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**CALIFORNIA COASTAL COMMISSION**

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# Th19a

## **CITY OF ENCINITAS LCP AMENDMENT**

### **LCP-6-ENC-18-0068-2 (INCLUSIONARY HOUSING)**

**MARCH 7, 2019**

## **EXHIBITS**

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## ORDINANCE 2018-03

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ENCINITAS, CALIFORNIA,  
ADOPTING AMENDMENTS TO TITLE 24 (SUBDIVISIONS) AND TITLE 30 (ZONING) OF  
THE ENCINITAS MUNICIPAL CODE, WHICH PROPOSES CHANGES TO THE CITY'S  
INCLUSIONARY HOUSING REGULATIONS TO BETTER ADDRESS THE NEED FOR  
AFFORDABLE UNITS RESERVED IN NEW RESIDENTIAL DEVELOPMENT PROJECTS**

**CASE NUMBER: 15-162 ZA/LCPA**

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

**WHEREAS**, California Government Code Section 65580(d) states that all cities have a responsibility to use the powers vested in them to facilitate the improvement and development of housing and to make adequate provision for the housing needs of all economic segments of the community;

**WHEREAS**, pursuant to Public Resources Code Section 21065 and CEQA Guidelines Section 15378, the proposed project does not constitute a "project" within the meaning of CEQA in that it has no potential to cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and therefore does not require environmental review. The proposed ordinance also is exempt from environmental review pursuant to CEQA Guidelines Section 15061(b)(3) since there would be no possibility of a significant effect on the environment, in that its provisions requiring the provision of affordable housing would not have any effect on the physical environment;

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

**WHEREAS**, the Planning Commission conducted a Public Hearing on August 6, 2015 for the purpose of considering amendments to Titles 24 and 30 of the Encinitas Municipal Code and considered public testimony and made a recommendation to the City Council to adopt the proposed amendments;

**WHEREAS**, the City Council conducted Public Hearings on August 26, 2015, February 14, 2018, and June 13, 2018 for the purpose of considering the proposed amendments to Titles 24 and 30 of the Encinitas Municipal Code;

**WHEREAS**, the City Council and Planning Commission conducted a Special Joint City Council and Planning Commission meeting on March 7, 2018 for the purpose of conducting an Inclusionary Housing Workshop;

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

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

**EXHIBIT NO. 1**

**Code Amendment New Text**



**Encinitas LCP-6-ENC-18-0068-2**

California Coastal Commission

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

**WHEREAS**, the City Council further finds as follows:

- A. Rental and owner-occupied housing in the City of Encinitas has become steadily more expensive. In recent years housing costs have escalated sharply, increasing faster than incomes for many groups in the community. As a result, there is a severe shortage of adequate, affordable housing for extremely low, very low, lower, and moderate income households, as evidenced by the following:
  1. The 2010-2020 regional housing needs plan for San Diego County, mandated by California Government Code Section 65584 and prepared by the San Diego Association of Governments (SANDAG) shows that 52.5 percent of new housing in San Diego County should be affordable to extremely low, very low, lower, and moderate-income households.
  2. According to the most recent 2010-2020 Regional Housing Needs Allocation (RHNA) determined by SANDAG, the City of Encinitas has a total housing need of 2,353 units through the year 2010, out of which nearly 61 percent is for lower- and moderate-income households (1,446 units). Of the affordable units: 587 units (25%) for very low income households; 446 units (19%) for lower income households; and 413 units (17%) for moderate income households. Yet, as described below, these goals fall far short of the actual need for households in these income categories.
  3. Because of the shortage of affordable housing in Encinitas, many households overpay for their housing. The 2010-12 American Community Survey found that approximately 48.6 percent of Encinitas households who own their homes pay more than 30 percent of income for their mortgage, while 52.7 percent of renter households pay more than 30 percent of income for housing. These households are overpaying for their housing, according to standards of the United States Department of Housing and Urban Development. Additionally, the 2007-2011 American Community Survey reports that, in Encinitas, nearly 71 percent extremely low income, 81.5 percent very low income, and 76.7 percent lower income households experienced a housing problem, which means a household is either spending more than 30 percent of its household income on housing costs or is living in overcrowded or substandard conditions, or both. Providing decent housing at affordable costs allows households to utilize their resources for other necessary pursuits, such as education, food, investment, and saving for retirement. Providing decent rental housing at affordable costs allows households to save money to purchase a home.
- B. As stated in the City of Encinitas General Plan, it is the City's policy to encourage the provision of a wide range of housing by location, type of unit and price to meet the existing and future housing needs in the region and City. The City can achieve its goals of providing more affordable housing and achieving an economically balanced community only if part of the new housing built in the City is affordable to households with limited incomes.
- C. In order to meet the needs of Encinitas households, dwelling units will need to house a variety of household types, incomes, and age groups. This chapter provides incentives for affordable housing to be constructed on the same site as the market rate units in a residential development.

- D. The affordable housing ordinance codified in this chapter will advance the City's legitimate interest in providing additional housing affordable to all income levels and dispersed throughout the City because affordable units required by the ordinance codified in this chapter, including both rental and ownership units, must be affordable to either very low, lower, and moderate-income households.
- E. The ordinance codified in this chapter is being adopted pursuant to the City's police power authority to protect the public health, safety, and welfare. Requiring affordable units within each development is consistent with the community's housing element goals of protecting the public welfare by fostering an adequate supply of housing for persons at all economic levels and maintaining both economic diversity and geographically dispersed affordable housing. Requiring builders of new market rate housing to provide some housing affordable to very low, lower, and moderate-income households is also reasonably related to the impacts of their developments, because:
  - 1. Rising land prices have been a key factor in preventing development of new affordable housing. New market-rate housing uses available land and drives up the price of remaining land. New development without affordable units reduces the amount of land development opportunities available for the construction of affordable housing.
  - 2. New residents of market-rate housing place demands on services provided by both public and private sectors, creating a demand for new employees. Some of these public and private sector employees needed to meet the needs of the new residents earn incomes only adequate to pay for affordable housing. Because affordable housing is in short supply in the City, such employees may be forced to live in less than adequate housing within the City, pay a disproportionate share of their incomes to live in adequate housing in the City, or commute ever increasing distances to their jobs from housing located outside the City. These circumstances harm the City's ability to attain employment and housing goals articulated in the City's general plan and place strains on the City's ability to accept and service new market-rate housing development.

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

**SECTION TWO.** Chapter 24.21 (Dedication: Affordable Housing Assistance) of the Encinitas Municipal [Subdivision] Code is hereby repealed.

**SECTION THREE.** Chapter 30.41 (Affordable Housing) of the Encinitas Municipal [Zoning] Code is hereby adopted to read as follows:

### **Section 30.41 AFFORDABLE HOUSING**

Section 30.41.010 Purpose

Section 30.41.020 Definitions

Section 30.41.030 Applicability

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**Section 30.41.010 Purpose.**

- A. The purpose of this chapter is to enhance the public welfare by establishing policies which require the development of housing affordable to households of very low, low, and moderate incomes, meet the City's regional share of housing needs, and implement the goals and objectives of the general plan and housing element.
- B. The adoption of a citywide affordable housing program will also assist in alleviating the use of available residential land solely for the benefit of households that are able to afford market rate housing because such market-rate development will be required to contribute to the provision of affordable housing for the entire Encinitas community, and will assist in alleviating the impacts of the service needs of households in new market-rate residential development by making additional affordable housing available.
- C. The City Council also desires to provide and maintain affordable housing opportunities in the community through an affordable housing program for both ownership and rental housing, and, in furtherance of that goal, includes rental affordable housing requirements in this chapter consistent with Government Code Sections 65850(g) and 65850.01.
- D. The City Council also desires to provide the residential development community with alternatives to construction of the affordable units on the same site as the market rate residential development. Therefore, this chapter includes a menu of options from which a developer may select an alternative to the construction of affordable units on the same site as the market rate residential development.

**Section 30.41.020 Definitions.**

The definitions set forth in this section shall govern the application and interpretation of this chapter. Words and phrases not defined in this section shall be interpreted so as to give this chapter its most reasonable application.

- A. "Affordable housing fund" means a fund or account designated by the City to maintain and account for all monies received pursuant to this chapter.
- B. "Affordable housing agreement" means an agreement in conformance with Section 30.41.090.B of this chapter between the City and an applicant, governing how the applicant shall comply with this chapter.
- C. "Affordable housing guidelines" means any requirements for implementation and administration of this chapter adopted by the City Council in accordance with Section 30.41.090.D of this chapter.
- D. "Affordable housing plan" means a plan containing all of the information specified in and submitted in conformance with Section 30.41.090.A of this chapter, specifying the manner in which affordable units will be provided in conformance with this chapter and any adopted affordable housing guidelines.

- E. "Affordable rent" means the maximum monthly rent, including an allowance for tenant paid utilities calculated at the specified income level in accordance with California Health and Safety Code Section 50053.
- F. "Affordable sales price" means the maximum purchase price that will be affordable to the specified household at the specified income level, calculated in accordance with California Health and Safety Code Section 50052.5. The affordable sales price shall include a reasonable down payment, and monthly housing payments (including interest, principal, mortgage insurance, property taxes, homeowner's insurance, homeowner's association dues, and a reasonable allowance for property maintenance, repairs, and utilities), all as determined by the City.
- G. "Affordable unit" means a dwelling unit required by this chapter to be affordable to very low or low-income households.
- H. "Applicant" or "developer" means a person, persons, or entity that applies for a residential development and also includes the owner or owners of the property if the applicant does not own the property on which development is proposed.
- I. "Approval body" means the body with the authority to approve the proposed residential development.
- J. "Area median income" or "AMI" means the annual median income for San Diego County, adjusted for household size, as published periodically in the California Code of Regulations, Title 25, Section 6932, or its successor provision, or as established by the City of Encinitas in the event that such median income figures are no longer published periodically in the California Code of Regulations.
- K. "Building permit" includes full structural building permits as well as partial permits such as foundation-only permits.
- L. "Common ownership or control" refers to property owned or controlled by the same person, persons, or entity, or by separate entities in which any shareholder, partner, member, or family member of an investor of the entity owns ten percent (10%) or more of the interest in the property.
- M. "Construction phase" means either:
  - 1. The area included within one approved tentative subdivision map for residential development where a single final map implements the entire approved tentative map;
  - 2. The area included within each separate final map for residential development where multiple final maps implement the entire approved tentative map; or
  - 3. An area designated as a construction phase in an approved affordable housing plan.
- N. "Contiguous property" means any parcel of land that is:
  - 1. Touching another parcel at any point;
  - 2. Separated from another parcel at any point only by a public right of way, private street or way, or public or private utility, service, or access easement; or
  - 3. Separated from another parcel only by other real property of the applicant which is not subject to the requirements of this chapter at the time of the planning permit application by the applicant.

- O. "Density bonus units" means dwelling units approved in a residential development pursuant to California Government Code Section 65915 and Encinitas Municipal Code Section 30.16.020.C that are in excess of the maximum allowable residential density otherwise permitted by the City of Encinitas.
- P. "First approval" means the first of the following approvals to occur with respect to a residential development after the effective date of this chapter: planning permit or building permit.
- Q. "Low income households" are those households whose income does not exceed the low-income limits applicable to San Diego County as defined in California Health and Safety Code Section 50079.5 and published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provision) by the California Department of Housing and Community Development.
- R. "Market rate unit" means a new dwelling unit in a residential development that is not an affordable unit.
- S. "Ownership residential development" means any residential development that includes the creation of one or more additional dwelling units that may be sold individually. A residential ownership development also includes the conversion of a residential rental development to a residential ownership development.
- T. "Planning area" means one of the five Encinitas communities (Cardiff, New Encinitas, Leucadia, Old Encinitas, and Olivenhain).
- U. "Planning permit" means any discretionary approval of a residential development, including but not limited to a general or specific plan adoption or amendment, rezoning, tentative map, parcel map, conditional use permit, variances, design review, or coastal development permit.
- V. "Rental residential development" means any residential development that creates one or more additional dwelling units that cannot be lawfully sold individually in conformance with the Subdivision Map Act.
- W. "Residential development" means any development for which a planning permit or building permit is required that includes the creation of one or more additional dwelling units, conversion of nonresidential uses to dwelling units, or the conversion of a use from a residential rental development to a residential ownership development.
- X. "Surplus affordable unit" means any affordable unit constructed in connection with residential development and without any public subsidy, which exceeds the numerical requirement for affordable units for that residential development under this chapter.
- Y. "Very low-income households" are those households whose income does not exceed the very low-income limits applicable to San Diego County as defined in California Health and Safety Code Section 50105 and published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provision) by the California Department of Housing and Community Development.

#### Section 30.41.030 Applicability

The provisions of this chapter shall apply to:

A. All residential development except for any residential development exempt under Section 30.41.040; and

B. All residential development and contiguous properties that are under common ownership or control,

**Section 30.41.040 Exemptions.**

A. The following residential developments shall be exempt from the provisions of this chapter:

1. Residential developments with fewer than seven dwelling units or lots.
2. Residential developments which are developed in accordance with the terms of a development agreement adopted by ordinance pursuant to the authority and provisions of California Government Code Section 65864 et seq., and that is executed prior to the effective date of the ordinance codified in this chapter, provided that such residential developments shall comply with any affordable housing requirements included in the development agreement or any predecessor ordinance in effect on the date the development agreement was executed.
3. Residential developments exempted by California Government Code Section 66474.2 or 66498.1, provided that such residential developments shall comply with any predecessor ordinance, resolution, or policy in effect on the date the application for the development was deemed substantially complete.
4. Residential developments for which an application for a planning permit has been deemed complete no later than the effective date of this chapter, provided that such residential developments shall comply with any predecessor ordinance, resolution, or policy in effect on the date the application for the development was deemed complete.

B. Planning permit expiration. Upon the expiration of any planning permit, and unless otherwise exempted, the residential development shall be subject to the affordable housing requirements of this chapter, and shall not proceed until such time as an affordable housing plan is approved in conjunction with any other required planning permit or amendment thereto. The provisions of this chapter shall also apply to any residential development which is granted a discretionary extension of a planning permit beyond its initial term, to the extent consistent with state law.

**Section 30.41.050 Affordable Housing Requirement.**

All new residential developments, unless exempt under Section 30.41.040, and contiguous property under common ownership and control shall include affordable units. Calculations of the number of affordable units required by this section shall be based on the number of dwelling units in the residential development, excluding any density bonus units.

A. On-site affordable requirement. Unless exempted from this chapter, or unless an alternative is approved as described in 30.41.080, residential developments shall include affordable units upon the same site as the residential development as follows:

1. Ownership residential development: the applicant shall provide either:

- a. Fifteen percent (15%) of the dwelling units in the residential development made available at affordable sales price to low-income households; or
- b. Ten percent (10%) of the dwelling units in the residential development made available at affordable sales price to very low-income households.

2. Rental residential development: the applicant shall provide either:
  - a. Fifteen percent (15%) of the dwelling units in the residential development made available at affordable rent to low-income households; or
  - b. Ten percent (10%) of the dwelling units in the residential development made available at affordable rent to very low-income households.
- B. If the affordable housing requirements described in subsection A above result in a fractional unit, the applicant may either pay an in-lieu fee as specified in Section 30.41.080.E or may construct one additional affordable unit, at the applicant's option.
- C. When a residential development includes both ownership and rental dwelling units, the provisions of this chapter that apply to ownership residential development shall apply to that portion of the development that consists of ownership dwelling units, while the provisions of this chapter that apply to rental residential development shall apply to that portion of the development that consists of rental dwelling units.
- D. An applicant for a planning permit shall not avoid the requirements of this chapter by submitting piecemeal planning permit applications. At the time of the application for first approval for the residential development, the applicant shall identify all contiguous property under common ownership and control. The applicant shall not be required to construct dwelling units upon the contiguous property at the time of the application for first approval; however, the applicant shall be required to include the contiguous property under common ownership or control in its affordable housing plan. The affordable housing agreement shall be recorded against the residential development and all contiguous property under common ownership or control and shall require compliance with this chapter upon development of each contiguous property at such time as there are planning permit applications that would authorize a total of seven or more residential units for the residential development and the contiguous property under common ownership or control.

#### Section 30.41.060 Affordable Housing Standards and Incentives.

- A. Affordable units shall be comparable in exterior appearance and overall quality of construction to market-rate units in the same housing development. Interior finishes and amenities may differ from those provided in the market rate units, but neither the workmanship nor the products may be of substandard or inferior quality as determined by the City.
- B. The affordable units shall have the same amenities as the market rate units, including the same access to and enjoyment of common open space, parking, storage, and other facilities in the residential development.
- C. The developer of a residential development providing all required affordable units upon the same site as the market-rate units may, at the developer's sole option and concurrently with the submittal of the affordable housing plan, submit a written request for one or more of the following on-site affordable housing development incentives:
  1. Density bonus and other regulatory incentives pursuant to Government Code Section 65915 and the provisions of Section 30.16.020.C, if the residential development contains sufficient affordable units to qualify for a density bonus. If the applicant requests a density bonus, the other incentives listed in this subsection D may be provided only if each is individually requested as a regulatory incentive under Section 30.16.020.C.

2. City assistance. The developer may request City staff to assist in the sale or rental of the affordable units to qualified households at an affordable housing cost.
  3. Financial subsidies. The developer may apply for financial subsidies for the affordable units from any available federal and state funding sources. The developer may also apply for financial subsidy from City-administered funds for the difference in costs that results if the developer provides more affordable units or provides affordable units to households in income classifications that are lower than required.
- D. Affordable housing plan. The incentives requested by the developer shall be included in the proposed affordable housing plan submitted at the time of application for the first approval, and any incentives authorized by the City shall be included in the affordable housing plan, if approved by the City, for the residential development.

#### **Section 30.41.070 Timing of Construction of Affordable Units.**

All required affordable units shall be made available for occupancy concurrently with the market rate units. For the purposes of this subsection, "concurrently" means one of the following:

- A. The City may not issue building permits for more than fifty percent (50%) of the market rate units until it has issued building permits for all of the affordable units, and the City may not approve any final inspections or certificates of occupancy for more than seventy five percent (75%) of the market rate units until it has issued final inspections or certificates of occupancy for all of the affordable units.
- B. In-lieu fees, as appropriate, have been paid in accordance with Section 30.41.080.E.1.
- C. The applicant has met, or made arrangements satisfactory to the City to meet, an alternative requirement as permitted by Section 30.41.080.

#### **Section 30.41.080 Developers' Alternative Compliance Options.**

- A. Accessory dwelling units. As an alternative to providing single-family dwelling units as affordable units, an applicant may instead provide an affordable accessory dwelling unit for each required affordable unit, subject to the standards for accessory dwelling units contained in Section 30.48.040T. The term and affordability of the accessory dwelling units and the affordable housing agreement and rent regulatory agreement shall conform with the provisions of this Chapter 30.41 applicable to rental affordable units. In no event shall a developer be allowed to construct more than a total of five (5) accessory dwelling units in any given residential development to satisfy the requirements of this Chapter.
- B. Rental units in an ownership residential development. The affordable housing requirement in Section 30.41.050.A.1 may be satisfied by providing fifteen percent (15%) of the dwelling units in the residential development at affordable rent to low-income households or ten percent (10%) of the dwelling units in the residential development at affordable rent to very low-income households.

Any rent regulatory agreement shall include provisions to allow for the sale of the affordable units and relocation benefits for tenants of the affordable units if the owner of the ownership residential development later determines to offer any affordable units in the residential development for sale. At sale, appropriate documents shall be recorded to ensure affordability in perpetuity of the affordable units to very low and low-income households.

C. Off-site construction of affordable units. The applicant may propose to construct the affordable units required by Section 30.41.050.A on another site. The City may grant a credit for the off-site construction if the City Council makes all of the following findings, at the City's sole discretion:

1. The developer has demonstrated that the goals of this Chapter and the City's Housing Element would be better served by allowing some or all of the affordable units required by Section 30.41.050.A to be produced and operated at an alternative site or sites.
2. The off-site construction 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 on-site option considering project size, site constraints, competition from other projects, difficulty in integrating due to significant price and product type disparity, lack of capacity of the on-site developer to produce or operate affordable housing. Also to be considered are whether the off-site option offers greater feasibility and cost effectiveness, particularly regarding potential local public assistance and any adopted affordable housing guidelines, location advantages such as proximity to jobs, schools, transportation, and services, diminished impact on other existing developments, capacity of the proposed affordable housing developer to deliver and operate the project, and satisfaction of multiple developer obligations that would be difficult to satisfy on multiple projects.
3. Financing or a viable financing plan, which may include public funding, shall be in place for the off-site affordable units.
4. The off-site location must be suitable for the proposed affordable housing, consistent with any adopted affordable housing guidelines and the Housing Element, will not tend to cause residential segregation, and be located within the same planning (community) area with appropriate infrastructure and services. Any off-site alternative must comply with the density, intensity and development standards that are permitted under the zone for the site.
5. All agreements between parties regarding off-site construction of affordable housing shall be made a part of the affordable housing agreement required for the site(s) and shall be subject to review and approval by the City Manager.

D. Preservation or conversion of existing units. The affordable housing requirement in Section 30.41.050 may be satisfied by the preservation of existing affordable units at risk of loss or by conversion of market-rate units to affordable units, if the preservation or conversion of these units is consistent with Government Code Section 65583.1 and allows the City to substitute the preservation or conversion of these units for the obligation to identify adequate sites.

E. In-lieu fees. The affordable housing requirement in Section 30.41.050 may be satisfied by the payment of a fee to the City in-lieu of constructing the affordable units within the residential development. In-lieu fees may be established from time-to-time by resolution of the City Council or may be determined for a specific residential development through the preparation of an affordability gap analysis that will determine the difference between the affordable sales price or rent and the fair market rate price for the unit.

1. No certificate of occupancy shall be issued by the City for any market rate unit in the residential development until all in-lieu fees for the residential development have been paid to the City.
2. Prior to recordation of any final or parcel map for the development, notice of this requirement shall be recorded against each lot in the subdivision. The developer shall provide specific written notice to any purchaser of any dwelling unit prior to the acceptance of any offer to purchase, and shall obtain executed acknowledgment of the receipt of such notice, that

purchaser shall not have any right to occupy the dwelling unit until such time as all in-lieu fees owing for the residential development are paid to the City.

3. All in-lieu fees shall be deposited in the affordable housing fund described in Section 30.41.110.

F. Dedication of land. The applicant may propose to meet the requirements of Section 30.41.050.A by dedicating property to the City in lieu of constructing affordable units within the residential development. The City may approve property dedication under this subsection only if the proposal meets all of the following conditions:

1. The number of affordable units to be constructed on the dedicated property shall be the number of affordable units required under 30.41.050.A, or the affordable units to be constructed on the dedicated property shall provide units affordable to households in a lesser income category than required under 30.41.050.A (for example, very low income units exclusively); and
2. Financing or a viable financing plan, which may include public funding, shall be in place for construction of the affordable units on the dedicated property; and
3. The off-site location is suitable for the proposed affordable housing, consistent with the affordable housing guidelines and the Housing Element, and will not tend to cause residential segregation and is located within the same planning area with appropriate infrastructure and services.

The property shall be dedicated to the City prior to issuance of any building permit for the residential development.

G. Affordable housing credits. The applicant may propose to meet the requirements of Section 30.41.050.A by obtaining credits for affordable units from a developer of surplus affordable units. The City may approve the use of credits under this subsection only if the proposal meets all of the following conditions:

1. A developer who constructs a surplus affordable unit may utilize that surplus affordable unit to satisfy the affordable housing requirement for future residential development for a period of no more than ten (10) years after issuance of the certificate of occupancy for the surplus affordable unit.
2. A developer who constructs a surplus affordable unit may sell or otherwise transfer the surplus affordable credit to another developer in order to satisfy, or partially satisfy, the transferee developer's affordable housing requirement.
3. The transferee developer who utilizes any surplus affordable housing credit shall comply with the timing requirements for affordable units to be made available for occupancy concurrently with the market rate units in the residential development as required by Section 30.41.070.
4. No residential development that has received federal, state, or local financial assistance shall be deemed to have surplus affordable units.

H. Other alternative compliance methods. A developer may propose an alternative compliance method to provide affordable units through other means. The decision-making body may approve or conditionally approve such an alternative only if the decision-making body determines, based on substantial evidence, that such alternative compliance will provide as many or more affordable units at the same or lower income levels and will otherwise provide greater public benefit than would provision of the affordable units on site.

## Section 30.41.090 Application and Review Procedures.

### A. Affordable housing plan.

1. An application for the first approval of a residential development shall include an affordable housing plan describing how the development will comply with the provisions of this chapter. As an alternative to compliance with the basic provisions included in Section 30.41.050, an applicant may propose one of the alternatives listed in Section 30.41.080 as part of the affordable housing plan. If in-lieu fees are requested, the applicant shall submit an affordability gap analysis.
2. Any adopted affordable housing guidelines may specify the contents of the affordable housing plan. No application for a first approval for a residential development may be deemed complete unless an affordable housing plan is submitted in conformance with this chapter. The cost of reviewing any affordability gap analysis or other proposed alternative, including but not limited to the cost to the City of hiring a consultant to review the application, shall be borne by the applicant.
3. The affordable housing plan shall be processed concurrently with all other permits required for the residential development. Before approving the affordable housing plan, the approval body shall find that the affordable housing plan conforms to this chapter. A condition shall be attached to the first approval of any residential development to require recordation of the affordable housing agreement described in Section 30.41.090.B prior to the approval of any final or parcel map or building permit for the residential development.
4. The approved affordable housing plan for a residential development, or for a building phase in a residential development, where phasing has been approved as part of planning permit approvals, may be amended prior to issuance of any building permit for the residential development or building phase, if applicable. A request for a minor modification of an approved affordable housing plan may be granted by the Development Services Director if the modification is substantially in compliance with the original affordable housing plan and conditions of approval. Other modifications to the affordable housing plan shall be processed in the same manner as the original plan.

### B. Affordable housing agreement.

1. The applicant shall enter into an affordable housing agreement with the City, in a form approved by the City Attorney, to be executed by the City Manager, to ensure that all the requirements of this Chapter are satisfied. The affordable housing agreement shall be recorded against the residential development prior to approval of any final or parcel map, or issuance of any building permit, whichever occurs first.
  2. The affordable housing agreement shall specify the number, type, location, size, and phasing of all affordable units, provisions for income certification and screening of potential purchasers or renters of units, and resale control mechanisms, including the financing of ongoing administrative and monitoring costs, consistent with the approved affordable housing plan and any adopted affordable housing guidelines, as determined by the city manager or designee.
- C. The City Council, by resolution, may establish fees for the ongoing administration and monitoring of the affordable units, which fees may be updated periodically, as required.
- D. The City Council, by resolution, may adopt affordable housing guidelines to implement this chapter.

### Section 30.41.100 Continued Affordability.

- A. Any adopted affordable housing guidelines may include standard documents for execution by the City Manager, in a form approved by the City Attorney, to ensure the continued affordability of the affordable units approved for each residential development. The documents shall be recorded against the residential development, all affordable units, and any site subject to the provisions of this chapter.
- B. All affordable units shall remain affordable to the targeted income group in perpetuity.
- C. Any eligible household that occupies an affordable unit must occupy that unit as its principal residence, unless otherwise approved in writing for rental to a third party eligible household for a limited period of time due to household hardship, as may be specified in any adopted affordable housing guidelines.
- D. No household may begin occupancy of an affordable unit until the household has been determined to be eligible to occupy that unit by the Development Services Director or designee. Any adopted affordable housing guidelines may establish standards for determining household income, affordable housing cost, provisions for continued monitoring of tenant eligibility, and other eligibility criteria.
- E. Officials, employees, or consultants of the City and members of city boards and commissions shall comply with all applicable laws, regulations, and policies relating to conflicts of interest as to their eligibility to develop, construct, sell, rent, lease, occupy, or purchase an affordable unit. Any adopted affordable housing guidelines shall include conflict of interest provisions relating to the administration of this chapter and the eligibility of persons to occupy affordable units.

### Section 30.41.110 Affordable Housing Fund.

- A. All in-lieu fees, promissory note repayments, or other funds collected under this chapter shall be deposited into the City's Affordable Housing Fund.
- B. The moneys in the Affordable Housing Fund and all earnings from investment of the moneys in the Fund shall be expended exclusively to provide housing affordable to extremely low-income, very low-income, lower-income, moderate-income households and any special needs populations in the City, consistent with the goals and policies contained in the City's Housing Element, and for administration and compliance monitoring of the affordable housing program, as approved by the City Council.

### Section 30.41.120 Waiver.

- A. Notwithstanding any other provision of this chapter, the requirements of this chapter may be waived, adjusted, or reduced based upon a showing that applying the requirements of this chapter would result in an unconstitutional taking of property or would result in any other unconstitutional result.
- B. Any request for a waiver, adjustment, or reduction under this section shall be submitted to the City concurrently with the affordable housing plan. The request for a waiver, adjustment, or reduction shall set forth in detail the factual and legal basis for the claim.
- C. The request for a waiver, adjustment, or reduction shall be reviewed and considered in the same manner and at the same time as the affordable housing plan.

- D. In making a determination on an application for waiver, adjustment, or reduction, the applicant shall bear the burden of presenting substantial evidence to support the claim. The City may assume each of the following when applicable:
1. That the applicant will provide the most economical affordable units feasible, meeting the requirements of this chapter and any adopted affordable housing guidelines; and
  2. That the applicant will benefit from the incentives for the residential development as described in this chapter and elsewhere in the municipal code.
- E. The waiver, adjustment or reduction may be approved only to the extent necessary to avoid an unconstitutional result, after adoption of written findings, based on substantial evidence, supporting the determinations required by this section. If a reduction, adjustment, or waiver is granted, any change in the residential development shall invalidate the reduction, adjustment, or waiver, and a new application shall be required for a reduction, adjustment, or waiver pursuant to this section.

#### **Section 30.41.130 Enforcement.**

- A. The City Attorney shall be authorized to enforce the provisions of this chapter and all affordable housing agreements, regulatory agreements, and all other covenants or restrictions placed on affordable units, by civil action and any other proceeding or method permitted by law.
- B. Failure of any official or agency to fulfill the requirements of this chapter shall not excuse any applicant or owner from the requirements of this chapter. No permit, license, map, or other approval or entitlement for a residential development shall be issued, including without limitation a final inspection or certificate of occupancy, until all applicable requirements of this chapter have been satisfied.
- C. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

#### **SECTION FOUR:**

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

#### **SECTION FIVE:**

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

**SECTION SIX:**

This Ordinance was introduced on June 13, 2018.

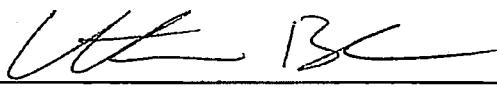
**PASSED AND ADOPTED** this 8th day of August, 2018 by the following vote to wit:

AYES: Blakespear, Boerner Horvath, Kranz, Mosca, Muir

NAYS: None

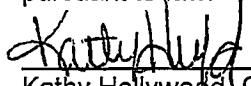
ABSTAIN: None

ABSENT: None

  
\_\_\_\_\_  
Catherine S. Blakespear, Mayor, City of Encinitas

**ATTESTATION AND CERTIFICATION:**

I hereby certify that this is a true and correct copy of Ordinance No. 2018-03 which has been published pursuant to law.

  
\_\_\_\_\_  
Kathy Hollywood, City Clerk

**Encinitas Municipal Code**

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[Title 24 SUBDIVISIONS](#)

## **Chapter 24.21 DEDICATION—AFFORDABLE HOUSING ASSISTANCE\***

\* CodeAlert: This topic has been affected by Ordinance No. 2018-03. To view amendments and newly added provisions, please refer to the [CodeAlert Amendment List](#).

### **24.21.010 Intent.**

The intent of this chapter is to insure that the private sector, as well as the public sector, contributes to and shares our government's responsibility of providing adequate housing opportunities for all segments of the population. (Ord. 87-10)

### **24.21.020 Requirement.**

As a condition of approval of any tentative subdivision map for residential dwellings, condominiums, community apartments, stock cooperatives or conversions comprising 10 or more lots or 10 or more dwelling units, the subdivider shall reserve a unit or units for rental or for sale to tenants qualified by the Encinitas Housing Authority or shall alternatively rent the inclusionary unit subject to the applicable Encinitas Affordable Housing Policy adopted by City Council resolution or pay a fee in-lieu thereof, at the option of the subdivider, for the purpose of providing affordable housing assistance. (Ord. 2010-08)

### **24.21.030 Filing.**

At the time of filing of a tentative subdivision map, the subdivider shall, as part of the filing, elect whether to reserve a unit or units for sale, or to alternatively rent the inclusionary unit subject to the applicable Encinitas Affordable Housing Policy adopted by City Council resolution or pay the in-lieu fee. (Ord. 2010-08)

### **24.21.040 Amount of Reservation/In-Lieu Fee Required.**

- A. Unit Reservation. If the subdivider elects to reserve units, the number of units required shall be equal to one unit for every 10 lots or 10 dwelling units in the proposed development. The reserved unit or units shall be sold or rented to persons qualified by the Encinitas Housing Authority.
- B. In-Lieu Fee. If the subdivider elects to make payment in-lieu of unit reservation, the amount of the fee shall be fixed by a schedule adopted, from time to time, by resolution of the City Council. The fee amount shall be reasonably calculated to provide the subdivider's fair share contribution towards meeting the City's affordable housing objective without placing an unreasonable financial burden on any applicant. (Ord. 2010-08; Ord. 2017-03)

### **24.21.050 Affordable Housing Fund.**

All fees collected hereunder shall be deposited in an affordable housing fund. The fund shall be administered by the City and shall be used only for the purpose of providing funding assistance for the provision of

**EXHIBIT NO. 2**

**Repealed Chapter**



Encinitas LCP-6-ENC-18-0068-2

California Coastal Commission

affordable housing units consistent with the goals and policies contained in the Housing Element of the Community Plan. (Ord. 2010-08; Ord. 2017-03)

**A 24.21.060 Procedure.**

- A. Where a unit or units are to be reserved for sale or for rent pursuant to the provisions herein, the subdivider shall prepare covenants, conditions, and restrictions applicable to the subdivision in accordance with the provisions herein.
- B. Where a subdivider has elected to pay a fee in-lieu of unit reservation, approval of the tentative map or tentative parcel map shall be conditioned upon a requirement that the subdivider, prior to approval of the final parcel map, shall pay an in-lieu fee for the subdivision in an amount established by resolution of the City Council in effect at the time of payment. Or, in the alternative, the subdivider shall execute a secured, recorded agreement whereby:
  1. The owner of each lot within the subdivision shall pay an in-lieu fee for such lot as a condition to the owner's entitlement to obtain a building permit for such lot.
  2. The in-lieu fee for the lot shall be calculated as follows: The number of units or portions thereof required to be reserved from the subdivision shall be multiplied by the per unit in-lieu fee fixed by the resolution of the City Council in effect at the time of payment. The resulting product shall be divided by the number of units created by the subdivision. The resulting quotient shall equal the amount of the fee for the lot.
  3. In the case of condominiums, community apartments, stock cooperatives or conversions, payment of the in-lieu fee for each unit shall be included as a condition of the escrow for the initial sale of each unit within the project. (Ord. 2010-08)

**A 24.21.070 Refund.**

- A. Any fee paid pursuant to the provisions of this chapter shall be refunded upon written request by the subdivider following withdrawal of the application or abandonment of the approval of the subdivision, provided such withdrawal or abandonment occurs prior to the recordation of the final map.
- B. The in-lieu funds shall be segregated from City funds. The in-lieu funds may be invested in the same manner and at the same rate as allowed for City funds. If the City has not, within a 10-year period from receipt of in-lieu funds committed the funds to a low or moderate income housing project, then the in-lieu funds, together with any earnings thereon, shall be refunded to the payor. The 10-year period shall be suspended during the pendency of any litigation involving the above. (Ord. 2010-08)

**A 24.21.080 New Condominiums—Rental Unit Agreement.**

Notwithstanding any other provisions in this title, the City may enter into an agreement with the subdivider proposing to construct a condominium development to provide apartment rental units in accordance with Section 66452.50 of the Act. (Ord. 2010-08)

**A 24.21.090 Requirement Adjustment.**

A subdivider of any project subject to the requirements of this chapter may apply to the City Council for a reduction, adjustment, or waiver of the requirement based upon the absence of any reasonable relationship or nexus between the impact of the development and either the amount of in-lieu fee charged or the affordable unit reservation required. The application shall be made in writing, in a form acceptable to the Director of

Planning and Building, at the time of filing of a tentative subdivision map, or no later than 10 days before the first public hearing on the proposed subdivision map. The application shall state in detail the factual basis for the claim of reduction, adjustment, or waiver. The subdivider shall bear the burden of presenting substantial evidence to support the claim that there is not a reasonable relationship or nexus between the impact of the development and the requirements of this chapter. The City Council shall consider the application for reduction, adjustment, or waiver within 30 days of receiving it. If a reduction, adjustment, or waiver is granted, any change in use within the development, modification of the proposed tentative subdivision map, or application for a new subdivision map shall invalidate the reduction, adjustment, or waiver of the in-lieu fee or affordable unit reservation requirement. (Ord. 2007-02; Ord. 2010-08)

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