

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO DISTRICT OFFICE  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4402  
VOICE (619) 767-2370  
FAX (619) 767-2384



# W16a

**LCP-6-ENC-21-0075-2 (Inclusionary Housing Update)**

**May 11, 2022**

## EXHIBITS

**Table of Contents**

**EXHIBIT 1: Ordinance Number 2021-02**

**ORDINANCE NO. 2021-02**

**AN ORDINANCE OF THE CITY OF ENCINITAS, CALIFORNIA, AMENDING CHAPTER 30.41 AFFORDABLE HOUSING OF THE ENCINITAS MUNICIPAL CODE, WHICH PROPOSES CHANGES TO THE CITY'S INCLUSIONARY HOUSING REGULATIONS INCLUDING IN-LIEU FEE AND NEW AFFORDABLE HOUSING IMPACT FEE REQUIREMENT**

**WHEREAS**, the City of Encinitas ("City") adopted an affordable housing program in 1990 to assist with meeting the demand for affordable housing and meeting the City's goals;

**WHEREAS**, the original Affordable Housing Ordinance ("Ordinance") was adopted to address the City's need for increased supply of affordable housing;

**WHEREAS**, the Ordinance gave developers the option to provide at least 10 percent of the dwelling units in new residential development of ten units or more as affordable units or pay an in-lieu fee;

**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**, in 2017 AB 1505 amended California Government Code Section 65850 and added Section 65850.1, to "reaffirm the authority of local jurisdictions to include within these inclusionary housing ordinances requirements related to the provision of rental units" and "does not modify or in any way change or affect the authority of local jurisdictions to require, as a condition of the development of residential units, that the development include a certain percentage of residential for-sale units affordable to, and occupied by, households with incomes that do not exceed the limits for moderate-income, lower income, very low income, or extremely low income households;"

**WHEREAS**, state law supports the City's ability to require a portion of rental residential development be made available for extremely low, very low, low, median and moderate-income households;

**WHEREAS**, on June 13, 2018, the City Council introduced Ordinance No. 2018-03 which was adopted on August 8, 2018 to repeal Chapter 24.21 Dedication: Affordable Housing Assistance and replace it with new Chapter 30.41 Affordable Housing, which modified the City's affordable housing regulations;

**WHEREAS**, at the City Council meeting of June 13, 2018, City Council directed staff to prepare a nexus study, gap analysis, and economic feasibility analysis to evaluate further opportunities for affordable housing units citywide and on sites proposed to be up zoned to 30 dwelling units per acre;

**WHEREAS**, the City continues to experience increases in the cost of housing and significant shortages in affordable housing;

**WHEREAS**, the City now desires to amend Chapter 30.41 to help meet the City's goals of providing affordable housing in a balanced manner, to increase the supply of affordable housing in the City, and to combat the adverse effects of insufficient affordable housing;

**WHEREAS**, the City hired Keyser Marston Associates, Inc. (KMA), a qualified consultant with demonstrated expertise preparing economic feasibility studies, to prepare the affordable housing real

**EXHIBIT NO. 1**

**Ordinance #2021-02**

 Encinitas LCPA No. LCP-6-ENC-0075-2  
California Coastal Commission

estate financial feasibility analysis, gap analysis and nexus study related to the Ordinance, which the Council considered along with these amendments to Chapter 30.41;

**WHEREAS**, the KMA Inclusionary Affordable Housing Real Estate Financial Feasibility Analysis (Feasibility Analysis) and the Affordable Housing Nexus Analysis (Nexus Analysis) were provided to the public in December 2019 and has been available on the City's website since December 2019;

**WHEREAS**, the Nexus Analysis demonstrates the impact of large additions and new market-rate housing on the need for affordable housing and supports the imposition of an in-lieu fee to mitigate the impact;

**WHEREAS**, the study methodology follows best professional practices and is sufficiently rigorous to allow an assessment of whether an increase in the citywide rental inclusionary requirement, in combination with other factors that influence feasibility, is economically feasible;

**WHEREAS**, the Feasibility Analysis relies on a comprehensive review of local market conditions from multiple industry data sources, as documented in Appendix 8 beginning on page 283;

**WHEREAS**, the Planning Commission received additional public testimony and input received during the public hearings regarding feasibility of a higher inclusionary requirement for properties in the R-30 Overlay, showing that developer profits were higher than shown in the KMA Report;

**WHEREAS**, the City Council and Planning Commission conducted a Special Joint City Council and Planning Commission meeting on December 11, 2019 to hear the findings of the KMA studies and directed staff to draft an amendment to the Ordinance reflecting the KMA recommendations and Council direction, as well as draft a resolution establishing an in-lieu fee;

**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 January 29, 2021 to March 12, 2021;

**WHEREAS**, the Planning Commission conducted Public Hearings on February 18, 2021, March 18, 2021, and May 6, 2021, and further considered the ordinance on May 20, 2021 for the purpose of considering amendments to Title 30 of the Encinitas Municipal Code and considered public testimony and made a recommendation to the City Council to approve draft Ordinance No. 2021-02 with modifications, amending Chapter 30.41 Affordable Housing of the Encinitas Municipal Code which proposes changes to the City's inclusionary housing regulations, including the imposition of in-lieu fees and affordable housing impact fees;

**WHEREAS**, the City Council conducted public hearings on June 23, 2021, September 22, 2021 and October 13, 2021 for the purpose of considering the proposed amendments to the Ordinance;

**WHEREAS**, the City Council has duly considered all evidence, including but not limited to 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; and

**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.

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

**SECTION 1:** The recitals above are each incorporated by reference and adopted as findings by the City Council.

**SECTION 2:** The City Council further finds:

- 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 2021-2029 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 57 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 2021-2029 Regional Housing Needs Allocation (RHNA) determined by SANDAG, the City of Encinitas has a total housing need of 1,554 units through the year 2029, out of which nearly 74 percent is for lower- and moderate-income households (1,146 units). Of the affordable units: 469 units (30 percent) are intended for very low income households; 369 units (24 percent) for lower income households; and 308 units (20 percent) for moderate income households.
  3. Because of the shortage of affordable housing in Encinitas, many households overpay for their housing. The 2013-17 American Community Survey found that approximately 32.7 percent of Encinitas households who own their homes pay more than 30 percent of income for their mortgage, while 50.8 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. Between 2013 and 2017, In Encinitas, the median monthly costs were \$3,016 for housing units with a mortgage, requiring an annual income of \$120,640 to avoid overpayment. Median gross rent was \$1,837, requiring an annual income of \$73,480. Additionally, over 73 percent of the lower income households are paying more than 30 percent of their income and over 52 percent are paying over 50 percent of their income versus 22 percent and 6 percent respectively for the moderate and above moderate households. Providing decent housing at affordable costs allows households to utilize their resources for other necessary pursuits, such as education, food, investment, and savings 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 and regulate land use, ensuring that the limited supply of developable land provides housing opportunities for households of all income levels. 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 demand on services provided by both the public and the 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.

**SECTION 3:** Chapter 30.41 (Affordable Housing) of the Encinitas Municipal Code is hereby amended, as shown in **Exhibit A**, attached hereto and incorporated herein by this reference.

**SECTION 4:** The adoption of this Ordinance is not a project within the meaning of Section 15378 of the California Environmental Quality Act (CEQA) Guidelines because there is no potential for it to result in a physical change in the environment, either directly or indirectly, in that the inclusionary ordinance is related only to the affordability of housing and does not modify the physical characteristics of housing. In the event this Ordinance is found to be subject to CEQA, it is exempt from CEQA pursuant to the exemption contained in CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that

there is no possibility of a significant effect on the environment, in that this Ordinance regulates the price of housing and contains no provisions that will directly or indirectly result in a physical change in the environment, in that it does not modify the physical standards applicable to housing.

**SECTION 5:** If any section, sentence, clause or phrase of this Ordinance is determined to be invalid, illegal or unconstitutional by a decision or order of any court or agency of competent jurisdiction, then such decision or order will not affect the validity and enforceability of the remaining portions of this Ordinance. The City Council declares that it would have passed and adopted this Ordinance, and each section, sentence, clause or phrase thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

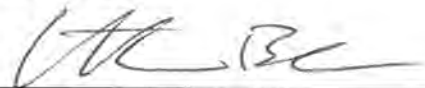
**SECTION 6:** The City Clerk is directed to prepare and have published a summary of the Ordinance no less than five days prior to consideration of its adoption, and again within 15 days following adoption, indicating the votes cast. This Ordinance will become effective following certification by the California Coastal Commission as being consistent with the Local Coastal Program for the City of Encinitas and California Coastal Act.

**INTRODUCED** at a regular meeting of the City Council of the City of Encinitas, California, held on this 22<sup>nd</sup> day of September 2021; and

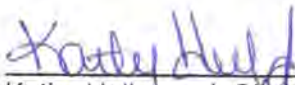
**PASSED, APPROVED AND ADOPTED** at a regular meeting of the City Council of the City of Encinitas, California, held on the 13th day of October, 2021, by the following roll call vote:

**AYES:** Blakespear, Hinze, Kranz, Lyndes, Mosca  
**NOES:** None  
**ABSENT:** None  
**ABSTAIN:** None

**APPROVED:**

  
\_\_\_\_\_  
Catherine S. Blakespear, Mayor

**ATTEST:**

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

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Leslie E. Devaney, City Attorney

CERTIFICATION

I, Kathy Hollywood, City Clerk of the City of Encinitas, California, do hereby certify under penalty of perjury that the foregoing ordinance was duly and regularly introduced at a meeting of the City Council on this 22 day of September, 2021 and that thereafter the said ordinance was duly and regularly adopted at a meeting of the City Council on this 13 day of October, 2021 by the following vote, to wit:

AYES: Blakespear, Hinze, Kranz, Lyndes, Mosca

NOES: None

ABSENT: None

ABSTAIN: None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Encinitas, California, this 14 day of October, 2021.



Kathy Hollywood, City Clerk

## EXHIBIT A

Chapter 30.41 (Affordable Housing) of the Encinitas Municipal Code is hereby **amended** to read as follows (~~strikeout~~ is used to denote existing text being deleted; underline is used to denote new text being added):

### Chapter 30.41 AFFORDABLE HOUSING

#### 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.

#### 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.

"Affordable housing agreement" means ~~an agreement~~ a legally binding agreement in conformance with Section 30.41.090B of this chapter between the City and an applicant to ensure that the inclusionary requirements of this chapter are satisfied ~~governing how the applicant shall comply with this chapter.~~

"Affordable housing fund" means a fund or account designated by the City to maintain and account for all monies received pursuant to this chapter.

"Affordable housing guidelines" means any requirements for implementation and administration of this chapter adopted by the City Council in accordance with Section 30.41.090D of this chapter.



“Affordable housing plan” means a plan containing all of the information specified in and submitted in conformance with Section 30.41.090A of this chapter, specifying the manner in which affordable units will be provided in conformance with this chapter and any adopted affordable housing guidelines.

“Affordable rent” means the maximum monthly rent, including an allowance for tenant paid utilities (HUD Allowances for Tenant- Furnished Utilities Table) calculated at the specified income level in accordance with California Health and Safety Code Section 50053 and implementing regulations.

“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 and implementing regulations. 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.

“Affordable unit” means a dwelling unit ~~required by this chapter~~ to be affordable to very low, ~~or~~ low-income, or moderate income households.

“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.

“Approval body” means the body with the authority to approve the proposed residential development.

“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.

“Building permit” includes full structural building permits as well as partial permits such as foundation-only permits.

“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 10% or more of the interest in the property.

“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.

“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.

“Conversion” means the change of status of a dwelling unit from an ownership unit to a rental unit or vice versa and/or a market-rate unit to a unit affordable to lower-income households.

“Density bonus units” means dwelling units approved in a residential development pursuant to California Government Code Section 65915 and Encinitas Municipal Code Section 30.16.020C that are in excess of the maximum allowable residential density otherwise permitted by the City of Encinitas.

“Financial assistance” means assistance to include, but not limited to, the payment or waiver of expenses for fees, infrastructure, land costs, or construction costs, the provision of community development block grant (CDBG) or other public funds, or the provision of other in-kind assistance or financial aid in the form of loans or other monetary compensation, by the City of Encinitas.

“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.

“Inclusionary unit” means an “Affordable unit” required by this chapter.

“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.

“Lower-income household” means low-income, very low-income and extremely low-income households, whose gross income does not exceed the applicable income limits applicable to San Diego County, as 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.

“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 by other local, state, or federal programs requiring the provision of affordable housing. a new dwelling unit in a residential development that is not an affordable unit.

“Moderate-income households” are those households whose income does not exceed the moderate-income limits applicable to San Diego County as defined in California Health and Safety Code Section 50093 (b) 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.

“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.

“Planning area” means one of the five Encinitas communities (Cardiff, New Encinitas, Leucadia, Old Encinitas, and Olivenhain).

“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.

“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.

“Residential care facility, general” shall mean any residential care, general facility as defined in Section 30.04.010 of the Encinitas Municipal Code.

“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, construction of an addition of 500 sq. ft. or more to an existing dwelling unit, or the conversion of nonresidential uses to dwelling units, ~~or the conversion of a use from a residential rental development to a residential ownership development.~~

“Surplus affordable unit” means any affordable unit constructed in connection with residential development and without any financial assistance or other public subsidy, which exceeds the numerical requirement for affordable units for that residential development under this chapter.

“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.

### **30.41.030 Applicability.**

The ~~provisions~~ inclusionary housing requirements of this chapter shall apply to:

- A. All residential development and all conversions except for any residential development exempt under Section 30.41.040; and
- B. All residential development and all conversions and contiguous properties that are under common ownership or control.

The provisions of Section 30.41.085 Affordable Housing Impact Fee - Residential Care Facilities shall apply to any residential care facility, general.

### **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. Existing residences which are altered, improved, restored, repaired, expanded or extended by less than five hundred (500) square feet of habitable space, provided that the number of dwelling units is not increased.~~
  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 exempted by California Government Code Section 65589.5(o) or successor provision, provided that such residential developments shall comply with any predecessor ordinance, resolution, or policy in effect on the date that a preliminary application for the development containing all of the information required by Government Code Section 65941.1 was submitted to the City.

4.5. 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.

6. The construction of a new residential structure that replaces a residential structure that was destroyed or demolished within two (2) years prior to the application for a building permit, provided that the number of residential units is not increased, nor expanded or enlarged by five hundred (500) square feet or more of habitable space. If the number of residential units is increased, then the requirements of this chapter shall be applied to only the total number of new units minus the number of units destroyed or demolished.

7. Accessory dwelling units developed in accordance with Chapter 30.48.040T that are built as an accessory dwelling unit to an existing residential structure. Accessory dwelling units built as part of a new residential development shall not be counted towards a project's total unit count regarding inclusionary requirements.

8. Density bonus units constructed in accordance with Chapter 30.16.020C.

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.

### **30.41.050 Affordable Inclusionary Housing Requirement.**

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

A. ~~On-Site Affordable Requirement~~ Residential Developments of Seven or More Units. Unless exempted from this chapter, or unless an alternative is approved as described in Section 30.41.075~~80~~, residential developments of seven units or more shall include affordable inclusionary units upon the same site as the residential development as follows:

1. Ownership residential development: the applicant shall provide either:
  - a. ~~TwentyFifteen~~ percent (~~2015~~%) of the dwelling units in the residential development made available at affordable sales price to low-income households; or
  - b. ~~FifteenTen~~ percent (~~1540~~%) 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. ~~TwentyFifteen~~ percent (~~2015~~%) of the dwelling units in the residential development made available at affordable rent to low-income households; or
  - b. ~~FifteenTen~~ percent (~~1540~~%) of the dwelling units in the residential development made available at affordable rent to very low-income households.

B. Residential Developments of Six or Fewer Units and Expansions and Additions of Five Hundred (500) Square Feet or Greater. Unless exempted from this chapter, or unless an alternative is approved as described in Section 30.41.075, residential developments of six or fewer units, replacement units expanded or enlarged by five hundred (500) square feet or more of habitable space, and additions of 500 square feet or more of habitable space to an existing unit shall construct an ADU affordable to a low or very low income household as described in Section 30.41.075(A) or pay an in-lieu fee as described in Section 30.41.080.

CB. If the affordable housing requirements described in subsection A above result in a fractional unit of one-half or more, one additional affordable unit shall be provided. When the calculation results in a fraction of less than one-half, the applicant may either pay an in-lieu fee as specified in Section 30.41.080E or may ~~construct~~ provide one additional affordable inclusionary unit, at the applicant's option.

DC. 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.

ED. 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.

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

- A. Affordable Housing Standards. Inclusionary units must be constructed on the site of the residential development unless the City approves an off-site alternative as provided under Section 30.41.075. Inclusionary housing units must conform to the following standards:
1. Inclusionary units shall remain restricted and affordable to the designated income group in perpetuity.
  2. Affordable Inclusionary 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.
  - 3.B affordable Inclusionary 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.
  4. ~~Inclusionary units shall be at least seventy five percent of the average square footage of all market rate units with the same bedroom count. In single family housing developments, the inclusionary units shall not exceed 2,000 square feet.~~
  45. The unit mix based on bedroom count provided for inclusionary units shall be proportional to the unit mix based on bedroom count provided for market-rate units.
  56. Affordable units shall be dispersed throughout the housing development, on each floor, elevation, and section of the building(s) and throughout the site such that:
    - a. No more than 50 percent of the proposed affordable housing units are consolidated into one structure in developments with more than one multi-unit structure, and
    - b. No more than 20 percent of affordable housing units in a single multi-unit structure may be located adjacent to each other or stacked on consecutive floors unless it is unavoidable due to the required unit mix and distribution, and
    - c. No more than 20 percent of the affordable housing units may be located adjacent to each other within single-family residential subdivisions.
  67. When a housing development proposes for sale and for rent units, the affordable units shall be dispersed proportionally between for sale and for rent units.
  78. The dispersion requirements of this subsection shall not be applicable if the affordable units are financed with low-income tax credits or consist of affordable senior housing.
  89. 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.
- BC. Affordable Housing Incentives. The developer of a residential development providing all required ~~affordable~~ inclusionary 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 30.16.020C, 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 below in this subsection B of this section may be provided only if each is individually requested as a regulatory incentive under Section 30.16.020C.
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~~ sales price or rent.
3. Financial ~~Assistance~~ Subsidies. ~~The developer may apply for financial assistance subsidies for the affordable units from any available federal and state funding sources.~~ The developer may also apply for financial assistance subsidy from City-administered funds for the difference in costs that results if the developer provides more affordable inclusionary units than are required by this Chapter, or provides affordable units to households in income classifications that are lower than required.
4. Incentives may 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 incentives, assists in achieving the City's housing goals. To the degree that the City makes available programs to provide incentives, applicants may make application for such programs.

CD. 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 approved by the City shall be included in the affordable housing plan, ~~if approved by the City~~, for the residential development.

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

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

- A. In ownership residential developments, ~~the~~ the City may not issue building permits for more than 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 75% of the market-rate units until it has issued final inspections or certificates of occupancy for all of the affordable units. The final approval body of the City and developer may agree on an alternative schedule for development that is included recorded in the affordable housing agreement.
- B. In rental residential development, the City may not issue building permits for more than 50% of the market rate buildings, until it has issued building permits for all buildings containing affordable units, and the City may not approve any final inspections or certificates of occupancy for more than 75% of the market-rate buildings it has issued final inspections or certificates of occupancy for all of the buildings containing affordable units. The final approval body of the City and developer may agree on an alternative schedule for development that is included recorded in the affordable housing agreement.

C. In-lieu fees, as appropriate, have been paid in accordance with Section 30.41.080~~E4~~.

DC. The applicant has met, or made arrangements satisfactory to the City to meet, an alternative requirement as permitted by Section 30.41.07580.

### **30.41.07580 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 inclusionary 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 applicable to rental affordable units. In no event shall a developer be allowed to construct more than a total of 50% of the total required inclusionary units as accessory dwelling units for projects of 10 or more units, or five accessory dwelling units, whichever is less, in any given residential development to satisfy the requirements of this chapter. ADU units constructed to comply with inclusionary requirements shall not be subject to provisions in 30.41.060(A)(4).

B. Rental Units in an Ownership Residential Development. The affordable inclusionary housing requirement in Section 30.41.050A1 may be satisfied by providing the required number of inclusionary units in the ownership residential development at an affordable rent to low or very low income households. ~~15% of the dwelling units in the residential development at affordable rent to low income households or 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 30.41.050A on another site. The City may ~~grant a credit for~~ approve the off-site construction only if the proposal meets all of the following requirements ~~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 30.41.050A 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~~ financial assistance or other public subsidy 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 ~~is must be~~ suitable for the proposed affordable housing, ~~is~~ consistent with any adopted affordable housing guidelines and the Housing Element, will not tend to cause residential segregation, and ~~be is~~ located within the same planning (community) area with appropriate infrastructure and services. ~~Any~~ The off-site alternative ~~must compliesy~~ 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~~ will be made a part of the affordable housing agreement required for the site(s) and ~~shall~~ will be subject to review and approval by the City Manager or designee.

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 accordance with Section 30.41.080. ~~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 30.41.050A 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 City Council, upon recommendation by the Planning Commission, makes all of the following findings proposal meets all of the following conditions:

1. The number of affordable units to be constructed on the dedicated property either equals ~~shall be~~ the number of affordable units required under Section 30.41.050A, 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 Section 30.41.050A (for example, 20 percent very low income units ~~exclusively~~); and
2. Financing or a viable financing plan, which may include public funding, ~~shall be~~ is in place for construction of the affordable units on the dedicated property; and
3. The location of the dedicated land is suitable for the proposed affordable housing, is consistent with any adopted affordable housing guidelines and the Housing Element, will not tend to cause residential segregation, ~~and is located within the same planning (community) area~~ with appropriate infrastructure and services. The project will comply with the density, intensity and development standards that are permitted under the zone for the site. 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~~ consistent with regulations of the California Tax Credit Allocation Commission.

The property shall be dedicated to the City, or to an affordable housing developer who has secured financing to construct the affordable housing, 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 30.41.050A 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 requirements ~~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 ~~40~~ 5 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 financial assistance or other public subsidy ~~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 approval~~ approval body may approve or conditionally approve such an alternative only if the ~~decision-making approval~~ approval 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, will not tend to cause residential

segregation, and will otherwise provide greater public benefit than would provision of the affordable units on site.

### **30.41.080 Inclusionary In-Lieu Fee.**

A. 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 inclusionary units in one or more of the following circumstances:

1. For any residential development of less than seven units.

2. Additions of five hundred (500) square feet or more of habitable space.

3. The reconstruction or replacement of any residential unit that results in a net increase of five hundred (500) square feet or more of habitable space.

42. Fractional unit less than one-half.

53. Where the in-lieu fee will be used to provide financial assistance to an identified affordable residential development housing project that (a) is providing more inclusionary units than required by this ordinance chapter; (b) is proposed by an affordable housing developer; (c) has received all discretionary approvals from the City; and (d) requires additional funds to commence construction; and (e) where the in-lieu fee will provide more affordable units than required by this chapter.

64. Provision of the in-lieu fee will create ten (10) percent more affordable units than would be created by on-site provision of the affordable units.

B. Inclusionary in-lieu fees shall be established from time to time by resolution of the City Council and adjusted annually administratively based on the Engineering News Record Construction Cost Index for the Los Angeles region, or similar construction industry index selected by the City Manager if the CCI index is discontinued.

C. The inclusionary in-lieu fee shall be determined using the rate in effect when the applicant's development permit application or application for subdivision under the Subdivision Map Act is deemed complete, whichever is earlier, unless the residential development is subject to the provisions of Government Code Section 65589.5(o).

D. 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.

E. No building permit 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.

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

G. Projects requesting a density bonus, incentive or concession, waiver, or parking ratio under Government Code Section 65915 or Section 30.16.020C or located within the R-30 OL Zone shall

not be permitted to pay in-lieu fees as an alternative to satisfying the affordable housing requirements of this Chapter.

### **30.41.085 Affordable Housing Impact Fee - Residential Care Facilities.**

A. It is the purpose of this chapter to assess and collect fees during the building permit process to finance the cost of additional affordable housing opportunities necessitated by new residential care development.

#### B. Requirement.

1. An affordable housing impact fee for residential care facilities, general may be established from time to time by resolution of the City Council and adjusted annually administratively based on the Engineering News Record Construction Cost Index for the Los Angeles region, or similar construction industry index selected by the City Manager if the CCI index is discontinued.

2. In accordance with Government Code Section 66007, the City shall require the applicant of a new residential care facility, general to satisfy the fee requirement prior to the issuance of the certificate of occupancy, as a condition of approval of the development. The fees shall be deposited in the affordable housing fund described in Section 30.41.110.

3. Alternative Compliance Options. The requirement to pay the affordable housing impact fee may be satisfied by the residential care applicant by dedicating land for affordable housing development if the proposal meets the standards set in Section 30.41.075 or by dedicating affordable housing units within the residential care facility or on-site. The value of any land or difference between the affordable unit and the market rate unit will be credited to the applicant's affordable housing impact fee requirement.

C. Exemptions. The following developments are exempt from the regulations of this chapter:

1. Remodels of existing residential care facilities which do not add new units.

2. Development involving the replacement on the same parcel by the owner of a residential care facility of dwellings destroyed by fire or other calamity, provided that the application for a building permit to replace such residential care unit is filed within two years after destruction and that the number of units/beds is not increased.

3. Residential care facilities 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.

4. Residential care facilities exempted by California Government Code Section 66474.2 or 66498.1, provided that such residential care facilities shall comply with any predecessor ordinance, resolution, or policy in effect on the date the application for the development was deemed substantially complete.

5. Residential care facilities 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 care facilities shall comply with any predecessor ordinance, resolution, or policy in effect on the date the application for the development was deemed complete.

### **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 30.41.075~~80~~ 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 subsection B of this section 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.

5. An affordable housing plan shall include, but not be limited to, the following:

- a. The number of inclusionary dwelling units proposed, with specific calculations detailing the application of any inclusionary credit adjustment;
- b. The unit square footage, and number of bedrooms for market rate and inclusionary units and tenure (ownership or rental);
- c. The proposed location of the inclusionary units;
- d. Amenities and services provided, such as daycare, transportation, job training/employment services and recreation;

- e. Level of affordability for inclusionary units (very low, low or moderate);
- f. Schedule for production of dwelling units;
- g. Incentives requested; and
- h. Evidence to justify any requested alternative under Section 30.41.075.

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, at a minimum, shall specify the number, type, location, size, and phasing of all affordable inclusionary 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.

3. 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.

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.

**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 or in the affordable housing agreement or other agreement.

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.

#### **30.41.110 Affordable Housing Fund.**

- A. All in-lieu fees, promissory note repayments, impact fees 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.

#### **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.

**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.