

CALIFORNIA COASTAL COMMISSION

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August 26, 2019

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TO: COMMISSIONERS AND INTERESTED PERSONS

**FROM: KARL SCHWING, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT
STEPHANIE LEACH, COASTAL PLANNER, SAN DIEGO COAST DISTRICT**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF ENCINITAS LCP
AMENDMENT NO. LCP-6-ENC-19-0013-1 (Emergency Shelters) for
Commission Meeting of September 11-13, 2019**

SYNOPSIS

The subject Local Coastal Program (LCP) implementation plan amendment was submitted and filed as complete on April 15, 2019. A one-year time extension was granted on June 13, 2019. As such, the last date for Commission action on this item is July 9, 2020. This report addresses the City's entire submittal.

SUMMARY OF AMENDMENT REQUEST

The subject submittal consists of changes to the certified Implementation Plan (IP) for the City of Encinitas. The City proposes to amend their IP in order to comply with California housing law concerning the provision of emergency shelters for its unsheltered individuals. This amendment request is part of a larger programmatic effort by the City to update its Housing Element in accordance with state law ([Exhibit 1](#)). Specifically, the City needs to comply with Senate Bill (SB) 2 through the adoption of an ordinance that allows for emergency shelters without any local discretionary permit ([Exhibit 2](#)). While emergency shelters are currently permitted in the City of Encinitas within some of the Specific Plan areas, as well as the General Commercial zones, they still require a Major Use Permit. The City passed Ordinance 2019-01 on February 13, 2019, which modified its housing element to be in conformance with SB 2 ([Exhibit 3](#)).

The requested changes to the IP include three main components. The first is the updating of the City's definition of emergency shelter to be in conformance with state law. The second is the revision of the Zoning Use Matrix so that emergency shelters are approved without the need for a local discretionary permit in the Light Industrial and Business Park zones. The third is the addition of Chapter 30.36 (Emergency Shelters) to the Encinitas Municipal Code, which codifies the standards by which emergency shelters will be developed. The only objective standards that may be applied are specified in SB 2, and includes aspects of development such as maximum bed count for each facility, staffing requirements, the application of an operational plan, a minimum distance from other

emergency shelters, maximum length of stay for an individual, and size and location of interior onsite waiting and client intake area. Otherwise, emergency shelters will be developed in conformance with the Light Industrial (LI) and Business Park (BP) development standards. They will not be subject to EMC Chapter 23.03 (Design Review) or EMC Chapter 23.06 (Citizen Participation Plan), but only subject to the standards set forth in proposed EMC Chapter 30.36 (Emergency Shelters). However, because the LI and BP zones are within the Coastal Zone, the development of emergency shelters will still be subject to the permitting requirements of the Coastal Act.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending that the Commission first reject the proposed amendment to the IP as submitted, and then approve it with a suggested modification, to ensure that the proposed LCP amendment will be consistent with both the Coastal Act and state housing law.

The findings for rejection of the IP Amendment as submitted are based on a minor inconsistency between the current ordinance and a proposed modification by the City relating to the spatial separation required between emergency shelters. Of the limited number of objective development standards allowable per state law, emergency shelters within the City shall be located at least 299 feet from each other, and so the City must revise its proposed standard of 300 feet in order to comply. Only with the incorporation of this suggested modification can the IP amendment be found consistent with the stated goals and policies of the certified LCP that support sustainable redevelopment and growth management strategies, require preparation for emergency situations, and provide for the number and types of housing units that constitute an effective land use plan. The goals of the Land Use Element within the City's LCP clearly support a cohesive and thoughtful approach to the achievement of long-term planning objectives, to which legal conformance with State housing law surely adheres. The City supports the modification.

The appropriate resolutions and motions begin on Page 4. The suggested modification may be found on Page 6. The findings for denial of the Implementation Plan Amendment as submitted begin on Page 6. The findings for approval of the plan, if modified, begin on Page 9.

ADDITIONAL INFORMATION

Further information on the City of Encinitas LCP Amendment No. LCP-6-ENC-19-0013-1 may be obtained from Stephanie Leach, Coastal Planner, at (619) 767-2370.

EXHIBITS

[Exhibit 1 – Resolution No. PC 2018-40](#)

[Exhibit 2 – SB2 \(Cedillo, 2007\)](#)

[Exhibit 3 – Ordinance 2019-01](#)

[Exhibit 4 – Light Industrial and Business Park Zone Sites](#)

[Exhibit 5 – Emergency Shelter Ordinance Peer Review](#)

PART I. OVERVIEW

A. LCP HISTORY

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

B. STANDARD OF REVIEW

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

C. PUBLIC PARTICIPATION

Section 30503 of the Coastal Act required local governments to provide the public with maximum opportunities to participate in the development of the LCP amendment prior to its submittal to the Commission for review. The City has held Planning Commission and City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS

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

- I. MOTION I:** *I move that the Commission reject the Implementation Program Amendment No. LCP-6-ENC-19-0013-1 for the City of Encinitas certified LCP as submitted.*

STAFF RECOMMENDATION OF REJECTION:

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Program and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AS SUBMITTED:

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

II. MOTION II: *I move that the Commission certify the Implementation Program Amendment No. LCP-6-ENC-19-0013-1 for the City of Encinitas certified LCP if it is modified as suggested in this staff report.*

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Implementation Program Amendment with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM AMENDMENT WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies the Implementation Program Amendment for the City of Encinitas certified LCP if modified as suggested and adopts the findings set forth below on grounds that the Implementation Program Amendment, with the suggested modification, conforms with and is adequate to carry out the certified Land Use Plan. Certification of the Implementation Program Amendment if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

PART III. SUGGESTED MODIFICATIONS

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

1) Modify Section 30.36.020(B) of Chapter 30.36 (Emergency Shelters) to read:

B. The emergency shelter shall be located a minimum distance of ~~300~~ 299 feet from another emergency shelter, with said measurement being defined as the shortest distance between the outside walls of the structures housing such facilities.

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

The proposed amendment affects the IP component of the City's LCP. The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified Land Use Plan (LUP).

A. AMENDMENT DESCRIPTION

The City of Encinitas seeks to amend its IP as part of a larger effort to update its Housing Element in accordance with state law. Other changes to the LUP and IP were recently approved with a suggested modification by the Commission in June 2019 as part of the implementation of the City's 2013-2021 Housing Element. Compliance with the provisioning of emergency shelters is an additional component of the overall implementation of the City's updated housing element.

On June 12, 2018, the Department of Housing and Community Development (HCD) sent the City a letter in regards to their draft Housing Element that noted that the City would need to come into compliance with SB 2 through the adoption of an ordinance that permitted emergency shelters without any local discretionary permit. SB 2, which became effective on January 1, 2008, amended Sections 65582, 65583, and 65589.5 of the Government Code. The provisions require that cities identify zones within their jurisdiction where a year-round emergency shelter can be permitted without a discretionary permit at the local level. While emergency shelters are currently permitted in the City of Encinitas within several of the Specific Planning Areas and the General Commercial zones, they require a Major Use Permit. Therefore, the City's land use administrative framework does not currently comply. The City passed Ordinance 2019-01 on February 13, 2019, which modified its zoning to be in conformance with SB 2.

The City recognized in its Resolution and in the ordinance itself that the Coastal Act nevertheless applies to a project for an emergency shelter in the Coastal Zone. Because

the Light Industrial and Business Park zones are applied to sites within the Coastal Zone, the development of emergency shelters will still be subject to the permitting requirements of the Coastal Act. The City acknowledges this need for full conformance in several areas, including a footnote to the revised Zoning Use Matrix proposed in Section 30.09.010, the proposed language of Chapter 30.36 found in Ordinance 2019-01, and both the implementing Resolution and Ordinance themselves. The Coastal Act requires the obtaining of a coastal development permit for those individuals or local agencies that perform or undertake development in the coastal zone. (Pub. Resources Code Section 30600). Upon approval of this amendment, the Commission expects that proposed emergency shelters will be evaluated on a case-by-case basis taking into account site-specific factors, and, if necessary, coastal development permits will be procured accordingly.

The requested changes to the IP include three main components. The first is the updating of the City's definition of emergency shelter to be in conformance with state law. The second is the revision of the Zoning Use Matrix so that emergency shelters are permitted without a discretionary permit in the Light Industrial (LI) and Business Park (BP) zones. The third is the addition of Chapter 30.36 (Emergency Shelters) to the Encinitas Municipal Code (EMC), which will allow for the development of emergency shelters in the LI and BP zones without a discretionary permit. The only objective standards that may be applied are specified in SB 2, and includes aspects of development such as maximum bed count for each facility, staffing requirements, the application of an operational plan, a minimum distance from other emergency shelters, maximum length of stay for an individual, and size and location of interior onsite waiting and client intake area. Otherwise, emergency shelters will be developed in conformance with the Light Industrial and Business Park development standards. They will not be subject to EMC Chapter 23.03 (Design Review) or EMC Chapter 23.06 (Citizen Participation Plan), but only subject to the standards set forth in proposed EMC Chapter 30.36 (Emergency Shelters).

The City had several reasons to support the use of the Business Park and Light Industrial Zones for the use of emergency shelters. Primary reasons include the location of and available space within these zones, which are centrally located on the south side of Encinitas Boulevard off of Westlake Avenue ([Exhibit 4](#)). Government Code Section 65583(a)(4)(A-D) requires that the identified zone have sufficient capacity to accommodate the City's unsheltered homeless population (which in January 2018 was 86 unsheltered individuals). The area is comprised of 28.56 acres, 0.32 acre of which is vacant of any structures. The remaining area is developed with a variety of business and light industrial uses such as light manufacturing and warehousing. Of those parcels with existing structures, thirteen have structures between 5,000 and 10,000 square feet or larger, and the remaining parcels contain structures of less than 5,000 sq. ft. In these zones, the allowable Floor Area Ratio is 0.75, indicating that even the smaller parcels could accommodate the needs of the City's unsheltered homeless population of 86 individuals. A number of available suites were also identified by the City, which envisions the adaptive reuse of existing structures to serve as emergency shelters. If the

site contains hazardous materials, remediation will be completed to residential use standards before the site can be used for an emergency shelter.

Additionally, the City stated the BP and LI zoned properties are well-served by public transportation and regional connections, and are within walking distance (up to half a mile) from nearby businesses that could potentially offer employment opportunities. These zones are also approximately one mile from the main office of the Community Resource Center, which provides housing advice and support to the homeless and at-risk populations of the area, and is available via public transit. Off-street parking requirements will comply with the City's existing parking regulations for industrial uses, unless the applicant provides substantial evidence, such as a parking demand study, demonstrating that the actual parking need is lower. Bicycle parking will also be provided at a rate of one per five beds. The parcels are inland of Interstate 5; thus, no adverse impacts to coastal access would be expected.

Finally, the City conducted a peer review of ordinances on emergency shelters passed by twenty other local jurisdictions, and found that the great majority of them also utilized their industrial/commercial/business park zones as areas for emergency shelters under SB 2 ([Exhibit 5](#)).

B. SUMMARY FINDINGS FOR REJECTION

During the course of review of the subject amendment, the City identified the need to modify one of the objective standards included in the ordinance. Specifically, the City intends to revise Section 30.36.020(B) of the proposed zoning chapter so that it states emergency shelters may be located a minimum distance of 299 feet apart, not the currently proposed 300 feet. Until that revision occurs, the IP amendment cannot be approved as submitted, as it is currently not in conformance with the goals and policies of the LUP that ultimately support the type of managed, balanced growth and thoughtful redevelopment that underpin an effective land use plan to guide decision-making that affects all residents.

B. SPECIFIC FINDINGS FOR REJECTION

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

a) Purpose and Intent of the Ordinance.

The purpose of Ordinance 2019-01 is to bring the City into compliance with state housing law (specifically SB 2) by allowing for emergency shelters without a discretionary approval in specified zones.

b) Major Provisions of the Ordinance.

- Amending of the definition of emergency shelter in order to comply with California Health and Safety Code Section 50801(e).

- Revising of the Zoning Use Matrix to include emergency shelters as a permitted use within the Light Industrial and Business Park zones, as well as the addition of a footnote that emergency shelters will not be subject to discretionary approvals but for requirements of the Coastal Act.
- The addition of Chapter 30.36 (Emergency Shelters) to the Zoning Code, which includes the objective standards for the zone allowable by state law and otherwise defers to the Business Park and Light Industrial zone development standards.

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

The ordinance is currently inadequate to carry out the provisions of the certified LUP because it does not adhere to guidance on state law. The certified LCP encourages thoughtful redevelopment and growth, a balanced mix of development that meets the long-term goals of the City, and supports the inclusion and development of all necessary types and units of housing into land use planning. With the inclusion of the suggested modification, the City will be able to formalize a revision to the proposed IP that ensures consistency with stated LUP goals to meet long-term objectives and identify constraints for both new development and redevelopment. The goals of the Land Use Element within the City's LCP clearly support a cohesive and thoughtful approach to the achievement of these long-term planning objectives, of which legal conformance with State housing law would assuredly fall under.

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

With the incorporation of **Suggested Modification #1**, the IP amendment can be found consistent with the City of Encinitas certified LCP. The suggested modification will ensure consistency with the overall goals and policies of the certified LCP. Some of the more relevant goals and policies of the LCP are presented below.

Stated goals of the Land Use Element include, in relevant part:

- *The establishment of a balanced and functional mix of development consistent with the long-range goals, objectives, and values of the City;*
- *Providing guidance for both public and private investments indicating where new development is permitted and the nature, density, and intensity of that development;*
- *The identification of opportunities for the redevelopment and new development in the City, as well as any constraints that might affect this development;*
- *The reduction of loss of life, injury, and property damage that might result from flooding, seismic hazards and other natural and man-made hazards that need to be considered in future land use planning and decision making;*
[...]

Policy 2.3 of the Land Use Element:

Growth will be managed in a manner that does not exceed the ability of the City, special districts and utilities to provide a desirable level of facilities and services. (Coastal Act/30250)

Policy 1.12 of the Circulation Element states, in relevant part:

[...]
The City will require that all commercial, industrial and residential uses be designed and constructed with sufficient off-street parking and loading facilities to assure adequate parking is provided with new development such that no adverse impacts on coastal access are documented. Parking ratios shall be utilized as specified and detailed in the City's Zoning Code and in implementing Specific Plans...
[...]

Goal 3 of the Circulation Element states:

The City of Encinitas will promote the use of other modes of transport to reduce the dependence on the personal automobile. (Coastal Act/30252)

The proposed amendment will not affect requirements for setbacks, floor area ratios, lot sizes and coverage, sign standards, building height, or landscaping currently found in the certified LCP. Aside from a limited number of objective development standards relating to such aspects as number of beds, size and location of intake areas, maximum length of stay, staffing requirements, and minimum distance from other shelters, emergency shelters proposed under this amendment will comply with development standards for the Light Industrial and Business Park Zones that are already part of the certified LCP. Additionally, the suggested modification will not affect requirements or development standards of any other aspect of the IP and will be limited to one objective development standard exclusive to the addition of the proposed Chapter 30.36 to the certified IP.

Additionally, the City's recently repealed Housing Element contained several paragraphs that were considered part of the LCP. Despite the fact that the new Housing Element was approved without incorporation into the LCP, these paragraphs from the former Housing Element were part of staff's findings and have been retained for guidance as the City continues to implement the new policies. A relevant policy from this section can be found in a description of the Zoning Code, which states:

There is a direct relationship between housing goals and land use planning. The Land Use Element of this General Plan and its implementing zoning regulations is the City's single most important "housing program," in providing for the number, and range of type, of housing units needed.

The suggested modification will ensure that the zoning regulations for emergency shelters are adequate to carry out the housing goals that are necessary by state law and therefore ensure consistency with the Land Use Element of the certified LCP. Moreover, Section 65589.5(e) of the Government Code states that the local agency will still need to comply with the Coastal Act, and so a coastal development permit will be applied for and procured (where development is not considered exempt) according to the standards of the certified LCP. The City has acknowledged this requirement in a footnote to the revised Zoning Use Matrix proposed in Section 30.09.010, the proposed language of Chapter 30.36 found in Ordinance 2019-01, and both the implementing Resolution and Ordinance themselves. The development of an emergency shelter, including an interior renovation of an existing structure, would likely require a CDP based on the change in the density and intensity of the use of the building. However, projects will be evaluated on a case-by-case basis according to site-specific factors. Therefore, as modified, the Commission finds the IP amendment conforms with, and is adequate to carry out, the certified LUP and the request can be approved.

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

Section 21080.9 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. The 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 submission.

The City found that the proposed amendments to the Encinitas Municipal Code are exempt from environmental review pursuant to the CEQA Guidelines Section 15378(b)(5), which exempts organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment in that the ordinance being considered will not result in any physical development in and of itself. Additionally the changes implement the policies contained in the City's 2013-2021 Housing Element, and is required to be adopted by Government Code Section 65583(a)(4)(A-D). The proposal to permit emergency shelters within the LI and BP zones was also reviewed in the Program EIR certified by the City on June 15, 2016 and in the EA adopted on June 20, 2018, which found that no further impacts will be created by the adoption of zoning amendments to implement the proposed policy. Therefore the program EIR adequately describes this zoning amendment for the purposes of CEQA.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, as amended, does conform with CEQA provisions. In this case, the LCP amendment will not have any significant adverse effects on the environment, as proposed emergency shelter locations will be reviewed for regulatory consistency with the Coastal Act and the City's certified LCP at the time

development is proposed. This review will ensure that no feasible alternatives or feasible mitigation measures are available that would substantially lessen any significant adverse impact on the environment. Therefore, the Commission finds the subject LCP implementation plans, as amended, conform with CEQA provisions.