

CALIFORNIA COASTAL COMMISSION

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November 2, 2000

TO: COMMISSIONERS AND INTERESTED PERSONS

**FROM: DEBORAH LEE, SOUTH COAST DEPUTY DIRECTOR
SHERILYN SARB, DISTRICT MANAGER, SAN DIEGO
BILL PONDER, COASTAL PROGRAM ANALYST**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF CARLSBAD MELLO II
LCP SEGMENT MAJOR AMENDMENT NO. 1-2000B/C (Affordable
Housing/Basements) (For Public Hearing and Possible Commission
Action at the Meeting of November 13-17, 2000)**

SYNOPSIS

The subject amendment request revises the certified City of Carlsbad LCP Implementation Plan citywide regarding Inclusionary (affordable) housing requirements and the definition of "basements". On March 16, 2000, the City of Carlsbad's proposed Local Coastal Program Amendment (LCPA) #1-2000 was received in the San Diego District office. The amendment package contains three other LCPAs to amend the certified Carlsbad LCP Implementation Plan. At the July, 2000 meeting, a time extension on the LCP amendment package was granted by the Commission at the request of Commission staff due to agenda workload. The Steiner rezone (#1-2000A) went forward at the Commission's August 2000 hearing. The subject amendment is going forward at the November, 2000 hearing at the request of the City of Carlsbad.

SUMMARY OF STAFF RECOMMENDATION

In the first component of the LCPA, the proposed changes to Chapter 21.85 of the certified municipal code revise the inclusionary housing requirements, or the standards by which new residential development must provide housing affordable to lower income households. The revisions revise existing definitions and categories of housing and allow alternatives to construction of affordable units as a way to meet inclusionary requirements, such as in lieu fees and the rehabilitation and acquisition of existing units and construction of shelters. The proposed ordinance defines the applicability of the inclusionary requirements and describes the in-lieu fees and incentives to be offered.

The Commission reviewed and approved with suggested modifications the City's Inclusionary Housing Program in 1996. The Ordinance approved at that time authorizes the City to provide financial assistance and incentives in the form of modifications to inclusionary housing requirements. It does not authorize the City to grant discretionary density increases or other regulatory concessions. Density bonuses and incentives for affordable housing that are required pursuant to California Government Code sections 65915-65918 are governed by Chapter 21.86, which the City is not proposing to amend.

The proposed Ordinance would authorize the City Council to provide discretionary "offsets," when necessary to enable residential projects to provide a "preferable product type or affordability" beyond what is required by the Inclusionary Housing Ordinance. Offsets are defined in the ordinance as "concessions or assistance to include, but not be limited to, direct financial assistance, density increases, standards modifications or any other financial, land use, or regulatory concession which would result in an identifiable cost reduction enabling the provision of affordable housing". Section 21.85.100 addresses offsets and contains general criteria that the City Council should consider regarding the need for, and efficacy of, particular offsets. However, it does not expressly require the City Council to give any consideration to whether offsets would have any adverse effects on coastal resources protected by the City's certified LCP and the Coastal Act. Pursuant to the City's current Ordinance, any affordable housing project, including any project the receives an offset pursuant to new Section 21.85.100, must be processed pursuant to Chapter 21.06 (Q Qualified Development Overlay Zone) of the City's zoning code and must obtain approval of a site development plan pursuant to zoning code Section 21.53.120. The Commission has already certified these sections which the City is not proposing to change. Staff is recommending approval with a suggested modification that expressly references Sections 21.06.090 and 21.53.120 which require that any affordable housing project in the coastal zone to "be consistent with all certified local coastal program provisions, with the exception of density." The proposed language would clarify that any offsets granted in the coastal zone must also be consistent with all LCP provisions with the exception of the base density.

Proposed revisions to the Inclusionary Housing Ordinance will assist the City in its effort to qualify for self-certification since the revisions parallel self-certification policies. These revisions are consistent with both the current and draft Housing Elements. The City indicates the revisions make the ordinance easier to understand and simplify the process for meeting inclusionary requirements.

The second component proposes changes to the definition of "basements" and further restricts what qualifies as a basement. Currently, a basement must be at least 50% underground while the proposed change would require that a basement must be at least 75% underground. Staff is recommending approval of the proposed "basement" revision as submitted.

The appropriate resolutions and motions can be found on Page 4. The suggested modifications begin on Page 5. Findings for denial, as submitted, of the implementation plan amendment begins on Page 6. The findings for approval of the implementation plan amendment, if modified, begin on Page 14. The findings for approval of the basement implementation plan amendments, begin on Page 15.

ADDITIONAL INFORMATION

Further information on the submittal may be obtained from **Bill Ponder** at the San Diego Area Office of the Coastal Commission at 7575 Metropolitan Drive, Suite 103, San Diego, CA 92108-4402, (619) 767-2370.

PART I. OVERVIEW

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

A. STANDARD OF REVIEW

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

B. PUBLIC PARTICIPATION

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

PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS

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

A. RESOLUTION I. (Resolution to approve certification of City of Carlsbad Implementation Plan Amendment #1-2000B (Affordable Housing), as submitted)

MOTION I

I move that the Commission reject the City of Carlsbad's Implementation Plan Amendment #1-2000B as submitted.

Staff Recommendation

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

Resolution I

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

B. RESOLUTION II. (Resolution to approve certification of City of Carlsbad Implementation Plan Amendment #1-2000B [Affordable Housing], if modified)

MOTION II

I move that the Commission approve the City of Carlsbad Implementation Plan Amendment #1-2000B if it is modified in conformance with the suggestions set forth in this staff report.

Staff Recommendation

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

Resolution II

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

C. RESOLUTION III. (Resolution to approve certification of the City of Carlsbad Implementation Plan Amendment #1-2000C [Basement definition], as submitted)

MOTION III

I move that the Commission reject the City of Carlsbad Implementation Plan Amendment #1-2000C [Basement definition], as submitted.

Staff Recommendation

Staff recommends a **NO** vote and the adoption of the following resolution and findings. An affirmative vote by a majority of the Commissioners present is needed to pass the motion.

Resolution III

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

PART III. SUGGESTED MODIFICATIONS

1. The following (underlined language) shall be added as new language to the end of Section 21.85.100., addressing "Offsets to the Cost of Affordable Housing Development", as follows:

21.85.100 Offsets to the Cost of Affordable Housing Development.

The City shall consider making offsets available to Developers when necessary to enable residential projects to provide a preferable product type or affordability in excess of the requirements of this chapter. Offsets will be offered by the City to the extent that resources and programs for this purpose are available to the City and approved for such use by the City Council, and to the extent that the residential development, with the use of offsets, assists in achieving the City's housing goals. To the degree that the City makes available programs to provide offsets, Developers may make application for such programs. Evaluation of requests for offsets shall be based on the effectiveness of the offsets in achieving a preferable product type and/or affordability objectives as set forth within the Housing Element; the capability of the development team; the reasonableness of development costs and justification of subsidy needs; and the extent to which other resources are used to leverage the requested offsets. Nothing in this chapter establishes, directly or through implication, a right to receive any offsets from the City or any other party or agency to enable the Developer to meet the obligations established by this chapter. Projects are entitled to density bonuses and/or other incentives in accordance with provisions of state law, pursuant to the provisions of Chapter

21.86 of this code. Any offsets approved by the City Council and the housing affordability to be achieved by use of those offsets shall be set out within the Affordable Housing Agreement pursuant to Section 21.85.140 or at the City's discretion in a subsequent document.

Furthermore, Developers are encouraged to utilize local, state or federal assistance, when available, to meet the affordability standards set forth in Sections 21.85.030 and 21.85.040.

In the coastal zone, any offsets granted pursuant to this chapter that are not otherwise required pursuant to Chapter 21.86 shall be consistent with all certified local coastal program provisions, including sections 21.06.090 and 21.53.120, with the exception of the base density. Any density increases allowed pursuant to this chapter shall be consistent with all other local coastal program provisions.

PART IV. FINDINGS FOR REJECTION OF THE CITY OF CARLSBAD IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED

A. AMENDMENT DESCRIPTION/Affordable Housing

The first component of the proposed amendment revises the City's LCP Implementation Plan citywide regarding Inclusionary (affordable) housing requirements. The proposed changes to Chapter 21.85 of the certified municipal code revises the inclusionary housing requirements, or the standards by which new residential development must provide housing affordable to lower income households. The City indicates the revisions make the ordinance easier to understand and as such make it more user-friendly. The revisions revise existing definitions and categories of housing, allow alternatives to construction of affordable units as a way to meet inclusionary requirements such as in lieu fees and the rehabilitation and acquisition of existing units and construction of shelters. The revisions outline the City's specific affordable housing program options and provide for "incentives" and "offsets" on certain development standards in association with affordable housing projects. Incentives are defined as a "reduction in the inclusionary housing agreement granted in return for the provision of certain desired types of affordable housing or related amenities".

Regarding offsets, the revisions provide that the City may make offsets available to developers when necessary to enable residential projects to provide a preferable product type or affordability in excess of the requirements of the ordinance. Offsets are defined in the ordinance as "concessions or assistance to include, but not be limited to, direct financial assistance, density increases, standards modifications or any other financial, land use, or regulatory concession which would result in an identifiable cost reduction enabling the provision of affordable housing". The ordinance provides that offsets will be offered by the City to the extent that resources and programs for this purpose are available to the City and approved by the City Council and to the extent that the residential development with the use of offsets assists in achieving the City's housing goals.

The current ordinance does not provide for density increases or other regulatory concessions except as provided by Chapter 21.86, which governs the City's mandatory density bonus program as required by Government Code Section 65915. In LCPA #1-

96G (August, 1996), the Commission approved the Inclusionary Housing Ordinance (Chapter 21.85 of the certified Carlsbad Municipal Code) as well as the Density Bonus Ordinance (Chapter 21.86) and other ordinance revisions. The present submittal is a major rewrite of the inclusionary ordinance; no other ordinance revisions are proposed in the subject amendment relating to affordable housing.

BACKGROUND

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

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

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

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

Chapter 21.86 (Residential Density Bonus or In-Lieu Incentives) was proposed to promote housing in the City that is affordable to its low income and senior citizens and to provide density

bonuses and other incentives to developers in order to implement the goals of the City's Housing Element and Sections 65915-65917 of the California Government Code. It provided the mechanism for providing density bonuses, regulatory concessions or financial assistance to eligible affordable housing developments pursuant to the requirements of Government Code Sections 65915-65918. The ordinance, as proposed, did not provide for a project's consistency with the certified LCP.

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

Following is a description of the changes proposed in Chapter 21.85 of the City of Carlsbad Municipal Code.

Definition Additions/Revisions:

Extremely Low Income - Under the existing Housing Element Regional Share Allocation system, the City is required to provide affordable housing to four income categories. These categories include very low, low, moderate, and above moderate income. Under the new Housing Element Self-Certification Program, requirements are established for the income categories of extremely low, very low, and low income households. Because the current Inclusionary Housing Ordinance does not contain a definition for *extremely low income*, a definition has been proposed for addition. *Extremely low income* is defined by a household whose annual income is 30% of the Area Median Income (AMI) or below.

Low Income Rent - A monthly rental rate affordable to low income households is currently defined as 1/12th of 30% of 80% of AMI. When the Inclusionary Housing Ordinance was originally adopted, the City decided to set the low income rental rate at the subject level (30% of 80%) because it was the maximum acceptable to obtain credit for producing a low income affordable housing unit. With over six years of experience in implementing the Inclusionary Housing Ordinance, the City has discovered that the acceptable affordable rents (at 80%) are often equal to, and sometimes higher than, *market* rents within the community. In order to ensure that the Inclusionary Housing Ordinance is actually providing a unit which is more affordable to low income households, staff is proposing to define Low Income Rent as 1/12th of 30% of 70% of AMI. For a two bedroom unit, this would reduce the current maximum affordable rent from \$1,050 to \$919. It should be noted that the new affordability level applies to rentals only. The affordability level for a for-sale product shall remain at the original 80%.

Offsets and Incentives - The Inclusionary Housing Ordinance in effect at this time authorizes the City to provide incentives to encourage the provision of desired types of affordable housing. The term "incentives" is defined as "a reduction in the inclusionary housing requirement in return for the provision of certain preferred types of affordable housing or related amenities." For example, if a developer agrees to produce housing units which all have 3 bedrooms or more and/or are affordable to households at 50% of the AMI, they may be eligible to reduce their inclusionary housing requirement from 15% to 10%. This would be a negotiated agreement based on the needs and/or desires of the City of Carlsbad as related to affordable housing. The reason for this consideration is related to the new Housing Self-Certification Program and the fact that it allows the City to receive additional credit for certain types of housing or lower level of affordability. The proposed LCP amendment authorizes the City to provide "offsets" to encourage the provision of desired types of affordable housing and defines "offsets" as "direct financial incentives, density increases, standards modifications, and/or other financial, land use or regulatory concessions which would result in an identifiable cost reduction enabling the provision of affordable housing." See Sections 21.85.100 and 21.85.020(S). The City would pass that credit on to the developer as deemed appropriate by the City Council.

Applicability of Provisions:

Construction Requirement - Currently, all projects which propose seven or more units are required to ensure that 15 percent of the units constructed (rental or for sale) are affordable to low income households. This means that some projects have a very small requirement (e.g. 1 to 10 units). Small affordable housing projects are difficult to finance. To date, these smaller requirements have been met through the provision of second dwelling units (under the existing ordinance requirements), or through the purchase of housing credits from the Villa Loma Affordable Apartment project (as permitted). Currently, only those projects located in the southeast or southwest quadrant of the City are allowed to purchase housing credits from the Villa Loma Project. Typically, projects with a requirement of 10 affordable units or less have had their requests to purchase housing credits in Villa Loma approved by the City Council with little discussion.

There are no qualified combined projects with excess affordable units in the northern half of the City. Therefore, projects in the northeast or northwest quadrants of the City do not have an option to purchase housing credits. They must build units. Typically, these developers or property owners have chosen to construct second dwelling units.

The City has expressed concern about the use of second dwelling units to meet the requirements under the Inclusionary Housing Ordinance. The concern has been that the units are not required to remain available as a rental unit on the open market and that there are no income qualifications for the person's living within the unit. The City found that there are few other options for projects with small affordable housing requirements; the City found the requirement to actually produce units be increased to a higher level (i.e., *construction* of affordable housing units is only required when the size of the total housing project is more than 50 units). If the housing project is 50 units or less, which means that the affordable housing requirement will be 7 units or less, the

developer/property owner will have the option of paying the Housing In-Lieu Fee. The City anticipates that this will result in fewer Second Dwelling Units. However, if second dwelling units continue to be proposed to meet an Inclusionary Housing Requirement, then they will need to meet the new restrictions set forth below.

Second Dwelling Units - As mentioned above, under existing policy, a Second Dwelling Unit is not required to be rented and the tenants do not need to meet maximum income requirements. Simply stated, if the unit is rented, existing policy only requires the unit be rented at a rate affordable to lower income households (1/12th of 30% of 80% of AMI). The reason for this policy is primarily related to enforcement. It would be extremely difficult to effectively monitor the operations of individual homeowners as related to the rental of second dwelling units. Therefore, the City took the policy position that second dwelling units are affordable simply by the fact that they are small (less than 640 square feet), and they meet an affordable housing need for elderly parents, domestic help, college students, etc. As approved by the City, second dwelling units can still be permitted to satisfy the requirements of the Inclusionary Housing Ordinance but must be rented at an affordable housing cost to a low income household. This means that the tenants must be income-qualified (i.e., second dwelling units must be rented at an affordable rate to a low income qualified tenant).

Affordable Housing Standards:

Affordable Tenure - Under Housing Element Self-Certification, greater credit is earned when projects have a regulatory requirement which maximizes the term of affordability. The greatest credit is earned for projects which are restricted for 55-years or longer. Projects developed under the current ordinance state that projects will be affordable for a minimum of 30 years, or for the useful life of the project. In practice, all projects have been deemed to have a useful life of 55 years and have been so restricted. The proposed revisions to the Ordinance will change the standard to reflect the current practice of restricting units for a 55-year period.

Maximum Affordable Rent within a Mixed Income Project- As stated above, at the current rental standard for low income households (1/12th of 30% of 80%), the rent for a low income affordable unit may be equal to or greater than the market rate rent for a comparable unit. The City approved that the rental standard for a low income affordable unit be reduced to 1/12th of 30% of 70% of the AMI. The City also approved that within a mixed income rental project, the maximum affordable rent be further restricted to require that the rental rate be the lesser of 1/12th of 30% of 70% or 90% of the market rate rent for a comparable unit within the project.

Incentive Credit

As mentioned above, as an incentive to assist the City in providing more desirable types of housing, developers may receive additional credit (more than one unit) for each unit of more desirable housing, thereby reducing the total inclusionary housing requirement. For example, if a developer proposes to provide units affordable to extremely low income households, they may be eligible to receive additional credit for those units.

Alternative to Construction

Under the current housing element system, the City only receives credit for new construction of affordable units. Under the new Housing Element Self-Certification Program, a variety of housing types now receive credit. Examples include acquisition and rehabilitation of existing units, conversion of existing market rate units to affordable units, construction of special needs housing or programs (shelters, transitional housing, etc.), or contributions to a special needs housing project or program. Such alternatives to new construction may be approved to satisfy an Inclusionary Housing requirement where the proposed alternative supports specific Housing Element policies and goals, and assists the City in meeting its housing requirements. Alternatives would only be acceptable if new construction is infeasible or presents an unreasonable hardship.

Additional Considerations

The City's density bonus ordinance states that the City has the first right of refusal to purchase housing projects that were developed under the ordinance once their affordability tenure expires. The same language was approved in the proposed Inclusionary Housing Ordinance for affordable rental projects. In general, 90 days prior to the expiration of the affordability tenure, the property owner would offer the Housing and Redevelopment Director the opportunity to purchase the property. The City, or its designee, would then have 90 days to act upon the offer.

B. FINDINGS FOR REJECTION

The standard of review for LCP implementation submittals or amendments is their consistency with and adequacy to carry out the provisions of the certified LUP. The purpose of the proposed amendment is to accommodate a City-wide affordable housing program consistent with state guidelines to provide a percentage of the regional affordable housing needs. As submitted, the amendment does not conform with, and is inadequate to carry out, the provisions of Carlsbad's certified LUP.

Chapter 21.85 Inclusionary Housing

a) Purpose and Intent of the Ordinance.

The purpose and intent of the new ordinance is to provide a range of housing opportunities for all economic segments of the population. This is to be accomplished by requiring that 15 percent of all approved residential units be affordable.

b) Major Provisions of the Ordinance.

The proposed ordinance defines the applicability of the inclusionary requirements and describes the in-lieu fees and incentives to be offered. As noted, the Inclusionary Housing Ordinance in effect at this time authorizes the City to provide financial assistance and incentives in the form of modifications to inclusionary housing requirements. It does not authorize the City to grant

discretionary density increases or other regulatory concessions. Density bonuses and incentives for affordable housing that are required pursuant to California Government Code sections 65915-65918 are governed by Chapter 21.86, which the City is not proposing to amend. The new Ordinance authorizes the City Council to provide discretionary "offsets," defined to include density increases and regulatory concessions, when necessary to enable residential projects to provide a "preferable product type or affordability" beyond what is required by the Inclusionary Housing Ordinance. See Section 21.85.100. Section 21.85.100 provides general criteria for the City Council to consider when evaluating whether to offer an offset to a developer:

Evaluation of requests for offsets shall be based on the effectiveness of the offsets in achieving a preferable product type and/or affordability objectives as set forth within the Housing Element; the capability of the development team; the reasonableness of development costs and justification of subsidy needs; and the extent to which other resources are used to leverage the requested offsets. Nothing in this chapter establishes, directly or through implication, a right to receive any offsets from the City or any other party or agency to enable the Developer to meet the obligations established by this chapter.

Any affordable housing project, including any project that receives an offset pursuant to new Section 21.85.100, must be processed pursuant to Chapter 21.06 (Q Qualified Development Overlay Zone) of the City's zoning code and must obtain approval of a site development plan pursuant to zoning code Section 21.53.120. The Commission has already certified Chapters 21.06 and 21.53 of the zoning code and the City is not proposing to amend either chapter.

Sections 21.06.090 and 21.53.120 both provide that:

The site development plan for affordable housing projects may allow less restrictive development standards than specified in the underlying zone or elsewhere provided that the project is in conformity with the general plan and adopted policies and goals of the city, it would have no detrimental effect on public health, safety and welfare, and, in the coastal zone, any project processed pursuant to this chapter shall be consistent with all certified local coastal program provisions, with the exception of density. (Emphasis added.)

c) Adequacy of the Ordinance to Implement the Certified LUP Segment.

The proposed ordinance amendment modifies the existing municipal code and certified Carlsbad LCP. Currently, the six certified land use plan segments contain language that reads:

1. Policy 1 (A)-- In order to encourage and enable the development of lower income affordable housing, senior citizen housing, and second dwelling units, density increases above the maximum residential densities permitted by this plan may be permitted as follows:

Density Increases: Any request to increase residential densities above the densities permitted by the plan, for the purpose of providing lower-income affordable housing shall be evaluated relative to: (a) a proposal's compatibility with adjacent land uses; (b) the adequacy of public facilities; and (c) the project site being located in proximity to a minimum of one of the following: a freeway or major roadway, a commercial center, employment opportunities, a City park or open space, or a commuter rail or transit center. Within the coastal zone, any affordable housing project that incorporates a density increase pursuant to this policy shall be consistent with all certified local coastal program provisions, with the exception of the base density. In calculating the base density, all environmentally constrained lands identified pursuant to the coastal zoning ordinances and local coastal programs are considered to be undevelopable and shall be deducted from the total number of acres of a subject property. (Emphasis added.)

Density Bonuses: Consistent with Government Code Section 65915 and 65915.5, density bonuses and other incentives may be granted to enable the development of low income, very low income and senior citizen housing. Within the coastal zone, any housing development that incorporates a density bonus and/or other incentives pursuant to Chapter 21.86 of the Carlsbad Municipal Code, shall be consistent with all certified local coastal program provisions, with the exception of the base density. In calculating the base density, all environmentally constrained lands identified pursuant to the coastal zoning ordinances and local coastal programs are considered to be undevelopable and shall be deducted from the total number of acres of a subject property.

Second Dwelling Units: The maximum density permitted under this plan may be exceeded for the purpose of constructing second dwelling units. In the coastal zone, any second dwelling unit shall be consistent with all certified local coastal program provisions, with the exception of the base density.

2. Policy 1(B) - Affordable Housing,

In order to enable the development of a variety of housing types (i.e., lower income dwelling units, second dwelling units and senior citizen housing), which provide housing opportunities for lower income and senior citizen households, the City will implement an inclusionary housing mandate, which all residential development will be subject to, and offer a variety of economic incentives to the development community (i.e., density bonuses consistent with State Government Code Sections 65915 and 65915.5 and development standards modifications). In the coastal zone, the granting of density increases, density bonuses and incentives to assist developers with satisfaction of inclusionary housing requirements shall be consistent with Policy 1A and those ordinances implementing Policy 1A. (Emphasis added.)

The Commission finds that as currently drafted Section 21.85.100 of the new Inclusionary Housing Ordinance does not conform with, and is inadequate to carry out, the provisions of Carlsbad's certified land use policy. On its face, Section 21.85.100 grants the City Council essentially unfettered discretion to determine when to offer offsets to encourage additional

affordable housing and what form any offsets should take. Although Section 21.85.100 contains general criteria that the City Council should consider regarding the need for, and efficacy of, particular offsets, it does not expressly require the City Council to give any consideration to whether offsets would have any adverse effects on coastal resources protected by the City's certified LCP and the Coastal Act. Read by itself, Section 21.85.100 appears to authorize the City Council to grant offsets in the form of regulatory concessions that would undermine the protections the certified LCP provides to coastal resources.

The City has pointed out in discussions with Commission staff that other provisions of Carlsbad's certified zoning code, in particular Sections 21.06.090 and 21.53.120, would apply to any affordable housing project. These sections require any affordable housing project in the coastal zone to "be consistent with all certified local coastal program provisions, with the exception of density." Section 21.85.100, as drafted, however, does not expressly reference these other provisions. Moreover, if Section 21.85.100 were certified as currently worded, it would create ambiguity within the LCP regarding the authority of the City Council to grant discretionary exceptions from particular LCP requirements. Sections 21.06.090 and 21.53.120 do require consistency with all LCP provisions, except for density, but if Section 21.85.100 were certified as proposed, the question would arise whether the offsets provision, as part of the LCP, authorizes exceptions to a wide range of LCP requirements.

Because Section 21.85.100 is susceptible to an interpretation that would authorize a wide range of exceptions to the LCP, it does not conform with, and is inadequate to carry out the provisions of, the LUP. In particular, although the LUP authorizes density increases in order to encourage the development of affordable housing, it requires such density increases to be consistent with all other LCP provisions. The LUP does not authorize any regulatory concessions for affordable housing other than density increases.

The Commission finds that Section 21.85.100 must be modified in order to bring it into conformity with the LUP. The suggested modification expressly references Sections 21.06.090 and 21.53.120 and clarifies that any offsets granted in the coastal zone must be consistent with all LCP provisions with the exception of the base density. If modified, Section 21.85.100 would conform with, and be adequate to carry out, Carlsbad's certified LUP policies regarding the provision of density increases to encourage the development of affordable housing.

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

As stated previously, the City is proposing modifications to an existing ordinance to implement its affordable housing program citywide. In order to be consistent with the existing respective land use plans, a suggested modification has been added indicating that any development in the coastal zone approved pursuant to that particular ordinance must be found consistent with the certified LCP provisions.

The LUP authorizes the City to grant density increases that otherwise comply with all the provisions of the LCP. The proposed modification assures that any offsets granted under the program will not result in inconsistency with the LCP. With this suggested modification, the Commission finds the proposed implementation plan revisions are consistent with, and able to

carry out, the certified land use plan segments. All other aspects of the Implementation Plan amendment are consistent with and adequate to carry out the certified land use plans.

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

AMENDMENT DESCRIPTION/ Basements

Chapter 21.04.045

a) Purpose and Intent of the Ordinance. The purpose and intent of the current basement definition requires that more of the "basement" area be below as opposed to above existing grade. Thus a basement area is required to be more submerged than emerged relative to existing grade around the perimeter of an existing or proposed structure.

b) Major Provisions of the Ordinance. The element of the current definition that is proposed for amendment is the requirement that the above described "basement" criteria apply to fifty (50%) of the perimeter of a given structure. The other 50% may have the visual appearance of being higher than the height limit. The definition revision would increase the percentage for the perimeter to comply with the basement definition from 50% to 75%. Three sides of a four-sided structure would have to comply with the basement definition. Therefore, the proposal is to increase the fifty- percent compliance requirement to seventy-five percent (75%). The City found the long term effect of this change would result in future basement designs that are truly subterranean, and the percentage of the structure than need not comply with the "basement" definition is reduced from 50% to 25%.

c) Adequacy of Ordinance to Implement the Certified LUP. The standard of review for LCP implementation submittals or amendments are their consistency with and ability to carry out the provisions of the certified Land Use Plan (LUP). In the case of the subject LCP amendment, the City's Municipal Code serves as the Implementation Program for the Mello II segment of the LCP. The proposed "basement" definition revision does not alter any LCP land use designations or policies. As identified, the proposed amendment is more restrictive than the current definition and will promote future basement designs whereby more of an overall structure's basement area will be located below grade as opposed to above grade. The City found that overall this will help to implement the objective for ensuring basement areas are truly a subterranean feature. Coastal policies will not be impacted and there will be no impacts to coastal resources from the proposed revision. The Commission finds the proposed definition can be found consistent with the policies of the certified LCP because the change to the definition is more restrictive and will not create environmental impacts when applied to applicable projects in the future.

**VII. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENT
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. Instead, the CEQA responsibilities are assigned to the Coastal Commission and the Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

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

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"Chapter 21.85

INCLUSIONARY HOUSING

Sections:

| | |
|-----------|--|
| 21.85.010 | Purpose and Intent. |
| 21.85.020 | Definitions. |
| 21.85.030 | Applicability of Inclusionary Housing Requirement. |
| 21.85.035 | <i>New Master Plans or Specific Plans.</i> |
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| 21.85.070 | <i>Alternatives to Construction of Inclusionary Units.</i> Regulations for New Master Plans or Specific Plans. |
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| 21.85.110 | <i>In-lieu Fees.</i> Combined Inclusionary Housing Projects. |
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| 21.85.140 | <i>Affordable Housing Agreement as a Condition of Development.</i> Preliminary Project Application and Review Process. |
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| 21.85.150 | <i>Agreement/Amendments.</i> Inclusion of Affordable Housing Agreement as a Condition of Development. |
| 21.85.160 | <i>Pre-existing Approvals.</i> Inclusionary Housing Resale Agreement. |
| 21.85.170 | <i>Enforcement.</i> Eligibility Requirements. |
| 21.85.180 | <i>Savings Clause.</i> Management and Monitoring. |
| 21.85.190 | <i>Separability of Provisions.</i> Collection of Fees. |
| 21.85.200 | Separability of Provisions. |

21.85.010. Purpose and Intent.

The purpose and intent of this chapter is as follows:

(a)A. It is an objective of the City, as established by the Housing Element of the City's General Plan, to ensure that all *residential development, including* all Master Planned and Specific Planned communities and all residential subdivisions, provide a range of housing opportunities for all identifiable economic segments of the population, including households of lower and moderate income. It is also the policy of the City to:

1. Require that a minimum of fifteen (15%) percent of all approved residential ~~development units in any Master Plan, Specific Plan, or residential subdivision~~ be restricted to and affordable by to lower-income households; *subject to adjustment based on the granting of certain incentives;*

2. Require that for those developments which provide ten or more units affordable to lower-income households, at least ten (10%) percent of the lower-income units ~~should~~ *shall* have three or more bedrooms; and

3. ~~In specific cases, allow inclusionary requirements to be satisfied through the payment of an in-lieu fee as an alternative to requiring inclusionary units to be constructed on the ground; Under certain conditions, allow alternatives to onsite construction as a means of providing affordable units;~~

4. ~~Require existing, unbuilt residential subdivisions and subdivision proposals with completed applications as of the effective date of the ordinance to pay a housing impact fee to satisfy the inclusionary housing requirement~~ *In specific cases, allow inclusionary requirements to be satisfied through the payment of an in-lieu fee as an alternative to requiring inclusionary units to be constructed on the ground;*

(b)B. It is the purpose of this chapter to ensure the implementation of the City objective and policy stated in subsection (a) A.

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

21.85.020. Definitions.

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

(1)A. "Affordable housing" means housing for which the allowable housing expenses paid by a qualifying household shall not exceed a specified fraction of the gross monthly income, adjusted for household size, for the following classes of housing:

1. *Extremely low-income, rental or for-sale units: thirty (30%) percent of the gross monthly income, adjusted for household size, at thirty (30%) percent of the County median income;*

(A)2. Very low-income, ~~unassisted and assisted (state and/or federal)~~ rental and ~~unassisted and assisted (state and/or federal)~~ for-sale units: thirty (30%) percent of the gross monthly income, adjusted for household size, at fifty (50%) percent of the County median income;

(B)3. Low-income, ~~unassisted and assisted (state and/or federal)~~ for-sale units: thirty (30%) percent of the gross monthly income, adjusted for household size, at ~~seventy~~ eighty (80%) percent of the County median income;

(D)4. Low-income, ~~unassisted and assisted (state and/or federal)~~ rental units: thirty (30%) percent of the gross monthly income, adjusted for household size, at seventy (70%) percent of the County median income;

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

(3)C. "Allowable housing expense" means the total monthly or annual recurring expenses required of a household to obtain shelter. For a for-sale unit, allowable housing expenses include loan principal and interest at the time of initial purchase by the homebuyer, allowances for property and mortgage insurance, property taxes,

homeowners association dues and a reasonable allowance for utilities as defined by the Federal Regulations for the ~~Section 8 Tenant Based~~ Rental Assistance Program. For a rental unit, allowable housing expenses include rent and a reasonable utility allowance ~~for utilities as established and adopted by the City of Carlsbad Housing Authority, as well as all monthly payments made by the tenant to the lessor in connection with use and occupancy of a housing unit and land and facilities associated therewith, including any separately charged fees, utility charges, or service charges assessed by the lessor and payable by the tenant.~~

~~(4) "Assisted (state and/or federal)~~

~~(5) "unit" means a dwelling unit as defined in Section 50055 of the California Health and Safety Code.~~

~~(5)D. "Base residential units" means a number of units associated with each Master Plan or Specific Plan plan phase, or individual development within a master or Specific Plan or residential subdivision from which are calculated the lower-income inclusionary units to be provided in conjunction with that Master Plan or Specific Plan.~~

E. "Affordable housing policy team" shall consist of the Community Development Director, Planning Director, Housing and Redevelopment Director, Administrative Services Director/Finance Director, and a representative of the City Attorney's office.

~~(6)F.~~ "Combined inclusionary housing project" means separate residential development sites which are linked by a contractual relationship such that some or all of the inclusionary units which are associated with one development site are produced and operated at a separate development site or sites.

~~(7)G.~~ "Conversion" means the change of status of a dwelling unit from a purchased unit to a rental unit or vice versa.

~~(8)H.~~ "Density bonus (new residential construction)" means a minimum density increase of at least twenty-five (25%) percent over either the Growth Management Control Point of the applicable General Plan designation, as defined in Section 21.90.045 of this Title, or the otherwise maximum allowable residential density as specified by the applicable Master Plan or Specific Plan, at the time of application.

~~(9) "Existing Master Plan or Specific Plan" means any Master Plan or Specific Plan approved on or before the effective date of the ordinance codified in this chapter.~~

I. "Extremely low-income household" means those households whose gross income is equal to or less than thirty (30%) percent of the median income for San Diego County as determined by the U.S. Department of Housing and Urban Development.

~~(10)J.~~ "Financial assistance" means assistance to include, but not be limited to, the subsidization of fees, infrastructure, land costs, or construction costs, the use of redevelopment set-aside funds, or Community Development Block Grant (CDBG) funds, or the provision of other direct financial aid in the form of cash transfer payments or other monetary compensation, by the City of Carlsbad.

~~(11)K.~~ "Growth Management Control Point" shall have the same meaning as provided in chapter 21.90, Section 21.90.045 of this Title.

~~(12)L.~~ "Incentives" means a reduction in the inclusionary housing requirement granted in return for the provision of certain desired types of affordable housing or related amenities *as determined by the City Council.*

~~(13)M.~~ "Inclusionary housing project" means a new residential development or conversion of existing residential buildings which has at least fifteen (15%) percent ~~or five percent~~ of the total units reserved and made affordable to lower-income households ~~or moderate income households, respectively,~~ as required by this chapter.

~~(14)N.~~ "Inclusionary unit" means a dwelling unit that will be offered for rent or sale exclusively to and which shall be affordable to lower-income households, as required by this chapter.

~~(15)O.~~ "Income" means any monetary benefits that qualify as income in accordance with the criteria and procedures used by the City of Carlsbad Housing and Redevelopment Department for the acceptance of applications and recertifications for the ~~Section 8-Tenant Based~~ Rental Assistance Program, or its successor.

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

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

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

~~(19) "Net developable acreage (for base residential unit calculations)" means the total number of acres of a subject property minus those lands considered to be undevelopable, as listed in Section 21.53.230 of this Code. Within the coastal zone, all environmentally constrained lands identified pursuant to the coastal zoning ordinances and local coastal programs are considered to be undevelopable and shall be deducted from the total number of acres of a subject property.~~

~~(20) "New Master Plan or Specific Plan" means any Master Plan or Specific Plan approved after the effective date of this ordinance, codified in this chapter;~~

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

T. "Residential Development" means any new residential construction of rental or for-sale units or development revisions, including those with and without a Master Plan or Specific Plan, planned unit developments, Site Development Plans, mobilehome developments and conversions of apartments to condominiums, as well as dwelling units for which the cost of shelter is included in a recurring payment for expenses, whether or not an initial lump sum fee is also required.

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

~~(22) "Unassisted unit" means a dwelling unit regarding which no form of assistance has been received from a public body in the production, occupancy and use of said dwelling unit.~~

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

21.85.030. Applicability of Inclusionary Housing Requirement.

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

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

~~(1) New Master Plans or Specific Plans (approved after the effective date of this Ordinance codified in this chapter);~~

~~(2) Existing Master Plans or Specific Plans (approved on or before the effective date of this Ordinance) with or without development entitlements (i.e., tentative maps, final maps, building permits);~~

~~(3) Residential subdivisions not located within any Master Plan or Specific Plan area; and~~

~~(4) Mobile home developments; and~~

~~(5) Tentative maps for the conversion of apartments to air-space condominiums.~~

B. For any residential development or development revision of more than ~~seven~~ fifty (50) units, not less than fifteen (15%) percent of the total units approved shall be constructed and restricted both as to occupancy and affordability to lower-income households.

C. For those developments which are required to provide ten or more units affordable to lower income households, at least ten (10%) percent of the lower income units shall have three or more bedrooms.

~~(b)~~D. Notwithstanding the foregoing, this chapter shall not apply to the following:

~~1. Those residential units of a project for which building permits have been issued as of the effective date of said ordinance;~~

~~(b)(2)~~1. Existing residences which are altered, improved, restored, repaired, expanded or extended, provided that the number of units is not increased, ~~however, except that~~ this chapter shall pertain to the subdivision of land for the conversion of apartments to air-space condominiums;

2. Conversion of a mobilehome park pursuant to Section 21.37.120 of the Code;

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

~~(b)(4)~~4. Any residential unit which is accessory as defined in Section 21.04.020 of this Code, the development of which is deemed by the City to be in the public interest; or

~~(b)(5)~~ Those residential units for which, consistent with this chapter, an Affordable Housing Agreement has been approved by the City, and a deed restriction recorded restricting the units as affordable for households of lower income or moderate income.

5. Second Dwelling Units developed in accordance with Section 21.10.015 of this Code;

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

7. Those residential units which have obtained affordable housing approvals prior to the effective date of this ordinance, as set forth in Section 21.85.160 of this chapter.

21.85.035 New Master Plans or Specific Plans

New Master Plans and Specific Plans shall submit an inclusionary housing plan as follows:

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

1. The total number of base residential units of the Master Plan or Specific Plan;

2. The number of required inclusionary units for lower-income households over the entire Master Plan or Specific Plan;

3. The designated sites for the location of the inclusionary units, including but not limited to any sites for locating offsite inclusionary housing projects or combined inclusionary housing projects;

~~4. A phasing schedule for production of inclusionary units; and~~

4. A general provision stipulating that an Affordable Housing Agreement shall be made a condition of all future discretionary permits for development within the Master or Specific Plan area such as tentative maps, parcel maps, planned unit developments and Site Development Plans. The provision shall establish that all relevant terms and conditions of any Affordable housing Agreement shall be filed and recorded as a

restriction on the project as a whole and those individual lots, units or projects which are designated as inclusionary units. The Affordable Housing Agreement shall be consistent with Section 21.85.140 of this chapter.

B. The location and phasing of inclusionary dwelling units may be modified as a minor amendment to the Master Plan pursuant to Section 21.38.120 of this Title if the City Council authorizes such modifications when approving the Master Plan.

C. All existing Master Plans or Specific Plans proposed for major amendment, pursuant to Section 21.38.120 of this Code, shall incorporate into the amended Master Plan or Specific Plan document an Inclusionary housing plan, consistent with this Section of this chapter.

21.85.040. Construction of Required Inclusionary Units:

~~(a) For the following classes of residential projects or permits, for which the application is deemed complete on or after the effective date of this Ordinance, the inclusionary housing requirements for lower income households shall be satisfied through the construction of new units:~~

~~(1) Any residential project (i.e., tentative map, tentative map for the conversion of apartments to air-space condominiums, Site Development Plan, planned unit development, redevelopment permit, residential mobile home park permit or conditional use permit) of seven (7) or more dwelling units, for which the application for said project was deemed complete on or after the effective date of this ordinance. Projects of seven (7) or more dwelling units, that have been approved prior to the effective date of this ordinance and that require, as a condition of approval, the processing of subsequent Site Development Plans, shall be subject to the requirements of chapter 21.85.060 and each dwelling unit will meet the inclusionary requirements by payment of an inclusionary housing impact fee.~~

~~(2) Any residential tentative map revision, including a tentative map revision for the conversion of apartments to air space condominiums, of seven (7) or more dwelling units, for which the application is deemed complete on or after the effective date of this Ordinance.~~

~~(3) Any residential tentative map of seven (7) or more dwelling units, for which the tentative map application was deemed complete on or following the effective date of this ordinance, and is subsequently approved for extension after the effective date of this ordinance.~~

~~(4) Any residential planned unit development, Site Development Plan, conditional use permit, residential mobile home park permit or redevelopment permit for seven (7) or more dwelling units, for which the original project application was deemed complete on or following the effective date of this ordinance, and is subsequently approved for amendment after the effective date of this Ordinance.~~

~~(b) Notwithstanding, any contrary provisions of Sections 21.85.070, 21.85.080, 21.85.090, and 21.85.100, at the sole discretion of the final decision making authority of the City, the City may determine that an alternative to the construction of new inclusionary units is acceptable, which shall be required to be processed through an Affordable Housing Agreement, consistent with Section 21.85.150 of this chapter.~~

~~(c) In determining the number of inclusionary units that are required to be built pursuant to the standards of Section 21.85.070 (New Master/Specific Plans), Section 21.85.080 (Existing Master/Specific Plans), Section 21.85.090 (Residential Subdivisions), and Section 21.85.100 (Mobile Home Parks), fractional units that result from the formulas contained in these sections may be satisfied by the Developer, at the discretion of the Developer, by either of the following alternatives:~~

~~(1) The fractional inclusionary unit shall be treated as a whole inclusionary unit (i.e., any resulting fraction shall be rounded up to the next larger integer) and the inclusionary unit shall be built pursuant to the provisions of these sections; or~~

~~(2) The fractional inclusionary unit shall not be included in the number of units otherwise required to be built pursuant to the provisions of these sections, but the Developer shall pay to the City, within 90 calendar days of the hearing date granting approval of the requested discretionary permits, an amount of money equal to the fraction~~

~~times the average subsidy needed to make affordable to a lower income household, as appropriate, one newly constructed typical attached housing unit, as set forth in Section 21.85.050 (b) of this chapter.~~

21.85.040. Affordable Housing Standards

The affordable housing standards are as follows:

A. *All residential developments are subject to and must satisfy the inclusionary housing requirements of this chapter, notwithstanding a Developer's request to process a residential development under other program requirements, laws or regulations, including but not limited to Chapter 21.86 (Residential Density Bonus) of this Code.*

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

C. *The required inclusionary units shall be constructed concurrently with market-rate units unless both the final decision-making authority of the City and Developer agree within the Affordable Housing Agreement to an alternative schedule for development.*

D. *Inclusionary rental units shall remain restricted and affordable to the designated income group for 55 years. In addition to the income of a targeted group, limitations on assets may also be used as a factor in determining eligibility for rental or for-sale units. Notwithstanding anything to the contrary in this chapter, no inclusionary unit shall be rented for an amount which exceeds ninety (90%) percent of the actual rent charged for a comparable market unit in the same development, if any.*

E. *After the initial sale of the inclusionary for-sale units at a price affordable to the target income level group, inclusionary for-sale units shall remain affordable to subsequent income eligible buyers. pursuant to a resale restriction with a term of thirty (30) years or for-sale units may be sold at a market price to other than targeted households provided that the sale shall result in the recapture by the City or its designee of a financial interest in the units equal to the amount of subsidy necessary to make the unit affordable to the designated income group and a proportionate share of any appreciation. Funds recaptured by the City shall be used in assisting other eligible households with home purchases at affordable prices. To the extent possible, projects using for-sale units to satisfy inclusionary requirements shall be designed to be compatible with conventional mortgage financing programs including secondary market requirements.*

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

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

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

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

~~21.85.050. In lieu Contributions:~~

~~(a) For the following classes of residential projects or permits, for which the application was deemed complete on or after the effective date of this Ordinance, the inclusionary housing requirement for lower income households may be met by the payment to the City of an in lieu fee or other in lieu contributions:~~

~~(1) Any residential project (i.e.; tentative map, tentative map for the conversion of apartments to air-space condominiums, parcel map, planned unit development, Site Development Plan, conditional use permit;~~

~~residential mobile home park permit or redevelopment permit) of six (6) dwelling units or less, for which the application is deemed complete on or after the effective date of said Ordinance.~~

~~(2) Any residential tentative map or parcel map revision, including a tentative map revision for the conversion of apartments to air space condominiums, of six (6) dwelling units or less, for which the application is deemed complete on or after the effective date of said Ordinance.~~

~~(3) Any residential tentative map or parcel map of six (6) dwelling units or less, for which the map application was deemed complete on or after the effective date of this Ordinance, and is subsequently approved for extension after the effective date of said Ordinance.~~

~~(4) Any residential planned unit development, Site Development Plan, conditional use permit, residential mobile home park permit or redevelopment permit for six (6) dwelling units or less, for which the application is deemed complete on or after the effective date of this Ordinance, and is subsequently approved for amendment after the effective date of said Ordinance.~~

~~(5) Development of 6 (six) or fewer new mobile home pads in a mobile home park, for which the application is deemed complete on or after the effective date of said Ordinance.~~

~~(b) The in lieu fee to be paid for each market rate dwelling unit shall be 15 percent of the subsidy needed to make affordable to a lower income household one newly constructed, typical attached housing unit. This subsidy shall be based upon the City's determination of the average subsidy that would be required to make affordable typical, new two bedroom/one bath and three bedroom/two bath for sale units and two bedroom/one bath and three bedroom/two bath rental units, each with an assumed affordability tenure of at least 30 years.~~

~~(c) The dollar amount and method of payment of the in lieu fees shall be fixed by a schedule adopted, from time to time, by resolution of the City Council. Said fee shall be assessed against the market rate units/pads of a development.~~

~~(d) All in lieu fees collected hereunder shall be deposited in a Housing Trust Fund. Said fund shall be administered by the City and shall be used only for the purpose of providing funding assistance for the provision of affordable housing and reasonable costs of administration consistent with the policies and programs contained in the Housing Element of the General Plan.~~

~~(e) At the discretion of the City Council, an irrevocable dedication of land or other non monetary contribution of a value not less than the sum of the otherwise required in lieu fee may be accepted in lieu of providing the required affordable housing units or in lieu fees. The valuation of any land offered in lieu shall be determined by an appraisal made by an agent mutually agreed upon by the City and the Developer. Costs associated with the appraisal shall be borne by the Developer.~~

~~(f) Where an applicant/Developer is authorized to pay a fee in lieu of development of affordable housing units, approval of qualifying parcel maps, tentative maps, Site Development Plans, planned unit developments, residential mobile home park permits, redevelopment permits or conditional use permits listed in subsection 21.85.050(a) shall be conditioned upon a requirement to pay the in lieu fee in an amount established by resolution of the City Council in effect at the time of payment.~~

~~(g) As an alternative to paying required in lieu fee(s), inclusionary housing requirements may be satisfied either through a combined inclusionary housing project, pursuant to Section 21.85.110 of this chapter or new construction of required inclusionary units, pursuant to Section 21.85.040 of this chapter.~~

21.85. 050. Calculating the Required Number of Inclusionary Units.

Subject to adjustments for incentives, the required number of lower-income inclusionary units shall be fifteen (15%) percent of all residential units, approved by the final decision-making authority. Fractional unit requirements of .5 or greater will be rounded up to a whole unit, and requirements of less than .5 will be rounded down to zero, or a fractional proportion of the in-lieu fee may be paid.

21.85.060. Inclusionary Housing Impact Fee.

~~(a) For the following classes of residential projects, for which the application is deemed complete before the effective date of this Ordinance, the inclusionary housing requirement for lower income households may be met by the payment to the City of an inclusionary housing impact fee:~~

~~(1) Residential projects, of any size, establishing individual lots or dwelling units (i.e.: parcel maps, tentative maps, tentative maps for the conversion of apartments to air space condominiums, Site Development Plans, planned unit developments, conditional use permits, residential mobile home park permits, and redevelopment permits), for which the application was accepted and deemed complete or approved prior to the effective date of this Ordinance.~~

~~(2) Single family residential projects, (i.e.: parcel maps and tentative maps) of any size, for which all discretionary approvals, except Site Development Plans, were granted on or before the effective date of this Ordinance and Site Development Plans are subsequently required as a condition of the prior approval and are approved after the effective date of this Ordinance.~~

~~(3) Any residential tentative map or parcel map revision, including a tentative map revision for the conversion of apartments to air space condominiums, of any size, for which the application was deemed complete prior to the effective date of this ordinance and is approved on, before or after the effective date of this Ordinance.~~

~~(4) Any residential tentative map or parcel map for which the application was deemed complete before the effective date of this Ordinance, which was approved on, before or after the effective date of this Ordinance, and is subsequently approved for extension on, before, or after the effective date of this Ordinance.~~

~~(5) Any residential planned unit development, Site Development Plan, conditional use permit, residential mobile home park permit or redevelopment permit, for which the application was deemed complete before the effective date of this ordinance, which was approved on, before, or after the effective date of this Ordinance, and is subsequently approved for amendment on, before, or after the effective date of this Ordinance.~~

~~(b) Those residential projects which were approved on or before the effective date of this Ordinance, and for which a condition of approval was to pay inclusionary in lieu fees shall instead pay a housing impact fee, in accordance with this Section.~~

~~(c) The housing impact fee to be paid for each market rate dwelling unit shall be 15 percent of the subsidy needed to make affordable to a lower income household the market rate rent at a typical existing apartment for a period of 30 years. This subsidy shall be based upon the City's determination of the average subsidy that would be required to make affordable rents for typical one, two, three, and four bedroom apartments. The average subsidy shall be weighted for the actual demand for housing, by number of bedrooms, as determined by the applications for lower income affordable housing qualified and approved by the City.~~

~~(d) The dollar amount of the inclusionary housing impact fee shall be fixed by a schedule adopted, from time to time, by resolution of the City Council. Said fee shall be assessed against the market rate units of a development.~~

~~(e) The inclusionary housing impact fee shall be paid, as an individual fee, on a per market rate dwelling unit basis at the time of building permit issuance, or prior to the recordation of final map and/or issuance of certificate of compliance for conversions of existing apartments to airspace condominiums.~~

~~(f) All housing impact fees collected hereunder shall be deposited in a Housing Trust Fund. Said fund shall be administered by the City and shall be used only for the purpose of providing funding assistance for the provision of affordable housing and reasonable costs of administration consistent with the policies and programs contained in the Housing Element of the General Plan.~~

21.85.060. Incentive Credit Adjustment to the Inclusionary Requirement.

Certain types of affordable housing are relatively more desirable in satisfying the City's state mandated affordable housing requirement as well as the City's Housing Element, goals, objectives and policies, and these may change over time.

As an incentive to assist the City in providing this housing, Developers may receive additional (more than one unit) credit for each of such units provided, thereby reducing the total inclusionary housing requirement; provided that the total number of unit credits for the inclusionary housing is not less than fifteen (15%) percent of all residential units approved. A Schedule of Inclusionary Housing Incentive Credit specifying how credit may be earned shall be adopted by the City Council and made available to Developers subject to this chapter.

~~21.85.070. Regulations for New Master Plans or Specific Plans. (Approved after the effective date of this Ordinance.)~~

~~(a) This chapter requires the following:~~

~~(1) Not less than fifteen percent (15%) of all base residential units in any new Master Plan or Specific Plan shall be set aside for occupancy by and shall be affordable to lower income households.~~

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

~~(c) The inclusionary housing requirement for lower income households in a new Master Plan or new Specific Plan may not be met by the payment to the City of an in-lieu fee, other in-lieu contributions or inclusionary housing impact fee, with the exception that any resulting fractional inclusionary unit may be satisfied through the payment of a fee, as set forth in Section 21.85.040(c) of this chapter.~~

~~(d) All new Master Plans and Specific Plans are required by this chapter to provide an Inclusionary housing plan within the Master Plan or Specific Plan document. This inclusionary housing plan will include appropriate text, maps, tables, or figures to establish the basic framework for implementing the requirements of this chapter. It shall establish, as a minimum, but not be limited to, the following:~~

~~(1) The total number of base residential units of the Master Plan or Specific Plan;~~

~~(2) The number of required inclusionary units for lower income households over the entire Master Plan or Specific Plan;~~

~~(3) The designated sites for the location of the inclusionary units, including but not limited to any sites for locating off-site inclusionary housing projects or combined inclusionary housing projects;~~

~~(4) A phasing schedule for production of inclusionary units; and~~

~~(5) A general provision stipulating that an Affordable Housing Agreement shall be made a condition of all future discretionary permits for development within the Master or Specific Plan area (i.e. tentative maps, parcel maps, planned unit developments and Site Development Plans). The provision shall establish that all relevant terms and conditions of any Affordable Housing Agreement shall be filed and recorded as a deed restriction on those individual lots or units of a project which are designated for the location of inclusionary units. The Affordable Housing Agreement shall be consistent with Section 21.85.150 of this chapter.~~

~~(6) The location and phasing of inclusionary dwelling units may be modified as a minor amendment to the Master Plan pursuant to Section 21.38.120 of this Title.~~

~~(e) For the purpose of determining the number of required lower income inclusionary units in new Master Plans and Specific Plans, the following standards shall apply:~~

~~(1) The number of required lower income inclusionary units shall be obtained by the following formula:~~

$$\text{Lower Income Inclusionary units} = \text{"base"} \times 0.15.$$

~~(f) The base for a new Master Plan or Specific Plan is determined by multiplying the net developable acreage of the project site times the growth management control point(s) for the project site's applicable general plan designation(s). If in the course of reviewing a new Master Plan or Specific Plan, the final decision-making authority of the City determines that the base residential yield of the new Master Plan or Specific Plan cannot be achieved, then the base shall be equal to the maximum number of units actually approved by the final decision-making authority of the City. If a density bonus is or subsequently becomes awarded, the increased density is not included in the base when determining the number of required inclusionary units relative to the base project yield.~~

21.85.070. Alternatives to Construction of Inclusionary Units.

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

A. *The City Council may approve alternatives to the construction of new inclusionary units where the proposed alternative supports specific Housing Element policies and goals and assists the City in meeting its to the extent that the City will obtain credit towards the City's stated-mandated affordable housing requirements. Such determination shall be based on findings that new construction would be infeasible or present unreasonable hardship in light of such factors as project size, site constraints, market competition, price and product type disparity, Developer capability, and financial subsidies available. Alternatives may include, but not be limited to, acquisition and rehabilitation of affordable units, conversion of existing market units to affordable units, construction of second dwelling units and construction of special needs housing projects or programs (shelters, transitional housing, etc.).*

B. *Contribution to a special needs housing project or program may also be an acceptable alternative based upon such findings. The contribution shall amount to the calculation of amount for an in-lieu fee as set forth in Section 21.85.110.*

21.85.080. Regulations for Existing Master Plans and Specific Plans. (Approved on or before the effective date of this Ordinance.)

~~(a) This chapter requires the following:~~

~~(1) Not less than fifteen percent (15%) of all base residential units in any existing Master Plan or Specific Plan shall be set aside for occupancy by and shall be affordable to lower income households.~~

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

~~(c) All existing Master Plans or Specific Plans proposed for major amendment, pursuant to Section 21.38.120 of this Code, shall incorporate into the amended Master Plan or Specific Plan document an Inclusionary housing plan, consistent with Section 21.85.070 (d) of this chapter.~~

~~(d) Consistent with Sections 21.85.040 and 21.85.050 of this chapter, certain classes of projects or permits within an existing Master Plan or Specific Plan may satisfy their inclusionary housing requirement for lower income households through the payment to the City of an in-lieu fee or other in-lieu contributions.~~

~~(e) Consistent with Section 21.85.060 of this chapter, certain classes of projects or permits within an existing Master Plan or Specific Plan may satisfy their inclusionary housing requirement through the payment of an inclusionary housing impact fee.~~

~~(f) For the purpose of determining the number of required lower income inclusionary units in an existing Master Plan or Specific Plan, the following standards shall apply:~~

~~(1) The number of required lower income inclusionary units shall be obtained by the following formula:~~

~~Lower Income Inclusionary units = "base" x 0.15.~~

~~(g) The base for an existing Master Plan or existing Specific Plan shall be equal to the sum of the maximum number of dwelling units permitted under that existing Master Plan or Specific Plan for all phases or individual developments within the existing Master Plan or Specific Plan. If a density bonus is or subsequently becomes awarded, the increased density is not included in the base when determining the number of required inclusionary units relative to the base project yield. The base for existing Master Plan or Specific Plan phases and developments shall not be less than the maximum number of dwelling units permitted for that phase or development in the existing Master Plan or Specific Plan, except for the following specific development phases of an existing Master Plan or Specific Plan:~~

~~(1) Where building permits were issued, on or before the effective date of this Ordinance, for the construction of new dwelling units approved in a Master Plan or Specific Plan phase or individual development area, the number of dwelling units approved via said permits shall be subtracted from the base as otherwise determined for that phase or individual development.~~

~~(2) Where a tentative map or final map (which establishes individual residential lots or dwelling units) for any phase or individual development area of a Master Plan or Specific Plan was either approved, on or before the effective date of this Ordinance, or the application for said tentative map was received and deemed complete by the Planning Department, before the effective date of this ordinance, and the number of approved dwelling units is less than the maximum number of dwelling units permitted in the Master Plan or Specific Plan, then the base shall be equal to the number of dwelling units actually approved on the tentative map or final map for that phase or individual development of the Master Plan or Specific Plan.~~

~~(3) For any phase or individual development area of a Master Plan or Specific Plan for which a tentative map (which establishes individual residential lots or dwelling units) has not been deemed complete or approved, before the effective date of this ordinance, the base shall be equal to the maximum number of dwelling units permitted under that Master Plan or Specific Plan for that phase or individual development area. If in the course of reviewing a phase or individual development area of a master or Specific Plan, the final decision making authority of the City determines that the maximum number of dwelling units permitted for a phase or individual development area of a Master Plan or Specific Plan cannot be achieved, then the base shall be equal to the maximum number of units actually approved by the final decision making authority of the City.~~

~~(h) An Affordable Housing Agreement shall be made a condition of all future discretionary permits for development within the master or Specific Plan area (i.e. tentative maps, parcel maps, planned unit developments and Site Development Plans). The relevant terms and conditions of the Affordable Housing Agreement shall be filed and recorded as a deed restriction on those individual lots or units of a project which are designated for the location of inclusionary units. The Affordable Housing Agreement shall be consistent with Section 21.85.150 of this chapter.~~

21.85.080. Combined Inclusionary Housing Projects.

An affordable housing requirement may be satisfied with offsite construction as follows:

A. When it can be demonstrated by a Developer that the location of inclusionary units onsite is not feasible, and that the goals of this chapter and the City's Housing Element would be better served by allowing some or all of the inclusionary units associated with one residential project site to be produced and operated at an alternative site or sites the resulting linked inclusionary project site(s) is a combined inclusionary housing project.

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

C. All agreements between parties to form a combined inclusionary housing project shall be made a part of the Affordable Housing Agreement required for the site(s) which Affordable Housing Agreement(s) shall be approved by Council.

D. *Location of the combined inclusionary housing project is limited to sites within the same City quadrant in which the market-rate units are located, or site which are contiguous to the quadrant in which the market-rate units are proposed.* Where the required inclusionary units are located within a master or Specific Plan area, the first priority for location of the alternative site is within the same master or Specific Plan, followed by the same Local Facilities Management Zone. In the event that a Local Facilities Management Zone crosses City quadrants, the required inclusionary units shall be located within the same City quadrant in which the market rate units are located.

21.85.090. Regulations for Residential Subdivisions Not Subject to Master Plan or Specific Plan:

(a) This chapter requires the following:

(1) Not less than fifteen percent (15%) of all base residential units in any residential subdivision shall be set aside for occupancy by and shall be affordable to lower income households.

(b) Consistent with Sections 21.85.040 and 21.85.050 of this chapter, certain residential subdivisions may satisfy their inclusionary housing requirement for lower income households through the payment to the City of an in-lieu fee or other in-lieu contributions.

(c) Consistent with Section 21.85.060 of this chapter, certain residential subdivisions may satisfy their inclusionary housing requirement through the payment to the City of an inclusionary housing impact fee.

(d) For the purpose of determining the number of required lower income inclusionary units the following standards shall apply:

(1) The number of required lower income inclusionary units shall be obtained by the following formula:

$$\text{Lower Income Inclusionary units} = \text{"base"} \times 0.15.$$

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

(f) The base for a residential subdivision is determined by multiplying the net developable acreage of the project site times the growth management control point(s) for the project site's applicable general plan designation(s). If in the course of reviewing a residential subdivision project, the final decision making authority of the City determines that the base residential yield of the project site cannot be achieved, then the base shall be equal to the maximum number of units actually approved by the final decision making authority of the City. If a density bonus is or subsequently becomes awarded, the increased density is not included in the base when determining the number of required inclusionary units relative to the base project yield.

(g) Where a residential subdivision was either approved on or before the effective date of this ordinance, or the application for said residential subdivision was received and deemed complete by the Planning Department, before the effective date of this ordinance, and the number of approved dwelling units is less than the base number of dwelling units achievable, then the base shall be equal to the number of dwelling units actually approved on the residential subdivision.

(h) An Affordable Housing Agreement shall be made a condition of the discretionary permits for development of the residential subdivision (i.e. tentative maps, parcel maps, planned unit developments and Site Development Plans). The relevant terms and conditions of the Affordable Housing Agreement shall be filed and recorded as a deed restriction on those individual lots or units of a project which are designated for the location of inclusionary units. The Affordable Housing Agreement shall be consistent with Section 21.85.150 of this chapter.

21.85.090. Inclusionary Housing Impact Fee:

(a) For the following classes of residential projects, for which the application is deemed complete before the effective date of this Ordinance, the inclusionary housing requirement for lower income households may be met by the payment to the City of an inclusionary housing impact fee:

(1) Residential projects, of any size, establishing individual lots or dwelling units (i.e.: parcel maps, tentative maps, tentative maps for the conversion of apartments to air space condominiums, Site Development Plans,

~~planned unit developments, conditional use permits, residential mobile home park permits, and redevelopment permits), for which the application was accepted and deemed complete or approved prior to the effective date of this Ordinance.~~

~~(2) Single family residential projects, (i.e.: parcel maps and tentative maps) of any size, for which all discretionary approvals, except Site Development Plans, were granted on or before the effective date of this Ordinance and Site Development Plans are subsequently required as a condition of the prior approval and are approved after the effective date of this Ordinance.~~

~~(3) Any residential tentative map or parcel map revision, including a tentative map revision for the conversion of apartments to air space condominiums, of any size, for which the application was deemed complete prior to the effective date of this ordinance and is approved on, before or after the effective date of this Ordinance.~~

~~(4) Any residential tentative map or parcel map for which the application was deemed complete before the effective date of this Ordinance, which was approved on, before or after the effective date of this Ordinance, and is subsequently approved for extension on, before, or after the effective date of this Ordinance.~~

~~(5) Any residential planned unit development, Site Development Plan, conditional use permit, residential mobile home park permit or redevelopment permit, for which the application was deemed complete before the effective date of this ordinance, which was approved on, before, or after the effective date of this Ordinance, and is subsequently approved for amendment on, before, or after the effective date of this Ordinance.~~

21.85.090. Creation of Inclusionary Units Not Required.

Inclusionary units created which exceed the final requirement for a project may, subject to City Council approval in the Affordable Housing Agreement, be utilized by the Developer to satisfy other inclusionary requirements for which it is obligated or market the units to other Developers as a Combined Project subject to the requirements of Section 21.85.080.

21.85.100. Regulations for Mobile Home Parks.

~~(a) This chapter requires the following:~~

~~(1) Not less than fifteen percent (15%) of all base mobile home coaches and/or pads in any mobile home park shall be set aside for occupancy by and shall be affordable to lower income households.~~

~~(b) The development of (6) six or fewer new mobile home pads in a mobile home park may meet their inclusionary housing requirement for lower income households by the payment to the City of an in lieu fee or other in lieu contributions, consistent with Sections 21.85.040 and 21.85.050 of this chapter.~~

~~(c) For the purpose of determining the number of required lower income inclusionary units the following standards shall apply:~~

~~(1) The number of required lower income inclusionary units shall be obtained by the following formula:~~

~~Lower Income Inclusionary units = "base" x 0.15.~~

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

~~(e) The base for a mobile home development is determined by multiplying the net developable acreage of the project site times the growth management control point(s) for the project site's applicable general plan designation(s). If in the course of reviewing a mobile home project, the final decision making authority of the City determines that the base residential yield of the project site cannot be achieved, then the base shall be equal to the maximum number of units actually approved by the final decision making authority of the City. If a density bonus is or subsequently becomes awarded, the increased density is not included in the base when determining the number of required inclusionary units relative to the base project yield.~~

~~(f) An Affordable Housing Agreement shall be made a condition of the discretionary permits for development of the mobile home park (i.e. tentative maps, residential mobile home park permits, or conditional use permits). The relevant terms and conditions of the Affordable Housing Agreement shall be filed and recorded as a deed restriction on those individual pads or units of a project which are designated for the location of inclusionary units. The Affordable Housing Agreement shall be consistent with Section 21.85.150 of this chapter.~~

21.85. 100. Offsets to the Cost of Affordable Housing Development.

The City shall in good faith consider making offsets available to Developers when necessary to enable residential projects to provide a preferable product type or affordability in excess of the requirements of this chapter. Offsets will be offered by the City to the extent that resources and programs for this purpose are available to the City and approved for such use by the City Council, and to the extent that the residential development, with the use of offsets, assists in achieving the City's housing goals. To the degree that the City makes available programs to provide offsets, Developers may make application for such programs. Evaluation of requests for offsets shall be based on the effectiveness of the offsets in achieving a preferable product type and/or affordability objectives as set forth within the Housing Element; the capability of the development team; the reasonableness of development costs and justification of subsidy needs; and the extent to which other resources are used to leverage the requested offsets. Nothing in this chapter establishes, directly or through implication, a right to receive any offsets from the City or any other party or agency to enable the Developer to meet the obligations established by this chapter. Projects are entitled to density bonuses and/or other incentives in accordance with provisions of state law, pursuant to the provisions of Chapter 21.86. of this code. Any offsets approved by the City Council and the housing affordability to be achieved by use of those offsets shall be set out within the Affordable Housing Agreement pursuant to Section 21.85.140 or, at the City's discretion in a subsequent document. Furthermore, Developers are encouraged to utilize local, state or federal assistance, when available, to meet the affordability standards set forth in Sections 21.85.030 and 21.8.040.

21.85.110. Combined Inclusionary Housing Projects.

~~Circumstances may arise from time to time in which the public interest would be served by allowing some or all of the inclusionary units associated with one residential project site to be produced and operated at an alternative site or sites. Where the parties in interest to the sites and the City form an agreement to such an effect, the resulting linked project sites shall be considered to be a single combined inclusionary housing project. It is the exclusive prerogative of the final decision making authority of the City to determine whether or not it is in the public interest to authorize the residential sites to form a combined inclusionary housing project.~~

~~All agreements between parties to form a combined inclusionary housing project shall be made a part of the Housing Agreement (Section 21.85.150 of this Code) required for the sites.~~

21.85. 110. In-lieu Fees.

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

A. *For any residential development or development revision of fifty units or less, the inclusionary requirements may be satisfied through the payment to the City of an in-lieu fee or other in-lieu contribution such as land.*

B. *The in-lieu fee to be paid for each market-rate dwelling unit shall be fifteen (15%) percent of the subsidy needed to make affordable to a lower-income household one newly-constructed, typical attached-housing unit. This subsidy shall be based upon the City Council's determination of the average subsidy that would be required to make affordable typical, new two-bedroom/one bath and three-bedroom/two-bath for-sale units and rental units, each with an assumed affordability tenure of at least 55 years.*

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

D. All in-lieu fees collected hereunder shall be deposited in a Housing Trust Fund. Said fund shall be administered by the City and shall be used only for the purpose of providing funding assistance for the provision of affordable housing units or assistance programs and reasonable costs of administration consistent with the policies and programs contained in the Housing Element of the General Plan.

E. At the discretion of the City Council, where a Developer is authorized to pay a fee in-lieu of development, an irrevocable dedication of land or other non-monetary contribution of a value not less than the sum of the otherwise required in-lieu fee may be accepted as an alternative to paying the in-lieu fee if it is determined that the non-monetary contribution will be effectual in furthering the goals and policies of the Housing Element, and this chapter. The valuation of any land offered in-lieu shall be determined by an appraisal made by an agent mutually agreed upon by the City and the Developer. Costs associated with the appraisal shall be borne by the Developer.

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

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

21.85.120 Affordable housing standards.

~~—(a) Notwithstanding a Developer's request to process a residential project under chapter 21.86 (Residential Density Bonus) of this code, all residential projects are subject to and must satisfy the inclusionary housing requirements of this chapter.~~

~~—(b) The required inclusionary units shall be constructed concurrent with market rate units unless both the final decision-making authority of the city and Developer agree within the affordable housing agreement to an alternative schedule for development.~~

~~—(c) Inclusionary rental units shall remain restricted and affordable to the designated income group for the useful life of the project or housing unit, assuming good faith efforts to maintain the project or housing unit and rehabilitate it as necessary.~~

~~—(d) After the initial sale of the inclusionary for sale units to the designated income group, inclusionary for sale units shall remain affordable for their useful life; or if subsequently sold at a market price to other than targeted households, the sale shall result in the recapture of the city's financial interest in the units, for use in assisting other eligible households.~~

~~—(e) Inclusionary units should be built on site and whenever reasonably possible be distributed throughout the project site.~~

~~—(f) In certain cases where a combined inclusionary housing project is proposed, the inclusionary units may be provided on a site separate from the site of the market rate units. Construction of the inclusionary units is limited to sites within the same city quadrant in which the market rate units are located or sites which are contiguous to the quadrant in which the market rate units are proposed. Where the required inclusionary units are located within a master or Specific Plan area, the first priority for location of the alternative site is within the same master or Specific Plan, followed by the same local facilities management zone. In the event that a local facilities management zone~~

~~crosses city quadrants, the required inclusionary units shall be located within the same city quadrant in which the market rate units are located.~~

~~(g) Inclusionary units restricted for lower income households should be located on sites that are in proximity to or will provide access to employment opportunities, urban services, or major roads or other transportation and commuter rail facilities (i.e., freeways, bus lines) and that are compatible with adjacent land uses.~~

~~(h) With the approval of the final decision making authority of the city, the Developer/applicant may reduce both the size and amenities of the inclusionary units provided that all units conform to the requirements of the applicable building and housing codes. The design of the inclusionary units shall be reasonably consistent or compatible with the design of the total project development in terms of appearance, materials and finished quality.~~

~~(i) Inclusionary projects shall provide a mix of affordable dwelling units (by number of bedrooms) in response to affordable housing demand priorities of the city whenever feasible.~~

~~(j) No building permit shall be issued, nor any development approval granted for a development which does not meet the requirements of this chapter. No inclusionary unit shall be rented or sold except in accordance with this chapter.~~

~~(k) In the coastal zone, any inclusionary housing development processed pursuant to this chapter shall be consistent with all certified local coastal program provisions, with the exception of density.~~

21.85.120. Collection of fees.

All fees collected under this chapter shall be deposited into a Housing Trust Fund and shall be expended only for the affordable housing needs of lower-income households, and reasonable costs of administration consistent with the purpose of this chapter.

21.85.130 Incentives to offset the cost of affordable housing development.

~~The inclusionary housing regulations established by this chapter are a portion of the requirements which must be met by parties wishing city approvals for the construction of residential developments in the city. The city shall in good faith consider making available to the development industry incentives or financial assistance to enable residential projects to provide affordable housing to lower income households. Incentives or financial assistance will be offered by the city to the extent that resources for this purpose are available to the city and approved for such use by the city council, and to the extent that the residential projects, with the use of incentives or financial assistance, assists in achieving the city's housing goals. To the degree that the city makes available programs to provide incentives or financial assistance to the development industry, Developers may make application for such incentives or assistance. However, nothing in this chapter establishes, directly or through implication, a right for a Developer to receive any assistance or incentive from the city or any other party or agency to enable him/her to meet the obligations established by this chapter. Projects are entitled to density bonuses and/or other incentives in accordance with provisions of state law, pursuant to the provisions of Chapter 21.86 of this code. Any incentives provided by the final decision making authority of the city and the allowable housing expenses established by the final decision making authority of the city shall be set out within the affordable housing agreement pursuant to Section 21.85.150. Furthermore, Developers are encouraged to utilize local, state or federal assistance, when available, to meet the affordability standards set forth in Section 21.85.020 (1).~~

21.85.140130. Preliminary Project Application and Review Process.

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

DA. An applicant/Developer of a Residential Development not subject to a Master Plan or Specific Plan, proposing an inclusionary housing project shall have an approved Site Development Plan prior to execution of an affordable housing agreement for the project. The Developer may submit a preliminary application

to the ~~Planning-Housing and Redevelopment~~ Director prior to the submittal of any formal applications for such housing development. The preliminary application ~~shall~~ *should* include the following information:

1. A brief description of the proposal including the number of inclusionary units proposed;
2. The Zoning, General Plan designations and assessors parcel number(s) of the project site;
3. A site plan, drawn to scale, which includes: building footprints, driveway and parking layout, building elevations, existing contours and proposed grading; and
4. A letter identifying what specific ~~incentives (i.e., standards modifications, density bonus or free subsidies)~~ *offsets and/or adjustments* are being requested of the City. Justification for each ~~incentive~~ request should also be included.

bB. Within thirty days of receipt of the preliminary application by the Planning Director for projects not requesting ~~incentives of financial assistance offsets or incentive adjustments~~ or ninety days for projects requesting ~~incentives or financial incentives offsets or incentive adjustments~~ the department shall provide to an applicant/developer, a letter which identifies project issues of concern, the ~~incentives and/or financial assistance offsets and incentive adjustments~~ that the ~~planning~~ *Community Development* Director can support when making a recommendation to the final decision-making authority, and the procedures for compliance with this chapter. The applicant shall also be provided with a copy of this chapter and related policies, the pertinent sections of the California Codes to which reference is made in this chapter and all required application forms.

~~21.85.140 Preliminary project application and review process.~~

~~—(a)An applicant/Developer proposing an inclusionary housing project shall submit a preliminary application to the planning director prior to the submittal of any formal applications for such housing development. The preliminary application shall include the following information:~~

- ~~—(1)A brief description of the proposal including the number of inclusionary units proposed;~~
- ~~—(2)The zoning, general plan designations and assessors parcel number(s) of the project site;~~
- ~~—(3)A site plan, drawn to scale, which includes: building footprints, driveway and parking layout, building elevations, existing contours and proposed grading; and~~
- ~~—(4) A letter identifying what specific incentives (i.e., standards modifications, density bonus or free subsidies) are being requested of the city. Justification for each incentive request should also be included.~~

~~—(b)Within thirty days of receipt of the preliminary application by the planning director for projects not requesting incentives or financial assistance, or ninety days for projects requesting incentives or financial incentives, the department shall provide to an applicant/Developer, a letter which identifies project issues of concern, the incentives and/or financial assistance that the planning director can support when making a recommendation to the final decisionmaking authority, and the procedures for compliance with this chapter. The applicant shall also be provided with a copy of this chapter and related policies, the pertinent sections of the California Codes to which reference is made in this chapter and all required application forms.~~

21.85.150/140. Inclusion of Affordable Housing Agreement as a Condition of Development.

This chapter requires the following:

(a)A. Applications/dDevelopers, subject to this chapter, shall demonstrate compliance with this chapter by ~~the preparation and approval of executing~~ an Affordable Housing Agreement *prepared in a form prescribed by the City and submitted to the Developer for execution*. ~~A draft affordable housing agreement shall be submitted by the applicant to the city. The terms of the draft agreement~~ *Agreements which conform to the requirements of this section and which do not involve requests for offsets and/or incentives, other than those*

~~permitted by right, if any, shall be reviewed by the planning director and director of housing and redevelopment, who shall formulate a recommendation and refer the matter to the Affordable Housing Policy Team and approved by the Community Development Director or his designee for final approval. Agreements which involve requests for offsets and/or incentives, other than those permitted by right, shall require the recommendation of the Housing Commission and action by the City Council as the final decision-maker.~~ Following the approval and the signing execution by all parties the completed Affordable Housing Agreement with approved Site Development Plan shall be recorded, *against the entire development, including market-rate lots/units* and the relevant terms and conditions therefrom filed and *subsequently* recorded as a *separate* deed restriction ~~on these or regulatory agreement on the affordable project~~ individual lots or units of property which are designated for the location of affordable units. The approval and ~~recreation~~ *execution of the Affordable Housing Agreement* shall take place prior to final map approval and *shall be recorded upon final map recordation* or, where a map is not being processed, prior to the issuance of building permits for such lots ~~or~~ /units. *The Affordable Housing Agreement may require that more specific project and/or unit restrictions be recorded at a future time.* The Affordable Housing Agreement shall be binding to all future owners and successors in interest *for the term of years specified therein.*

B. An Affordable Housing Agreement, for which the inclusionary housing requirement will be satisfied through the new construction of inclusionary units, either onsite or offsite, ~~or through a combined inclusionary housing project,~~ shall establish, but not be limited to, the following:

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

2. The unit size(s) (square footage) ~~of the inclusionary units,~~ and the number of bedrooms ~~per inclusionary dwelling unit;~~

3. The proposed location of the inclusionary units;

4. ~~Tenure of affordability for inclusionary units (thirty year minimum);~~ *Amenities and services provided, such as day-care, after school programs, transportation, job training/employment services and recreation;*

5. *Level and tenure of affordability for inclusionary units;*

~~(5)6.~~ Schedule for production of dwelling units;

~~(6)7.~~ *Incentives and/or financial assistance Offsets provided by the City; if approved at the time of the execution of the Affordable Housing Agreement;*

~~(7)8.~~ Where applicable, terms and conditions establishing rules and procedures for qualifying tenants, setting rental rates, filling vacancies, and operating and maintaining units for affordable inclusionary dwelling units; *requirements for other documents to be approved by the City, such as marketing, leasing and management plans; financial assistance/loan documents; resale agreements; and monitoring and compliance plans;*

~~(8)9.~~ *Where applicable, terms and conditions governing the initial sale of forsale inclusionary units; identification of the affordable housing Developer and agreements specifying their role and relationship to the project; and*

~~(9).~~ *Standards modifications granted by the city.*

10. *Upon request of the Community Development Director, identification of all sources and uses of funds for construction and permanent financing, including proforma financial statements, and evidence of a firm commitment from the sources when available.*

C. An Affordable Housing Agreement, for which the inclusionary housing requirement will be satisfied through payment to the City of any in-lieu contributions other than fee monies, ~~(i.e., such as land dedication),~~ shall be required to include the *method of determination, schedule and value of total in-lieu contributions.*

- ~~(1) The method, schedule and value of total in lieu contributions; and~~
- ~~(2) A determination of otherwise required per market rate dwelling unit in lieu fees as established by the schedule in effect at the time of payment.~~

D. An Affordable Housing Agreement will not be required for projects which will be satisfying their inclusionary housing requirement through payment to the City of an in-lieu fee or inclusionary housing impact fee.

21.85.145 Agreement Processing Fee.

The City Council may establish by resolution, fees to be paid by the Developer at the time of preliminary project application to defray the City's cost of preparing and/or reviewing all inclusionary housing agreements.

21.85.150 Inclusion of affordable housing agreement as a condition of development.

~~(a) Applications/Developers, subject to this chapter, shall demonstrate compliance with this chapter by the preparation and approval of an affordable housing agreement. A draft affordable housing agreement shall be submitted by the applicant to the city. The terms of the draft agreement shall be reviewed by the planning director and director of housing and redevelopment, who shall formulate a recommendation and refer the matter to the community development director or his designee for final approval. Following the approval and the signing by all parties the completed affordable housing agreement shall be recorded, and the relevant terms and conditions therefrom filed and recorded as a deed restriction on those individual lots or units of property which are designated for the location of affordable units. The approval and recordation shall take place prior to final map approval or, where a map is not being processed, prior to the issuance of building permits for such lots or units. The affordable housing agreement shall be binding to all future owners and successors in interest.~~

~~(b) An affordable housing agreement, for which the inclusionary housing requirement will be satisfied through the new construction of inclusionary units, either on site, off site or through a combined inclusionary housing project, shall establish, but not be limited to, the following:~~

- ~~(1) The number of inclusionary dwelling units proposed;~~
- ~~(2) The unit size(s) (square footage) of the inclusionary units and the number of bedrooms per inclusionary dwelling unit;~~
- ~~(3) The proposed location of the inclusionary units;~~
- ~~(4) Tenure of affordability for inclusionary units (thirty year minimum);~~
- ~~(5) Schedule for production of dwelling units;~~
- ~~(6) Incentives and/or financial assistance provided by the city;~~
- ~~(7) Where applicable, terms and conditions establishing rules and procedures for qualifying tenants, setting rental rates, filling vacancies, and operating and maintaining units for affordable inclusionary dwelling units;~~
- ~~(8) Where applicable, terms and conditions governing the initial sale of forsale inclusionary units; and~~
- ~~(9) Standards modifications granted by the city.~~

~~(c) An affordable housing agreement, for which the inclusionary housing requirement will be satisfied through payment to the city of any in lieu contributions other than fee moneys (i.e., land dedication) shall be required to include the following:~~

- ~~(1) The method, schedule and value of total in lieu contributions; and~~
- ~~(2) A determination of otherwise required per market rate dwelling unit in lieu fees as established by the schedule in effect at the time of payment.~~

~~(d) An affordable housing agreement will not be required for projects which will be satisfying their inclusionary housing requirement through payment to the city of an in-lieu fee or inclusionary housing impact fee.~~

21.85.150. Agreement/Amendments.

Any amendment to an Affordable Housing Agreement shall be processed in the same manner as an original application for approval, except as authorized in Section 21.85.035(B). Amendments to Affordable Housing agreements initially approved prior to the effective date of this ordinance shall be entitled to consideration under the ordinance provisions superseded by this ordinance.

~~21.85.160. Inclusionary Housing Resale Agreement.~~

~~All buyers of for sale inclusionary units shall enter into an Inclusionary Housing Resale Agreement with the City's Housing Authority prior to purchasing the unit or property. The Resale Agreement shall specify that the title to the subject unit or property may not be transferred without prior approval of the City's Housing Authority.~~

21.85.160. Pre-existing Approvals.

Any residential developments for which a Site Development Plan for the affordable housing component of the development was approved prior to the effective date of this ordinance shall not be subject to the amended provisions of this chapter, but shall be processed pursuant to the ordinance superseded by this ordinance.

~~21.85.170. Eligibility Requirements.~~

~~Only households meeting the standards for designated lower income groups as defined in Section 21.85.020 shall be eligible to occupy inclusionary units.~~

21.85.170. Enforcement.

Enforcement provisions are as follows:

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

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

C. *Any individual who sells or rents a restricted unit in violation of the provisions of this chapter shall be required to forfeit all monetary amounts so obtained. Such amounts shall be added to the City's Housing Trust Fund.*

~~21.85.180. Management and Monitoring.~~

~~(a) Inclusionary rental units shall be managed/operated by the owner of the units or his or her agent. Each owner of inclusionary rental units shall submit an annual report to the City, at the end of the previous calendar year, identifying which units are inclusionary units, the monthly rent, vacancy information for each inclusionary rental unit for the prior year, monthly income for tenants of each inclusionary rental unit throughout the prior year, and other information as required by the City, while ensuring the privacy of the tenant.~~

21.85.180. Savings Clause.

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

effective date of this ordinance, under any chapter, ordinance, or part of an ordinance hereby otherwise repealed, all provisions of such chapter, ordinance, or part of an ordinance shall be deemed to remain in full force for the purpose of sustaining any proper suit, action, or other proceedings, with respect to any such violation, right, liability or appeal.

21.85.190. Collection of fees.

~~All fees collected under this chapter shall be deposited into a Housing Trust Fund and shall be expended only for the affordable housing needs of lower income households, and reasonable costs of administration consistent with the purpose of this chapter.~~

21.85.200190. Separability of Provisions.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the remainder of the chapter and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

ORDINANCE NO. NS- 535

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, AMENDING TITLE 21 OF THE CARLSBAD MUNICIPAL CODE AND THE LOCAL COASTAL PROGRAM BY THE REPEAL AND REENACTMENT OF CHAPTER 21.85 REGARDING AFFORDABLE HOUSING UNITS FOR LOWER-INCOME HOUSEHOLDS AND IN-LIEU FEES.

CASE NAME: INCLUSIONARY HOUSING ORDINANCE AMENDMENT

CASE NO: ZCA 99-08/LCPA 99-06

WHEREAS, Government Code Section 65584(a) requires localities to address the Regional Share housing needs for persons of all income levels in their General Plan Housing Elements; and

WHEREAS, based upon its Housing Element, the City of Carlsbad finds that Carlsbad is experiencing a lack of housing affordable to lower-income households; and

WHEREAS, new residential development which does not include nor contribute toward housing for lower income households will only serve to aggravate the current affordable housing shortage and create additional need for affordable lower income housing by reducing the supply of residential land available for affordable housing development and increasing the population and the demand for community services businesses staffed by lower wage employees; and

WHEREAS, in 1993, the mandatory Inclusionary Housing Program was implemented within the City's Housing Element as a viable program available to the City to assist it in achieving its Housing Element objectives for lower-income units; and

WHEREAS, the City's Housing Element and this chapter identify programs to provide technical, financial, and standards flexibility, offsets and incentives, to facilitate inclusionary housing development;

1 WHEREAS, on August 12, 1999, the Housing Commission held a public
2 meeting to consider a recommendation to the Planning Commission and City
3 Council to amend Title 21 of the Carlsbad Municipal Code by the repeal and
4 reenactment of Chapter 21.85 regarding affordable housing units for lower-
5 income households and in-lieu fees; and
6

7 WHEREAS, at said public meeting, upon hearing and considering all
8 testimony, if any, of all persons desiring to be heard, said Commission considered
9 all factors relating to the repeal and reenactment of Chapter 21.85, and voted to
10 recommend approval of said modifications; and

11 WHEREAS, on January 19, 2000, the Planning Commission held a public
12 meeting to consider a recommendation to the City Council to amend Title 21 of
13 the Carlsbad Municipal Code by the repeal and reenactment of Chapter 21.85
14 regarding affordable housing units for lower-income households and in-lieu fees;
15 and
16

17 WHEREAS, at said public meeting, upon hearing and considering all
18 testimony, if any, of all persons desiring to be heard, said Commission considered
19 all factors relating to the repeal and reenactment of Chapter 21.85.

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

21 SECTION 1: That Title 21 of the Carlsbad Municipal Code is amended by the
22 repeal and reenactment of Chapter 21.85 to read as follows:
23

24

25

26

27

28

"Chapter 21.85

INCLUSIONARY HOUSING

Sections:

| | |
|-----------|--|
| 21.85.010 | Purpose and Intent. |
| 21.85.020 | Definitions. |
| 21.85.030 | Inclusionary Housing Requirement. |
| 21.85.035 | New Master Plans and Specific Plans. |
| 21.85.040 | Affordable Housing Standards. |
| 21.85.050 | Calculating the Required Number of Inclusionary Units. |
| 21.85.060 | Incentive Credit Adjustment to the Inclusionary Requirement. |
| 21.85.070 | Alternatives to Construction of Inclusionary Units. |
| 21.85.080 | Combined Inclusionary Housing Projects. |
| 21.85.090 | Creation of Inclusionary Units Not Required . |
| 21.85.100 | Offsets to the Cost of Affordable Housing Development. |
| 21.85.110 | In-lieu Fees. |
| 21.85.120 | Collection of Fees. |
| 21.85.130 | Preliminary Project Application and Review Process. |
| 21.85.140 | Affordable Housing Agreement as a Condition of Development. |
| 21.85.145 | Agreement Processing Fee. |
| 21.85.150 | Agreement/Amendments. |
| 21.85.160 | Pre-existing Approvals. |
| 21.85.170 | Enforcement. |
| 21.85.180 | Savings Clause. |
| 21.85.190 | Separability of Provisions. |

21.85.010. Purpose and Intent.

The purpose and intent of this chapter is as follows:

A. It is an objective of the City, as established by the Housing Element of the City's General Plan, to ensure that all residential development, including all Master Planned and Specific Planned communities and all residential subdivisions provide a range of housing opportunities for all identifiable economic segments of the population, including households of lower and moderate income. It is also the policy of the City to:

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

2. Require that for those developments which provide ten or more units affordable to lower-income households, at least ten (10%) percent of the lower-income units shall have three or more bedrooms;

3. Under certain conditions, allow alternatives to onsite construction as a means of providing affordable units; and

4. In specific cases, allow inclusionary requirements to be satisfied through the payment of an in-lieu fee as an alternative to requiring inclusionary units to be constructed.

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

1 C. Nothing in this chapter is intended to create a mandatory duty on the part of
2 the City or its employees under the Government Tort Claims Act and no cause of action against the
3 City or its employees is created by this chapter that would not arise independently of the provisions
4 of this chapter.

5 **21.85.020. Definitions.**

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

8 A. "Affordable housing" means housing for which the allowable housing
9 expenses paid by a qualifying household shall not exceed a specified fraction of the gross
10 monthly income, adjusted for household size, for the following classes of housing:

11 1. Extremely low-income, rental or for-sale units: thirty (30%) percent
12 of the gross monthly income, adjusted for household size, at thirty (30%) percent of the County
13 median income;

14 2. Very low-income, rental and for-sale units: thirty (30%) percent of
15 the gross monthly income, adjusted for household size, at fifty (50%) percent of the County median
16 income;

17 3. Low-income, for-sale units: thirty (30%) percent of the gross
18 monthly income, adjusted for household size, at eighty (80%) percent of the County median
19 income; and

20 4. Low-income, rental units: thirty (30%) percent of the gross monthly
21 income, adjusted for household size, at seventy (70%) percent of the County median income.

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

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

D. "Base residential units" means a number of units associated with each
Master Plan or Specific Plan from which are calculated the lower-income inclusionary units to be
provided in conjunction with that Master Plan or Specific Plan or residential subdivision.

E. "Affordable housing policy team" shall consist of the Community
Development Director, Planning Director, Housing and Redevelopment Director, Administrative
Services Director/Finance Director, and a representative of the City Attorney's office.

F. "Combined inclusionary housing project" means separate residential
development sites which are linked by a contractual relationship such that some or all of the
inclusionary units which are associated with one development site are produced and operated at a
separate development site or sites.

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

1 H. "Density bonus (new residential construction)" means a minimum density
2 increase of at least twenty-five (25%) percent over either the Growth Management Control Point of
3 the applicable General Plan designation, as defined in Section 21.90.045 of this Title, or the
4 otherwise maximum allowable residential density as specified by the applicable Master Plan or
5 Specific Plan, at the time of application.

6 I. "Extremely low-income household" means those households whose gross
7 income is equal to or less than thirty-five (35%) percent of the median income for San Diego
8 County as determined by the U.S. Department of Housing and Urban Development.

9 J. "Financial assistance" means assistance to include, but not be limited to, the
10 subsidization of fees, infrastructure, land costs, or construction costs, the use of redevelopment set-
11 aside funds, Community Development Block Grant (CDBG) funds, or the provision of other direct
12 financial aid in the form of cash transfer payments or other monetary compensation, by the City of
13 Carlsbad.

14 K. "Growth Management Control Point" shall have the same meaning as
15 provided in Chapter 21.90, Section 21.90.045 of this Title.

16 L. "Incentives" means a reduction in the inclusionary housing requirement
17 granted in return for the provision of certain desired types of affordable housing or related
18 amenities as determined by the City Council.

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

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

25 O. "Income" means any monetary benefits that qualify as income in accordance
26 with the criteria and procedures used by the City of Carlsbad Housing and Redevelopment
27 Department for the acceptance of applications and recertifications for the Tenant Based Rental
28 Assistance Program, or its successor.

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

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

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

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

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

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

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

7 **21.85.030. Inclusionary Housing Requirement.**

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

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

12 B. For any residential development or development revision of more than fifty
13 (50) units, not less than fifteen (15%) percent of the total units approved shall be constructed and
14 restricted both as to occupancy and affordability to lower-income households.

15 C. For those developments which are required to provide ten or more units
16 affordable to lower income households, at least ten (10%) percent of the lower income units shall
17 have three or more bedrooms.

18 D. Notwithstanding the foregoing, this chapter shall not apply to the following:

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

22 2. Conversion of a mobilehome park pursuant to Section 21.37.120 of
23 the Code;

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

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

5. Second Dwelling Units developed in accordance with Section
21.10.015 of this Code;

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

7. Those residential units which have obtained affordable housing
approvals prior to the effective date of this ordinance, as set forth in Section 21.85.160 of this
chapter.

23 **21.85.035 New Master Plans or Specific Plans**

24 New Master Plans and Specific Plans shall submit an inclusionary housing plan as follows:

25 A. All Master Plans and Specific Plans approved on or after the effective date
26 of this Ordinance are required by this Chapter to provide an inclusionary housing plan within the
27 Master Plan or Specific Plan document. This inclusionary housing plan will include appropriate
28 text, maps, tables, or figures to establish the basic framework for implementing the requirements of
this chapter. It shall establish, as a minimum, but not be limited to, the following:

1. The total number of base residential units of the Master Plan or
Specific Plan;

2. The number of required inclusionary units for lower-income
households over the entire Master Plan or Specific Plan;

1 3. The designated sites for the location of the inclusionary units,
2 including but not limited to any sites for locating offsite inclusionary housing projects or combined
inclusionary housing projects;

3 4. A general provision stipulating that an Affordable Housing
4 Agreement shall be made a condition of all future discretionary permits for development within the
Master or Specific Plan area such as tentative maps, parcel maps, planned unit developments and
5 Site Development Plans. The provision shall establish that all relevant terms and conditions of any
Affordable housing Agreement shall be filed and recorded as a restriction on the project as a whole
6 and those individual lots, units or projects which are designated as inclusionary units. The
Affordable Housing Agreement shall be consistent with Section 21.85.140 of this chapter.

7 B. The location and phasing of inclusionary dwelling units may be modified as
a minor amendment to the Master Plan pursuant to Section 21.38.120 of this Title if the City
8 Council authorizes such modifications when approving the Master Plan.

9 C. All existing Master Plans or Specific Plans proposed for major amendment,
pursuant to Section 21.38.120 of this Code, shall incorporate into the amended Master Plan or
Specific Plan document an inclusionary housing plan, consistent with this Section of this chapter.

10 **21.85.040. Affordable Housing Standards.**

11 The affordable housing standards are as follows:

12 A. All residential developments are subject to and must satisfy the inclusionary
housing requirements of this chapter, notwithstanding a Developer's request to process a residential
13 development under other program requirements, laws or regulations, including but not limited to
Chapter 21.86 (Residential Density Bonus) of this Code.

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

15 C. The required inclusionary units shall be constructed concurrently with
market-rate units unless both the final decision-making authority of the City and Developer agree
16 within the Affordable Housing Agreement to an alternative schedule for development.

17 D. Inclusionary rental units shall remain restricted and affordable to the
designated income group for 55 years. In addition to the income of a targeted group, limitations on
18 assets may also be used as a factor in determining eligibility for rental or for sale units.
Notwithstanding anything to the contrary in this Chapter, no inclusionary unit shall be rented for an
19 amount which exceeds ninety (90%) percent of the actual rent charged for a comparable market unit
in the same development, if any.

20 E. After the initial sale of the inclusionary for-sale units at a price affordable to
the target income level group, inclusionary for-sale units shall remain affordable to subsequent
21 income eligible buyers pursuant to a resale restriction with a term of thirty (30) years or for-sale
units may be sold at a market price to other than targeted households provided that the sale shall
22 result in the recapture by the City or its designee of a financial interest in the units equal to the
amount of subsidy necessary to make the unit affordable to the designated income group and a
23 proportionate share of any appreciation. Funds recaptured by the City shall be used in assisting
other eligible households with home purchases at affordable prices. To the extent possible, projects
24 using for-sale units to satisfy inclusionary requirements shall be designed to be compatible with
conventional mortgage financing programs including secondary market requirements.

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

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

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

2 I. No building permit shall be issued, nor any development approval granted
3 for a development which does not meet the requirements of this chapter. No inclusionary unit shall
be rented or sold except in accordance with this chapter.

4 **21.85.050. Calculating the Required Number of Inclusionary Units.**

5 Subject to adjustments for incentives, the required number of lower-income inclusionary
units shall be fifteen (15%) percent of all residential units, approved by the final decision-making
6 authority. Fractional unit requirements of .5 or greater will be rounded up to a whole unit, or a
fractional proportion of the in-lieu fee may be paid.

7 **21.85.060. Incentive Credit Adjustment to the Inclusionary Requirement.**

8 Certain types of affordable housing are relatively more desirable in satisfying the City's
9 state-mandated affordable housing requirement as well as the City's Housing Element goals,
objectives and policies, and these may change over time.

10 As an incentive to assist the City in providing this housing, Developers may receive
additional (more than one unit) credit for each of such units provided, thereby reducing the total
11 inclusionary housing requirement is not less than fifteen (15%) percent of all residential units
approved. A Schedule of Inclusionary Housing Incentive Credit specifying how credit may be
12 earned shall be adopted by the City Council and made available to Developers subject to this
chapter.

13 **21.85.070. Alternatives to Construction of Inclusionary Units.**

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

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

21 B. Contribution to a special needs housing project or program may also be an
acceptable alternative based upon such findings. The requisite contribution shall be calculated in
22 the same manner as an in-lieu fee per Section 21.85.110.

23 **21.85.080. Combined Inclusionary Housing Projects.**

24 An affordable housing requirement may be satisfied with offsite construction as follows:

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

27 B. It is at the sole discretion of the City Council to authorize the residential
site(s) which form a combined inclusionary housing project. Such decision shall be based on
findings that the Combined Project represents a more effective and feasible means of implementing
28 this chapter and the goals of the City's Housing Element. Factors to be weighed in this

determination include: the feasibility of the onsite option considering project size, site constraints, competition from other projects, difficulty in integrating due to significant price and product type disparity, and lack of capacity of the onsite development entity to deliver affordable housing. Also to be considered are whether the offsite option offers greater feasibility and cost effectiveness, particularly regarding potential local public assistance and the City's affordable housing financial assistance policy, location advantages such as proximity to jobs, schools, transportation, and services, diminished impact on other existing developments, capacity of the development entity to deliver the project, and satisfaction of multiple Developer obligations that would be difficult to satisfy with multiple projects.

C. All agreements between parties to form a combined inclusionary housing project shall be made a part of the Affordable Housing Agreement required for the site(s), which Affordable Housing Agreement(s) shall be approved by Council.

D. Location of the combined inclusionary housing project is limited to sites within the same City quadrant in which the market-rate units are located, or sites which are contiguous to the quadrant in which the market-rate units are proposed.

21.85.090. Creation of Inclusionary Units Not Required.

Inclusionary units created which exceed the final requirement for a project may, subject to City Council approval in the Affordable Housing Agreement, be utilized by the Developer to satisfy other inclusionary requirements for which it is obligated or market the units to other Developers as a Combined Project subject to the requirements of Section 21.85.080.

21.85.100. Offsets to the Cost of Affordable Housing Development.

The City shall consider making offsets available to Developers when necessary to enable residential projects to provide a preferable product type or affordability in excess of the requirements of this chapter. Offsets will be offered by the City to the extent that resources and programs for this purpose are available to the City and approved for such use by the City Council, and to the extent that the residential development, with the use of offsets, assists in achieving the City's housing goals. To the degree that the City makes available programs to provide offsets, Developers may make application for such programs. Evaluation of requests for offsets shall be based on the effectiveness of the offsets in achieving a preferable product type and/or affordability objectives as set forth within the Housing Element; the capability of the development team; the reasonableness of development costs and justification of subsidy needs; and the extent to which other resources are used to leverage the requested offsets. Nothing in this chapter establishes, directly or through implication, a right to receive any offsets from the City or any other party or agency to enable the Developer to meet the obligations established by this chapter. Projects are entitled to density bonuses and/or other incentives in accordance with provisions of state law, pursuant to the provisions of Chapter 21.86. of this code. Any offsets approved by the City Council and the housing affordability to be achieved by use of those offsets shall be set out within the Affordable Housing Agreement pursuant to Section 21.85.140 or, at the City's discretion in a subsequent document. Furthermore, Developers are encouraged to utilize local, state or federal assistance, when available, to meet the affordability standards set forth in Sections 21.85.030 and 21.85.040.

21.85.110. In-lieu Fees.

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

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

1 B. The in-lieu fee to be paid for each market-rate dwelling unit shall be fifteen
2 (15%) percent of the subsidy needed to make affordable to a lower-income household one newly-
3 constructed, typical attached-housing unit. This subsidy shall be based upon the City Council's
4 determination of the average subsidy that would be required to make affordable typical, new two-

5 bedroom/one bath and three-bedroom/two-bath for-sale units and rental units, each with an
6 assumed affordability tenure of at least 55 years.

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

10 D. All in-lieu fees collected hereunder shall be deposited in a Housing Trust
11 Fund. Said fund shall be administered by the City and shall be used only for the purpose of
12 providing funding assistance for the provision of affordable housing and reasonable costs of
13 administration consistent with the policies and programs contained in the Housing Element of the
14 General Plan.

15 E. At the discretion of the City Council, where a Developer is authorized to pay
16 a fee in-lieu of development, an irrevocable dedication of land or other non-monetary contribution
17 of a value not less than the sum of the otherwise required in-lieu fee may be accepted as an
18 alternative to paying the in-lieu fee if it is determined that the non-monetary contribution will be
19 effectual in furthering the goals and policies of the Housing Element and this Chapter. The
20 valuation of any land offered in-lieu shall be determined by an appraisal made by an agent mutually
21 agreed upon by the City and the Developer. Costs associated with the appraisal shall be borne by
22 the Developer.

23 F. Where a Developer is authorized to pay a fee in-lieu of development of
24 affordable housing units, any approvals shall be conditioned upon a requirement to pay the in-lieu
25 fee in an amount established by resolution of the City Council in effect at the time of payment.

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

21.85.120. Collection of fees.

All fees collected under this chapter shall be deposited into a Housing Trust Fund and shall
be expended only for the affordable housing needs of lower-income households, and reasonable
costs of administration consistent with the purpose of this chapter.

21.85.130. Preliminary Project Application and Review Process.

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

A. A Developer of a Residential Development not subject to a Master Plan or
Specific Plan, proposing an inclusionary housing project shall have an approved Site Development
Plan prior to execution of an affordable housing agreement for the project. The Developer may
submit a preliminary application to the Housing and Redevelopment Director prior to the submittal
of any formal applications for such housing development. The preliminary application should
include the following information:

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

2. The Zoning, General Plan designations and assessors parcel
number(s) of the project site;

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

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

3 B. Within thirty days of receipt of the preliminary application by the Planning
4 Director for projects not requesting offsets or incentive adjustments, or ninety days for projects
5 requesting offsets or incentive adjustments the department shall provide to an applicant, a letter
6 which identifies project issues of concern, the offsets and incentive adjustments that the
Community Development Director can support when making a recommendation to the final
decision-making authority, and the procedures for compliance with this chapter. The applicant
shall also be provided with a copy of this chapter and related policies, the pertinent sections of the
California Codes to which reference is made in this chapter and all required application forms.

7 **21.85.140. Affordable Housing Agreement as a Condition of Development.**

8 This chapter requires the following:

9 A. Developers subject to this chapter shall demonstrate compliance with this
10 chapter by executing an Affordable Housing Agreement prepared by the City and submitted to the
11 Developer for execution. Agreements which conform to the requirements of this section and which
12 do not involve requests for offsets and/or incentives, other than those permitted by right, if any,
13 shall be reviewed by the Affordable Housing Policy Team and approved by the Community
14 Development Director or his designee. Agreements which involve requests for offsets and/or
15 incentives, other than those permitted by right, shall require the recommendation of the Housing
16 Commission and action by the City Council as the final decision-maker. Following the approval
17 and execution by all parties, the Affordable Housing Agreement with approved Site Development
18 Plan shall be recorded against the entire development, including market-rate lots/units and the
relevant terms and conditions therefrom filed and subsequently recorded as a separate deed
restriction or regulatory agreement on the affordable project individual lots or units of property
which are designated for the location of affordable units. The approval and execution of the
Affordable Housing Agreement shall take place prior to final map approval and shall be recorded
upon final map recordation or, where a map is not being processed, prior to the issuance of
building permits for such lots/units. The Affordable Housing Agreement may require that more
specific project and/or unit restrictions be recorded at a future time. The Affordable Housing
Agreement shall bind all future owners and successors in interest for the term of years specified
therein.

19 B. An Affordable Housing Agreement, for which the inclusionary housing
20 requirement will be satisfied through new construction of inclusionary units, either onsite or offsite,
shall establish, but not be limited to, the following:

- 21 1. The number of inclusionary dwelling units proposed, with specific
calculations detailing the application of any incentive adjustment credit;
- 22 2. The unit square footage, and number of bedrooms;
- 23 3. The proposed location of the inclusionary units;
- 24 4. Amenities and services provided, such as daycare, after school
25 programs, transportation, job training/employment services and recreation;
- 26 5. Level and tenure of affordability for inclusionary units;
- 27 6. Schedule for production of dwelling units;
- 28 7. Offsets provided by the City; if approved at the time of the execution
of the Affordable Housing Agreement;

26 8. Where applicable, requirements for other documents to be approved
27 by the City, such as marketing, leasing and management plans; financial assistance/loan
documents; resale agreements; and monitoring and compliance plans;

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

1 C. An Affordable Housing Agreement, for which the inclusionary housing
2 requirement will be satisfied through payment to the City of any in-lieu contributions other than
3 fee monies, such as land dedication, shall include the method of determination, schedule and value
4 of total in-lieu contributions.

5 D. An Affordable Housing Agreement will not be required for projects which
6 will be satisfying their inclusionary housing requirement through payment to the City of an in-lieu
7 fee.

8 **21.85.145. Agreement Processing Fee.**

9 The City Council may establish by resolution, fees to be paid by the Developer at the time
10 of preliminary project application to defray the City's cost of preparing and/or reviewing all
11 inclusionary housing agreements.

12 **21.85.150. Agreement Amendments.**

13 Any amendment to an Affordable Housing Agreement shall be processed in the same
14 manner as an original application for approval, except as authorized in Section 21.85.035(B).
15 Amendments to Affordable Housing agreements initially approved prior to the effective date of this
16 ordinance shall be entitled to consideration under the ordinance provisions superseded by this
17 ordinance.

18 **21.85.160. Pre-existing Approvals.**

19 Any residential developments for which a Site Development Plan for the affordable housing
20 component of the development was approved prior to the effective date of this ordinance shall not
21 be subject to the amended provisions of this chapter, but shall be governed by the ordinance
22 superseded by this ordinance.

23 **21.85.170. Enforcement.**

24 Enforcement provisions are as follows:

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

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

C. Any individual who sells or rents a restricted unit in violation of the
provisions of this chapter shall be required to forfeit all monetary amounts so obtained. Such
amounts shall be added to the City's Housing Trust Fund.

23 **21.85.180. Savings Clause.**

24 All code provisions, ordinances, and parts of ordinances in conflict with the provisions of
25 this chapter are repealed. The provisions of this chapter, insofar as they are substantially the same
26 as existing code provisions relating to the same subject matter shall be construed as restatements
27 and continuations thereof and not as new enactments. With respect, however, to violations, rights
28 accrued, liabilities accrued, or appeals taken, prior to the effective date of this ordinance, under any
chapter, ordinance, or part of an ordinance hereby otherwise repealed, all provisions of such
chapter, ordinance, or part of an ordinance shall be deemed to remain in full force for the purpose of
sustaining any proper suit, action, or other proceedings, with respect to any such violation, right,
liability or appeal.

1 **21.85.190. Separability of Provisions.**

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

5 EFFECTIVE DATE: This ordinance shall be effective thirty days after its adoption, and
6 the City Clerk shall certify to the adoption of this ordinance and cause it to be published at least
7 once in a publication of general circulation in the City of Carlsbad within fifteen days after its
8 adoption. *(Notwithstanding the preceding, this ordinance shall not be effective within the City's*
9 *Coastal Zone until approved by the California Coastal Commission.)*
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Title 21 ZONING*

Chapter 21.53 USES GENERALLY

21.53.120 Affordable housing multi-family residential projects--Site development plan required.

(a) Site Development Plan Requirement. Notwithstanding anything to the contrary in this code, no building permit or other entitlement shall be issued for any multi-family residential development having more than four dwelling units or an affordable housing project of any size unless a site development plan has been approved for the project. The site development plan shall be processed pursuant to Chapter 21.06 (Q Qualified Development Overlay Zone) of this code.

A site development plan for a multi-family residential project (not affordable) shall not be required for any project processed pursuant to Chapter 21.45 of this code.

(b) Multi-family Residential and Affordable Housing Determination. The planning commission shall have the authority to approve, conditionally approve or deny site development plans for a multi-family residential project or affordable housing projects with fifty dwelling units or less. The planning commission's decision may be appealed to the city council as provided in Chapter 21.06. For projects with more than fifty units, the planning commission shall hold a public hearing and make a report and recommendation to the city council. The city council, after public hearing noticed as provided in Section 21.54.060(1), shall approve, conditionally approve or deny the site development plan.

(c) Development Standards. The development (both for multi-family residential and affordable housing) shall be subject to the development standards of the zone in which the development is located and/or any applicable specific or master plan except for affordable housing projects as expressly modified by the site development plan. The site development plan for affordable housing projects may allow less restrictive development standards than specified in the underlying zone or elsewhere provided that the project is in conformity with the general plan and adopted policies and goals of the city, it would have no detrimental effect on public health, safety and welfare, and, in the coastal zone, any project processed pursuant to this chapter shall be consistent with all certified local coastal program provisions, with the exception of density. In addition, the planning commission or the city council in approving a site development plan may impose special conditions or requirements which are more restrictive than the development standards in the underlying zone or elsewhere that include provisions for, but are not limited to the following:

- (1) Density of use;
- (2) Compatibility with surrounding properties and land uses;
- (3) Parking standards;
- (4) Setbacks, yards, active and passive open space required as part of the entitlement process, and on-site recreational facilities;
- (5) Height and bulk of buildings;
- (6) Fences and walls;
- (7) Signs;
- (8) Additional landscaping;
- (9) Grading, slopes and drainage;
- (10) Time period within which the project or any phases of the project shall be completed;
- (11) Points of ingress and egress;
- (12) Such other conditions as deemed necessary to ensure conformity with the general plan and other adopted policies, goals or objectives of the city.

(d) In addition the planning commission or city council may require that the developer provide public improvements either on or off the subject site as are needed to serve the proposed

development or to mitigate public facilities needs or impacts created by the project.

(e) No more than fifty percent of the portion of a site containing twenty-five to forty percent slopes may be utilized for calculating allowable residential density. Residential development on slopes with an inclination of twenty-five to forty percent inclusive shall be designed to minimize the amount of grading necessary to accommodate the project. For projects within the coastal zone, the grading provisions of the Carlsbad Local Coastal Program shall apply. (Ord. NS-402 § 7, 1997; Ord. 207 § 6, 1992; Ord. 9826 § 1, 1987; Ord. 9804 § 5 (part), 1986; Ord. 9767 § 1, 1985)

Title 21 ZONING*

Chapter 21.53 USES GENERALLY

21.53.230 Residential density calculations, residential development restrictions on open space and environmentally sensitive lands.

- (a) For the purposes of Titles 20 and 21 of this code, residential density shall be determined based on the number of dwelling units per developable acre of property.
- (h) The following lands are considered to be undevelopable and shall be excluded from density calculation:
- (1) Beaches;
 - (2) Permanent bodies of water;
 - (3) Floodways;
 - (4) Natural slopes with an inclination of greater than forty percent except as permitted pursuant to Section 21.95.120(B) of this code;
 - (5) Significant wetlands;
 - (6) Significant riparian or woodland habitats;
 - (7) Land subject to major power transmission easements;
 - (8) Land upon which other significant environmental features as determined by the environmental review process for a project are located;
 - (9) Railroad track beds.
- (c) No residential development shall occur on any property listed in subsection(b). Subject to the provisions of Chapters 21.33 and 21.110, the city council may permit limited development of such property if, when considering the property as a whole, the prohibition against development would constitute an unconstitutional deprivation of property. The planning commission or city council, whichever is the final decision-making body for a residential development may permit accessory facilities, including, but not limited to, recreational facilities, view areas, and vehicular parking areas, to be located in floodplains (subject to Chapter 21.110) and on land subject to major power transmission easements.
- (d) Residential development on slopes with an inclination of twenty-five to forty percent, inclusive, shall be designed to minimize the amount of grading necessary to accommodate the project. For projects within the coastal zone, the grading provisions of the Carlsbad local coastal program and Chapters 21.38 and 21.203 of the municipal code shall apply. (Ord. NS-524 § 6, 2000; Ord. NS-446 § 2, 1998; Ord. 9795 § 1, 1986)

Title 21 ZONING*Chapter 21.86 RESIDENTIAL DENSITY BONUS OR IN-LIEU INCENTIVES

21.86.010 Purpose and intent.

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

(a) It is the purpose of this chapter to provide incentives to developers for the production of housing affordable to lower-income households, moder-

ate-income households and senior citizens.

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

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

(d) Nothing in this chapter is intended to create a mandatory duty on behalf of the city or its employees under the Government Tort Claims Act and no cause of action against the city or its employees is created by this chapter that would not arise independently of the provisions of this chapter. (Ord. NS-233 § 1 (part), 1993)

Title 21 ZONING*Chapter 21.86 RESIDENTIAL DENSITY BONUS OR IN-LIEU INCENTIVES

21.86.020 Definitions.

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

- (1) "Additional incentive(s)" means any incentive(s) that is offered in addition to the twenty-five percent density bonus.
- (2) "Affordable housing (density bonus)" means housing for which the allowable housing expenses paid by a qualifying household shall not exceed a specified fraction of the gross monthly income, adjusted for household size, for the following classes of housing:
 - (A) Very low-income, rental and for-sale units: thirty percent of the gross monthly income, adjusted for household size, at fifty percent of the county median income.
 - (B) Low-income, rental units: thirty percent of the gross monthly income, adjusted for household size, at sixty percent of the county median income.
 - (C) Low-income, for-sale units: thirty percent of the gross monthly income, adjusted for household size, at seventy percent of the county median income.
 - (D) Moderate-income, for-sale units: thirty-five percent of the gross monthly income, adjusted for household size, at one hundred ten percent of the county median income.
- (3) "Allowable housing expense" means the total monthly or annual recurring expenses required of a household to obtain shelter. For a for-sale unit, allowable housing expenses include loan principal, loan interest, property and mortgage insurance, property taxes, home owners association dues and a reasonable allowance for utilities. For a rental unit, allowable housing expenses include rent, and a reasonable allowance for utilities.
- (4) "Combined density bonus housing project" means separate residential development sites which are linked by a contractual relationship such that some or all of the target dwelling units and/or density bonus dwelling units which are associated with one development site are produced and operated at an alternative development site or sites.
- (5) "Conversion" means the change of occupancy of a dwelling unit from owner-occupied to rental or vice versa.
- (6) "Density bonus (condominium conversions)" means a minimum increase of at least twenty-five percent over the number of apartments within the existing structure or structures proposed for conversion.
- (7) "Density bonus (new residential construction)" means a minimum density increase of at least twenty-five percent over either the growth management control point of the applicable general plan designation, as defined in Section 21.90.045 of this title, or the otherwise maximum allowable residential density as specified by the applicable master plan or specific plan, at the time of application.
- (8) "Density bonus dwelling units" means those residential units granted pursuant to the provisions of this chapter which are above the maximum allowable residential yield of the project site.
- (9) "Density bonus housing agreement" means a legally binding agreement between a developer and the city to ensure that the density bonus requirements of this chapter are satisfied. The agreement establishes the number of target dwelling units and density bonus dwelling units, the unit sizes, location, affordability tenure, terms and conditions of affordability and unit production schedule.
- (10) "Growth management control point" shall have the same meaning as Chapter 21.90, Section 21.90.045 of this title.
- (11) "Housing development" means a new residential development or conversion of existing

residential building(s) of five or more residential dwelling units.

(12) "In-lieu incentives" means incentives offered by the city, which are of equivalent financial value based upon the land cost per dwelling unit(s), that are offered in-lieu of the twenty-five percent of density bonus and additional incentive.

(13) "Incentives" means such regulatory concessions as stipulated in State Government Code Section 65915(h), to include, but not be limited to the reduction of site development standards or zone code requirements, approval of mixed use zoning in conjunction with the housing project, or any other regulatory incentive which would result in identifiable cost reductions to enable the provision of housing for lower-income households and qualifying residents.

(14) "Income" means any monetary benefits that is determined as income in accordance with the criteria and procedures used by the city housing and redevelopment department for the acceptance of applications and recertifications for the Section 8 Rental Assistance Program, or its successor.

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

(16) "Lower-income household" means low-income and very low-income households, whose gross income does not exceed eighty percent of the area median income.

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

(18) "Maximum allowable residential yield" means the maximum number of residential units permitted on the project site, which number of units is calculated by multiplying the net developable acreage of the project site times the growth management control point(s) for the project site's applicable residential general plan designation(s). Within the coastal zone, all environmentally constrained lands identified pursuant to the coastal zoning ordinances and local coastal programs are considered to be undevelopable and shall be deducted from the total number of acres of a subject property.

(19) "Moderate-income household" means those households whose gross income is more than eighty percent but does not exceed one hundred twenty percent of the median income for San Diego County as determined annually by the U.S. Department of Housing and Urban Development.

(20) "Partial density bonus" means a density bonus less than twenty-five percent.

(21) "Qualifying resident" means a resident as defined in Section 51.2 of the California Civil Code.

(22) "Target dwelling unit" means a dwelling unit that will be offered for rent or sale exclusively to and which shall be affordable to the designated income group or qualified (senior) resident, as required by this chapter.

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

(24) "Very low-income household" means a household earning a gross income equal to fifty percent or less of the median income for San Diego County as determined annually by the U.S. Department of Housing and Urban Development. (Ord. NS-402 § 1, 1997; Ord. NS-233 § 1 (part), 1993)

Title 21 ZONING*Chapter 21.86 RESIDENTIAL DENSITY BONUS OR IN-LIEU INCENTIVES

21.86.030 Regulations for new residential construction.

(a) The city shall grant either a density bonus and at least one additional incentive, as set forth in Section 21.86.060(c), or in-lieu incentives of equivalent financial value, as set forth in Section 21.86.060(c) to an applicant or developer of a housing development of at least five units, who agrees to construct the following:

(1) A minimum of twenty percent of the total units of the housing development as restricted and affordable to low-income households; or

(2) A minimum of ten percent of the total units of the housing development as restricted and affordable to very low income households; or

(3) A minimum of fifty percent of the total units of the housing development as restricted to qualified (senior) residents.

(b) In determining the number of density bonus dwelling units to be granted pursuant to the standards of this section, the maximum allowable residential yield for the site, shall be multiplied by 0.25. Any resulting decimal fraction shall be rounded to the next larger integer.

(c) In determining the number of target dwelling units to be reserved pursuant to the standards of this section, the maximum allowable residential yield shall be multiplied by either 0.10, 0.20 or 0.50, for very low-income households, low-income households or qualified residents, respectively. The density bonus shall not be included when determining the number of housing units which is equal to ten percent, twenty percent or fifty percent of the total units of the housing development. Any resulting decimal fraction shall be rounded to the next larger integer.

(d) In cases where a density increase of less than twenty-five percent is requested, including cases where a density increase is sought to satisfy inclusionary housing requirements, no reduction will be allowed in the number of target dwelling units required.

(e) In cases where a density increase of more than twenty-five percent is requested, the requested density increase is an additional density bonus and shall be considered an additional incentive, in accordance to Section 21.86.060(c) of this chapter. The final decisionmaking authority of the city may at its discretion grant an additional density bonus if a written finding is made by the final decisionmaking authority of the city that the additional density bonus is required in order for allowable housing expenses to be set as affordable. The city in granting an additional density bonus may require some portion of the additional density bonus to be designated as target dwelling units.

(f) In cases where the developer agrees to construct both twenty percent of the total units for low-income households and ten percent of the total units for very low-income households, the developer is entitled to only one density bonus and at least one additional incentive.

(g) A density bonus housing agreement shall be made a condition of the discretionary permits (i.e., tentative maps, parcel maps, planned unit developments, condominium permits, site development plans and redevelopment permits) for all housing developments that request a density bonus and additional incentives or in-lieu incentives. The relevant terms and conditions of the density bonus housing agreement shall be filed and recorded as a deed restriction on those individual lots or units of a project development which are designated for the location of target dwelling units. The density bonus housing agreement shall be consistent with Section 21.86.100 of this chapter. (Ord. NS-402 § 2, 1997; Ord. NS-233 § 1 (part), 1993)

Title 21 ZONING*Chapter 21.86 RESIDENTIAL DENSITY BONUS OR IN-LIEU INCENTIVES

21.86.040 Regulations for condominium conversions.

(a) The city shall grant either a density bonus or in-lieu incentives of equivalent financial value, as set forth in Section 21.86.060(c), to an applicant or developer proposing to convert apartments to condominiums, and who agrees to provide the following:

(1) A minimum of thirty-three percent of the total units of the housing development as restricted and affordable to low-income or moderate-income households; or

(2) A minimum of fifteen percent of the total units of the housing development as restricted and affordable to lower-income households.

(b) An applicant/developer proposing to convert apartments to condominiums shall be ineligible for a density bonus or in-lieu incentives under this section if the apartments proposed for conversion constitute a housing development for which a density bonus or in-lieu incentives were previously provided under this chapter.

(c) In determining the number of density bonus dwelling units to be granted pursuant to the standards of this section, the number of existing apartment units within the structure or structures proposed for conversion shall be multiplied by 0.25. Any resulting decimal fraction shall be rounded to the next larger integer.

(d) In determining the number of target dwelling units to be reserved pursuant to the standards of this section, the number of existing apartment units within the structure or structures proposed for conversion shall be multiplied by either 0.33 or 0.15, for low or moderate-income households or lower-income households, respectively. The density bonus shall not be included when determining the number of housing units which is equal to thirty-three percent or fifteen percent of the total units of the housing development. Any resulting decimal fraction shall be rounded to the next larger integer.

(e) In cases where a density increase of less than twenty-five percent is requested, no reduction will be allowed in the number of target dwelling units required.

(f) A density bonus housing agreement shall be made a condition of the discretionary permits (tentative maps, parcel maps, planned unit developments and condominium permits) for all condominium conversion proposals that request a density bonus or in-lieu incentives. The relevant terms and conditions of the density bonus housing agreement shall be filed and recorded as a deed restriction on those individual lots or units of a project development which are designated for the location of target dwelling units. The density bonus housing agreement shall be consistent with Section 21.86.100 of this chapter. (Ord. NS-233 § 1 (part), 1993)

Title 21 ZONING*Chapter 21.86 RESIDENTIAL DENSITY BONUS OR IN-LIEU INCENTIVES

21.86.050 Combined density bonus housing projects.

(a) Circumstances may arise from time to time in which the public interest would be served by allowing some or all of the density bonus and/or target dwelling units associated with one residential project site to be produced and operated at an alternative site or sites. Where the parties in interest to the sites and the city form an agreement to such an effect, the resulting linked project sites shall be considered to be a single combined density bonus housing project.

(b) It is the exclusive prerogative of the final decisionmaking authority of the city to determine whether or not it is in the public interest to authorize the residential sites to form a combined density bonus housing project.

(c) All agreements between parties to form a combined density bonus housing project shall be made a part of the density bonus housing agreement (Section 21.86.100 of this Code) required for the sites. (Ord. NS-233 § 1 (part), 1993)

Title 21 ZONING*Chapter 21.86 RESIDENTIAL DENSITY BONUS OR IN-LIEU INCENTIVES

21.86.060 Density bonus, equivalent in-lieu incentives and additional incentives.

- (a) Upon application by a developer, pursuant to Section 21.86.030, the final decisionmaking authority of the city shall grant either a density bonus and at least one additional incentive or in-lieu incentives of equivalent financial value to qualified lower-income or senior housing developments.
- (b) Upon application by a developer, pursuant to Section 21.86.040, the final decisionmaking authority of the city shall grant either a density bonus or in-lieu incentives of equivalent financial value to qualified lower-income and/or moderate-income housing developments.
- (c) Additional incentives or in-lieu incentives, as defined in Sections 21.86.020(1) and (12) respectively, may include, but are not limited to, the following:
- (1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements which exceed the minimum building standards approved by the State Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicle parking spaces that would otherwise be required;
 - (2) Approval of mixed use zoning in conjunction with the housing development and mixed use zoning will reduce the cost of developing the housing; or
 - (3) Other regulatory incentives or concessions proposed by the developer or the city which result in identifiable cost reductions;
 - (4) Partial or additional density bonus;
 - (5) Subsidized or reduced planning, plan check or permit fees; and
 - (6) Direct financial aid including, but not limited to redevelopment set-aside funding, community development block grant funding, or subsidizing infrastructure, land cost or construction costs or other incentives of equivalent financial value based upon the land costs per dwelling unit.
- (d) The value of each incentive will vary from project to project, therefore, additional incentives or in-lieu incentives shall be determined on a case by case basis.
- (e) The city shall provide at least one additional incentive, for qualified housing developments as set forth in Section 21.86.030, upon a written request by the developer unless the city makes a written finding that the additional incentive is not required in order for allowable housing expenses to be set as affordable. The applicant/owner shall be required to show that the additional incentive is economically necessary to make the units affordable as required by this chapter. The process for requesting an additional incentive and the criteria for evaluating such request is contained in Section 21.86.090 of this chapter.
- (f) It is the exclusive prerogative of the city to offer in-lieu incentives of equivalent financial value, based upon the land cost per dwelling unit, instead of a density bonus and at least one additional incentive.
- (g) Where a density bonus would cause a housing development targeted for lower-income households, moderate-income households or qualified seniors to exceed the upper end of the general plan density range for the project site, then this request shall be evaluated relative to the proposal's compatibility with adjacent land uses and its proximity to employment opportunities, urban services or major roads.
- (h) All qualified housing developments as set forth in Sections 21.86.030 and 21.86.040 shall be given priority in processing.
- (i) In the coastal zone, any housing development processed pursuant to this chapter shall be consistent with all certified local coastal program provisions, with the exception of density. (Ord. NS-402 § 3, 1997; Ord. NS-233 § 1 (part), 1993)

Title 21 ZONING*Chapter 21.86 RESIDENTIAL DENSITY BONUS OR IN-LIEU INCENTIVES**21.86.070 Density bonus housing standards.**

(a) Notwithstanding a developer's request to process a residential project pursuant to this chapter, all residential projects are subject to and must satisfy the requirements (i.e., number of required lower and/or moderate-income units, tenure of affordability, and target income groups) of Chapter 21.85 (Inclusionary Housing) of this code.

(b) Some of the provisions of this chapter may satisfy the developer's inclusionary housing obligations (i.e., fifteen percent of the base units reserved as affordable to lower-income households for a minimum thirty year tenure) consistent with Chapter 21.85 of this code, and other provisions of this chapter will not.

(c) Required target dwelling units should be constructed concurrent with market rate dwelling units unless both the final decisionmaking authority of the city and the developer/applicant agree within the density bonus housing agreement to an alternative schedule for development.

(d) Target dwelling units shall remain restricted and affordable to the designated group for a period of at least thirty years, or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program, under the following circumstances:

- (1) Both a density bonus and at least one additional incentive are granted by the city;
- (2) In-lieu incentives in the form of direct financial contributions are granted by the city; or
- (3) Any target unit which is provided through the conversion of apartments to air space condominiums.

(e) Target dwelling units shall remain restricted and affordable to the designated group for a period of at least ten years under the following circumstances:

- (1) Only a density bonus is granted and no additional incentives are granted by the city; or
- (2) In-lieu incentives other than direct financial contributions are granted by the city.

(f) Target dwelling units and density bonus dwelling units should be built on-site and, whenever reasonably possible, be distributed throughout the project site.

(g) In certain cases where a combined density bonus housing project is proposed, the target dwelling units and density bonus dwelling units may be provided on a site separate from the site of the market-rate units. Construction of the target dwelling units and density bonus dwelling units is limited to sites within the same city quadrant in which the market-rate units are located.

However, in the event that two properties abut a road, which forms a quadrant boundary, and the two properties are contiguous, except for the presence of the roads, then the target dwelling units and/or density bonus units may be provided on the other property. Where the target dwelling units are located within a master or specific plan area, the first priority for location of the alternative site is within the same master or specific plan, followed in order by the same local facilities management zone. In the event that a local facilities management zone crosses city quadrants, the target dwelling units and density bonus dwelling units shall be located within the same city quadrant in which the market-rate units are located.

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

(i) Density bonus projects shall include a mix of target dwelling units (by number of bedrooms) in response to affordable housing demand priorities of the city, whenever feasible.

(j) Density bonus projects shall comply with all applicable development standards, except those which may be modified as an additional incentive as provided herein with regard to additional

incentives. In addition, all units must conform to the requirements of the applicable building and housing codes. The design of the target dwelling units shall be reasonably consistent or compatible with the design of the total project development in terms of appearance, materials and finished quality.

(k) No building permit shall be issued, nor any development approval granted, for a development which does not meet the requirements of this chapter. No target dwelling unit shall be rented or sold except in accordance with this chapter. (Ord. NS-233 § 1 (part), 1993)

Title 21 ZONING*Chapter 21.86 RESIDENTIAL DENSITY BONUS OR IN-LIEU INCENTIVES

21.86.080 Expiration of affordability tenure.

(a) At the end of the minimum tenure for rental units in projects containing target units or for-sale target dwelling units a notice of availability of the rental project or for-sale target dwelling unit(s), the city or its designee has the first right of refusal to buy the rental or for-sale target dwelling unit(s) shall be prepared by the property owner and submitted to the housing and redevelopment director. Within ninety days of the notification of availability of the rental project or for-sale target dwelling unit(s), the city or its designee has the first right of refusal to buy the rental or for-sale target dwelling unit(s) for the purposes of providing affordable housing. Under this option, the city or its designee will make a good-faith effort to close escrow within ninety days. The sales price of the rental project or for-sale unit(s) shall be the fair-market appraised value at the time of sale, assuming continued affordability restrictions. The fair-market valuation of the rental project or for-sale target dwelling unit(s) shall be determined by an appraisal made by an agent mutually agreed upon by the city and the property owner. Costs associated with the appraisal shall be borne by the property owner.

(b) If the city or its designee fails to exercise its option of first right of refusal to purchase the rental project or for-sale target dwelling unit(s) within ninety days of notification of availability of the rental project or for-sale units, then the target units may be converted to market-rate units under the following circumstances:

(1) The management of the complex intending to convert target rental units to market-rate units shall give notice of such intent, via registered mail, to each affected tenant household and to the city clerk. The notice shall be given at least one hundred eighty days prior to the date proposed for conversion to market-rate rents; and

(2) Each affected tenant household shall be eligible to receive rental relocation assistance in an amount equal to four months rent, the assistance to be provided by the owner/management company and paid to the tenant at least sixty days prior to conversion to market-rate rents. (Ord. NS-233 § 1 (part), 1993)

Title 21 ZONING*Chapter 21.86 RESIDENTIAL DENSITY BONUS OR IN-LIEU INCENTIVES

21.86.090 Density bonus or in-lieu incentive application and review process.

(a) All residential projects requesting a density bonus, additional incentive(s) or in-lieu incentives pursuant to this chapter, shall be required to comply with the following application requirements:

(1) Application for On-Site Target Dwelling Units. Target dwelling units proposed to be developed within the same project site requiring such units shall be designated on the project plans and shall be processed under a site development plan application in addition to the otherwise required project development application(s) (i.e., tentative maps, parcel maps, planned unit developments, conditional use permits and redevelopment permits). The site development plan shall be processed pursuant to Section 21.53.120 of this code. No additional hearings or approvals shall be required, except as provided herein with regard to the provision of financial incentives. If the application involves a request to the city for direct financial incentives, then any action by the planning commission on the application shall be advisory only, and the city council shall have the authority to make the final decision on the site development plan application and any related discretionary permits.

(2) Application for Combined Density Bonus Housing Projects. Separate development application (s) (including the submittal of a site development plan) shall be processed concurrently for both sites unless the alternative site has previously received its discretionary permits. No additional applications, hearings or approvals shall be required, except as provided herein with regard to the provision of financial incentives. If the application involves a request to the city for direct financial incentives, then any action by the planning commission on the application shall be advisory only, and the city council shall have the authority to make the final decision on all of the required development permits.

(b) Preliminary Application. An applicant/developer proposing a density bonus housing project, shall submit a preliminary application prior to the submittal of any formal requests for approvals of such housing development. The preliminary application shall include the following information:

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

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

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

(4) A letter identifying what specific incentives (i.e., standards modifications, density bonus, or fee subsidies) are being requested of the city. Within thirty days of receipt of the preliminary application by the planning director for projects requesting direct financial assistance from the city, the department shall provide to an applicant/developer, a letter which identifies project issues of concern, the financial assistance that the planning director can support when making a recommendation to the final decisionmaking authority and the procedures for compliance with this chapter. The applicant shall also be provided with a copy of this chapter and related policies, the pertinent sections of the California Codes to which reference is made in this chapter and all required application forms.

(c) Submittal. The completed application(s) shall include the following information:

(1) A legal description of the total site proposed for development of the target dwelling units including a statement of present ownership and present and proposed zoning;

(2) A letter signed by the present owner stating what incentives, if any, are being requested from the city;

(3) A detailed vicinity map showing the project location and such details as the location of the nearest commercial retail, transit stop, potential employment locations, park or recreation facilities or other social or community service facilities;

(4) Site plans, designating the total number of units proposed on the site, including the number of

target dwelling units and density bonus dwelling units, and supporting plans per the application submittal requirements;

(5) In the case of a request for any incentive(s), a pro forma for the proposed project to justify the request;

(6) In the case of a condominium conversion request, a report documenting the following information for each unit proposed to be converted: the monthly income of tenants of each unit throughout the prior year, the monthly rent for each unit throughout the prior year, and vacancy information for each unit throughout the prior year.

(d) Review. The community development director and/or his/her designated staff shall evaluate the request based upon the following criteria:

(1) The density bonus housing project helps achieve the city's housing goals for lower-income, moderate-income or qualified senior households, as set forth in the housing element of the general plan;

(2) The requested incentive(s) (including, but not limited to, additional density bonuses, requests for a mixed use project, reduction in development standards, or direct or indirect financial contributions) must be necessary to make the project economically feasible;

(3) The housing project shall not result in an overall development pattern that is incompatible with other land uses in the immediate vicinity; and

(4) The density bonus housing project complies with the general plan, zoning and development policies of the city;

(5) That the conversion of apartment units to condominiums shall not result in a reduction in the affordable housing stock for lower income groups, as of most recent inventory.

(6) In cases where an applicant/developer agrees to construct a housing development with ten percent, twenty percent or fifty percent of the units restricted and affordable to very low-income, low-income or qualified households respectively, and an additional incentive is requested, the planning director and/or his staff cannot disallow the incentive(s) listed in Section 21.86.060(c) on the basis that it is materially detrimental to public health and safety. (Ord. NS-233 § 1 (part), 1993)

Title 21 ZONING*Chapter 21.86 RESIDENTIAL DENSITY BONUS OR IN-LIEU INCENTIVES

21.86.100 Inclusion of density bonus housing agreement as a condition of development.

(a) Applicants/developers, requesting a density bonus, additional incentives or in-lieu incentives pursuant to this chapter, shall demonstrate compliance with this chapter by the preparation and approval of a density bonus housing agreement. A density bonus housing agreement shall be submitted by the applicant to the city. The terms of the draft agreement shall be reviewed by the planning director and director of housing and redevelopment, who shall formulate a recommendation and refer the matter to the community development director or his/her designee for final approval. Following the approval and the signing by all parties, the completed density bonus housing agreement shall be recorded and the relevant terms and conditions therefrom filed and recorded as a deed restriction on those individual lots or units of a property which are designated for the location of target dwelling units. The approval and recordation shall take place prior to final map approval, or, where a map is not being processed, prior to issuance of building permits for such lots or units. The density bonus housing agreement shall be binding to all future owners and successors in interest.

(b) A density bonus housing agreement for new residential construction processed pursuant to this chapter shall include the following:

- (1) The number of density bonus dwelling units granted;
- (2) The number of lower-income and senior dwelling units proposed;
- (3) The unit size(s) (square footage) of target dwelling units and the number of bedrooms per target dwelling unit;
- (4) The proposed location of the lower-income and senior target dwelling units;
- (5) Tenure of restrictions for target dwelling units (of at least ten or thirty years);
- (6) Schedule for production of target dwelling units;
- (7) Incentives and/or financial assistance provided by the city;
- (8) Where applicable, tenure and conditions governing the initial sale of for-sale target units; and
- (9) Where applicable, tenure and conditions establishing rules and procedures for qualifying tenants, setting rental rates, filling vacancies, and operating and maintaining units for rental target dwelling units.

(c) A density bonus housing agreement for condominium conversions processed pursuant to this chapter shall be required to include the following:

- (1) The number of density bonus dwelling units granted;
- (2) The number of lower and moderate-income dwelling units proposed;
- (3) The unit size(s) (square footage) of target dwelling units and number of bedrooms per target dwelling unit;
- (4) The proposed location of the lower and moderate-income target dwelling units;
- (5) Tenure of affordability for target dwelling units (thirty-year minimum);
- (6) Schedule for production of target dwelling units;
- (7) In-lieu incentives provided by the city; and
- (8) Terms and conditions of for-sale target dwelling units.

(d) Where an inclusionary housing agreement is required pursuant to Section 21.85.160, both the density bonus and inclusionary housing agreements shall be combined into a single housing agreement. (Ord. NS-233 § 1 (part), 1993)

Title 21 ZONING*

Chapter 21.86 RESIDENTIAL DENSITY BONUS OR IN-LIEU INCENTIVES

21.86.110 Density bonus resale agreements.

(a) All buyers of for-sale target dwelling units shall enter into a density bonus resale agreement with the city's housing authority prior to purchasing the unit or property. The resale agreement shall specify that the title to the subject property or unit may not be transferred without prior approval of the city's housing authority.

(b) Where an inclusionary resale agreement is required pursuant to Section 21.85.170, both the resale agreements for inclusionary for-sale units and target for-sale units shall be combined into a single resale agreement. (Ord. NS-233 § 1 (part), 1993)

Title 21 ZONING*

Chapter 21.86 RESIDENTIAL DENSITY BONUS OR IN-LIEU INCENTIVES

21.86.120 Eligibility requirements.

Only households meeting the standards for lower-income households, moderate-income households, and qualified (senior) residents as defined in Section 21.86.020 shall be eligible to occupy target dwelling units. (Ord. NS-233 § 1 (part), 1993)

Title 21 ZONING*

Chapter 21.86 RESIDENTIAL DENSITY BONUS OR IN-LIEU INCENTIVES

21.86.130 Management and monitoring.

Rental target dwelling units shall be managed/operated by the developer or his or her agent. Each developer of rental target dwelling units shall submit an annual report to the city identifying which units are target dwelling units, the monthly rent, vacancy information for each target rental dwelling unit for the prior year, monthly income for tenants of each target rental dwelling unit throughout the prior year, and other information as required by the city, while ensuring the privacy of the tenant. (Ord. NS-233 § 1 (part), 1993)

Title 21 ZONING*Chapter 21.86 RESIDENTIAL DENSITY BONUS OR IN-LIEU INCENTIVES

21.86.140 Administrative fee for target dwelling units.

Over the minimum tenure of projects containing target dwelling units, the city will either directly or, via one or more third parties, provide a number of recurring services associated with the administration and monitoring of such units. Although the provision of some of these services will be within the normal purview of existing city activities, others will involve new costs to the city for which there are no existing funding sources. Unless and until alternative funding sources are identified, it is necessary to require the builders/owners of residential projects to share in these administrative costs. Therefore, the city council establishes an administrative fee for target dwelling units, the amount to be established by the city council resolution and paid prior to the issuance of building permit(s). (Ord. NS-233 § 1 (part), 1993)

Title 21 ZONING*

Chapter 21.86 RESIDENTIAL DENSITY BONUS OR IN-LIEU INCENTIVES

21.86.150 Separability of provisions.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the remainder of the chapter and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby. (Ord. NS-233 § 1 (part), 1993)

Title 21 ZONING*Chapter 21.06 Q QUALIFIED DEVELOPMENT OVERLAY ZONE

21.06.090 Development standards.

Property in the Q zone shall be subject to the development standards required in the underlying zone and any applicable specific plans, except for affordable housing projects as expressly modified by the site development plan. The site development plan for affordable housing projects may allow less restrictive development standards than specified in the underlying zone or elsewhere provided that the project is in conformity with the general plan and adopted policies and goals of the city, it would have no detrimental effect on public health, safety and welfare, and, in the coastal zone, any project processed pursuant to this chapter shall be consistent with all certified local coastal program provisions, with the exception of density. In addition, the planning commission or the city council in approving a site development plan may impose special conditions or requirements which are more restrictive than the development standards in the underlying zone or elsewhere that include provisions for, but are not limited to the following:

- (1) Special setbacks, yards, active or passive open space, required as part of the entitlement process;
- (2) Special height and bulk of building regulations;
- (3) Fences and walls;
- (4) Regulation of signs;
- (5) Additional landscaping;
- (6) Special grading restrictions;
- (7) Requiring street dedication and improvements (or posting of bonds);
- (8) Requiring public improvements either on or off the subject site that are needed to service the proposed development;
- (9) Time period within which the project or any phases of the project shall be completed;
- (10) Regulation of point of ingress and egress;
- (11) Such other conditions as deemed necessary to insure conformity with the general plan and other adopted policies, goals or objectives of the city.

However, it is not intended that the review of the site development plan shall include aesthetic aspects such as:

- (1) Color;
- (2) Texture;
- (3) Materials;
- (4) Adornments. (Ord. NS-402 § 6, 1997; Ord. 207 § 8, 1992; Ord. 9425 § 3 (part), 1975)

RECEIVED

APR 20 2000

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

ORDINANCE NO. NS-532

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
CARLSBAD, CALIFORNIA, AMENDING TITLE 21 OF THE
CARLSBAD MUNICIPAL CODE BY THE MODIFICATION
OF THE CITY'S BASEMENT DEFINITION
CASE NAME: BASEMENT DEFINITION REVISION
CASE NO.: ZCA 99-07/LCPA 99-07

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

SECTION 1: That Section 21.04.045 of the Carlsbad Municipal Code is amended

to read as follows:

"21.04.045 Basement.

"Basement" means that portion of a building between floor and ceiling which is partly below and partly above grade as measured along the exterior (immediately outside of "building coverage") perimeter of the structure but so located that the vertical distance from exterior grade to the adjacent interior floor below is more than the vertical distance from exterior grade to adjacent interior ceiling. This definition must apply to a minimum of seventy-five percent of the perimeter of building coverage for a structure to qualify as a basement. The portion of a basement that is below existing grade is not included in the measurement of building height (as defined in Section 21.04.065). Notwithstanding Chapter 21.48 of this Code, existing buildings and projects which have a complete application or received discretionary approvals by January 25, 2000, or if no discretionary approvals are required, then development projects for which a building permit has been issued by January 25, 2000, shall not be considered non-conforming."

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

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Exhibit #7

CARLSBAD LCPA 1-2000 (C)
Approved "Basement" Revisions

1 of 2

1 INTRODUCED AND FIRST READ at a regular meeting of the Carlsbad City
2 Council on the 25th day of January, 2000, and thereafter.

3 PASSED AND ADOPTED at a regular meeting of the City Council of the City of
4 Carlsbad on the 1st day of February, 2000, by the following vote, to wit:

5 AYES: Council Members Lewis, Finnila, Nygaard, Kulchin

6 NOES: Council Member Hall.


7 ABSENT: None.

8 ABSTAIN: None.

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CLAUDE A. LEWIS, Mayor

ATTEST:



LORRAINE M. WOOD, City Clerk
KAREN R. KUNTZ, Assistant City Clerk
(SEAL)

