

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA  
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SAN DIEGO, CA 92108-4421  
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# W11c

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## Addendum

May 6, 2016

To: Commissioners and Interested Persons

From: California Coastal Commission  
San Diego Staff

Subject: Addendum to **Item W11c**, City of Encinitas LCP Amendment Request  
No. **LCP-6-ENC-15-0042-4-2 (Density Bonus Amendment)**, for the  
Commission Meeting of May 11, 2016

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Commission staff recommends the following changes be made to the above-referenced staff report for clarification purposes. Deletions shall be marked by a ~~strike through~~ and additions shall be underlined.

1. On Page 5 of the staff report, the second bullet shall be modified as follows:
  - Base Density Calculation (Section 30.16.020.C.5): Base density will be calculated based on the City's applicable zoning and general plan provisions. In determining the number of density bonus units to be granted, any fractions of dwelling unites obtained by multiplying the maximum allowable residential density by the allowable percentage density increase shall be rounded up to the next whole number.
2. On Page 5 of the staff report, the second to last bullet shall be modified as follows:
  - Long-Term Affordability (Section 30.16.020.C.9): The proposed ordinance requires that any affordable rental unit ~~or ownership unit~~ remain restricted as affordable for 55 years. If a density bonus is granted for market-rate senior housing, a covenant will be recorded requiring that the project will be operated as senior housing consistent with federal and state fair housing laws.
3. On Page 6 of the staff report, the first paragraph shall be modified as follows:

3. **Adequacy of the Ordinance to Implement the Certified LUP**

**Segments.** The Commission has, in general, found that the allowance for density bonuses can be an effective tool to provide for affordable housing. In fact, Coastal Act Section 30604(f) specifically encourages the Commission to approve an increase in density for affordable housing when such housing can be accommodated in a manner otherwise consistent with the resource protection policies of the Coastal Act or a local government's certified LCP. As such, while the density of a development project could be increased beyond the numbers established as part of the underlying land use designations, the proposed development would still have to meet all development standards in the certified LCP that protect coastal resources and public access. The most applicable LUP development standards are as follows:

4. On Page 9 of the staff report, the second to last paragraph shall be modified as follows:

However, the City is not proposing to alter the existing development standards established as part of the underlying zoning designations. Therefore, in order for any density bonus, incentive, and/or waiver request to be approved by the City for development within the Coastal Zone, consistency with all applicable requirements of the certified Encinitas LUP must be achieved, with the exception of density. As such, while the density of a development project could be increased beyond the numbers established as part of the underlying land use designations, the proposed development would still have to meet all development standards established as part of the certified LCP that protect coastal resources and public access.

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April 21, 2016

**W11c**

**TO: COMMISSIONERS AND INTERESTED PERSONS**

**FROM: SHERILYN SARB, DEPUTY DIRECTOR, SAN DIEGO DISTRICT  
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO DISTRICT  
GABRIEL BUHR, PROGRAM MANAGER, SAN DIEGO DISTRICT  
SARAH RICHMOND, COASTAL ANALYST, SAN DIEGO DISTRICT**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF ENCINITAS LOCAL  
COASTAL PROGRAM AMENDMENT NO. LCP-6-ENC-15-0042-2 (Density  
Bonus Amendment) for Commission Meeting of May 11-13, 2016**

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**SYNOPSIS**

The City of Encinitas' Local Coastal Program (LCP) Amendment request No. LCP-6-ENC-15-0042-4-2 involves an amendment to the City's certified Implementation Plan (IP) for text changes to the City's Municipal Code (Section 30.16.020.C) to make the City's regulation of density bonuses consistent with recent changes in state law. The proposed amendment would therefore be applicable citywide.

The subject request was filed in the San Diego District Office on November 23, 2015. The Commission must act upon amendments containing only IP components within 60 days of filing. Due to a request from the City to allow for further time to coordinate with Commission staff on potential modification of the submittal, Commission staff requested and received a one-year time extension on January 14, 2016. Staff worked with City staff to address local concerns regarding the City's regulation of density bonuses and the item is now ready for public review.

**SUMMARY OF AMENDMENT REQUEST**

The purpose of the proposed amendment is to specify how compliance with Government Code Section 65915 ("state density bonus law") will be implemented. In 1995, the City adopted a local density bonus ordinance, which largely followed the requirements and standards specified under the state law in existence at the time. The City's density bonus ordinance needs to be updated because significant legislative changes have occurred over the years that modify state density bonus law. Major provisions of the proposed ordinance pertain to density bonus application requirements, base density calculation and density bonus rounding, LCP consistency, long-term affordability requirements, and design and quality standards. This update to the City's Municipal Code (Section

30.16.020.C) makes the City's regulation of density bonuses consistent with current state law.

### **SUMMARY OF STAFF RECOMMENDATION**

Staff is recommending that the Commission approve the amendment as submitted. The Commission can only reject IP amendments where it can be shown that the amendment would be inconsistent with the certified Land Use Plan (LUP) or render the IP inadequate to carry out the LUP.

While the density of a development project within the Coastal Zone could be increased beyond the numbers established as part of the underlying land use designations, the proposed development would still have to be consistent with all applicable development standards in the certified LCP, as specified in proposed Section 30.16.020.C.7.

Development standards dictate a development's footprint and bulk/massing through, for example, buffer and setback distances, use restrictions on steep slopes and floodplains, and requirements to protect designated viewsheds. Since the City is not proposing to alter existing development standards, the proposed amendment should not result in any adverse impacts to wetlands, sensitive habitat, designated viewsheds, or coastal access and recreation, and is found to be consistent with the certified LUP.

The appropriate resolution and motion may be found on Page 3. The findings for approval of the IP Amendment as submitted begin on Page 4.

### **ADDITIONAL INFORMATION**

Further information on the City of Encinitas' LCP Amendment No. LCP-6-ENC-15-0042-2 may be obtained from Sarah Richmond, Coastal Planner, at (619) 767-2370.

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**PART I. OVERVIEW**

**A. LCP HISTORY**

On November 17, 1994, the Commission approved, with suggested modifications, the City of Encinitas' LCP (both land use plan and implementing ordinances). The City accepted the suggested modifications and, on May 15, 1995, began issuing coastal development permits for those areas of the City within the Coastal Zone. The Commission has certified many amendments to the City's LCP since 1995.

**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(s). 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 the maximum opportunities to participate in the development of the LCP amendment prior to submittal to the Commission for review. The City has held Planning Commission and City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

**PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTION**

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

- I. MOTION:**     *I move that the Commission reject the Implementation Program Amendment No. LCP-6-ENC-15-0042-2 for the City of Encinitas as submitted.*

**STAFF RECOMMENDATION OF CERTIFICATION AS SUBMITTED:**

Staff recommends a **NO** vote. Failure of this motion will result in certification of the Implementation Program Amendment as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO CERTIFY IMPLEMENTATION PROGRAM AMENDMENT  
AS SUBMITTED**

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

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

**A. AMENDMENT DESCRIPTION**

This request involves a city-initiated LCP amendment to the Encinitas Municipal Code (Zoning Ordinance; Section 30.16.020.C), which is certified as part of its LCP IP. No changes to the City's certified LCP LUP are proposed herein.

The City is requesting an amendment to the City's IP to implement text changes that make the City's regulation of density bonuses consistent with California Assembly Bill 2222 (Nazarian, 2014). Among other provisions, AB 2222 extended density bonus affordability requirements to 55 years or longer and created further protections to maintain very-low and low-income housing stock.

**B. FINDINGS FOR APPROVAL**

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

1. **Purpose and Intent of Ordinance.** The purpose of the proposed amendment is to specify how compliance with Government Code Section 65915 ("state density bonus law") will be implemented, as required by Government Code Section 65915(a).
2. **Major Provisions of the Ordinance.** State density bonus law allows a property owner to increase the density (number of new, market-rate residential units) on their property above the maximum set under the city's local land use plan and zoning. In exchange for these additional units, a certain percentage of the proposed development must be reserved for very low, low, or moderate-income households. Property owners may also receive certain modifications

of development standards. Major provisions of the proposed ordinance include:

- Application Requirements (Section 30.16.020.C.4): As part of the application, applicants will be required to prepare and submit a “Density Bonus Report” for any density bonus, incentive, or waiver being proposed as part of the project. The report will document the request and demonstrate why any requested incentive or waiver is necessary and complies with state law.
- Base Density Calculation (Section 30.16.020.C.5): Base density will be calculated based on the City’s applicable zoning and general plan provisions. In determining the number of density bonus units to be granted, any fractions of dwelling units shall be rounded up to the next whole number.
- LCP Consistency (Section 30.16.020.C.7): State density bonus law does not supersede or in any way lessen the effect of the Coastal Act. Within the Coastal Zone, a requested density bonus, incentive, and/or waiver must be consistent with all applicable requirements of the certified LCP, with the exception of density.
- Findings (Section 30.16.020.C.8): The City staff report must explain in detail how the project complies with the requirements of state density bonus law. Written findings are required to deny a density bonus project.
- Long-Term Affordability (Section 30.16.020.C.9): The proposed ordinance requires that any affordable rental unit or ownership unit remain restricted as affordable for 55 years. If a density bonus is granted for market-rate senior housing, a covenant will be recorded requiring that the project will be operated as senior housing consistent with federal and state fair housing laws.
- Design and Quality Standards (Section 30.16.020.C.10): Requirements have been included to ensure that the affordable units are comparable in the quality of construction and minimum number of bedrooms as market-rate units in the same housing development.

3. **Adequacy of the Ordinance to Implement the Certified LUP Segments.**

The Commission has, in general, found that the allowance for density bonuses can be an effective tool to provide for affordable housing. In fact, Coastal Act Section 30604(f) specifically encourages the Commission to approve an increase in density for affordable housing when such housing can be accommodated in a manner otherwise consistent with the resource protection policies of the Coastal Act or a local government's certified LCP. As such, while the density of a development project could be increased beyond the numbers established as part of the underlying land use designations, the proposed development would still have to meet all development standards in the certified LCP. The most applicable LUP development standards are as follows:

**Environmentally Sensitive Habitat Areas (ESHA)**

Land Use Policy 8.3:

*Residential development on land that has physical constraints shall exclude or discount areas subject to specified constraints from density allowance. Portions of development sites subject to the following constraints shall be excluded from the net lot area used to figure density: floodplains, beaches, permanent bodies of water, significant wetlands, major utility easements, railroad track beds or rights-of-way, and rights-of-way and easements for public/private streets and roads. The remaining net lot area shall then be calculated for density allowance, based on the assigned land use category density range, subject to the following discounts based on site slope:*

- *Portions of site 0-25% slope - 100% density;*
- *Portions of site 25-40% slope - approximately 50% density allowance;*
- *Portions of site 40%+ slope - no density allowance.*

Public Safety Policy 1.2:

*Restrict development in those areas where slope exceeds 25% as specified in the Hillside/Inland Bluff overlay zone regulations of the zoning code. Encroachment into slopes as detailed in the Hillside/Inland Bluff overlay may range from 0 percent to a maximum of 20 percent, based on a sliding scale of encroachment allowances reflective of the amount of the property within steep slopes, upon the discretionary judgment that there is no feasible alternative siting or design which eliminates or substantially reduces the need for such encroachment, and it is found that the bulk and scale of the proposed structure has been minimized to the greatest extent feasible and such encroachment is necessary for minimum site development and that the maximum contiguous area of sensitive slopes shall be preserved ...*

Resource Management Policy 10.1:

*The City will minimize development impacts on coastal mixed chaparral and coastal sage scrub environmentally sensitive habitats by preserving within the inland bluff*



*and hillside systems, all native vegetation on natural slopes of 25% grade and over other than manufactured slopes ...*

## **Wetlands**

### **Resource Management Policy 10.6:**

*The City shall preserve and protect wetlands within the City's planning area ... Within the Coastal Zone, the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following newly permitted uses and activities:*

- a. Incidental public service projects.*
- b. Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- c. Restoration purposes.*
- d. Nature study, aquaculture, or other similar resource dependent activities.*

*[...]*

*The City shall also control use and development in surrounding areas of influence to wetlands with the application of buffer zones. At a minimum, 100-foot wide buffers shall be provided upland of salt water wetlands, and 50-foot wide buffers shall be provided upland of riparian wetlands ...*

## **Hazards**

### **Land Use Policy 8.2:**

*Development within coastal and flood plain areas identified in the Land Use and Resource Management Elements must be limited, designed to minimize hazards associated with development in these areas, and to preserve area resources ... No development shall occur in the 100-year Floodplain that is not consistent and compatible with the associated flood hazard. Only uses which are safe and compatible with periodic flooding and inundation shall be considered, such as stables, plant nurseries, a minimum intrusion of open parking, some forms of agriculture, and open space preservation, as appropriate under zoning, and subject to applicable environmental review and consistency with other policies of this Plan ...*

### **Public Safety Policy 1.6:**

*The City shall provide for the reduction of unnatural causes of bluff erosion, as detailed in the Zoning Code, by:*

*[...]*

- f. Requiring new structures and improvements to existing structures to be set back 25 feet from the inland bluff top edge, and 40 feet from coastal bluff top edge with exceptions to allow a minimum coastal bluff top setback of no less than 25 feet. For*

*all development proposed on coastal bluff tops, a site-specific geotechnical report shall be required. The report shall indicate that the coastal bluff top setback will not result in risk of foundation damage resulting from bluff erosion or retreat to the principal structure within its economic life and with other engineering evidence to justify the coastal bluff top setback.*

*On coastal bluffs, exceptions to allow a minimum setback of no less than 25 feet shall be limited to additions or expansions to existing principal structures which are already located seaward of the 40 foot coastal bluff top setback, provided the proposed addition or expansion is located no further seaward than the existing principal structure, is set back a minimum of 25 feet from the coastal bluff top edge, and the applicant agrees to remove the proposed addition or expansion, either in part or entirely, should it become threatened in the future ...*

## **Visual Resources**

### **Resource Management Policy 4.5:**

*The City will designate "Scenic/Visual Corridor Overlay" areas within which the character of development would be regulated to protect the integrity of the Vista Points according to the following criteria:*

- *Critical view shed areas should meet the following requirements:*
  - *extend radially for 2,000 feet (610M) from the Vista Point; and*
  - *cover areas upon which development could potentially obstruct, limit, or degrade the view.*
- *Development within the critical view shed area should be subject to design review based on the following:*
  - *building height, bulk, roof line and color and scale should not obstruct, limit or degrade the existing views;*
  - *landscaping should be located to screen adjacent undesirable views (parking lot areas, mechanical equipment, etc.)*

### **Resource Management Policy 4.7:**

*The City will designate the following view corridors as scenic highway/visual corridor viewsheds:*

- *Saxony Road, from Leucadia Blvd., north to La Costa Ave.*
- *Highway 101 from Encinitas Blvd. south to Santa Fe Drive*
- *El Camino Real from Encinitas Blvd. north to La Costa Blvd.*
- *Highway 101, La Costa Ave. to South Carlsbad Beach*
- *La Costa Ave. from just west of I-5 to El Camino Real*
- *Highway 101, from Encinitas Blvd. to La Costa Ave.*
- *Leucadia Blvd. between Hwy 101 and El Camino Real*
- *San Elijo Ave. (and Hwy 101) south of Cardiff Beach State Park to Santa Fe Drive*
- *Manchester Ave. from San Elijo Ave. to Encinitas Blvd.*
- *Interstate 5, crossing San Elijo Lagoon*

## Coastal Access and Recreation

### Circulation Policy 1.12:

*The City will require increased off-street parking for expansions and additions to existing and future commercial and residential uses in the near coast area, will minimize curb cuts for new development in the vicinity of beach access points in order that the maximum amount of curb parking will be available to beach users, and will encourage remote parking/shuttle service and park-and-ride facilities in the Coastal Zone. The City will require that all commercial, industrial and residential uses be designed and constructed with sufficient off-street parking and loading facilities to assure adequate parking is provided with new development such that no adverse impacts on coastal access are documented. Parking ratios shall be utilized as specified and detailed in the City's Zoning Code and in implementing Specific Plans which provide sufficient parking spaces so as not to require patrons/employees/residents to utilize parking which is necessary/required for other approved uses or street and other public parking that should otherwise be available for public use.*

Thus, development standards dictate a development's footprint and bulk/massing through, for example, buffer and setback distances, use restrictions on steep slopes and floodplains, and requirements to protect designated viewsheds. A waiver request is based on physical infeasibility and can include reductions in setback, lot dimensions, and lot size. An incentive request is based on economic infeasibility and can include reductions in design standards. Waivers and incentives have the potential to result in larger construction, which can negatively impact critical coastal habitats, visual resources, and public access if off-street parking requirements are reduced.

However, the City is not proposing to alter the existing development standards established as part of the underlying zoning designations. Therefore, in order for any density bonus, incentive, and/or waiver request to be approved by the City for development within the Coastal Zone, consistency with all applicable requirements of the certified Encinitas LUP must be achieved, with the exception of density. As such, while the density of a development project could be increased beyond the numbers established as part of the underlying land use designations, the proposed development would still have to meet all development standards established as part of the certified LCP.

Therefore, the proposed amendment should not result in any adverse impacts to wetlands, sensitive habitat, designated viewsheds, or coastal access and recreation. The Commission finds that the amendment is consistent with, and adequate to carry out, the certified LUP, thereby meeting the standard of review.

#### **PART IV. 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. Instead, the Coastal Commission acts as lead agency for the purposes of fulfilling CEQA. 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 its review of an LCP or LCP amendment submittal. Under the regulatory process, the Commission must respond to significant environmental points raised during the review process. This staff report addresses all significant environmental points raised during the City's and the Commission's review of the LCP amendment submittal.

At the local level, in connection with the revisions to its Municipal Code, the City determined that the subject LCP amendment is exempt from environmental review pursuant to CEQA Section 15061(b)3, where it exempts projects, "...where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." The City asserts that the changes proposed by this amendment are primarily procedural in nature, are not substantial, and will not significantly affect the existing development standards in the Municipal Code; therefore, the project will not result in a significant effect on the environment.

Nevertheless, the Commission is required in an LCP amendment submittal, such as in this case, to find that the approval of the proposed LCP, or LCP as amended, does conform to CEQA. In this particular case, the LCP amendment will not have any significant adverse effects on the environment and there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact on the environment. Further, the Commission finds that the proposed amendment is unlikely to have any significant adverse effect on the environment as a whole. Therefore, the Commission finds that the subject LCP IP amendment conforms to the provisions of CEQA.

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## ORDINANCE 2015-05

### AN ORDINANCE OF THE CITY OF ENCINITAS AMENDING CHAPTER 30.16.020.C [DENSITY BONUSES PURSUANT TO GOVERNMENT CODE SECTION 65915] OF THE ENCINITAS MUNICIPAL CODE

CASE NUMBER: 14-202 POD

**SECTION ONE.** The City Council of the City of Encinitas does hereby finds and declares as follows:

**WHEREAS**, California Government Code Section 65915(a) requires that all cities adopt an ordinance that specifies how compliance with State Density Bonus Law will be implemented, and,

**WHEREAS**, the City finds that the proposed amendments to the City's Municipal Code are exempt from environmental review pursuant to General Rule, Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines since there would be no possibility of a significant effect on the environment. The ordinance being considered specifies how the City will comply with and implement State density bonus law, and adoption is required pursuant to Government Code §65915(a). The bonuses, incentives, and waivers permitted by the ordinance are required by State law, and this ordinance does not permit any bonuses, incentives, or waivers other than those required by State law.


**WHEREAS**, a Public Notice of Availability of proposed Local Coastal Plan Amendments (LCPA) was issued which opened a six-week public review period that ran from July 24, 2015 to September 4, 2015; and,

**WHEREAS**, the Planning Commission conducted a Public Hearing on August 6, 2015 for the purpose of considering amendments to Title 30, Zoning of the Encinitas Municipal Code and considered public testimony and made a recommendation to the City Council to adopt the proposed amendments, and,

**WHEREAS**, the City Council conducted a Public Hearing on October 14, 2015 for the purpose of considering amendments to Title 30, Zoning of the Encinitas Municipal Code; and,

**WHEREAS**, the City Council has duly considered all evidence, including testimony and the evaluation and recommendations by staff, presented at said hearing, and,

**WHEREAS**, notices of said public hearings were made at the time and in the manner required by law; and,

EXHIBIT NO. 1
APPLICATION NO.
LCP-6-ENC-15-0042-2
Density Bonus Amendment
Ordinance
 California Coastal Commission

**WHEREAS**, the City Council finds that this Ordinance is intended to be carried out in a manner in full conformance with the California Coastal Act of 1976 and the Planning and Building Director is hereby authorized to submit this Ordinance as part of the Local Coastal Program Amendment to the California Coastal Commission for their review and adoption, and,

**NOW, THEREFORE**, the City Council of the City of Encinitas, California, hereby ordains as follows.

**SECTION TWO.** Chapter 30 16 020 C of the Encinitas Municipal [Zoning] Code shall be amended as follows.

~~30.16.020.C. DENSITY BONUSES PURSUANT TO GOVERNMENT CODE SECTION 65915. When a developer of residential units agrees to construct any one of the types of residential projects described in Government Code Section 65915(b), and which complies with all standards set forth in Government Code Section 65915, the City shall grant a density increase of 25 percent over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan and one other concession or incentive in accordance with Section 65915 of the Government Code and all of the following. (Ord. 95-04)~~

~~1. Approval of a density bonus and any other regulatory concession(s) shall be obtained through a MUP application. In the coastal zone, approval of a coastal development permit shall also be required. (Ord. 95-04)~~

~~2. Very low, lower income, and housing units reserved for qualifying residents as defined by Civil Code Section 51.2 shall be maintained for a minimum of thirty (30) years through execution and recordation of a covenant between the developer (property owner) and the City.~~

~~3. In lieu of a density bonus and other concessions, the City may instead provide other incentives of equivalent financial value based upon the land cost per dwelling unit, provided they are not inconsistent with the policies and development standards of the certified Local Coastal Program. (Ord. 95-04)~~

~~4. 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. 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. (Ord. 95-04)~~

~~5. 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 25 percent density increase, would have been fully consistent with the policies and development standards of the certified Local Coastal Program. In cases where a 25 percent density increase is granted pursuant to Government Code Section 65915 and 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. 95-04)

6. A qualifying housing development shall receive one of the incentives identified in Government Code Section 65915(h) in addition to a 25 percent density bonus unless it is found that the additional incentive is not required in order to provide for affordable housing costs or rents. 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 certified Local Coastal Program policies and standards otherwise applicable to development not subject to Government Code Section 65915. In choosing between incentives, priority shall be given to those incentives 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. (Ord. 95-04)

7. The City may prepare an LCP amendment for certification by the Coastal Commission that would include maps identifying areas within the City where density bonuses in excess of 25 percent may be permitted based on a finding that no adverse impacts on coastal resources would result. (Ord. 95-04)

## **Section 30.16.020.C. DENSITY BONUS REGULATIONS**

Section 30.16.020.C.1 Purpose

Section 30.16.020.C.2 Definitions

Section 30.16.020.C.3 Applicability

Section 30.16.020.C.4 Application Requirements

Section 30.16.020.C.5 Density Bonus

Section 30.16.020.C.6 Incentives

Section 30.16.020.C.7 Development within the Coastal Zone

Section 30.16.020.C.8 Review Procedures

Section 30.16.020.C.9 Affordable Housing Agreement and Senior Housing Agreement

Section 30.16.020.C.10 Design and Quality

### **Section 30.16.020.C.1 Purpose.**

The purpose of this Chapter is to specify how compliance with Government Code Section 65915 ("State Density Bonus Law") will be implemented, as required by Government Code Section 65915(a).

### **Section 30.16.020.C.2 Definitions.**

The definitions found in State Density Bonus Law shall apply to the terms contained in this Chapter.

### **Section 30.16.020.C.3 Applicability.**

A "housing development" as defined in State Density Bonus Law shall be eligible for a density bonus and other regulatory incentives that are provided by State Density Bonus Law when the applicant seeks and agrees to provide low, very-low, senior or moderate income housing units in the threshold amounts specified in State Density Bonus Law. A "housing development" includes only the residential component of a mixed use project.

### **Section 30.16.020.C.4 Application Requirements.**

- a. Any applicant requesting a density bonus and any incentive(s), waiver(s), or parking reductions provided by State Density Bonus Law shall submit a Density Bonus Report as described below concurrently with the filing of the planning application for the first discretionary permit required for the housing development. The requests contained in the Density Bonus Report shall be processed concurrently with the planning application.
- b. The Density Bonus Report shall include the following minimum information.
  - i. Requested Density Bonus.
    - (A) Summary table showing the maximum number of dwelling units permitted by the zoning and general plan excluding any density bonus units, proposed affordable units by income level, proposed bonus percentage, number of density bonus units proposed, total number of dwelling units proposed on the site, and resulting density in units per acre.
    - (B) A tentative map and/or preliminary site plan, drawn to scale, showing the number and location of all proposed units, designating the location of proposed affordable units and density bonus units.
    - (C) The zoning and general plan designations and assessor's parcel number(s) of the housing development site.
    - (D) Calculation of the maximum number of dwelling units permitted by the City's zoning ordinance and general plan for the housing development, excluding any density bonus units.
    - (E) A description of all dwelling units existing on the site in the five-year period preceding the date of submittal of the application and identification of any units



rented in the five-year period. If dwelling units on the site are currently rented, income and household size of all residents of currently occupied units. If any dwelling units on the site were rented in the five-year period but are not currently rented, the income and household size of residents occupying dwelling units when the site contained the maximum number of dwelling units, if known.

(F) Description of any recorded covenant, ordinance, or law applicable to the site that restricted rents to levels affordable to very low or lower income households in the five-year period preceding the date of submittal of the application.

(G) If a density bonus is requested for a land donation, the location of the land to be dedicated, proof of site control, and evidence that each of the requirements included in Government Code Section 65915(g) can be met.

ii Requested Incentive(s). In the event an application proposes incentives pursuant to State Density Bonus Law, to ensure that each incentive contributes significantly to the economic feasibility of the proposed affordable housing, the Density Bonus Report shall include the following minimum information for each incentive requested, shown on a site plan if appropriate:

(A) The City's usual development standard and the requested development standard or regulatory incentive.

(B) Except where mixed-use zoning is proposed as an incentive, demonstrate that any requested incentive results in identifiable, financially sufficient, and actual cost reductions to the housing development and is required in order to provide for affordable rents or affordable sales prices.

(C) If approval of mixed use zoning is proposed as an incentive, provide evidence that nonresidential land uses will reduce the cost of the housing development, that the nonresidential land uses are compatible with the housing development and the existing or planned development in the area where the proposed housing development will be located, and that mixed use zoning is required in order to provide for affordable rents or affordable sales prices.

iii. Requested Waiver(s). In the event an application proposes waivers of development standards pursuant to State Density Bonus Law, the Density Bonus Report shall include the following minimum information for each waiver requested on each lot, shown on a site plan if appropriate.

(A) The City's usual development standard and the requested development standard.

(B) Evidence that each development standard for which a waiver is requested will have the effect of physically precluding the construction of the housing development with the density and incentives that the applicant is entitled to.

iv Requested Parking Reduction. In the event an application proposes a parking reduction pursuant to Government Code Section 65915(p), a table showing parking required by the zoning ordinance and parking proposed under Section 65915(p).

- v Child Care Facility. If a density bonus or incentive is requested for a child care facility, evidence that all of the requirements included in Government Code Section 65915(h) can be met.
- vi Condominium Conversion. If a density bonus or incentive is requested for a condominium conversion, evidence that all of the requirements included in Government Code Section 65915.5 can be met.
- vii. Fee. Payment of any fee in an amount set by resolution of the City Council for staff time necessary to determine compliance of the Density Bonus Plan with State Density Bonus Law.

#### **Section 30.16.020.C.5 Density Bonus.**

- a. A density bonus for a housing development means a density increase over the otherwise maximum allowable residential density under the applicable zoning and land use designation as of the date a Density Bonus Plan is submitted to the City. Where the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element, the maximum density allowed under the land use element shall prevail.
- b. In determining the number of density bonus units to be granted, any fractions of dwelling units obtained by multiplying the maximum allowable residential density by the allowable percentage density increase shall be rounded up to the next whole number. When calculating the number of affordable units needed for a given density bonus, any fractions of affordable dwelling units shall be rounded up to the next whole number.
- c. Each housing development is entitled to only one density bonus. If a housing development qualifies for a density bonus under more than one income category or additionally as senior housing, the applicant shall select the category under which the density bonus is granted. Density bonuses from more than one category may not be combined.
- d. The density bonus units shall not be included in determining the number of affordable units required to qualify a housing development for a density bonus pursuant to State Density Bonus Law.
- e. The applicant may elect to accept a lesser percentage of density bonus than the housing development is entitled to, but no reduction will be permitted in the percentages of required affordable units contained in Government Code Sections 65915(b), (c), and (f). Regardless of the number of affordable units, no housing development shall be entitled to a density bonus of more than thirty-five percent.

#### **Section 30.16.020.C.6 Incentives.**

- a. Incentives include "incentives and concessions" as defined in State Density Bonus Law. The number of incentives that may be requested shall be based upon the number the applicant is entitled to pursuant to State Density Bonus Law.
- b. Nothing in this section requires the provision of direct financial incentives for the housing development, including but not limited to the provision of financial subsidies, publicly owned

land, fee waivers, or waiver of dedication requirements. The City, at its sole discretion, may choose to provide such direct financial incentives.

#### **Section 30.16.020.C.7 Local Coastal Plan Consistency – State Law.**

- a. State Density Bonus Law provides that it shall not be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976, and further provides that the granting of a density bonus or an incentive shall not be interpreted, in and of itself, to require a local coastal plan amendment.
- b. For development within the coastal zone, the requested density bonus and any requested incentive(s) or waiver(s) shall be consistent with all applicable requirements of the certified Encinitas Local Coastal Program, with the exception of density.

#### **Section 30.16.020.C.8 Review Procedures.**

All requests for density bonus, incentives, parking reductions, or waivers shall be considered and acted upon by the approval body with authority to approve the housing development, with right of appeal to the City Council.

- a. Eligibility for Bonus, Incentive(s), Parking Reduction, and/or Waiver(s). To ensure that the application conforms with the provisions of State Density Bonus Law and the Coastal Act, the staff report presented to the decision-making body shall state whether the application conforms to the following requirements of state law::
  - i. The housing development provides the affordable units or senior housing required by State Density Bonus Law to be eligible for the density bonus and any incentives, parking reduction, or waivers requested, including the replacement of units rented or formerly rented to low and very low income households.
  - ii. Any requested incentive would result in identifiable, financially sufficient, and actual cost reductions based upon the documentation provided, except that, if a mixed-use development is requested, the application must instead meet all of the requirements of Government Code Section 65915(k)(2).
  - iii. The development standards for which a waiver is requested would have the effect of physically precluding the construction of the housing development with the density bonus and incentive(s) that the housing development is eligible for.
  - iv. If the housing development is in the coastal zone, the requested density bonus and any requested incentive(s) or waiver(s) are consistent with all applicable requirements of the certified Encinitas Local Coastal Program, with the exception of density.
  - v. If the density bonus is based all or in part on donation of land, all of the requirements included in Government Code Section 65915(g) have been met.
  - vi. If the density bonus or incentive is based all or in part on the inclusion of a child care facility, all of the requirements included in Government Code Section 65915(h) have been met.

- vii. If the density bonus or incentive is based all or in part on the inclusion of affordable units as part of a condominium conversion, all of the requirements included in Government Code Section 65915.5 have been met.
- b. The decision-making body may deny an application for an incentive only if it makes one of the following written findings, supported by substantial evidence:
  - i. The proposed incentive is not required to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety code, or for affordable rents, as defined in Section 50053 of the Health and Safety Code, or,
  - ii. The proposed incentive would be contrary to state or federal law; or
  - iii. The proposed incentive would have a specific, adverse impact upon public health or safety or the physical environment or on any real property that is listed in the California Register of Historic Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the housing development unaffordable to low and moderate income households. For the purpose of this subsection, "specific adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application for the housing development was deemed complete.
- c. The decision-making body may deny an application for a waiver only if it makes one of the following written findings, supported by substantial evidence.
  - i. The proposed waiver would be contrary to state or federal law; or
  - ii. The proposed waiver would have an adverse impact on any real property listed in the California Register of Historic Resources, or
  - iii. The proposed waiver would have a specific, adverse impact upon public health or safety or the physical environment, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the housing development unaffordable to low and moderate income households. For the purpose of this subsection, "specific adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application for the housing development was deemed complete.
- d. If any density bonus, incentive, parking reduction, or waiver is approved pursuant to this chapter, the applicant shall enter into an Affordable Housing Agreement or Senior Housing Agreement with the City pursuant to Section **30.16.020.C.9**

### **Section 30.16.020.C.9 Affordable Housing Agreement and Senior Housing Agreement.**

Except where a density bonus is provided for a market-rate senior housing development, the applicant shall enter into an Affordable Housing Agreement with the City, in a form approved by the City Attorney, to be executed by the City Manager, to ensure that the requirements of this Chapter are satisfied. The Affordable Housing Agreement shall guarantee the affordability of the affordable units for a minimum of 55 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program; shall identify the type, size and location of each affordable unit; and shall specify phasing of the affordable units in relation to the market-rate units.

Where a density bonus is provided for a market-rate senior housing development, the applicant shall enter into a restrictive covenant with the City, running with the land, in a form approved by the City Attorney, to be executed by the City Manager, to require that the housing development be operated as "housing for older persons" consistent with State and federal fair housing laws.

The executed Affordable Housing Agreement or Senior Housing Agreement shall be recorded against the housing development prior to final or parcel map approval, or, where a map is not being processed, prior to issuance of building permits for the housing development. The Affordable Housing Agreement or Senior Housing Agreement shall be binding on all future owners and successors in interest.

### **Section 30.16.020.C.10 Design and Quality.**

- a. The City may not issue building permits for more than fifty percent (50%) of the market rate units until it has issued building permits for all of the affordable units, and the City may not approve any final inspections or certificates of occupancy for more than fifty percent (50%) of the market rate units until it has issued final inspections or certificates of occupancy for all of the affordable units.
- b. Affordable units shall be comparable in exterior appearance and overall quality of construction to market-rate units in the same housing development. Interior finishes and amenities may differ from those provided in the market rate units, but neither the workmanship nor the products may be of substandard or inferior quality as determined by the City.
- c. The number of bedrooms of the affordable units shall at least equal the minimum number of bedrooms of the market-rate units.

### **Section 30.16.020.C.11 Interpretation.**

If any portion of this section conflicts with State Density Bonus Law or other applicable state law, state law shall supersede this section. Any ambiguities in this section shall be interpreted to be consistent with State Density Bonus Law

### **SECTION THREE:**

**Severability.** If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed and adopted this Ordinance, and each and all provisions hereof, irrespective of the fact that one or more provisions may be declared invalid

### **SECTION FOUR:**

**Public Notice and Effective Date.** The City Clerk is directed to prepare and have published a summary of the ordinance no less than five days prior to consideration of its adoption, and again within 15 days following adoption, indicating the votes cast. For property located within the Coastal Zone, this Ordinance will become effective following certification by the California Coastal Commission as being consistent with the Local Coastal Program for the City of Encinitas and California Coastal Act For property located outside the Coastal Zone, this Ordinance shall take effect 30 days after its adoption by the City Council.

### **SECTION FIVE:**

This Ordinance was introduced on October 14, 2015.

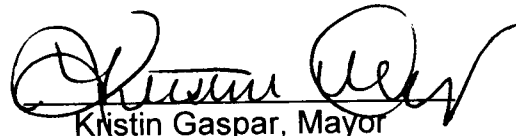
**PASSED AND ADOPTED** this 28th day of October, 2015 by the following vote to wit:

AYES            Blakespear, Gaspar, Kranz, Muir, Shaffer.

NAYS.           None.

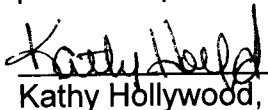
ABSTAIN       None

ABSENT:       None

  
Kristin Gaspar, Mayor  
City of Encinitas

### **ATTESTATION AND CERTIFICATION:**

I hereby certify that this is a true and correct copy of Ordinance No 2015-05 which has been published pursuant to law

  
Kathy Hollywood, City Clerk