

**CALIFORNIA COASTAL COMMISSION**

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April 26, 2016

# W11d

**TO: COMMISSIONERS AND INTERESTED PERSONS**

**FROM: SHERILYN SARB, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT  
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF SAN DIEGO LCP  
AMENDMENT NO. LCP-6-SAN-15-0035-4 (Part A/Affordable Housing  
Density Bonus) for Commission Meeting of May 11-13, 2016**

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## **SYNOPSIS**

The subject LCP implementation plan amendment was submitted and filed as complete on November 19, 2015. This request was one of four unrelated amendments to the City's Land Development Code (LDC) which serves, in large part, as the City's certified implementation plan. The other three parts of the submittal included the establishment of community plan implementation measures, solar energy system regulations and the incorporation of an overlay zone for the Chollas Creek Triangle. At the Commission's January 2016 hearing, a time extension was granted for the submittal and the other three components have been subsequently acted on and approved as submitted. Therefore, for this remaining item, the date by which the Commission must take action will be the January 2017 hearing.

## **SUMMARY OF AMENDMENT REQUEST**

State law requires California cities to grant density bonuses and incentives to encourage the development of affordable and senior housing opportunities within the state. The City of San Diego is herein proposing to incorporate its affordable housing density bonus provisions into the certified LCP. All of the proposed revisions are found in the City's Land Development Code (LDC) which constitutes the bulk of its certified implementation plan. Specifically, the proposed amendment would modify two existing definitions, including the deletion of "affordable housing cost" from Chapter 11 of the LDC. Also within Chapter 11, the provisions for calculating maximum permitted density would be amended to clarify that the allowable density for multi-unit development can be rounded up (for calculations where a fractional unit results at .5 or more) but the provision restricts the use of rounding-up to only one time. In addition, Section 113.0222(c) would be added to specify that if there is an inconsistency between the density specified in the base zone and the land use plan, the certified land use plan would be controlling. Finally, the amendment request then recognizes and incorporates the City's affordable housing density bonus provisions from Chapter 14 of the LDC into the

LCP. The proposed density bonus provisions were adopted consistent with State law, including the most recent amendments contained in AB-2222.

### **SUMMARY OF STAFF RECOMMENDATION**

While the Commission supports the State mandate and City's efforts to encourage affordable housing opportunities, expanded senior housing programs and the provision of child care centers, historically, there have been issues in reconciling efforts to promote such opportunities and still maintain coastal resource protection measures. Given that the affordable housing density bonus programs all include provisions that cities grant concessions or incentives, such as modifications to site development standards as a means to make density bonus projects more physically or economically feasible, there have been challenges in reconciling the affordable housing and coastal mandates.

Coastal resources such as sensitive habitats, shoreline bluffs, public view corridors and public access all have the potential to be adversely affected by density bonus programs if incentives or modifications offered to encourage affordable housing would conflict or eliminate critical resource protection measures in the certified Land Use Plan(s). Development standards such as habitat buffers, geologic setbacks, building height limits and parking requirements all dictate a development's footprint and bulk/massing. Reducing setbacks that provide buffers from identified resources, such as wetlands or coastal bluffs, could result in both direct and indirect impacts to those resources or the siting of new development in a more hazardous location. Increased density could impact levels of service along major coastal access routes in the absence of interconnected multi-modal transit programs.

In this amendment, however, the City of San Diego has worked with multiple stakeholders, including Commission staff, and has proposed regulations that encourage affordable housing opportunities while ensuring that resource protection standards will be maintained. Therefore, the amendment request can be approved as submitted.

As identified and mandated through the certified land use plans, the City's critical coastal resources are protected under the City's land use regulations and development review procedures, particularly through the Environmentally Sensitive Lands ("ESL") regulations. Environmentally sensitive lands ("ESL") include sensitive biological resources, wetlands, steep hillsides, coastal beaches, sensitive coastal bluffs and special flood hazard areas. The City's process for approving development in the coastal zone, particularly in areas subject to the ESL regulations, is rigorous. For example, when development is proposed and environmentally sensitive lands are present, the LDC requires that in addition to a coastal development permit, a Neighborhood or Site Development Permit be obtained with specific findings, including consistency with the certified land use plan(s), which must be made. In addition, as proposed herein, the City's affordable housing density bonus regulations provide the necessary safeguards to ensure that any future incentives, concessions or waivers that involve modifications to development standards will not conflict with approved resource protection measures, such as wetland buffers, coastal height limits or blufftop setbacks. The proposed

regulations specifically state that deviations from the Coastal Height Limit will not be allowed as an incentive and within the Coastal Overlay Zone, an incentive must be consistent with the resource protection standards of the certified LCP and the ESL regulations, with the exception of density. Therefore, the proposed density bonus program will serve to encourage affordable housing opportunities in the City's coastal zone, while ensuring protection of its most sensitive coastal resources. Thus, the proposed amendment can be approved as submitted.

The appropriate resolution and motion can be found on Page 5. The findings for approval of the implementation plan amendment, as submitted, also begin on Page 5.

### **BACKGROUND**

The City's first Implementation Plan (IP) was certified in 1988, and the City assumed permit authority shortly thereafter. The IP consisted of portions of the City's Municipal Code, along with a number of Planned District Ordinances (PDOs) and Council Policies. Late in 1999, the Commission effectively certified the City's Land Development Code (LDC) that includes Chapters 11 through 14 of the municipal code. It replaced the first IP in its entirety and went into effect in the coastal zone on January 1, 2000. The Commission has certified many IP amendments since 2000.

### **ADDITIONAL INFORMATION**

Further information on the City of San Diego LCP Amendment No. LCP-6-SAN-15-0035-4 may be obtained from Deborah Lee, District Manager, at (619) 767-2370.

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## **PART I. OVERVIEW**

### **A. LCP HISTORY**

The City of San Diego has a long history of involvement with the community planning process; as a result, in 1977, the City requested that the Coastal Commission permit segmentation of its Land Use Plan (LUP) into twelve parts in order to have the LCP process conform, to the maximum extent feasible, with the City's various community plan boundaries. In the intervening years, the City has intermittently submitted all of its LUP segments, which are all presently certified, in whole or in part.

When the Commission approved segmentation of the LUP, it found that the implementation phase of the City's LCP would represent a single unifying element. This was achieved in January 1988, and the City of San Diego assumed permit authority on October 17, 1988 for the majority of its coastal zone. Several isolated areas of deferred certification remained at that time; some of these have been certified since through the LCP amendment process. Other areas of deferred certification remain today and the City is completing that planning; the Commission will consider those submittals in the future.

Since effective certification of the City's LCP, there have been numerous major and minor amendments processed. These have included everything from land use revisions in several segments, to the rezoning of single properties, to modifications of citywide ordinances. In November 1999, the Commission certified the City's Land Development Code (LDC), and associated documents, as the City's IP, replacing the original IP adopted in 1988. The LDC became effective in January 2000.

### **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 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 just prior to the resolution.

- I. MOTION I:** *I move that the Commission reject the City of San Diego LCP Amendment No. LCP-6-SAN-0035-4, Part A, 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 APPROVE CERTIFICATION OF THE IMPLEMENTATION PROGRAM AMENDMENT AS SUBMITTED**

The Commission hereby certifies the Implementation Program Amendment for the City of San Diego LCP, 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 City of San Diego Land Use Plans, 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, as amended.

**PART III. FINDINGS FOR APPROVAL OF THE CITY OF SAN DIEGO IMPLEMENTATION PLAN AMENDMENT FOR THE AFFORDABLE HOUSING DENSITY BONUS PROGRAM, AS SUBMITTED**

**A. AMENDMENT DESCRIPTION**

The City of San Diego is herein proposing to incorporate its affordable housing density bonus provisions into the certified LCP. All of the proposed revisions are found in the City's Land Development Code (LDC) which constitutes the bulk of its certified implementation plan. Specifically, the proposed amendment would modify two existing definitions, including the deletion of "affordable housing cost" from Chapter 11 of the LDC. Also within Chapter 11, the provisions for calculating maximum permitted density would be amended to clarify that the allowable density for multi-unit development can be rounded up (for calculations where a fractional unit results at .5 or more) but the

provision restricts the use of rounding-up to only one time. In addition, Section 113.0222(c) would be added to specify that if there is an inconsistency between the density specified in the base zone and the land use plan, the certified land use plan would be controlling. Finally, the amendment request then recognizes and incorporates the City's affordable housing density bonus provisions from Chapter 14 of the LDC into the LCP. The proposed density bonus provisions were adopted consistent with State law, including the most recent amendments contained in AB-2222. AB-2222 enacted three principal modifications to State density bonus law, including increasing the length of affordability for designated units from 30 to 55 years; expanding the affordable for sale housing option to low and very low income households; and the law now requires replacement of existing low and very low income units displaced by a proposed development.

## **B. SPECIFIC FINDINGS FOR APPROVAL**

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified Land Use Plan(s).

### **1) Purpose and Intent of the Ordinance.**

As stated in proposed Section 143.0710, the purpose of these regulations is to provide increased residential density to developers who guarantee that a portion of their residential development will be available to moderate income, low income, very low income or senior households. The regulations are intended to assist the housing industry in providing adequate and affordable housing for all economic segments. The adoption of the City's program is also intended to implement the provisions of California Government Code Sections 65915 through 65918, as amended.

### **2) Major Provisions of the Ordinance.**

The major provisions address when the program would be applicable and then specific the requirements for the programs. Specific provisions include the following:

- The regulations address residential developments of five or more dwelling units where increased density is being sought in exchange for committing a specified portion of the units for moderate, low or very low income households, senior housing or a donation of land;
- Provides for written agreements with the San Diego Housing Commission that must be recorded as encumbrances against the development;
- Addresses both rental and for sale residential units and requires the affordable units to be designated, comparable in bedroom mix and amenities as market rate units and dispersed throughout the development;
- Specifies what development incentives can be considered and disallows any deviation from the requirements of the Coastal Height Limit Overlay Zone as an incentive;

- Establishes the criteria for approval and denial of a requested incentive and includes within the Coastal Overlay Zone that any approved incentive must be consistent with the resource protection standards of the certified LCP and the ESL regulations, with the exception of density;
- Limits the number of allowable incentives to no more than three with the maximum number tied to the provision of more affordable units;
- Provides for additional density or an incentive when a child care center is associated with the development proposal and expected to be in operation for at least 30 years; and
- Provides for some adjustment to parking standards related to reduced parking demand housing, such as housing for seniors or special needs individuals.

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

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified Land Use Plan(s). In general, as noted earlier, density bonus regulations raise potential issues with the protection of critical coastal resources. Allowing greater density than could otherwise be permitted could adversely affect coastal resources through more intensive development, such as high rise buildings, that could encroach on public views or contribute to increased traffic that would deter coastal access. In addition, the granting of incentives, concessions or waivers/reductions to otherwise required development standards to encourage affordable housing opportunities could also lead to coastal resource impacts, such as direct impacts to sensitive habitats or reductions in required buffers. Critical coastal resources are mandated protection first in the Coastal Act's Chapter Three policies and then applied, as appropriate, to each coastal community through the establishment of resource protection standards in their certified land use plans.

In two previous LCP amendments, the City brought forward components of its affordable housing and density bonus programs. In LCP Amendment No. 1-03C (Affordable Housing) and LCP Amendment No. 3-07A (Affordable Housing/Density Bonus Regulations), the City proposed the incorporation of density bonus provisions into the LDC. However, in both cases, the LCP amendments were both withdrawn after the City and Commission staffs could not reconcile adoption of the proposed ordinances with the specific resource protection standards in the certified land use plans. The most sensitive issues in those two prior submittals were how the proposed ordinances addressed the Environmentally Sensitive Lands ("ESL") regulations and the Coastal Height Limit.

In the case of the City of San Diego, it has developed community planning areas based on its established neighborhoods and future urbanizing area. Predicated on those community planning areas, the City utilized the geographic segmentation provisions of the LCP regulations and developed its land use plan component covering twelve different communities (i.e., North City, La Jolla, Pacific Beach, Mission Beach, Ocean Beach, Peninsula, Otay-Mesa Nestor). Each community plan or LCP Land Use Plan contains policies that protect public views, scenic resources, public access, recreational

opportunities and sensitive coastal resources including, but not limited to, beaches, bluffs, slopes, hillsides and environmentally sensitive lands in that community. The Commission's review of the proposed changes to the Land Development Code must assure that development is approved only when consistent with the certified LUPs. Listed below are policy excerpts contained in the certified Land Use Plan segments in the Coastal Overlay Zone for the City of San Diego.

#### **Torrey Pines Community Plan**

- Construction or improvements of roadways adjacent to biologically sensitive areas or open space shall be designed to avoid impacts, especially in wetlands and wetland buffer areas. Protection of sensitive habitats through buffers, realignments and reduced development areas shall also be considered.
- Protect, preserve and enhance the variety of natural features within the San Dieguito River Valley including the floodplain, the open waters of the lagoon and river, wetlands, marshlands and uplands.

#### **Mira Mesa Community Plan**

- No encroachment shall be permitted into wetlands, including vernal pools. [...]

#### **La Jolla LCP Land Use Plan**

- The City should preserve and protect the coastal bluffs, beaches and shoreline areas of La Jolla assuring that development occurs in a manner that protects these resources, encourages sensitive development, retains biodiversity and interconnected habitats and maximizes physical and visual public access to and along the shoreline. (Policy 3a.)
- Development on coastal bluffs should be set back sufficiently from the bluff edge to avoid the need for shoreline or bluff erosion control devices so as not to impact the geology and visual quality of the bluff and/or public access along the shoreline. (Policy 3c.)
- Protect public views to and along the shoreline as well as to all designated open space areas and scenic resources from public vantage points as identified in Figure 9 and Appendix G (Coastal Access Subarea maps). Public views to the ocean along public streets are identified in Appendix G. Design and site proposed development that may affect an existing or potential public view to be protected, as identified in Figure 9 or in Appendix G, in such a manner as to preserve, enhance or restore the designated view opportunities. (Policy 2c.)



- Where existing streets serve as public vantage points, as identified in Figure 9 and Appendix G including, but not limited to, view corridors and scenic overlooks and their associated viewsheds, set back and terrace development on corner lots and/or away from the street in order to preserve and enhance the public view provided from the public vantage point to and along the ocean. In review of variances or other requests for reduced setbacks within the viewshed public vantage points, adjacent to identified view corridors or on property between the ocean and first coastal roadway, do not allow any reduction in the public view provided to and along the ocean. Figure 9 and Appendix G list streets that provide identified public views to and along the ocean to be protected from visual obstruction. (Policy 2e.)
- Where new development is proposed on property that lies between the shoreline and the first public roadway, preserve, enhance or restore existing or potential view corridors within the yards and setbacks by adhering to setback regulations that cumulatively, with the adjacent property, form functional view corridors and prevent an appearance of the public right-of-way being walled off from the ocean. (Policy 2h.)

#### **Pacific Beach Community Plan**

- Development Along View Corridors – Mandate setbacks of new development along all east-west streets west of Cass Street, and all north-south streets south of Grand Avenue which have a public view to the water (as identified in Figure 16). Street landscaping along these streets shall not obstruct, but shall enhance public views, in conformance with the streetscape recommendations of this plan (Appendix D). (Residential Design Standards *Development Along View Corridors*)
- Coastal Bluff and Ocean/Bayfront Development – Set back new development along coastal bluffs in accordance with the Sensitive Coastal Resource Zone and Appendix H of this plan to reduce the potential for erosion and slippage. (Residential Design Standards, *Coastal Bluff and Ocean/Bayfront Development*)

#### **Mission Beach Precise Plan and Local Coastal Program Addendum**

- Under the Local Coastal Program, the following specific concept for future implementation technique development is set out in regard to community landscaping:

Views to and along the shoreline from public areas shall be protected from blockage by development and or vegetation.

**Peninsula Community Plan and Local Coastal Program Addendum**

- Preserve and enhance significant views of the bay and ocean.

For any new development which proposes to provide affordable housing based on increased density related to a granted density bonus or incentive, the discretionary review process will be the same process as that which would have been required if the density bonus element was not proposed. Unless otherwise exempt, all development within the coastal zone in the City of San Diego requires a coastal development permit. In the case of a proposed development within the coastal zone also occurring on a site where environmentally sensitive lands are present, a Site Development Permit would also be required. The proposed development must meet the findings of each of the respective permit processes or the development cannot be approved.

The Coastal Development Permit process includes a separate set of findings that must be made in order to assure conformance with the certified land use plan policies, the certified LCP implementation plan and the public access and recreation policies of the Coastal Act. Section 126.0708 specifies the findings that are necessary for Coastal Development Permit Approval and states the following:

An application for a Coastal Development Permit may be approved or conditionally approved only if the decision maker makes all of the findings in Section 126.0708(a) and the supplemental findings in Section 126.0708(b) that are applicable to the proposed development.

Specifically, Section 126.0708 (a) states:

Findings for all Coastal Development Permits:

- (1) The proposed coastal development will not encroach upon any existing physical accessway that is legally used by the public or any proposed public accessway identified in a Local Coastal Program land use plan; and the proposed coastal development will enhance and protect public views to and along the ocean and other scenic coastal areas as specified in the Local Coastal Program land use plan;
- (2) The proposed coastal development will not adversely affect environmentally sensitive lands; and
- (3) The proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program;
- (4) For every Coastal Development Permit issued for any coastal development between the nearest public road and the sea or the shoreline of any body of water located within the Coastal Overlay Zone, the coastal development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act.

For developments occurring on property where environmentally sensitive lands are present, as mentioned above, a Site Development Permit would also be required. The

ESL regulations again apply to sensitive biological resources; steep hillsides; coastal beaches; sensitive coastal bluffs; and special flood hazard areas. All Site Development Permits must have certain findings made pursuant to Section 126.0504(a).

Section 126.0504 – Findings for all Site Development Permits

A Site Development Permit may be approved or conditionally approved only if the decision maker makes all of the findings in Section 126.0504(a) and the supplemental findings in Section 126.0504(b) through (o) that are applicable to the proposed development as specified in this section.

(a) Findings for all Site Development Permits

- (1) The proposed development will not adversely affect the applicable land use plan;
- (2) The proposed development will not be detrimental to the public health, safety, and welfare;
- (3) The proposed development will comply with the applicable regulations of the Land Development Code.

Based on the certified policies of the City's land use plans, the ESL regulations establish the various resource protection measures and development standards in the LDC. As an example, for development on coastal bluffs, no development is permitted on the face of a sensitive coastal bluff; all drainage must be directed away from the bluff; and all development must generally observe a minimum of a 40 ft. setback from the bluff edge. The regulations allow for a reduction in this setback, however, if a geology report indicates that the site is stable enough to support the development at the proposed distance from the coastal bluff edge, although no development is allowed within 25 feet from the bluff edge. As can be seen, these regulations are intended to protect the geologic integrity of the coastal bluffs based on LUP policies adopted in conformance with Section 30253 of the Coastal Act. The ESL regulations also mandate the provision of wetland buffers, preservation of public views and protection of sensitive hillsides and habitat areas.

These regulations are very rigorous and define specifically what the requirements are for development on a site that contains any of these resources. With the City's existing land development review process and the ESL regulations, appropriate resource protection measures are assured. In addition, with this updated affordable housing density program, the City's proposed regulations now include three key elements for coastal resource protection that are integrated with its existing LDC provisions. First, the proposed ordinance clarifies that if there is a discrepancy between permitted density in the base zoning and the land use plan, the certified land use plan is controlling. Second, the proposed ordinance specifically prohibits as an incentive any deviation from the Coastal Height Limit. Then, finally, the updated ordinance provides within the Coastal Overlay Zone, incentives must be consistent with the resource protection standards of the City's LCP and the ESL regulations, with the exception of density. With these permitting

procedures and rigorous standards, the proposed ordinance amendment can be found consistent with and adequate to carry out the certified land use plans and can be approved as submitted.

Although no specific requirements were included to site affordable housing developments near transit centers, the City is committed to smart growth efforts and does include provisions for modified parking standards along transit corridors as another means to incentivize affordable housing in those locations. The City will be continuing to work on this element as it also begins the updating of multiple community plan segments, both in and out of the coastal zone. In summary, the Commission supports concentrating development in existing urban areas able to accommodate it and encouraging affordable housing opportunities in a manner where critical and sensitive coastal resources are protected. Therefore, the Commission finds that the proposed amendment to the Land Development Code, as submitted and described above, conforms with, and is adequate to carry out, the certified City of San Diego LCP land use plans.

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

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

For the City's action, an environmental impact report (EIR No. 96-0333) was completed for the original adoption of the Land Development Code and a Program EIR (No. 104495) was prepared and certified for the General Plan Update. The City has previously utilized these documents for CEQA compliance in association with other code amendments and has similarly found that no further CEQA analysis is needed for this amendment.

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 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. The updated ordinance ensures compliance with the ESL regulations and prohibits any deviation to the Coastal Height Limit. For specific development projects that ultimately benefit from any allowable incentive or concession, environmental impacts will be required to be mitigated. In summary, no adverse impacts to any coastal resources are anticipated.

§113.0103 Definitions

LCP-6-SAN-0035-4  
(Part A)

*Abutting property through Affiliate* [No change in text.]

*Affordable housing cost* shall mean (1) for ownership housing, a housing payment which includes loan principal, loan interest, property taxes, property and mortgage insurance, and homeowners association dues which allows a household with a gross income at not more than one hundred percent (100%) of the area median income to purchase a home and (2) for rental or cooperative housing, a housing payment including a reasonable allowance for utilities, which does not exceed thirty percent (30%) of not more than fifty percent (50%) of the area median income for *very low income* households and thirty percent (30%) of not more than eighty percent (80%) of the area median income for *low income* households.

*Alley through Deemed complete* [No change in text.]

*Density* means the relationship between the number of dwelling units ~~dwelling units~~ existing or permitted on a premises and the area of the premises. See Section 113.0222 for additional information on calculating density.

*Designated historical resource through Yard* [No change in text.]

§113.0222 Calculating Density

(a) Multiple Dwelling Unit Development

For *multiple dwelling unit development*, the maximum number of units that may be permitted on any premises is determined by dividing the ~~lot~~ lot area of the premises by the number of square feet required for each dwelling unit ~~dwelling unit~~ (maximum permitted density density), as prescribed by the applicable base zone.

- (1) If the quotient resulting from this calculation exceeds a whole number by 0.50 or more, the number of dwelling units ~~dwelling units~~ may shall be increased to the next whole number.
- (2) [No change in text.]
- (3) In determining the maximum permitted *density*, the rounding provisions of Section 113.0222(a)(1) may be used only once. For example, if multiple calculations are required as with application of the ~~density bonus provision~~, the result of only one calculation may be increased to the next whole number.

Example of calculation of *density* for *multiple dwelling unit development*:

Lot Area: 1.5 acres x 43,560 (sq. ft./ac.) = 65,340 sq. ft.

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Affordable Housing Density Bonus

Maximum Permitted *Density*: 1 dwelling unit/2000 sq. ft.

Units Permitted =  $65,340 \div 2,000 = 32.67$  dwelling units

Since the quotient exceeds a whole number by more than 0.50, the maximum number of permitted dwelling units may be rounded up to 33 dwelling units.

(b) [No change in text.]

(c) For purposes of calculating *density* for a *development* proposing a *density* bonus pursuant to Chapter 14, Article 3, Division 7, where the maximum *density* of the base zone and the *land use plan* are inconsistent, the maximum *density* allowed under the *land use plan* shall prevail. Calculations resulting in any fractional number shall be increased to the next whole number.

**§143.0710 Purpose of Affordable Housing Density Bonus Regulations**

The purpose of these regulations is to provide increased residential density to developers who guarantee that a portion of their residential *development* will be available to *moderate income*, *low income*, *very low income*, or senior households. The regulations are intended to materially assist the housing industry in providing adequate and affordable housing for all economic segments of the community and to provide a balance of housing opportunities for *moderate income*, *low income*, *very low income*, and senior households throughout the City. It is intended that the affordable housing *density* bonus and any additional *development* incentive be available for use in all residential *development* of five or more units, using criteria and standards provided in the General Plan, and that requests be processed by the City of San Diego and be implemented by the President and Chief Executive Officer of the San Diego Housing Commission. It is also intended that these regulations implement the provisions of California Government Code Sections 65915 through 65918.

**§143.0715 When Affordable Housing Density Bonus Regulations Apply**

This division applies to any residential *development* where current zoning allows for five or more *dwelling units*, not including *density* bonus units, where an *applicant* proposes *density* beyond that permitted by the base zone and *land use plan* at the time the application is *deemed complete*, in exchange for either of the following:

(a) A portion of the total *dwelling units* in the *development* being reserved for *moderate*, *low*, or *very low income* households or for senior citizens through a written agreement with the San Diego Housing Commission; or

(b) The donation of land, pursuant to the State Density Bonus Law.

**§143.0717 Required Replacement of Affordable Units**

- (a) An applicant is ineligible for a density bonus or any incentive under this division if the property on which the development is proposed contains, or during the five years preceding the application, contained, rental dwelling units that have had the rents restricted by law or covenant to persons and families of low income or very low income, or have been occupied by persons and families of low income or very low income, unless the proposed development replaces the affordable dwelling units, and either:
- (1) Provides affordable dwelling units at the percentages set forth in Section 143.0725 (inclusive of the replacement dwelling units), or
  - (2) Provides all of the dwelling units as affordable to low income or very low income households, excluding any manager's unit(s).
- (b) The number and type of required replacement dwelling units shall be determined as follows:
- (1) If any of the dwelling units are occupied, the replacement dwelling units must be at least the same number of dwelling units of equivalent size or type, or both, and must be made affordable to and occupied by persons and families in the same or a lower income category as the occupied dwelling units. If any dwelling units are unoccupied, the replacement dwelling units shall be of the same proportion of affordability as those dwelling units that are occupied.
  - (2) If the dwelling units in the development are vacant or have been demolished within the five year period preceding the application, the replacement dwelling units must be of at least the same number of dwelling units of equivalent size or type, or both, as existed at the time of the greatest number of occupied affordable dwelling units in that development, and must be made affordable to and occupied by, persons and families in the same or lower income categories as those in occupancy at that time. If the income categories are unknown for this five year period, then at least one-half of the replacement dwelling units shall be made available for rent to or purchase by and occupied by persons and families in the very low income category, and one-half of the replacement dwelling units shall be made available for rent to and occupied by persons and families in the very low income category.
  - (3) All replacement dwelling unit calculations resulting in fractional units shall be rounded up to the next whole number.
  - (4) All rental replacement dwelling units shall be affordable for at least 55 years.

- (a) A development shall be entitled to a density bonus and incentives as described in this division, for any residential development for which a written agreement, and a deed of trust securing the agreement, is entered into by the applicant and the President and Chief Executive Officer of the San Diego Housing Commission. The agreement and deed of trust in favor of the San Diego Housing Commission are to be recorded in the Office of the Recorder of the County of San Diego as an encumbrance against the development.
- (b) The density bonus units authorized by this division shall be exempt from the Inclusionary Housing Regulations set forth in Chapter 14, Article 2, Division 13.
- (c) A rental affordable housing density bonus agreement shall utilize the following qualifying criteria consistent with the procedures established by the San Diego Housing Commission:
- (1) Low income- At least 10 percent of the pre-density bonus units in the development shall be affordable, including an allowance for utilities, to low income households at a rent that does not exceed 30 percent of 60 percent of area median income, as adjusted for assumed household size; or
  - (2) Very low income- At least 5 percent of the pre-density bonus units in the development shall be affordable, including an allowance for utilities, to very low income households at a rent that does not exceed 30 percent of 50 percent of the area median income, as adjusted for household size.
  - (3) The affordable units shall be designated units, be comparable in bedroom mix and amenities to the market-rate units in the development, and be dispersed throughout the development.
  - (4) The dwelling units shall remain available and affordable for a period of at least 55 years or longer, as may be required by other laws or covenants.
- (d) A for-sale affordable housing density bonus agreement shall utilize the following qualifying criteria consistent with the procedures established by the San Diego Housing Commission:
- (1) Moderate income- At least 10 percent of the total dwelling units in a common interest development, as defined in California Civil Code Section 4100, shall be affordable, provided that all dwelling units in the development are offered to the public for purchase.
  - (2) The initial occupant of all for-sale affordable housing units shall be a very low income, low income, or moderate income household.



- (3) Prior to, or concurrent with, the sale of each *density* bonus affordable unit, the *applicant* shall require the buyer to execute and deliver a promissory note in favor of the San Diego Housing Commissions so that the payment of any initial subsidy is ensured.
- (4) Each for-sale unit shall be occupied by the initial owner at all times until the resale of the unit.
- (5) Upon the first resale of a unit the seller shall comply with all conditions regarding the sale of a unit, as applied by the San Diego Housing Commission, and as set forth in California Government Code Section 65915(c)(2).
- (6) The affordable units shall be designated units, be comparable in bedroom mix and amenities to the market-rate units in the development, and be dispersed throughout the development.
- (e) A *density* bonus agreement for housing for senior citizens shall utilize the following qualifying criteria consistent with the procedures established by the San Diego Housing Commission.

  - (1) The *development* consists of housing for senior citizens or qualifying residents as defined under California Civil Code Section 51.3 and 51.12, where at least 35 *dwelling units* are provided; or a *mobilehome* park that limits residency based on age requirements for housing for older persons pursuant to California Civil Code Section 798.76 or 799.5.
  - (2) The *dwelling units* shall remain available for a period of at least 30 years or longer as may be required by other laws.
- (f) The *density* bonus units shall have recorded against them a Declaration of Covenants, Conditions and Restrictions in favor of the San Diego Housing Commission that shall enjoy first lien position and shall be secured by a deed of trust that may be recorded against the project or unit, as applicable, prior to construction or permanent financing.
- (g) Provision shall be made by the San Diego Housing Commission for certification of eligible tenants and purchasers, annual certification of property owner compliance, payment of a monitoring fee to the San Diego Housing Commission, as adjusted from time to time, for monitoring of affordable unit requirements, and any other terms that the San Diego Housing Commission determines are needed to implement the provisions and intent of this division and State law.
- (h) A *condominium conversion* that provides at least 33 percent of the total *dwelling units* to *low income* and *moderate income* households, or 15 percent of the total *dwelling units* to *low income* households, shall be

entitled to a *density* bonus of 25 percent or other incentives of equivalent financial value in accordance with State Density Bonus Law and this division, unless the *development* previously received a *density* bonus or other incentives.

**§143.0725 Density Bonus Provisions**

A *development* proposal requesting an affordable housing *density* bonus is subject to the following:

- (a) For senior citizen housing meeting the criteria of Section 143.0720(e), the *density* bonus shall be 20 percent.
- (b) For *development* meeting the criteria for *low income* in Section 143.0720(c)(1), the *density* bonus shall be calculated as set forth in Table 143-07A. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For *development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable floor area ratio applicable to the *development* consistent with Section 156.0309(e).
- (c) For *development* meeting the criteria for *very low income* in Section 143.0720(c)(2), the *density* bonus shall be calculated as set forth in Table 143-07B. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For *development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable floor area ratio applicable to the *development* consistent with Section 156.0309(e).
- (d) For *development* meeting the criteria for *moderate income* in Section 143.0720(d), the *density* bonus shall be calculated as set forth in Table 143-07C. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For *development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable floor area ratio applicable to the *development* consistent with Section 156.0309(e).
- (e) If the *premises* is located in two or more zones, the number of *dwelling units* permitted in the *development* is the sum of the *dwelling units* permitted in each of the zones. Within the *development*, the permitted number of *dwelling units* may be distributed without regard to the zone boundaries.
- (f) Where the *development* consists of two or more specifically identified parcels, whether contiguous or noncontiguous, the maximum number of

dwelling units permitted on each parcel is calculated based on the area of that parcel.

- (g) Where the development consists of two or more noncontiguous parcels lying within two or more community planning areas, the dwelling units reserved at levels affordable by moderate income, low income or very low income households shall be distributed among community planning areas in the same proportion as the total number of dwelling units constructed within the development.

**§143.0730 Density Bonus in Exchange for Donation of Land**

An applicant for a tentative map, parcel map, or residential development permit, may donate and transfer land to the City for development with affordable housing units, in exchange for a density bonus, in accordance with this division and pursuant to State Density Bonus Law.

**§143.0740 Development Incentives for Affordable Housing Density Bonus Projects**

The City shall process an incentive requested by an applicant, consistent with State Density Bonus Law and as set forth in this Section.

- (a) An incentive means any of the following:
- (1) A deviation to a development regulation;
  - (2) Approval of mixed use zoning in conjunction with a residential development provided that the commercial, office, or industrial uses:
    - (A) Reduce the cost of the residential development; and
    - (B) Are compatible with the proposed residential development; and
    - (C) Are compatible with existing or planned development in the area where the proposed residential development will be located.
  - (3) Any other incentive proposed by the applicant, other than those identified in Section 143.0740(c), that results in identifiable, financially sufficient, actual cost reductions.
- (b) Items not considered incentives by the City of San Diego include, but are not limited to the following:
- (1) A waiver of a required permit;
  - (2) A deviation from the requirements of the Coastal Height Limit Overlay Zone (Chapter 13, Article 2, Division 5);

- (3) A waiver of fees or dedication requirements;
  - (4) A direct financial incentive;
  - (5) A deviation from the requirements of the City of San Diego Building Regulations;
  - (6) For projects required to notice the Federal Aviation Administration, an increase in height that has not received a determination of No Hazard to Air Navigation.
- (c) An incentive requested as part of a *development* meeting the requirements of Sections 143.0720 shall be processed according to the following:
- (1) Upon an *applicant's* request, *development* that meets the applicable requirements of Sections 143.0720 and 143.0725 shall be entitled to incentives pursuant to Section 143.0740 unless the City makes a written finding of denial based upon substantial evidence, of any of the following:

    - (A) The incentive is not required in order to provide for affordable housing costs as defined in California Health and Safety Code Section 50052.5, or for rents for affordable housing *dwelling units* in accordance with Section 143.0720(c);
    - (B) The incentive would have a specific adverse impact upon public health and safety as defined in Government Code section 65589.5, the physical environment, including *environmentally sensitive lands*, 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 income* and *moderate income* households ;
    - (C) The incentive would be contrary to state or federal law. Requested incentives shall be analyzed in compliance with the California Environmental Quality Act as set forth in Chapter 12, Article 8, and no incentive shall be granted without such compliance; or
    - (D) Within the Coastal Overlay Zone, the incentive would be inconsistent with the resource protection standards of the City's Local Coastal Program or the *environmentally sensitive lands* regulations, with the exception of *density*.

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- (2) Granting an incentive shall not require a General Plan amendment, zoning change, or other discretionary approval.
- (3) The decision process for a *development* requesting an incentive shall be the same decision process that would be required if the incentive were not a part of the *development* proposal.
- (4) The *development permit* requirement for a *development* requesting an incentive shall be the same *development permit* that would be required if the incentive were not a part of the *development* proposal.
- (5) Notwithstanding Sections 143.0740(c)(3) and (4), when a *development permit* is required, the decision to deny a requested incentive shall be made by the decision maker for the *development permit*.
- (d) The number of incentives available are identified in Table 143-07A for *low income*, Table 143-07B for *very low income*, and Table 143-07C for *moderate income* households consistent with the percentage of *pre-density* bonus units identified in column one of each table.

**Table 143-07A**  
**Low Income Density Bonus**  
**Households**

<u>Percent</u> <u>Low Income units</u>	<u>Percent</u> <u>Density Bonus</u>	<u>Number of Incentives</u>
<u>10</u>	<u>20</u>	<u>1</u>
<u>11</u>	<u>21.5</u>	<u>1</u>
<u>12</u>	<u>23</u>	<u>1</u>
<u>13</u>	<u>24.5</u>	<u>1</u>
<u>14</u>	<u>26</u>	<u>1</u>
<u>15</u>	<u>27.5</u>	<u>1</u>
<u>16</u>	<u>29</u>	<u>1</u>
<u>17</u>	<u>30.5</u>	<u>1</u>
<u>18</u>	<u>32</u>	<u>1</u>
<u>19</u>	<u>33.5</u>	<u>1</u>
<u>20 - 29</u>	<u>35</u>	<u>2</u>
<u>&gt; 30</u>	<u>35</u>	<u>3</u>

**Table 143-07B**  
**Very Low Income Density Bonus**

<u>Households</u> <u>Percent Very</u> <u>Low Income Units</u>	<u>Percent</u> <u>Density Bonus</u>	<u>Number of Incentives</u>
<u>5</u>	<u>20</u>	<u>1</u>
<u>6</u>	<u>22.5</u>	<u>1</u>

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<u>7</u>	<u>25</u>	<u>1</u>
<u>8</u>	<u>27.5</u>	<u>1</u>
<u>9</u>	<u>30</u>	<u>1</u>
<u>10</u>	<u>32.5</u>	<u>2</u>
<u>11 - 14</u>	<u>35</u>	<u>2</u>
<u>&gt; 15</u>	<u>35</u>	<u>3</u>

**Table 143-07C**  
**Moderate Income Density Bonus**  
**Households**

<u>Percent Moderate</u> <u>Income Units</u>	<u>Percent</u> <u>Density Bonus</u>	<u>Number of</u> <u>Incentives</u>
<u>10</u>	<u>5</u>	<u>1</u>
<u>11</u>	<u>6</u>	<u>1</u>
<u>12</u>	<u>7</u>	<u>1</u>
<u>13</u>	<u>8</u>	<u>1</u>
<u>14</u>	<u>9</u>	<u>1</u>
<u>15</u>	<u>10</u>	<u>1</u>
<u>16</u>	<u>11</u>	<u>1</u>
<u>17</u>	<u>12</u>	<u>1</u>
<u>18</u>	<u>13</u>	<u>1</u>
<u>19</u>	<u>14</u>	<u>1</u>
<u>20</u>	<u>15</u>	<u>2</u>
<u>21</u>	<u>16</u>	<u>2</u>
<u>22</u>	<u>17</u>	<u>2</u>
<u>23</u>	<u>18</u>	<u>2</u>
<u>24</u>	<u>19</u>	<u>2</u>
<u>25</u>	<u>20</u>	<u>2</u>
<u>26</u>	<u>21</u>	<u>2</u>
<u>27</u>	<u>22</u>	<u>2</u>
<u>28</u>	<u>23</u>	<u>2</u>
<u>29</u>	<u>24</u>	<u>2</u>
<u>30</u>	<u>25</u>	<u>3</u>
<u>31</u>	<u>26</u>	<u>3</u>
<u>32</u>	<u>27</u>	<u>3</u>
<u>33</u>	<u>28</u>	<u>3</u>
<u>34</u>	<u>29</u>	<u>3</u>
<u>35</u>	<u>30</u>	<u>3</u>
<u>36</u>	<u>31</u>	<u>3</u>
<u>37</u>	<u>32</u>	<u>3</u>
<u>38</u>	<u>33</u>	<u>3</u>
<u>39</u>	<u>34</u>	<u>3</u>
<u>40</u>	<u>35</u>	<u>3</u>

(e) Child Care Center: Development that meets the criteria in Section 143.0720 and includes a child care center as defined in Section

141.0606(a)(2) as part of, or adjacent to, such *development* shall be entitled to an additional *density* bonus or incentive provided that:

- (1) The child care center remains in operation for the greater of 30 years, or the period of time established by Section 143.0720(c)(4);
- (2) The percentage of children from *low, very low, or moderate income* households attending the child care center is equal to or greater than the percentage of those same households required in the residential *development*;
- (3) The additional *density* bonus or incentive requested is either:
  - (A) An additional *density* bonus in an amount equal to the amount of square feet in the child care center up to a maximum combined *density* increase of 35 percent; or
  - (B) An additional incentive that contributes significantly to the economic feasibility of the construction of the child care center; and
- (4) The City finds, based upon substantial evidence, that the community is inadequately served by child care centers.
- (f) Parking: In addition to any other incentive, and upon the request of an *applicant* the City shall apply the following regulations:
  - (1) For a *development* that meets the criteria of Section 143.0720(d), the following vehicular parking ratios inclusive of handicapped and guest parking shall apply:
    - (A) Zero to one bedroom: one onsite parking space
    - (B) Two to three bedrooms: two onsite parking spaces
    - (C) Four and more bedrooms: two and one-half parking spaces
    - (D) Additional reductions of 0.25 spaces per *dwelling unit* shall be granted for *development* that is at least partially within a *transit area* as described in Chapter 13, Article 2, Division 10 (Transit Area Overlay Zone), or that is subject to Chapter 13, Article 2, Division 11 (Urban Village Overlay Zone).
  - (2) For a *development* that meets the criteria of Sections 142.0720(c) or (e), the following vehicular parking ratios inclusive of handicapped and guest parking shall apply:

- (A) The parking regulations set forth in Section 142.0527 shall apply for *dwelling units* that meet the criteria of Section 142.0527(a)(3). If these parking ratios are greater than the parking ratios set forth in Section 143.0740(f)(1), then the parking ratios in Section 143.0740(f)(1) shall apply.
- (B) The parking requirements for all other *dwelling units* within a *development* that do not meet the requirements of Section 142.0527(a)(3) shall be determined in accordance with Section 143.0740(f)(1).
- (3) For purposes of this division, a *development* may provide onsite parking through tandem parking or uncovered parking, but not through on-street parking or parking within a required front yard setback.