request for reasonable accommodations are also detailed in this element.

c) **Adequacy of the Ordinance to Implement the Certified LUP.** 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 (LUP). The

proposed ordinance language raises several potential inconsistencies with the City's certified LUP policies that address protection for sensitive habitats, protection of and improvements to public access, protection of public views, regulation of development along the shoreline or preservation of community character. Relevant LUP policies state, in part:

### **Sensitive Habitat**

#### **CO-5 Estuary**

a. Assist in the implementing of the Estuaries Resource protection program, which includes the following development restrictions: "A buffer area will be established for each development adjacent to wetlands. The width of a buffer area will vary depending upon an analysis. The buffer area should be a minimum of 100 feet unless the applicant can demonstrate to the satisfaction of the State Department of Fish and Game and U.S. Fish and Wildlife that 100 feet is unnecessary to protect the resources of the habitat area. If the project involves substantial improvements or increased human impacts, such as a subdivision, a wider buffer area may be required. For a wetlands, the buffer area should be measured from the landward edge of the wetland."

### **Public Access**

#### **CO-1 The Beach**

3. Insure continued public access to beaches and, where possible, provide additional access, as well as increased public parking opportunities in the beach area (see Parks, Recreation and Access Element).

### **Visual Resources**

#### **Goal 4 Visual Quality is Important**

The visual quality of the City's environment shall be preserved and enhanced for the aesthetic enjoyment of both residents and visitors and the economic well-being of the community. Development of neighborhoods, streets and individual properties should be pleasing to the eye, rich in variety, and harmonious with existing development. The feeling of being near the ocean and bay should be emphasized even when the water is not visible. Designs reflective of a traditional California seaside community should be encouraged.

#### **D-8 Project Design**

b. Projects should be designed so there is a harmonious relationship with adjoining uses.

- The pattern of existing neighborhoods should be respected. A development should be integrated with the adjacent neighborhood if the project size or natural boundaries dictate, or the design should create one or more separate and strong neighborhood identities.

[...]

- d. Developments should attempt, through design, to give the appearance of a suburban density and scale.

#### **P-14 Retain Existing Street Ends**

All existing street ends under City ownership that provide public access to coastal resources, including bays, shall be retained for streets, open space or other public use. View corridors shall be protected and in no case shall buildings be permitted on or bridging the streets. The City shall approve detailed design plans for each street end.

### **Safety**

#### **S-10 Regulate Shoreline Land Use and Development**

The City should regulate shoreline land use and development by:

- a. Minimizing construction on beaches and in front of seacliffs.
- b. Require setbacks from beaches and low-lying coastal areas.
- c. Regulate sand mining if some were to occur.

#### **S-11 Storm Waves, Flooding and Seacliff Erosion**

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, shoreline protection devices and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal dependent uses or to protect existing principal structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Prior to completion of a comprehensive shoreline protection plan designed for the area, interim protection devices may be allowed provided such devices do not encroach seaward of a string line of similar devices.

d) **Specific Findings for Denial.** The City is proposing to amend its zoning ordinance to implement two housing element programs of the City's general plan. These programs include provisions for: affordable housing; manufactured homes, transitional/supportive housing, single-room occupancy units, and employee housing; and, reasonable accommodations. With the first housing program, the City includes key language that makes development in the City's LCP jurisdiction accountable to the policies and regulations in the certified LCP; however, certain sections of the proposed amendment omit this key language and must be revised in order to make the amendment internally consistent and follow the LCP.

Housing Element Program 12, which amends Chapter 19.65 (Affordable Housing Density Bonus) in the City's zoning code (IP), establishes requirements and procedures to encourage development of moderate income, low income, and very low income affordable housing as well as senior housing by offering a density bonus and incentives/concessions to qualified developers. Overall, this program includes sections which state that development in the City's LCP jurisdiction must follow the policies and standards listed in the City's certified LCP, but two sections in particular fail to include this language and are reasons for rejection of the amendment as proposed. When reviewing the "maximum allowable residential density" definition in Section 19.65.020, the definition mentioned that if there were any density inconsistencies between the

zoning ordinance and land use element of the general plan, the general plan's density would prevail; this language fails to recognize the relevant density provisions in the City's certified LCP. In addition, under newly proposed Section 19.65.100 (Other Affordable Housing Incentives or Concessions), the City is proposing to offer incentives and concessions to other affordable housing projects beyond those proposals seeking or qualifying for a density bonus. This new sub-section fails to include language that development under this category and in the City's LCP jurisdiction shall be consistent with all applicable requirements of the City's certified LCP. Without modification, such projects located in the City's LCP jurisdiction could potentially receive incentives or concessions that would have adverse impacts on coastal resources; this could include reduced buffers near environmentally sensitive habitat areas (i.e. wetlands) or public view corridors encroachments. If parking reductions were granted, potential impacts to public access could occur. Therefore, absent language that specifically states that the consideration of granting certain incentives or concessions to encourage affordable housing shall be consistent with the City's LCP; the current amendment cannot be found consistent with, or adequate to carry out, the policies of the certified land use plan.

Housing Element Program 13 amends the City's zoning code (IP) to include provisions for manufactured homes, transitional/supportive housing, single-room occupancy units, and employee housing to comply with state law; this program also amends the definition of "senior citizen housing development" pursuant to state law. In addition, the City of Imperial Beach is proposing to amend its implementation plan to include a new section (Section 19.02.070) to formalize the process by which requests for reasonable accommodations are reviewed and approved. For the most part, the Commission is not chiefly concerned with the review and approval of a request for a reasonable accommodation as it relates to the threshold criteria of whether or not a requestor of a reasonable accommodation is medically qualified to make such a request. However, when the approval of reasonable accommodations includes flexibility in the City's application of land use, zoning, and building code regulations, the Commission does have an interest in assuring that any potential impacts to coastal resources are avoided and/or minimized to the maximum extent feasible. In order for such approvals to be found consistent with the City's LCP, all potential impacts need to be identified, feasible alternatives reviewed, and the least damaging feasible alternative implemented.

For purposes of consistency with the LCP, the City did not include language in its definition of reasonable accommodation (sub-section A) that mirrors language in its proposed sub-section L.4. to further define that a reasonable accommodation may be one that requires a deviation from land use or zoning or building regulations, policies, practices, or procedures, but it may not be a request that fundamentally alters the nature of these policies. In addition, the City did not include language to the reasonable accommodation definition or sub-section L.4. to recognize the City's LCP as one element of the City's land use and zoning administration. Additionally, the submitted amendment does not clarify that either an individual or a developer of housing for the disabled must comply, to the maximum extent feasible, with all other required development policies and standards. Without these provisions, the administration for granting reasonable accommodations is not clear; therefore, the amendment shall be denied as submitted.

The Commission realizes that the City and other regulated parties must, by federal law, make reasonable accommodations available as necessary to assure that structures are accessible by all people, including those with disabilities. The City's proposed language will allow flexibility such that if land use restrictions preclude or limit accessibility to people with disabilities, the restrictions will not be imposed unless relaxing such restrictions fundamentally alters the nature of the city's land use and zoning and building regulations, policies, practices, and procedures, or the City's Local Coastal Program. As is reflected in the City's certified LUP policies cited above, the City's certified LUP places high value on maximizing public access and recreation, protecting and enhancing public views, protecting natural habitats and wildlife, and regulating shoreline development. A recurring issue with reasonable accommodation requests is the need for ingress/egress to structures; these should typically be reconciled without exceptions to any critical resource protection measures such as wetland buffers or delineation of public view corridors. Additionally, these LUP policies require that impacts to coastal resources be minimized to the maximum extent feasible and require feasible mitigation for any unavoidable impacts.

The Commission further recognizes that such impacts may be necessary to provide accessibility to those with disabilities as required by federal law. However, a feasible alternative that accomplishes the goals of accessibility without impacting coastal resources should be implemented. If there are no feasible alternatives that eliminate impacts to coastal resources, then the *least environmentally impacting* feasible alternative should be implemented. However, approval of a project that fundamentally alters the nature of the land use and zoning and building regulations, policies, practices, and procedures of the City's Local Coastal Program shall not be allowed. Federal law addressing reasonable accommodations for people with disabilities does not expressly prohibit the consideration of a project's environmental impacts in its project review nor does it prohibit requiring an applicant to construct a feasible project alternative that would avoid or minimize environmental impacts. Finally, for projects where impacts are unavoidable, the federal law does not prohibit requiring feasible mitigation measures for such impacts. Therefore, in summary, given the noted omissions, the Commission cannot find that the proposed ordinance amendment is consistent with the certified land use plan the request must be rejected as submitted.

**PART V. FINDINGS FOR APPROVAL OF THE CITY OF IMPERIAL BEACH IMPLEMENTATION PLAN AMENDMENT, IF MODIFIED**

As proposed, the amendment would potentially allow incentives and concessions for affordable housing projects and reasonable accommodations for persons with disabilities in the City's LCP jurisdiction without a complete assessment of critical resource protection measures and implementation of the land use plan policies. Five suggested modifications to the proposed amendment are necessary to assure that the ordinance provisions will conform with the certified land use plan and the least damaging environmental alternative will be implemented in all cases.



When reviewing the “maximum allowable residential density” definition in Section 19.65.020, the definition mentioned that if there were any density inconsistencies between the zoning ordinance and land use element of the general plan, the general plan’s density would prevail; this language failed to mention the City’s certified LCP, so **Suggested Modification #1** includes language that recognizes the density listed in both the general plan or, if the proposed density is within the coastal zone subject to the City’s CDP authority, the City’s certified LCP as the prevailing density standard.

In Housing Element Program 12, the addition of Section 19.65.100 (Other Affordable Housing Incentives or Concessions), which applies to affordable housing projects that are not qualifying or requesting a density bonus but may be considered for incentives or concessions, fails to include language that development under this category and in the City’s LCP jurisdiction shall be consistent with all the critical resource protection measures adopted in the City’s certified LCP. **Suggested Modification #2** includes this language to have the amendment consistent with the City’s LCP land use plan, while also making these projects accountable to LCP policies and regulations.

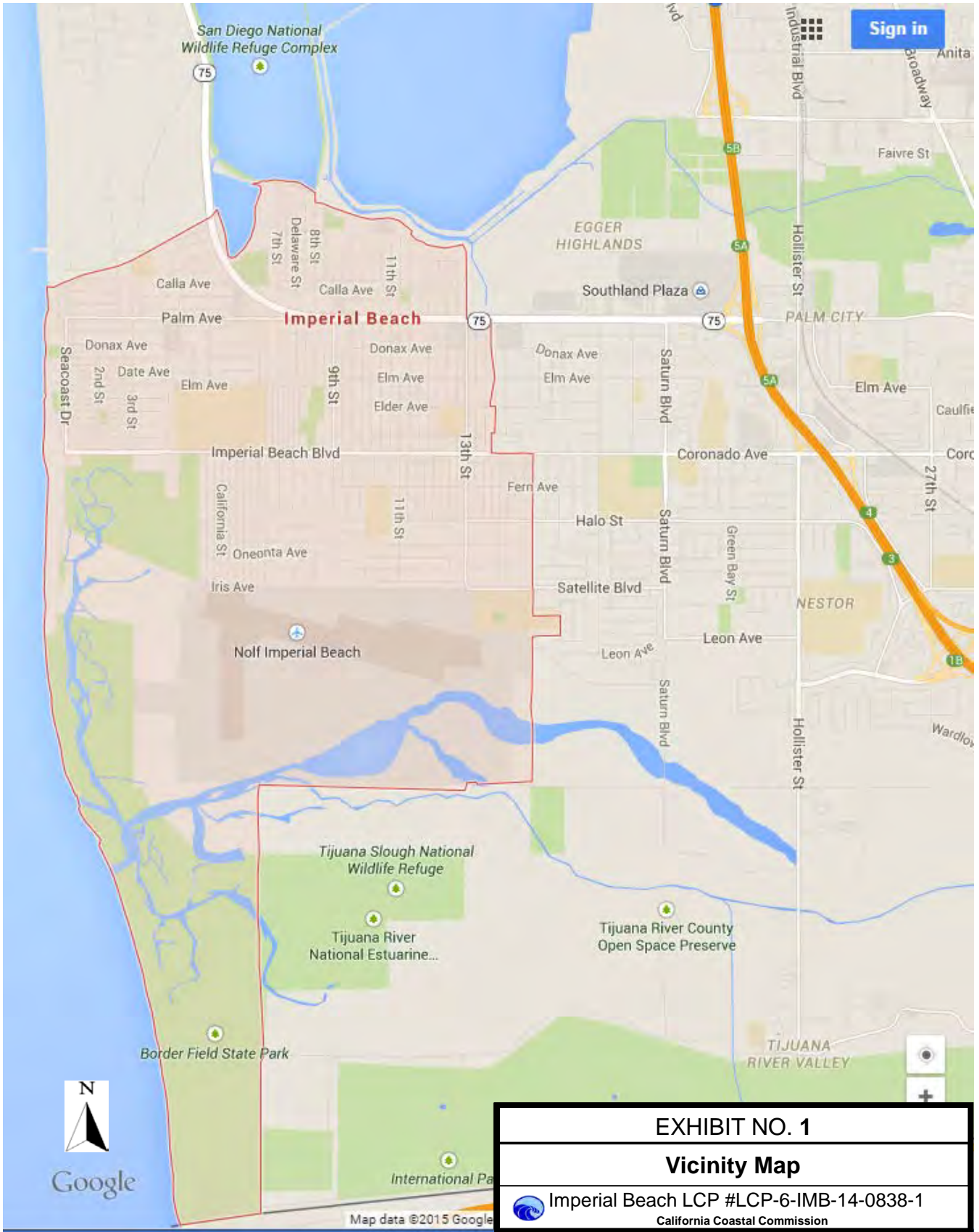
As modified herein, the City’s language also allows for flexibility in application of land use and zoning standards, policies and regulations in order to provide for reasonable accommodation in development intended for people with disabilities so long as such flexibility in the City’s LCP jurisdiction does not fundamentally alter the nature of the land use and zoning and building regulations, policies, practices, and procedures of the City’s Local Coastal Program. A project located in the City’s LCP jurisdiction which requests land use and zoning flexibility should identify whether impacts to coastal resources would result; and, if so, identify the specific resource(s) impacted. The alternatives review should also describe feasible alternatives to the project as proposed and identify the feasible alternative with the least impacts to coastal resources. In this case, three modifications to sections of the proposed ordinance indicating that if the proposed development is located in the City’s LCP jurisdiction, then the request must not fundamentally alter the nature of the city’s certified LCP. Specifically, **Suggested Modification #3** includes additional language to the definition of “reasonable accommodation” to state that if a reasonable accommodation requires a deviation from a city’s land use or zoning or building regulations, policies, practices, procedures, or LCP policy, then the City can only approve such a project so long as the requested deviation does not fundamentally alter the nature of these City’s policies. **Suggested Modification #4** clarifies that an individual or any developer of housing for individuals with disabilities is obligated to comply with other applicable regulations not at issue in the requested accommodation. Finally, **Suggested Modification #5** includes additional language to the required findings to grant an accommodation that if a reasonable accommodation requires a deviation from an LCP policy, then the City may only approve such a project so long as the requested deviation does not fundamentally alter the nature of the City’s LCP. The combination of these three sections of language can be found adequate to assure that the request for reasonable accommodation will not supersede other applicable regulations, will be fundamentally consistent with the City’s LCP, and will include adequate review of potential impacts to coastal resources.

In summary, as amended, the various affordable housing measures that will be permitted through the Housing Element Program 12 regulations will comply with the land use policies of the certified LCP. In addition, the certified LUP requires that coastal resources such as public access and recreation, public views, and sensitive habitats be protected. In this case, the modified language for Housing Element Program 13 will make it clear to any applicant that if the proposed development is located in the City's LCP jurisdiction, the proposal will also have to be found consistent with the City's LCP, to the maximum degree feasible, and that any deviation from the LCP, in approving a reasonable accommodation, does not fundamentally alter the nature of the land use and zoning and building regulations, policies, practices, and procedures of the City's Local Coastal Program. Therefore, the Commission finds that, as modified, the proposed Implementation Plan amendment will be consistent with and adequate to carry out the provisions of the certified Land Use Plan (LUP).

#### **PART VI. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 21080.9 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 Coastal Commission and 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. In 2013, the City of Imperial Beach conducted an Environmental Initial Study under CEQA and adopted the proposed amendment as a Negative Declaration (SCH #2012111006). The Commission finds that the proposed amendment, as submitted, could have an adverse impact on coastal resources, such as adverse effects on sensitive environmental areas, public access, and visual resources, by allowing the potential of reducing buffers, setbacks, or otherwise required parking, for projects that include affordable housing or reasonable accommodations for people with disabilities. The suggested modifications address each of these concerns as described in the above findings. As modified herein, there are no feasible alternatives or mitigation measures available that would substantially lessen any significant adverse impact on the environment. Therefore, the Commission finds that the proposed implementation plan revisions, as modified herein, conform with CEQA.



ORDINANCE NO. 2014-1146

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH AMENDING TITLE 19 (ZONING) OF THE IMPERIAL BEACH MUNICIPAL CODE BY IMPLEMENTING PROGRAMS 12 AND 13 OF THE 2013-2021 (5<sup>TH</sup> CYCLE) HOUSING ELEMENT. MF 1060.

WHEREAS, on January 23, 2013, the City Council of the City of Imperial Beach held a duly advertised public hearing and adopted the 2013-2021 Housing Element; and

WHEREAS, on July 16, 2014, the City Council of the City of Imperial Beach held a duly advertised public hearing to consider the merits of approving or denying amendments to the Zoning Ordinance that would implement Programs 11, 12, and 13 of the 2013-2021 (5<sup>th</sup> Cycle) Housing Element; and

WHEREAS, the City Council finds that the proposed implementing zoning amendments would be externally consistent with the General Plan/ Local Coastal Plan, specifically the Housing Element, pursuant to Government Code Section 65860; and

WHEREAS, the City Council of the City Of Imperial Beach hereby finds that the implementing zoning amendments of the 2013-2021 Housing Element is in substantial compliance with the California Housing Element Law (Government Code Section 65580 et seq); and

WHEREAS, the City Council finds that the Final Negative Declaration (SCH # 2012111006) adopted by the City Council on January 23, 2013 for the Housing Element remains adequate in addressing any environmental effects that may result from the implementation of the policies and programs, including the proposed zoning amendments, of the Housing Element.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH DOES ORDAIN AS FOLLOWS:

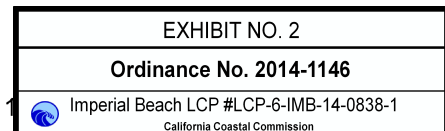
SECTION 1: That Chapter 19.65 is hereby amended to read as follows:

Chapter 19.65. AFFORDABLE HOUSING DENSITY BONUS

19.65.010. Purpose.

This section ~~chapter~~ establishes policies ~~procedures and requirements~~ which ~~facilitates~~ to facilitate the development of affordable housing ~~to that~~ serve a variety of economic needs ~~moderate income, low income, very low income, and senior households~~ within the city. To encourage ~~the~~ provision of ~~lower and very low income~~ affordable housing, the city shall provide to ~~developer/s~~ ~~property owners~~ who meet the requirements established by this chapter and Government Code Section 65915 (Density Bonus Law) ~~not more than a twenty five percent density bonus and one of the additional incentives identified in subdivision (h) of Government Code Section 65915.~~ if it is found that such incentive is necessary for affordability, or provide ~~other incentives of equivalent financial value not inconsistent with the standards contained in the certified local coastal program.~~ The regulations set forth in this section shall apply city wide. (~~Ord. 94-888 § 2, 1994; Ord. 94-884~~)

19.65.020. Definitions.



As used in this section ~~chapter~~, the following terms shall have the following meanings:

"Affordability" is determined ~~by the economic feasibility of constructing lower income housing in the proposed development as 30 percent or less of the area median income (AMI) as adjusted for assumed household size for moderate income, low income, and very low income households as defined by the Health and Safety Code.~~

"Density bonus" means a ~~twenty-five percent density increase in the number of dwelling units~~ over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the developer to the City. The density bonus shall apply to residential developments of five or more units. The number of housing units to be reserved for low or very low income households or qualifying residents does not include the density bonus units.

"Equivalent financial value" means to the cost to developer/property owner based on the land cost per dwelling unit. The land cost per dwelling unit is determined by the difference in the value of the land with and without the density bonus.

"Housing development," as used in this chapter, means a development project for five or more residential units. For the purposes of this chapter, "housing development" also includes a subdivision or common interest development, as defined in Section 4100 of the Civil Code, approved by the City and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Government Code Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

"Maximum allowable residential density" means the density allowed under the zoning ordinance and land use element of the general plan, or if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. Where the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

"Lower income households" are as currently defined in Section 50079.5 of the Health and Safety Code and any subsequent amendments or revisions.

"Qualifying residents" or "senior citizen" means a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development ~~are as currently defined in Section 51.3 of the Civil Code and any subsequent amendments or revisions (senior citizen housing).~~

"Very low income households" are as currently defined in Section 50105 of the Health and Safety Code and any subsequent amendments or revisions. (Ord. 94-888 § 2, 1994; Ord. 94-884)

#### **19.65.030. Implementation Density Bonus Application Process.**

A. Pursuant to and in accordance with Government Code Section 65915, et seq., an applicant seeking a density bonus for a housing development shall file the completed application with and on a form provided by the Community Development Department. The Ceity shall grant either:

1. ~~A density bonus and an additional concessions or incentives pursuant to this chapter, unless the additional incentive is determined unnecessary for affordability. The increase in density must be not more than a twenty five percent over the maximum allowable residential density authorized by the land use element of the city general plan and zoning ordinance.~~

2. ~~An incentive of equivalent financial value as defined in Section 19.65.020 not inconsistent with the standards contained in the certified local coastal program.~~

B. In order to qualify for the density bonus, a proposed housing project development must consist of five or more dwelling units and meet one or more of the following criteria:

1. At least ~~twenty~~ ten percent of the total units allowed by the maximum permitted density are designated for lower-income households as defined in Section 50079.5 of the Health and Safety Code; or

2. At least ~~ten~~ five percent of the total units allowed by the maximum permitted density are designated for very low-income households as defined in Section 50105 of the Health and Safety Code; or

3. ~~At least fifty percent of the total units allowed by the maximum permitted density are designated for qualifying residents as defined in the Civil Code (senior citizen housing development, as defined in Sections 51.3 of the 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 the Civil Code.~~

4. Ten percent of the total dwelling units in a common interest development as defined in Section 4100 of the Civil Code for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

C. This chapter shall not be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 commencing with Section 30000 of the Public Resources Code). In the coastal zone, the density bonus shall be calculated based on the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as they apply to the project site. The otherwise maximum allowable residential density shall mean the maximum potential density modified by applying all site-specific environmental development constraints identified within the coastal zoning ordinances and land use element certified by the coastal commission. The density bonus shall be applicable to housing developments consisting of five or more units.

D. In the coastal zone, any housing development approved pursuant to Government Code Section 65915 shall be consistent, to the maximum extent feasible, and in a manner most protective of coastal resources, with all otherwise applicable certified local coastal program policies and development standards. Approval of development proposed under this section shall require a finding that the development, if it had been proposed without the twenty-five percent density increase, would have been fully consistent with the policies and development standards of the certified local coastal program. In cases where a ~~twenty five percent~~ density increase is granted pursuant to Government Code Section 65915 which results in development inconsistent with otherwise applicable certified local coastal program policies and development standards, such as height, parking and setback requirements, the relief granted from such standards shall be considered an additional incentive under Government Code Section 65915(h). (Ord. 94-888 § 2, 1994; Ord. 94-884)

**19.65.040. Density bonus agreement.**



A. To be eligible for a density bonus, the developer/property owner must sign a binding agreement with the City which sets forth the conditions and guidelines to be met in the implementation of the density bonus law requirements pursuant to Government Code Sections 65915.(c) and 65917. The agreement will also establish specific compliance standards and remedies available to the City upon failure by the developer/property owner to make units accessible to intended residents. To ensure compliance, the city shall require a security in an amount and in a form acceptable to the City Manager, City Attorney, and the Community Development Department. (Ord. 94-888 § 2, 1994; Ord. 94-884)

B. The developer/property owner shall agree to, and the City shall ensure, continued affordability of all low- and very low income units that qualified the applicant for the award of the density bonus for 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. Rents for the lower income density bonus units shall be set at an affordable rent as defined in Section 50053 of the Health and Safety Code. Owner-occupied units shall be available at an affordable housing cost as defined in Section 50052.5 of the Health and Safety Code.

C. The developer/property owner shall agree to, and the City shall ensure that, the initial occupant of the moderate-income units that are directly related to the receipt of the density bonus in the common interest development, as defined in Section 4100 of the Civil Code, are persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code. The local government shall enforce an equity sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following apply to the equity sharing agreement:

1. 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. The local government shall recapture any initial subsidy, as defined in subparagraph 2, and its proportionate share of appreciation, as defined in subparagraph 3, which amount shall be used within five years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote home ownership.

2. The local government'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

3. The local government's proportionate share of appreciation shall be equal to the ratio of the local government's initial subsidy to the fair market value of the home at the time of initial sale.

D. Where there is a direct financial contribution to a housing development pursuant to Government Code Section 65915 through participation in the cost of infrastructure, write-down of land costs, or subsidizing the cost of construction, the City shall assure continued availability for low- and moderate-income units for 30 years. When appropriate, the agreement provided for in Section 19.65.040 shall specify the mechanisms and procedures necessary to carry out this section.

**19.65.050. Density bonus application calculations.**

A. To apply for a density bonus, the developer/property owner shall submit to the city a density bonus application for a project pursuant to this chapter. The density bonus application shall be submitted in conjunction with a subdivision application, site plan review, or a conditional use permit application. The proposal shall specify the number, type, location, size of the housing units, and a construction schedule. Low-Income Units. For housing developments meeting the criteria of Section 19.65.030.B.1, the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus	Incentives/concessions
10	20	1
11	21.5	1
12	23	1
13	24.5	1
14	26	1
15	27.5	1
17	30.5	1
18	32	1
19	33.5	1
20 - 29	35	2
≥ 30	35	3

B. The density bonus application shall consist of adequate information to determine the project cost per unit of the proposed developments. This will include, but not be limited to, capital costs, equity investment, debt service, projected revenues, operating expenses, or other information requested by the city. Very Low-Income Units. For housing developments meeting the criteria of Section 19.65.030.B.2, the density bonus shall be calculated as follows:

Percentage Very Low-Income Units	Percentage Density Bonus	Incentives/concessions
5	20	1
6	22.5	1
7	25	1
8	27.5	1
9	30	1
10	32.5	2
11 - 14	35	2
≥ 15	35	3

C. Senior Housing. For housing developments meeting the criteria of Section 19.65.030.B.3, the density bonus shall be 20 percent of the number of senior housing units.

D. Moderate Income Units. For housing developments meeting the criteria of Section 19.65.030.B.4, the density bonus shall be calculated as follows:

Percentage Moderate Income Units	Percentage Density Bonus	Incentives/concessions
10	5	1



11	6	1
12	7	1
13	8	1
14	9	1
15	10	1
16	11	1
17	12	1
18	13	1
19	14	1
20	15	2
21	16	2
22	17	2
23	18	2
24	19	2
25	20	2
26	21	2
27	22	2
28	23	2
29	24	2
30	25	3
31	26	3
32	27	3
33	28	3
34	29	3
35	30	3
36	31	3
37	32	3
38	33	3
39	34	3
40	35	3

E. All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

F. Land donation. When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to the City in accordance with the state Density Bonus Law, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density for the entire development, as follows:

Percentage Very Low Income	Percentage Density Bonus
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

C. ~~The city shall, within ninety days of receipt of a density bonus application, notify the developer/property owner in writing of the procedures required to comply with this chapter. (Ord. 94-888 § 2, 1994; Ord. 94-884)~~

**19.65.060. Additional Incentives or Concessions.**

A. ~~The city shall grant one additional concession or incentives identified in Government Code Section 65915(h) in addition to a twenty five percent density bonus to the developer/property owner if it is found that the project with the proposed lower income units would not be feasible without said incentive. The applicant shall receive the following number of incentives or concessions:~~

1. One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.

2. Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.

3. Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.

B. Such concession shall be specific to the individual project and may include:

1. A modification of development standards pertaining to building height, open space, lot size requirements, street access, off-street parking, landscaping, fencing or other development standards, or off-site improvements;

2. Reduction of development processing fees, not including impacts fees;

3. In the coastal zone, any incentives must be consistent to the maximum extent feasible, and in a manner most protective of coastal resources, with all otherwise applicable certified local coastal program policies and standards. In choosing between incentives, priority shall be given to that incentive most protective of coastal resources so as to avoid any development within or adjacent to wetlands or other environmentally sensitive areas, or any development within or adjacent to geologic hazard areas, or any development which would result in any significant adverse impacts on coastal access and recreation.

~~BC. The requested additional incentive shall not be materially detrimental to public health, safety and welfare, nor injurious to property and/or improvements within the project's vicinity. An applicant for a density bonus pursuant to Section 19.65.030 may submit to the City a proposal for the specific incentives or concessions that the applicant requests pursuant to this chapter, and may request a meeting with the City. The City shall grant the concession or incentive requested by the applicant unless the City makes a written finding, based upon substantial evidence, of any of the following:~~

~~1. The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in the density bonus agreement.~~

~~2. The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Government Code Section 65589.5, 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 without rendering the development unaffordable to low- and moderate-income households.~~

~~3. The concession or incentive would be contrary to state or federal law.~~

~~GD. The developer and city staff shall negotiate to determine the incentives which will make the project economically feasible with minimum deviations from established standards and minimal impacts of health, safety and welfare. (Ord. 94-888 § 2, 1994; Ord. 94-884)~~

#### **19.65.070. Requirements for participation- Development Standards.**

~~In order for a developer/property owner to participate in the program and be eligible for the density bonus or other incentives, the following requirements must be met:~~

~~A. The developer/property owner shall set aside each month, at the completion of the project, the number of units which are designated for lower or very low income households. A unit will be counted toward meeting the set-aside requirement if it is either vacant or occupied by a lower or very low income tenant or a qualifying resident (if density bonus was based on qualifying residents).~~

~~B. The target units must be proportional to the overall project in unit mix, floor plan, square footage, and exterior design. Further, the target units must be reasonably dispersed throughout the development.~~

~~C. The time period of availability to the intended population shall be thirty years.~~

~~D. The maximum allowable rents to comply with the law are determined by a formula designated by the State Department of Housing and Community Development based on the area median income. This formula is indicated in Section 65915(e) of the Government Code.~~

~~E. Houses for sale must be affordable to lower or very low income households as defined pursuant to the definitions of affordability contained in the city's housing element.~~

~~F. The developer/property owner must provide to the city a yearly accounting of the total units occupied, the total units vacant, the total units occupied by lower or very low income households, the total number of units occupied by qualifying residents and the total by which the units set aside fell short of the required number of units (default units). (Ord. 94-888 § 2, 1994; Ord. 94-884)~~

A. "Development standard" includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.

B. The City may not apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of Section 19.65.030.B at the densities or with the concessions or incentives permitted by this chapter. An applicant may submit to the City a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of Section 19.65.030.B at the densities or with the concessions or incentives permitted under this chapter, and may request a meeting with the City.

C. The City is not required to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Government Code Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. The City is not required to waive or reduce development standards if such waiver or reduction would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

D. A proposal for the waiver or reduction of development standards pursuant to this section shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to Section 19.65.060.

E. Upon the request of the developer, the City shall not require a vehicular parking ratio, inclusive of disabled and guest parking, of a development meeting the criteria of Section 19.65.030.B that exceeds the following ratios:

1. Zero to one bedroom: one onsite parking space.
2. Two to three bedrooms: two onsite parking spaces.
3. Four and more bedrooms: two and one-half parking spaces.

F. 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. For purposes of this section, a development may provide "onsite parking" through tandem parking or uncovered parking, but not through on-street parking.

G. This subdivision shall apply to a development that meets the requirements of Section 19.65.030.B but only at the request of the applicant. An applicant may request parking incentives or concessions beyond those provided in this section.

**19.65.080. Child care facility.**

A. When an applicant proposes to construct a housing development that conforms to the requirements of Section 19.65.030.B and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, the City shall grant either of the following:

1. 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 care facility.

2. An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

B. The City shall require, as a condition of approving the housing development, that the following occur:

1. The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

2. Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

C. Notwithstanding any requirement of this subdivision, a city, county, or city and county shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

D. "Child care facility," as used in this section, means a facility installed, operated, and maintained for the nonresidential care of children as defined under applicable state licensing requirements for the facility other than a family day care home, but including and not limited to, infant centers, preschools, extended day care facilities, and school age child care centers.

E. "Density bonus" as used in this section means a floor area ratio bonus over the otherwise maximum allowable density permitted under the applicable zoning ordinance and land use elements of the general plan of the City of:

1. A maximum of five square feet of floor area for each one square foot of floor area contained in the child care facility for existing structures.

2. A maximum of 10 square feet of floor area for each one square foot of floor area contained in the child care facility for new structures.

3. For purposes of calculating the density bonus under this section, both indoor and outdoor square footage requirements for the child care facility as set forth in applicable state child care licensing requirements shall be included in the floor area of the child care facility.

F. "Developer" means the owner or other person, including a lessee, having the right under the applicable zoning ordinance of the City to make an application for development approvals for the development or redevelopment of a commercial project.

G. "Floor area" means as to a commercial project, the floor area as calculated under the applicable zoning ordinance of the City and as to a child care facility, the total area contained within the exterior walls of the facility and all outdoor areas devoted to the use of the facility in accordance with applicable state child care licensing requirements.

H. The City may establish a procedure by ordinance to grant a developer of a commercial project, containing at least 50,000 square feet of floor area, a density bonus when that developer has set aside at least 2,000 square feet of floor area and 3,000 outdoor square feet to be used for a child care facility. The granting of a bonus shall not preclude the City from imposing necessary conditions on the project or on the additional square footage. Projects constructed under this section shall conform to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other health, safety, and zoning requirements generally applicable to construction in the zone in which the property is located. A consortium with more than one developer may be permitted to achieve the threshold amount for the available density bonus with each developer's density bonus equal to the percentage participation of the developer. This facility may be located on the project site or may be located offsite as agreed upon by the developer and the City. If the child care facility is not located on the site of the project, the City shall determine whether the location of the child care facility is appropriate and whether it conforms with the intent of this section. The child care facility shall be of a size to comply with all state licensing requirements in order to accommodate at least 40 children.

I. The developer may operate the child care facility itself or may contract with a licensed child care provider to operate the facility. In all cases, the developer shall show ongoing coordination with a local child care resource and referral network or local governmental child care coordinator in order to qualify for the density bonus.

J. If the developer uses space allocated for child care facility purposes, in accordance with Section 19.65.030.B, for purposes other than for a child care facility, an assessment based on the square footage of the project may be levied and collected by the City. The assessment shall be consistent with the market value of the space. If the developer fails to have the space allocated for the child care facility within three years, from the date upon which the first temporary certificate of occupancy is granted, an assessment based on the square footage of the project may be levied and collected by the City in accordance with procedures to be developed by the City. The assessment shall be consistent with the market value of the space. A penalty levied against a consortium of developers shall be charged to each developer in an amount equal to the developer's percentage square feet participation. Funds collected pursuant to this subdivision shall be deposited by the City into a special account to be used for child care services or child care facilities.

K. Once the child care facility has been established, prior to the closure, change in use, or reduction in the physical size of, the facility, the City shall be required to make a finding that the need for child care is no longer present, or is not present to the same degree as it was at the time the facility was established.

#### **19.65.090. Condominium conversions.**

A. When an applicant for approval to convert apartments to a condominium project agrees to provide at least 33 percent of the total units of the proposed condominium project to persons and families of low or moderate income as defined in Section 50093 of the Health and Safety Code, or 15 percent of the total units of the proposed condominium project to lower income households as defined in Section 50079.5 of the Health and Safety Code, and agrees to pay for the reasonably necessary administrative costs incurred by the City pursuant to this section, the

City shall either (1) grant a density bonus or (2) provide other incentives of equivalent financial value. The City may place such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value as it finds appropriate, including, but not limited to, conditions which assure continued affordability of units to subsequent purchasers who are persons and families of low and moderate income or lower income households.

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

C. For purposes of this section, "other incentives of equivalent financial value" shall not be construed to require the City to provide cash transfer payments or other monetary compensation but may include the reduction or waiver of requirements which the City might otherwise apply as conditions of conversion approval.

D. An applicant for approval to convert apartments to a condominium project may submit to the City a preliminary proposal pursuant to this section prior to the submittal of any formal requests for subdivision map approvals. The City shall, within 90 days of receipt of a written proposal, notify the applicant in writing of the manner in which it will comply with this section. The City shall establish procedures for carrying out this section, which shall include legislative body approval of the means of compliance with this section.

E. Nothing in this section shall be construed to require the City to approve a proposal to convert apartments to condominiums.

F. An applicant shall 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 Government Code Section 65915.

#### **19.65.100. Other Affordable Housing Incentives or Concessions.**

Applications for affordable housing projects not qualifying for or requesting a density bonus may be considered for incentives or concessions at the discretion of the City Council. The City may require an affordable housing agreement to ensure the availability of the targeted units for low and moderate income households for a period of 30 years and may execute such other provisions as may be necessary to implement the agreement.

**SECTION 2:** That Section 19.68.030 is hereby amended to read as follows:

#### **19.68.030. Manufactured homes in Residential-4 zones.**

- A. It is the purpose of this section to allow the placement of manufactured homes on ~~individual lots~~ in the R-1-6000, R-1-3800, R-3000-D, R-3000, R-2000, and R-1500 zones.
- B. Eligibility. A manufactured home shall not be eligible ~~unless it:~~
  - 1. If more than ten years have elapsed between the date of manufacture and the date of the application for a permit.
  - 2. If the home is not certified under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401, et seq.)
  - 3. If it has not ~~has not~~ been altered in violation of applicable code.

- C. Criteria. The manufactured home shall:
1. Be occupied only as a single-family residential use, in the R-1 zones;
  2. Be subject to all provisions of the Zoning Ordinance applicable to residential structures;
  3. Be attached to a permanent foundation system in compliance with all applicable building regulations;
  4. Have a roof overhang of twelve inches or more. (Ord. 94-884)

**SECTION 3:** That Chapter 19.04 is hereby amended to include the following definitions:

**19.04.318. Employee housing.**

Employee housing providing accommodations for six or fewer employees shall be deemed a single-family structure with a residential land use designation pursuant to Health and Safety Code Section 17021.5.(b)

**19.04.761. Transitional housing .**

"Transitional housing" and "transitional housing development" means buildings configured as rental housing developments, but operated under program requirements that call for the termination of assistance and recirculation of the assisted unit to another eligible program recipient at some predetermined future point in time, which shall be no less than six months pursuant to Health and Safety Code Section 50801(i). Pursuant to Government Code Section 65583(a)(5), transitional housing and supportive housing shall be considered a residential use of property, and shall be subject only to those restrictions that apply to other residential dwellings of the same type in the same zone.

**19.04.747. Supportive housing.**

"Supportive housing" means housing with no limit on length of stay, that is occupied by the target population, and that is linked to onsite or offsite services that assist the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community pursuant to Health and Safety Code Section 50675.14(a)(B)(2). Pursuant to Government Code Section 65583(a)(5), transitional housing and supportive housing shall be considered a residential use of property, and shall be subject only to those restrictions that apply to other residential dwellings of the same type in the same zone.

**19.04.702. Single-room occupancy unit.**

Single room occupancy" unit or an SRO, means a room used for sleeping purposes that: (1) is occupied as a primary residence, (2) lacks, in the unit itself, either or both a kitchen or bathroom, and (3) is subject to state landlord-tenant law pursuant to chapter 2 (commencing with section 1940) of Title 5 of part 4 of division 3 of the Civil Code.

**SECTION 4:** That Section 19.67.010 is hereby amended to read as follows:

**19.67.010. Definition.**



“Senior citizen housing development” means a residential project which may exceed the maximum density permitted for families in the zone in which it is located and which is established and maintained for the exclusive use of low income or moderate income senior residents. (Ord. 601 § 1, 1983; Ord. 94-884) development developed, substantially rehabilitated, or substantially renovated for, senior citizens that has at least 35 dwelling units. Any senior citizen housing development which is required to obtain a public report under Section 11010 of the Business and Professions Code and which submits its application for a public report after July 1, 2001, shall be required to have been issued a public report as a senior citizen housing development under Section 11010.05 of the Business and Professions Code. No housing development constructed prior to January 1, 1985, shall fail to qualify as a senior citizen housing development because it was not originally developed or put to use for occupancy by senior citizens.

**SECTION 5:** That Section 19.23.010. is hereby amended to read as follows:

**19.23.010. Land use table.**

	C/MU-1	C/MU-2	C/MU-3	Notes
<b>Residential and Similar Uses</b>				
Single-room occupancy units	<u>C</u>	<u>N</u>	<u>N</u>	

**SECTION 6:** That Section 19.02.070. is hereby added to read as follows:

**19.02.070. Reasonable Accommodation for Persons with Disabilities.**

- A. Reasonable accommodation in the land use and zoning context means providing individuals with disabilities or developers of housing for people with disabilities, flexibility in the application of land use and zoning and building regulations, policies, practices and procedures, or even waiving certain requirements, when it is necessary to eliminate barriers to housing opportunities.
- B. An individual with a disability is someone who has a physical or mental impairment that limits one or more major life activities; anyone who is regarded as having such impairment; or anyone with a record of such impairment.
- C. A request for reasonable accommodation may be made by any individual with a disability, his or her representative, or a developer or provider of housing for individuals with disabilities, when the application of a land use, zoning or building regulation, policy, practice or procedure acts as a barrier to fair housing opportunities.
- D. In order to make housing available to an individual with a disability, any eligible person may request a reasonable accommodation in land use, zoning and building regulations, policies, practices and procedures.
- E. Requests for reasonable accommodation shall be in writing and provide the following information:
  - (1) Name and address of the individual(s) requesting reasonable accommodation;
  - (2) Name and address of the property owner(s);
  - (3) Address of the property for which accommodation is requested;
  - (4) Description of the requested accommodation and the regulation(s), policy or procedure for which accommodation is sought; and (5) Reason that the requested accommodation may be necessary for the individual(s) with the disability to use and enjoy the dwelling.

- F. Any information identified by an applicant as confidential shall be retained in a manner so as to respect the privacy rights of the applicant and shall not be made available for public inspection.
- G. A request for reasonable accommodation in regulations, policies, practices and procedures may be filed at any time that the accommodation may be necessary to ensure equal access to housing. A reasonable accommodation does not affect an individual's obligations to comply with other applicable regulations not at issue in the requested accommodation.
- H. If an individual needs assistance in making the request for reasonable accommodation, the City will provide assistance to ensure that the process is accessible.
- I. Requests for reasonable accommodation shall be reviewed by the Community Development Director.
- J. The Community Development Director shall issue a written decision on a request for reasonable accommodation within thirty (30) days of the date of the application and may either grant, grant with modifications, or deny a request for reasonable accommodation in accordance with the required findings set forth in paragraph L.
- K. If necessary to reach a determination on the request for reasonable accommodation, the Community Development Director may request further information from the applicant consistent with fair housing laws, specifying in detail the information that is required. In the event that a request for additional information is made, the thirty (30) day period to issue a decision is stayed until the applicant responds to the request.
- L. The written decision to grant, grant with modifications, or deny a request for reasonable accommodation shall be consistent with fair housing laws and based on the following factors:
  - (1) Whether the housing, which is the subject of the request for reasonable accommodation, will be used by an individual with disabilities protected under fair housing laws;
  - (2) Whether the requested accommodation is necessary to make housing available to an individual with disabilities protected under the fair housing laws;
  - (3) Whether the requested accommodation would impose an undue financial or administrative burden on the jurisdiction and;
  - (4) Whether the requested accommodation would require a fundamental alteration in the nature of the jurisdiction's land use and zoning or building program.
- M. The written decision on the request for reasonable accommodation shall explain in detail the basis of the decision, including the Community Development Director's findings on the criteria set forth in paragraph L. All written decisions shall give notice of the applicant's right to appeal and to request reasonable accommodation in the appeals process as set forth below. The notice of decision shall be sent to the applicant by certified mail.
- N. The written decision of the Community Development Director shall be final unless an applicant appeals it to the City Council.
- O. If the Community Development Director fails to render a written decision on the request for reasonable accommodation within the thirty (30) day time period allotted by paragraph J, the request shall be deemed granted.

- P. While a request for reasonable accommodation is pending, all laws and regulations otherwise applicable to the property that is the subject of the request shall remain in full force and effect.
- Q. Within thirty (30) days of the date of the Community Development Director's written decision, an applicant may appeal an adverse decision. Appeals from the adverse decision shall be made in writing.
- R. If an individual needs assistance in filing an appeal on an adverse decision, the City will provide assistance to ensure that the appeals process is accessible.
- S. All appeals shall contain a statement of the grounds for the appeal. Any information identified by an applicant as confidential shall be retained in a manner so as to respect the privacy rights of the applicant and shall not be made available for public inspection.
- T. Nothing in this procedure shall preclude an aggrieved individual from seeking any other state or federal remedy available.

**SECTION 7:** That this ordinance shall only become effective upon its certification by the California Coastal Commission.

**Appeal Process under the California Code of Civil Procedure (CCP):** The time within which judicial review of a City Council decision must be sought is governed by Section 1094.6 of the CCP. A right to appeal a City Council decision is governed by CCP Section 1094.5 and Chapter 1.18 of the Imperial Beach Municipal Code.

**PROTEST PROVISION:** The 90-day period in which any party may file a protest, pursuant to Government Code Section 66020, of the fees, dedications or exactions imposed on this development project begins on the date of the final decision.

**INTRODUCED AND FIRST READ** at a regular meeting of the City Council of the City of Imperial Beach, California, on the 16<sup>th</sup> day of July, 2014; and **THEREAFTER ADOPTED** at a regular meeting of the City Council of the City of Imperial Beach, California, on the 6<sup>th</sup> day of August, 2014, by the following vote:

**AYES:            COUNCILMEMBERS:**  
**NOES:            COUNCILMEMBERS:**  
**ABSENT:        COUNCILMEMBERS:**

*James C. Janney*

\_\_\_\_\_  
**JAMES C. JANNEY, MAYOR**

**ATTEST:**

*Jacqueline M. Hald*

\_\_\_\_\_  
**JACQUELINE M. HALD, MMC**  
**CITY CLERK**

**APPROVED AS TO FORM:**

*Jennifer M. Lyon*

\_\_\_\_\_  
**JENNIFER M. LYON**  
**CITY ATTORNEY**