

CALIFORNIA COASTAL COMMISSION

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F9a

DATE: March 29, 2024

TO: Commissioners and Interested Persons

FROM: Karl Schwing, Deputy Director
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Amrita Spencer, District Supervisor
Fernie Sy, Coastal Program Analyst

SUBJECT: Major Amendment Request No. LCP-5-NPB-22-0056-1 (Part A) to the City of Newport Beach Certified Local Coastal Program, for Public Hearing and Commission Action at its April 12, 2024, meeting.

SUMMARY OF LCP AMENDMENT REQUEST NO.

LCP-5-NPB-22-0056-1 (Part A)

The City of Newport Beach is requesting an amendment to the City's Certified Local Coastal Program (LCP). The amendment would modify the Implementation Plan (IP) of the City's Certified Local Coastal Program (LCP) to allow density bonuses associated with housing development projects in the Coastal Zone. The LCP Amendment was submitted for Coastal Commission action on August 23, 2022, via Newport Beach City Council Resolution No. 2022-56.

SUMMARY OF STAFF RECOMMENDATION

The proposed LCP Amendment would amend the IP of the City's certified LCP to allow density bonuses associated with housing development projects in the coastal zone. This LCP Amendment is required to ensure that City's regulations comply with State Density Bonus Law (DBL).

Initially, the City had submitted comprehensive DBL language with its LCP Amendment. However, the City later contacted Commission staff and requested a modification to remove most of its proposed density bonus language because its proposed language was rendered out of date with new DBL changes that went into effect on January 1, 2024. Instead of adding comprehensive policies governing DBL projects to its IP, the City is now requesting a more streamlined approach under which its IP would simply: 1) cross-reference state DBL law and an existing process in the City's uncertified zoning code for processing such DBL projects; and 2) state that all such projects must also

obtain coastal development permits (CDPs) and comply with relevant LCP provisions. The City's rationale for this suggested modification is that a broad cross reference to state DBL would allow the City to keep up with ongoing changes to the DBL by the State Legislature, while avoiding the need to regularly update the LCP with new DBL language.

Cross-referencing the DBL does not raise any substantive coastal resource concerns as long as the IP is clear that DBL projects must also still comply with coastal resource protection standards of the LCP. However, the proposed LCP Amendment is not as clear as it needs to be on this point. Thus, staff proposes a modification to clarify that a specific process for reviewing projects exists that also takes into consideration the Coastal Act and the coastal resource protection policies found in the certified LCP. State DBL makes it clear that any density bonus, concessions, incentives, waivers or reductions of development standards shall be permitted in a manner consistent with the Coastal Act. Thus, in order to verify projects involving a density bonus component take into account the Coastal Act and are protective of coastal resources, it must be made clear that such a review process for density bonus projects is incorporated into the LCP.

Suggested Modification No. 1 cross references the State DBL and deletes the more comprehensive, originally proposed language, as requested by the City of Newport Beach. **Suggested Modification No. 2** clarifies that a CDP review process for a density bonus component exists that is protective of coastal resources.

As modified, the proposed LCP Amendment can be found consistent with and adequate to carry out the certified Coastal Land Use Plan (CLUP). Staff recommends that the Commission approve the amendment with those suggested modifications. The motions and resolutions to accomplish this recommendation are found on **page 6** of this staff report.

DEADLINE FOR COMMISSION ACTION: The City submitted the Implementation Plan (IP) Amendment request on December 9, 2022. The City submitted additional information on February 6, 2023, and the amendment request was deemed by staff to be complete on February 17, 2023. On May 10, 2023, the Commission authorized a one-year extension of the ninety-day time limit for action on the LUP and IP Amendment request. As such, the last date for Commission action on this item is May 16, 2024.

ADDITIONAL INFORMATION

Copies of the staff report are available on the Commission's website at www.coastal.ca.gov. For additional information, contact Fernie Sy in the South Coast District Office of the Coastal Commission at fernie.sy@coastal.ca.gov (562) 590-5071.

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Exhibits

[Exhibit No. 1 – City Council Resolution No. 2022-56](#)

I. PROCEDURAL ISSUES

A. STANDARD OF REVIEW

The standard of review for the Local Coastal Program (LCP) Implementing Ordinances (IP), pursuant to Sections 30513 and 30514 of the Coastal Act, is that the proposed IP amendment conforms with and is adequate to carry out the provisions of the Certified Coastal Land Use Plan (CLUP).

B. PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires public input in LCP development. It states: “During the preparation, approval, certification, and amendment of any local coastal program, the public, as well as all affected governmental agencies, including special districts, shall be provided maximum opportunities to participate. Prior to submission of a local coastal program for approval, local governments shall hold a public hearing or hearings on that portion of the program, which has not been subjected to public hearings within four years of such submission.”

The City Council adopted LCP Amendment No. LC2020-004 to amend the City’s Certified LCP IP. The proposed changes were submitted for Coastal Commission action via City Council Resolution No. 2022-56.

The City Council held one public hearing on the proposed LCP Amendment, on August 23, 2022. The Planning Commission held a public hearing on the proposed LCP Amendment on July 21, 2022.

C. PROCEDURAL REQUIREMENTS

If the Commission certifies the LCP Amendment as submitted, no further City Council action will be necessary, and the amendment will become effective. Should the Commission deny the LCP Amendment, as submitted, without suggested modifications, no further action is required by either the Commission or the City, and the LCP Amendment is not effective, pursuant to Sections 13537(d) and 13542(f). Should the Commission deny the LCP Amendment, as submitted, but then approve it with suggested modifications, then the City Council may consider accepting the suggested modifications and submitting them by resolution to the Executive Director for a determination that the City’s acceptance is consistent with the Commission’s action. In that scenario, pursuant to the sections cited above and Sections 13544(c) and 13544.5 (c) of Title 14 of the California Code of Regulations, the modified LCP amendment will become final and effective at a subsequent Commission meeting when the Executive Director reports his or her determination that the City’s action in accepting the suggested modifications approved by the Commission for the LCP Amendment is legally adequate. If the City does not accept the suggested modifications within six months of the Commission’s action, then the LCP Amendment remains uncertified and not effective within the coastal zone.

II. MOTIONS AND RESOLUTIONS

Staff recommends that the Commission, after public hearing, approve the proposed LCP Amendment with suggested modifications. The Commission needs to make two motions on the IP Amendment in order to act on this recommendation.

A. Deny the IP Amendment as Submitted

Staff recommends a **YES** vote on the motion below. Passage of this motion will result in rejection of IP Amendment as submitted and the adoption of the following resolution and findings in this staff report. The motion to reject passes only by an affirmative vote of a majority of the Commissioners present.

Motion: I move that the Commission reject LCP Amendment Number LCP-5-NPB-22-0056-1-Part A as submitted by The City of Newport Beach, and I recommend a yes vote.

Resolution to Deny: The Commission hereby denies certification of LCP Amendment Number LCP-5-NPB-22-0056-1-Part A as submitted by The City of Newport Beach and adopts the findings set forth below on grounds that the amendment as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Coastal Land Use Plan. Certification of the amendment 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 amendment as submitted.

B. Certify the IP Amendment with Suggested Modifications

Staff recommends a **YES** vote on the motion below. Passage of this motion will result in certification of the IP Amendment with suggested modifications and the adoption of the following resolution and the findings in this staff report. The motion to certify with suggested modifications passes only by an affirmative vote of a majority of the Commissioners present.

Motion: I move that the Commission certify LCP Amendment Number LCP-5-NPB-22-0056-1-Part A as submitted by The of Newport Beach if it is modified as suggested in this staff report.

Resolution to Certify: The Commission hereby certifies LCP Amendment Number LCP-5-NPB-22-0056-1-Part A, if modified as suggested, and adopts the findings set forth below on grounds that the amendment with the suggested modifications conforms with, and is adequate to carry out, the provisions of the certified Coastal Land Use Plan. Certification of the 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 plan 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.

III. SUGGESTED MODIFICATIONS

The Commission hereby suggests the following modifications to the proposed LCP Amendment, which are necessary to make the requisite Coastal Land Use Plan (LUP) consistency findings. If the City of Newport Beach accepts the suggested modifications within six months of Commission action (i.e., by October 12, 2024), by formal resolution of the City Council, the modified amendment will become effective upon Commission concurrence with the Executive Director's finding that this acceptance has been properly accomplished. findings. If The City of Newport Beach accepts the suggested modifications within six months of Commission action (i.e., by October 12, 2024), by formal resolution of the Board of Supervisors, the modified amendment will become effective upon Commission concurrence with the Executive Director's finding that this acceptance has been properly accomplished.

1. Suggested Modification No. 1: Modify Chapter 21.32 Density Bonus as follows: See [Appendix A](#)

Changes to proposed language are shown in **bold underline** and ~~strike-out~~.

2. Suggested Modification No. 2: Modify Chapter 21.32 Density Bonus as follows:

Changes to proposed language are shown in **bold double underline** and ~~strike-out~~.

21.32.02025 Coastal Act Consistency

- A. California Government Code Section 69515(m) provides that density bonus law shall not be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976. **Any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which the applicant is entitled under California State Government Code § 65915 et. seq., shall be permitted in a manner that is consistent with that section and the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code).**

21.32.040150 Approval Process.

An applicant requesting a density bonus, incentive, concession, or waiver pursuant to this chapter shall require approval of an Affordable Housing Implementation Plan pursuant to Sections 20.50.030 and 20.52.015 **and a coastal development permit pursuant to Chapter 21.52 (Coastal Development Review Procedures).**

IV. FINDINGS

The Commission hereby finds and declares:

A. AMENDMENT DESCRIPTION & LOCATION

The subject LCP Amendment, LCP-5-NPB-22-56-1 (Part A), would amend the IP (Title 21 of the City's Municipal Code) of the City's certified LCP to incorporate standards and establish an approval process for considering density bonuses with housing development projects. This LCP Amendment would add a new chapter (Chapter 21.23) to Title 21 of the (IP), clearly establishing the regulations for density bonuses in the Coastal Zone. Of note, the proposed amendment would not allow any development approved under this Chapter to be inconsistent with the coastal resource protection policies of the certified IP Sections 21.28.040 (Bluff (B) Overlay District), 21.28.050 (Canyon (C) Overlay District), 21.28.015(D)(Waterfront Development), 21.30.015(E)(2) (Development in Shoreline Hazardous Areas) and 21.30.100 (Scenic and Visual Quality Protection), or Chapters 21.30A (Public Access and Recreation) Chapter 21.30B (Habitat Protection). For any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which the applicant is entitled under California State Government Code Section 65915 et. seq., they shall only be permitted in a manner that is consistent with that section and the Coastal Act. This LCP Amendment is required to ensure that City's regulations comply with the State's DBL, Government Code Sections 65915 – 65918. Currently, the certified IP is silent with respect to density bonuses. The City's Municipal Code Chapter 20.32 (Density Bonus) of Title 20 (Planning and Zoning), both of which are not part of the certified LCP, which was last updated in 2010, is out of date with the state's current DBL.

In the past 14 years, the California State Legislature has enacted numerous bills that have amended various sections of the DBL. Density bonus allows a developer of a housing project with at least five units to increase density on a property above the maximum set under a jurisdiction's local regulations. In exchange for the increased density, a certain percentage of the new units must be reserved at below market rate (BMR) rents or as other qualifying housing types such as senior housing. Density bonus law also allows developers to receive a certain number of concessions or incentives that reduce or modify site and development standards based on the amount of affordable housing that is provided and other criteria. Additionally, local governments cannot apply development standards that would have the effect of physically precluding the construction of a qualifying development with the density bonus and concessions/incentives it is entitled to. The California DBL was initially enacted back in 1979. The state DBLs are often amended annually.

The City's IP lacks current density bonus information such as density bonus percentages, eligible housing types, replacement housing requirements, development standard waiver provisions, review process to consider density bonus applications, etc.

The LCP Amendment was submitted for Coastal Commission action on August 23, 2022 via Newport Beach City Council Resolution No. 2022-056 ([Exhibit No 1](#)).

After submitting the proposed LCP Amendment, the City requested a modification to remove most of its proposed density bonus language and instead cross reference Government Code 65915 (which describes the allowances and requirements for density bonuses). The City's rationale for this modification was that a generalized IP policy to allow density bonuses within the Coastal Zone consistent with state DBL would avoid the time and resources needed to regularly update the LCP with subsequent DBL changes. The City also clarified that the remaining sections would outline instances where density bonuses would not be approved in order to protect coastal resources.

Normally, the Commission does not allow LCPs to cross reference or incorporate outside laws, regulations, or documents, because those provisions could be changed in the future, without Commission involvement or even knowledge, in a manner that would be inconsistent with the Coastal Act and LCP. However, in this case the proposed IP amendment includes a provision specifying that any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios provided to the applicant pursuant to DBL shall only be permitted in a manner that is consistent with the Coastal Act. It also states that DBL projects require a CDP and that relevant coastal resource protection standards of the LCP may not be waived, reduced, or modified. These provisions ensure that the coastal resource protection standards of the LCP will be carried out even if state DBL law later changes. This revised language will be discussed further in the staff report.

B. EVALUATION OF PROPOSED LCP AMENDMENT

Standard of Review

The proposed amendment affects the LCP's IP, and the standard of review for IP amendments is that they must be consistent with and adequate to carry out the provisions of the certified LUP.

LUP – LAND USE AND DEVELOPMENT

2.7.1. Land Use and Development/Residential Development: Continue to maintain appropriate setbacks and density, floor area, and height limits for residential development to protect the character of established neighborhoods and to protect coastal access and coastal resources.

2.7.2. Land Use and Development/Residential Development: Continue the administration of provisions of State law relative to the demolition, conversion and construction of low and moderate-income dwelling units within the coastal zone.

2.2.1-1. General Development Policies/Location of New Development: Continue to allow redevelopment and infill development within and adjacent to the existing developed areas in the coastal zone subject to the density and intensity limits and resource protection policies of the Coastal Land Use Plan.

2.2.1-2. General Development Policies/Location of New Development: Require new development be located in areas with adequate public services or in areas that are capable of having public services extended or expanded without significant adverse effects on coastal resources.

As described above, the proposed LCP Amendment would add a new chapter to the IP that would allow density bonuses associated with housing development projects in the Coastal Zone. The City had initially submitted comprehensive language to incorporate standards and establish an approval process for considering allow density bonuses associated with housing development projects in the Coastal Zone. However, as detailed above, the City subsequently requested a modification to remove most of its proposed density bonus language because the proposed language was rendered out of date with new DBL changes that went into effect on January 1, 2024. The City's rationale for this suggested modification is that a broad cross reference to state DBL would keep up with the ongoing changes to the DBL by the State Legislature, while avoiding the need to regularly update the LCP with new DBL language.

The proposed LCP Amendment included language requiring consistency of any proposed density bonus concessions, incentives, waivers or reductions of development standards, and parking ratios project with the coastal resource protection requirements of the certified LCP. As submitted, the proposed amendment also stated that applicants for DBL projects must obtain an Affordable Housing Implementation Plan pursuant to Sections 20.50.030 and 20.52.015 of the IP, which are uncertified provisions that provide a process for reviewing DBL submittals. However, the proposed amendment did not explicitly state that applicants would also still need to obtain a coastal development permit (CDP). As submitted, the Amendment therefore was not sufficient to ensure conformity with the CLUP, as it was not clear that DBL project applicants would have to obtain a CDP in addition to an Affordable Housing Implementation Plan, and would therefore have to use that process to ensure consistency with relevant resource protection standards of the LCP.

The two modifications will ensure that the DBL law will be carried out in a manner that conforms with, and is adequate to carry out, the CLUP. **Suggested Modification No. 1** clarifies that the City's new IP Density Bonus Chapter will cross reference the State DBL and will delete the City's originally proposed language, as requested by the City. This will help ensure that the LCP's language will not become out-of-date due to frequent updates to DBL by the state Legislature and the time and effort it takes to make corresponding updates to the LCP. This, in turn, will help provide more clarity for applicants, foster affordable housing, and carry out the mandate that qualifying housing projects comply with both the DBL and Coastal Act. It will also promote consistency with CLUP Policies such as 2.7.2. and 2.2.1-1, which call for appropriate infill and low- and moderate-income development to be built consistent with the resource protection policies of the LCP. **Suggested Modification No. 2** clarifies that applicants for DBL projects will need to still apply for a CDP, which in turn will require the City to undertake an analysis of whether the project will comply with relevant resource protection

standards of the LCP. This modification is needed to ensure that applicants clearly understand that they must obtain a CDP and comply with relevant LCP resource protection standards in addition to getting approval of an Affordable Housing Implementation Plan.

The proposed LCP Amendment does provide an opportunity to better harmonize the DBL with Coastal Act/LCP requirements to ensure the protection of coastal resources while also allowing for the construction of additional affordable housing in infill areas. The DBL states that it does not supersede or in any way alter or lessen the effect or application of the Coastal Act (or by extension LCPs, which derive their authority from the Coastal Act), and that any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which the applicant is entitled under DBL shall be permitted in a manner that is consistent with DBL and the Coastal Act. The Coastal Act, in turn, requires the Commission to encourage affordable housing and recognizes its importance in the Coastal Zone (Pub. Resources Code, § 30604(f), (g)). Encouraging affordable housing in the coastal zone also aligns with a number of Coastal Act goals, including to maximize public access to the coast, as reflected in Sections 30001.5(c), 30210, and the other public access and recreation sections of the Coastal Act. High costs of housing and historical exclusionary public policies and private practices have limited lower-income households and households of color from living near the coast in many areas.¹ This means that it often costs lower-income households more and takes these households longer to travel to the coast. Encouraging affordable housing near coastal public access and recreation points can provide lower-income households with the opportunity to enjoy the coast in a way that reduces these barriers.

Additionally, encouraging denser housing in infill areas is often consistent with Section 30250(a) of the Coastal Act, which generally requires new development to be located within, contiguous with, or in close proximity to, existing developed areas with adequate existing services. Concentrating affordable housing in infill areas can ensure that lower-income residents have access to the opportunities, services, and coastal resources available in these areas. Further, encouraging denser housing in areas with existing public transit services and near jobs and other amenities allows people to drive less because they have access to public transit and shorter commutes and can minimize vehicle miles traveled, consistent with Section 30253(d) of the Coastal Act. The City has an established public transportation system that connects the public to the coast and the Coastal Zone portion of the City is built out and as a result is likely to encourage infill development and thus minimizes vehicle miles traveled consistent with 30250(a) and 30253(d) of the Coastal Act.

¹ [Coastal Commission Report on the Historical Roots of Housing Inequity and Impacts on Coastal Zone Demographic Patterns \(2022\)](#)

Although these Coastal Act provisions are not the standard of review for an IP amendment, they are policies that can help guide the interpretation of the CLUP's policies. And here, CLUP Policies such as 2.7.2. and 2.2.1-1 call for appropriate infill and low- and moderate-income development to be built consistent with the resource protection policies of the LCP. The CLUP also requires, per Policy 3.1.1-1, the protection and expansion, where feasible, of public access to and along the shoreline and to beaches, coastal waters, tidelands, coastal parks, and trails. Providing more affordable housing in the coastal zone can help promote access to these coastal resources.

With these modifications, the proposed amendment is consistent with and adequate to carry out the CLUP. Importantly, the amendment ensures that the LCP and the Government Code will work together to encourage the City to approve an increase in density for affordable housing when such housing can be accommodated in a manner otherwise consistent with the resource protection policies of the certified LCP. And the amendment appropriately does not require a project seeking a density bonus to be consistent with *all* applicable requirements of the certified LCP. Such a requirement could render density bonus projects infeasible by requiring a project to comply with all development standards, even when those standards don't protect coastal resources or public access at a particular site. For example, a proposed density bonus project might request a waiver of the IP's setback standards in order to accommodate the proposed housing. Even if the City found that the reduced setbacks at a particular site would not impact coastal resources such as habitat, geologic stability, or public views, such a requirement would prevent the City from approving the housing development because it would be inconsistent with the IP's setback requirements. Such proposed language could have the unintended consequence of discouraging affordable housing in the coastal zone.

Rather, the amendment requires conformity with the *coastal resource protection* development regulations contained in specific LCP provisions. This will allow an applicant for a DBL project to request waivers from, for example, setback requirements contained in the IP, but not if the setbacks are necessary to maintain important coastal views or provide buffers from environmentally sensitive habitat areas. In this way, the amendment harmonizes the DBL law, encourages denser and more affordable housing, but ensures coastal resource protection, as required by both DBL and the Coastal Act.

As modified, the IP Amendment will help carry out the DBL, carry out the Coastal Act and LUP's policies encouraging affordable housing, promote efficiency by foreclosing the needs for frequent updates to the DBL provisions of the LCP, and will do this while still protecting important coastal resources. The suggested modifications provide enhanced implementation clarity for the review of projects involving a density bonus that will also protect coastal resources as is required by the LUP, the standard of review here. As modified, the proposed IP amendment can be found consistent with and adequate to carry out the LUP.

C. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

21080.9 of the California Environmental Quality Act (CEQA) exempts local governments from the requirement of preparing environmental documentation in compliance with CEQA in connection with a Local Coastal Program (LCP) amendment. The Commission's Local Coastal Program review and approval procedures have been found by the Resources Agency to be functionally equivalent to the environmental review process under CEQA. (14 CCR § 15265(a)(1).) Thus, under Section 21080.5 of CEQA, the Commission is relieved of the responsibility to prepare CEQA documentation for each Local Coastal Program submitted for Commission review and approval. Instead, this staff report serves as the functional equivalent of CEQA documentation. Nevertheless, the Commission is required when approving a Local Coastal Program to find that the amendment will not have a significant adverse impact on the environment and that there are no further feasible alternatives or mitigation measures that would substantially lessen the project's impact on the environment.

The Commission finds that, for the reasons discussed in this report, the IP amendment request will be consistent with the Certified Land Use Plan (LUP) and will ensure that projects will not have significant coastal resource impacts.

Certification of the IP Amendment complies with the California Environmental Quality Act because: 1) the amendment as proposed with the Commission's suggested modifications will not have any significant adverse effects on the environment, and 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts which the IP Amendment may have on the environment. The Commission finds that the proposed amendments will be consistent with Section 21080.5(d)(2)(A) of the Public Resources Code.

APPENDIX A: Suggested Modification No. 01

Underline/Strikeout Version of Title 21 (Local Coastal Program Implementation Plan) Revisions

Local Coastal Program Amendment No. LC2020-004

Section 1: Subsection (C)(1) of Section 21.12.020 (Rules of Interpretation) of Chapter 21.12 (Interpretation of Implementation Plan Provisions) of Title 21 (Local Coastal Program Implementation Plan) of the NBMC is hereby amended to read as follows:

C. Calculations.

1. Residential Density. ~~When~~ Except for projects that include a density bonus in accordance with Section 21.32.040(A), when the number of dwelling units allowed on a site is calculated based on the minimum site area per dwelling unit, any fraction of a unit shall be rounded down to the next lowest whole number. For example, where a residential zoning district requires a minimum site area per dwelling unit of one thousand five hundred (1,500) square feet; a site of ten thousand (10,000) square feet would be allowed six (6) dwelling units (10,000 sq. ft./1,500 sq. ft. per dwelling unit = 6.66 dwelling units, which is rounded down to six (6) dwelling units).

~~Example: Ten thousand (10,000) sq. ft. site area/one thousand five hundred (1,500) sq. ft. per unit = 6.66 dwelling units. This would be rounded down to six dwelling units.~~

Section 2: Chapter 21.32 (Density Bonus) of Title 21 (Interpretation of Implementation Plan Provisions) of the NBMC is hereby added to read as follows:

Changes to proposed language is shown in bold underline and ~~strike-out~~.

Chapter 21.32 DENSITY BONUS

Sections:

<u>21.32.010</u>	<u>Purpose.</u>
<u>21.32.020</u>	<u>Coastal Act Consistency</u>
<u>21.32.030</u>	<u>Density Bonus, Concessions, Incentives, and Waivers</u>
<u>21.32.040</u>	<u>Approval Process</u>
21.32.020	Definitions.
21.32.025	Coastal Act Consistency.
21.32.030	Eligibility for Density Bonus and Incentives.
21.32.040	General Requirements.
21.32.050	Allowed Density Bonuses.

21.32.060	<u>Parking Requirements in Density Bonus Projects.</u>
21.32.070	<u>Allowed Incentives or Concessions.</u>
21.32.080	<u>Waivers or Reductions of Development Standards.</u>
21.32.090	<u>Incentives for Housing with Childcare Facilities.</u>
21.32.100	<u>Condominium Conversions.</u>
21.32.110	<u>Design and Distribution of Affordable Units.</u>
21.32.121	<u>Replacement Units.</u>
21.32.130	<u>Continued Availability.</u>
21.32.140	<u>Occupancy and Resale of Ownership Units.</u>
21.32.150	<u>Approval Process.</u>
21.32.160	<u>Affordable Housing Agreement.</u>

21.32.010 Purpose.

~~The purpose of this chapter is to provide a means for granting density bonus and incentives in compliance with State Density Bonus Law not intended to expand the requirements of Government Code Sections 65915 through 65918, as the same may be amended from time to time, but rather to provide a means for granting density bonuses and incentives as required by state law.~~ This chapter provides regulations for considering density bonus and incentive requests for the development of housing that is affordable to extremely low-, very low-, low-, and moderate-income households, foster youth, disabled veterans, homeless persons, lower-income students, senior citizens, and childcare.

21.32.020 Definitions.

~~As used in this chapter, the following words shall have the following meanings:~~

- ~~A. "Affordable housing" means housing for which the allowable housing expenses paid by a qualifying household shall not exceed a specified fraction of the county median income, adjusted for household size. This includes housing designated for extremely low-, very low-, low-, and moderate-income households.~~
- ~~B. "Childcare facility" means a child day care facility, other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and school-age childcare center. "Childcare facility" does not include public or private primary or secondary education facilities.~~
- ~~C. "Condominium conversion" means the conversion of apartments, or other rental units, into ownership property that consist of an undivided interest in common in a portion of real property coupled with a separate interest within the boundaries of the dwelling unit.~~
- ~~D. "Density bonus" means a density increase over the maximum allowable residential density under applicable zoning and Land Use Element of the General Plan as of the date of application.~~

- E. “Development standard” means a site or construction condition, including, but not limited to, a height limitation, setback requirement, floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a housing development pursuant to any ordinance, General Plan policy, specific plan, or other local condition, law, policy, resolution, or regulation. Development standard shall not mean an impact fee, inclusionary housing requirement, or dedication of land.
- F. “Disabled veteran” means any veteran who is currently declared by the United States Veterans Administration to be ten (10) percent or more disabled as a result of service in the armed forces. Proof of such disability shall be deemed conclusive if it is of record in the United States Veterans Administration.
- G. “Equivalent financial value” means an incentive that would result in a reduction in cost to the developer/property owner based upon the land cost per dwelling unit and shall be calculated based upon the difference in the value of the land with and without the density bonus.
- H. “Equivalent size” means that the replacement units specified in Section 21.32.120 contain at least the same total number of bedrooms as the units being replaced.
- I. “Foster youth” means a person in California whose dependency was established or continued by a court of competent jurisdiction, including a tribal court, on or after the youth's 13th birthday and who is no older than 25 years of age at the commencement of the academic year.
- J. “Homeless person” shall have the same meaning as that phrase is defined in Section 11302 of the federal McKinney-Vento Homeless Assistance Act (42U.S.C. Ch. 119).
- K. “Housing development” means a development project for five (5) or more residential dwelling units, including mixed-use developments, subdivisions, or common interest development. A “housing development” may consist of residential units, unimproved residential lots, a project to substantially rehabilitate and convert an existing commercial building to residential use, or the substantial rehabilitation of an existing multifamily dwelling where the result of the rehabilitation would result in a net increase in available residential units. For purposes of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one (1) development application but may include more than one subdivision map.
- L. “Lower income student” means a student who has a household income and asset level that does not exceed the level for Cal Grant A or Cal Grant B award recipients as set forth Education Code Section 69432.7(k)(1). The eligibility of a student to occupy a unit for lower income students under this section shall be verified by an affidavit, award letter, or letter of eligibility provided by the institution of higher education in which the student is enrolled or by the California Student Aid Commission that the student receives or is

eligible for financial aid, including an institutional grant or fee waiver from the college or university, the California Student Aid Commission, or the federal government.

- M. “Major transit stop” means a site containing an existing rail transit station or the intersection of two (2) or more major bus routes with a frequency of service interval of fifteen (15) minutes or less at the intersection of the two (2) routes during both the morning and afternoon peak commute hours.
- N. “Natural or constructed impediments” means a hindrance or obstruction that prevents pedestrian or bicycle access to a major transit stop. Natural or constructed impediments include, but are not limited to, freeways, rivers, mountains, harbors, and bodies of water, but does not include residential structures, shopping centers, parking lots, or rails used for transit.
- O. “Specific adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. The following shall not constitute a specific, adverse impact upon the public health or safety: (1) inconsistency with the zoning or General Plan land use designation, or (2) the eligibility to claim a welfare exemption under subdivision (g) of Section 214 of the Revenue and Taxation Code.
- P. “Unobstructed access” means that the income qualified resident of the housing development is able to walk or bike to from the residence without trespassing or otherwise encountering natural or constructed impediments.

21.32.02025 Coastal Act Consistency.

- A. California Government Code Section 69515(m) provides that density bonus law shall not be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976.
- B. A requested density bonus and any requested incentive, concession, waiver, modification, or modified parking standard shall comply with all applicable standards and use regulations of the certified Local Coastal Program Implementation Plan, with the exception of the development standards waived, reduced, or modified through density bonus provisions. In no case shall the coastal resource protection development regulations of Sections 21.28.040 (Bluff (B) Overlay District), 21.28.050 (Canyon (C) Overlay District), 21.28.015(D) (Waterfront Development), 21.30.015(E)(2) (Development in Shoreline Hazardous Areas) and 21.30.100 (Scenic and Visual Quality Protection), or Chapters 21.30A (Public Access and Recreation) Chapter 21.30B (Habitat Protection) be waived, reduced, or modified.

21.32.030 Density Bonuses, Concessions, Incentives, and Waivers

Unless restricted by Section 21.32.020, eligible housing development or mixed-use development projects may be granted density bonuses, concessions, incentives,

and waivers pursuant to California State Government Code § 65915 et. seq., which may be amended from time to time.

- A. ~~Density Bonus for Transitional Foster Youth, Disabled Veterans, or Homeless Persons. A housing development that is eligible for a density bonus at the level set forth in Section 21.32.030(A)(5) shall be entitled to a density bonus of twenty (20) percent.~~
- B. ~~Density Bonus for Lower-Income College Students. A student housing development that is eligible for a density bonus at the level set forth in Section 21.32.030(A)(6) shall be entitled to a density bonus of thirty five (35) percent.~~
1. ~~All units in the student housing development shall be used exclusively for undergraduate, graduate, or professional students enrolled full-time at an institution of higher education accredited by the Western Association of Schools and Colleges or the Accrediting Commission for Community and Junior Colleges.~~
 2. ~~The applicant or property owner shall provide evidence to the City that the housing development shall be subject to an operating agreement or lease with one (1) or more institution of higher education that all units shall be exclusively occupied by the students of the institution(s).~~
 3. ~~The rent for affordable units shall be calculated at thirty (30) percent of sixty-five (65) percent of the area median income for a single-room occupancy unit.~~
 4. ~~Priority for the affordable units shall be given to lower-income students experiencing homelessness. A homeless service provider, as defined in paragraph (3) of subdivision (e) of Section 103577 of the Health and Safety Code, or institution of higher education that has knowledge of a person's homeless status may verify a person's status as homeless for purposes of this subsection.~~
 5. ~~For purposes of calculating a density bonus granted pursuant to this section, the term "unit" shall mean one (1) rental bed and its pro rata share of associated common area facilities.~~
- C. ~~Density Bonus for Condominium Conversion. A condominium conversion that is eligible for a density bonus pursuant to Section 21.32.030(A)(7) shall be entitled to a density bonus of twenty-five (25) percent provided the condominium conversion meets all of the requirements in Section 20.32.100.~~
- D. ~~Density Bonus for Senior Housing. A senior housing development that is eligible for a density bonus pursuant to Section 21.32.030(A)(8) shall be entitled to a density bonus of twenty (20) percent.~~

E. Density Bonus for donating land for very low-income units. A housing development that includes the donation of land for the development of very low-income housing pursuant to Section 21.32.030(A)(9) shall be entitled to a density bonus calculated as follows:

TABLE 21.32-2

LAND DEDICATED TO ACCOMMODATE VERY LOW-INCOME

<u>Percentage of Base Units Proposed</u>	<u>Density Bonus Percentage</u>
<u>10%</u>	<u>15%</u>
<u>11%</u>	<u>16%</u>
<u>12%</u>	<u>17%</u>
<u>13%</u>	<u>18%</u>
<u>14%</u>	<u>19%</u>
<u>15%</u>	<u>20%</u>
<u>16%</u>	<u>21%</u>
<u>17%</u>	<u>22%</u>
<u>18%</u>	<u>23%</u>
<u>19%</u>	<u>24%</u>
<u>20%</u>	<u>25%</u>
<u>21%</u>	<u>26%</u>
<u>22%</u>	<u>27%</u>
<u>23%</u>	<u>28%</u>
<u>24%</u>	<u>29%</u>
<u>25%</u>	<u>30%</u>
<u>26%</u>	<u>31%</u>
<u>27%</u>	<u>32%</u>
<u>28%</u>	<u>33%</u>
<u>29%</u>	<u>34%</u>
<u>30%</u>	<u>35%</u>

1. Any increase authorized by this subsection may be approved in addition to any increase in density allowed by Section 21.32.030 up to a maximum combined density increase of thirty-five (35) percent.
2. The donated land shall be the greater of:
 - a. One (1) acre;
 - b. Sufficient square-footage or acreage to permit development of the percentage of base units proposed; or

- ~~6. Sufficient square-footage or acreage to permit development of forty (40) units under the existing General Plan and zoning designation.~~
- ~~3. The existing General Plan and zoning designation of the donated land shall be zoned to accommodate at least thirty (30) dwelling units per acre, and is, or will be, served by adequate public facilities and infrastructure through the construction of the housing development.~~
- ~~4. The land shall be donated and transferred to the City or a housing developer that is approved by the City. The applicant shall donate and transfer the land no later than the date of approval of the final subdivision map, or issuance of building permits for the housing development where no subdivision is required.~~
- ~~5. The City shall not approve the final subdivision map or issue building permits for the housing development unless and until all permits, other than building permits, for the development of very low-income housing have been issued for the donated and transferred land.~~
- ~~6. The donated and transferred land shall be within the boundary of the housing development, or upon approval of the review authority, within one-quarter (1/4) mile of the housing development.~~
- ~~7. The source of funding for the development of very low-income housing on the donated and transferred land shall be identified not later than the date of approval of the final subdivision map or issuance of building permits for the housing development.~~
- ~~8. The donated and transferred land and the affordable units shall be subject to a deed restriction recorded on the property at the time of transfer ensuring continued affordability of the units consistent with Section 21.32.130.~~

21.32.060 Parking Requirements in Density Bonus Projects.

A. Applicability. For a housing development that meets one (1) of the eligibility levels in Section 21.32.030, the applicant may request application of the parking requirements set forth below. An applicant may request additional parking incentives beyond those provided in this section in compliance with Sections 21.32.070 and 21.32.080.

B. Number of Parking Spaces Required.

1. Parking Ratios. At the request of the applicant, the following minimum parking ratios apply to the housing development:

<u>Dwelling Unit Size</u>	<u>Onsite Parking per Unit</u>
<u>Studio to 1 Bedroom</u>	<u>1 space</u>
<u>2 to 3 Bedrooms</u>	<u>1.5 spaces</u>

<u>4 or more Bedrooms</u>	<u>2.5 spaces</u>
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- ~~2. Within One-Half Mile (½) of Major Transit Stop. Notwithstanding subsection B(1), if a housing development provides at least twenty (20) percent low-income units or eleven (11) percent very low-income units and is located within one-half (½) mile of a major transit stop with unobstructed access, then upon the request of the developer, the City may not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds 0.5 spaces per bedroom.~~
- ~~3. Zero Parking. Notwithstanding subsection B(1), if a housing development consists solely of rental units affordable to lower income families; then upon the request of the developer, the City may not impose a vehicular parking ratio, inclusive of handicapped and guest parking, if either of the following criteria are met:~~
 - ~~a. The housing development is located within one-half (½) mile of a major transit stop with unobstructed access from the housing development;~~
 - ~~b. The housing development is a for-rent housing development for individuals who are 62 years of age or older that meet the definition in Sections 51.2 and 51.3 of the Civil Code and the housing development has either paratransit service or unobstructed access within one-half (½) mile of a fixed bus route that operates at least eight (8) times per day; or~~
 - ~~c. The housing development is either a special needs housing development, as defined in Section 51312 of the Health and Safety Code, or supportive housing development as defined in Section 50675.14 of the Health and Safety Code, and the housing development has either paratransit service or unobstructed access within one-half (½) mile of a fixed bus route that operates at least eight (8) times per day.~~
- ~~4. Notwithstanding subsections (B)(2) and (B)(3), the City may impose the parking ratio set forth in subsection (B)(1), if the City or an independent consultant has conducted an areawide or jurisdiction-wide parking study in the past seven (7) years that demonstrates a higher parking ratio is necessary based upon an analysis of parking availability, differing levels of transit access, walkability access to transit services, the potential for shared parking, the effect of parking requirements on the cost of market-rate and subsidized developments, and the lower rates of car ownership for low-income and very low-income individuals, including seniors and special needs individuals.~~
 - ~~C. Location of Parking. For purposes of this section, a housing development may provide on-site parking through uncovered or tandem on-site parking.~~
 - ~~D. Rounding of Partial Parking Spaces. If the total number of parking spaces required for a housing development is other than a whole number, the number shall be rounded up to the next whole number.~~

21.32.070 Allowed Incentives or Concessions.

- ~~A. Applicant Request and City Approval. The applicant shall include any request for incentive(s) or concession(s) listed in subsection (C) of this section concurrently with the application for project approval. The applicant shall provide documentation establishing that an incentive or concession is necessary to make the housing units economically feasible. When an applicant makes a request for an incentive or concession, the review authority shall grant the request unless one (1) or more of the following findings is made:~~
- ~~1. The incentive or concession is not required in order to provide affordable housing costs or for rents for the targeted units to be set as specified in Section 21.32.130(B);~~
 - ~~2. The incentive or concession would have a specific adverse impact upon public health and safety, or on any real property listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households; or~~
 - ~~3. The incentive would be contrary to state or federal law.~~
- ~~B. Number of Incentives or Concessions. Except as provided in subsection (A) of this section, the review authority shall grant the following number of incentives or concessions:~~
- ~~1. One (1) incentive or concession for a housing development that includes at least ten (10) percent of the total units for low-income households, at least five (5) percent of the total units for very low income households, at least twenty (20) percent of the total units for low-income students in a student housing development, or at least ten (10) percent of the total units for moderate-income households in a for-sale housing development.~~
 - ~~2. Two (2) incentives or concessions for a housing development that includes at least seventeen (17) percent of the total units for low income households, at least ten (10) percent of the total units for very low income households, or at least twenty (20) percent of the total units for moderate-income households in a for-sale housing development.~~
 - ~~3. Three (3) incentives or concessions for a housing development that includes at least twenty four (24) percent of the total units for low-income households, at least fifteen (15) percent of the total units for very low-income households, or at least thirty (30) percent of the total units for moderate-income households in a for-sale housing development.~~
 - ~~4. Four (4) incentives or concession for projects that meet the criteria of Section 21.32.030(A)(4). If the housing development is located within one-half (½) mile of a major transit stop with unobstructed access, the housing development is eligible for a height increase of up to three (3) additional stories, or thirty-three (33) feet.~~

~~C. Type of Incentive or Concession. For the purposes of this chapter, “incentive” or “concession” mean any of the following:~~

- ~~1. A reduction in the development standard(s) as that term is defined in Section 21.32.020 that results in identifiable, financially sufficient, and actual cost reductions;~~
- ~~2. A mixed-use project in conjunction with the housing development, if the nonresidential portion of the mixed-use project will reduce the cost of the housing development, is compatible with the residential portion of the housing development, and is compatible with adjacent existing or planned development;~~
- ~~3. A reduction or waiver of any City imposed fee or dedication of land, which shall be at the sole discretion of the City Council; and/or~~
- ~~4. Other regulatory incentives that will result in identifiable, financially sufficient, and actual cost reductions.~~

21.32.080 Waivers or Reductions of Development Standards.

~~In addition to requesting an incentive or concession, an applicant for a density bonus may also submit a proposal to the City to waive or reduce an unlimited number of development standards that would otherwise preclude or inhibit construction of the housing development at the densities or with the incentives permitted by this chapter.~~

~~A. When an applicant makes a request for a waiver, the review authority shall grant the request unless any of the following findings are made:~~

- ~~1. The waiver or reduction of development standards would have a specific adverse impact upon public health or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.~~
- ~~2. The waiver or reduction of development standards would have an adverse impact on any real property listed in the California Register of Historical Resources.~~
- ~~3. The waiver or reduction of development standards would be contrary to state or federal law.~~

~~B. Notwithstanding Section 21.32.080(A), a housing development that is eligible for no cap on density pursuant Section 21.32.050(A) shall only be eligible for a waiver or reduction of development standards as provided in Section 21.32.070(B)(4).~~

21.32.090 Incentives for Housing with Childcare Facilities.

~~A. Incentives. A housing development that complies with the income requirements of Section 21.32.030(A) and includes a childcare facility, other than a large or small family day care home, that will be located on the same site as the development, shall be eligible for either of the following additional incentives:~~

- ~~1. An amount of residential floor area equal to or greater than the floor area of the childcare facility; or~~
- ~~2. An incentive that contributes to the economic feasibility of the childcare facility (e.g., reduction of development standards, reduced parking requirements, monetary contribution) as provided in Section 21.32.070(C).~~

~~Notwithstanding the foregoing, the City shall not be required to provide a density bonus for a childcare facility if it finds that the community has adequate childcare facilities.~~

- ~~B. Requirements to Qualify for Incentives. The City shall require, as a condition of approval of the housing development, that:~~
- ~~1. The childcare facility shall remain in operation for a period of time that is as long as, or longer than, the period of time during which the density bonus units are required to remain affordable in compliance with Section 21.32.130; and~~
 - ~~2. Of the children who attend the childcare facility, the children of very low-income, low-income, or moderate-income households shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low-income, lower-income, or moderate-income households in compliance with Section 21.30.030(A).~~

21.32.100 Condominium Conversions:

- ~~A. Density Bonus. When an applicant proposes to convert apartments to condominiums, which meet the eligibility level in Section 21.32.030(A)(7), the City shall grant either a density bonus of up to twenty-five (25) percent pursuant to Section 21.32.050(D) to create additional units on the project site or other incentive of equivalent financial value provided:~~
- ~~1. The applicant agrees to pay for the reasonably necessary administrative costs, including, but not limited to, staff costs, consultant fees, photocopy costs, and mailing fees, incurred by the City; and~~
 - ~~2. The City places such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value as it finds appropriate, including, but not limited to, conditions which assure continued affordability of units to subsequent very low-, low- and moderate-income households.~~
- ~~B. Replacement Units. All units within the condominium conversion shall meet the replacement requirements in Section 21.32.120.~~
- ~~C. Ineligible Requests. Apartments which are proposed for conversion to condominiums shall be ineligible for a density bonus or other incentive under this section if the apartments were previously granted a density bonus, concession, incentive, or waiver or reduction of development standards.~~

- D. Preapplication Process. An applicant may submit a preliminary application to the City for the condominium conversion on a form provided by the Director prior to the submittal of an application under Chapters 19.08 and 19.64. Within ninety (90) days of receipt of the preliminary application, the City shall notify the applicant in writing whether the application is eligible for a condominium conversion pursuant to this section.
- E. Approval. An application for condominium conversion shall meet the requirements set forth in Chapter 19.64. Nothing in this section shall be construed to require the City to approve an application for a condominium conversion.

21.32.110 Design and Distribution of Affordable Units.

Affordable units shall be designed and distributed within the housing development as follows:

- A. Number of Bedrooms. Affordable units shall reflect the range of numbers of bedrooms provided in the residential development project as a whole;
- B. Comparable Quality and Facilities. Affordable units shall constructed to the same quality and exterior design as the market-rate housing units. Additionally, the affordable units shall include the same laundry, recreation and other facilities that are made available to the market-rate housing units;
- C. Access. In mixed income multi-unit structures, the occupants of the affordable units shall have the same access to common entrances and any common areas including parking areas in that structure as the occupants of the market-rate housing units;
- D. Size. Affordable units may be smaller and have different interior finishes and features than the market-rate units; and
- E. Location. Affordable units shall be distributed within the residential development, unless clustering is allowed by the review authority. Notwithstanding, in a mixed-income multi-unit structure, affordable units shall not be isolated to a specific floor or an area of a specific floor.

21.32.120 Replacement Units.

An application for a density bonus on any property with existing rental dwelling units or rental dwelling units that were vacated or demolished within the five (5) years preceding the application; and are, or were, subject to a recorded covenant that restricts rents to very low- or low-income households; or are, or were, occupied by very low- or low-income household(s) shall be subject to all of the following requirements:

- A. Occupied Units. For rental dwelling units that are occupied on the date of the application, the housing development shall provide at least the same number of affordable units of

~~equivalent size at affordable rent or affordable housing cost to, and occupied by, persons or families in the same or lower income category as the existing occupants.~~

- ~~B. Vacant or Demolished Units. For rental dwelling units that have been vacated or demolished within the five (5) years preceding the application, the housing development shall provide at least the same number of affordable units of equivalent size as existed at the highest occupancy point for those units in the five (5) years preceding the application at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as the persons or families that occupied the units immediately preceding the vacancy or demolition.~~
- ~~C. Unknown Household Income. If the income of the existing occupants or occupants within the past five (5) years is unknown to the City or the applicant, it shall be rebuttably presumed that the rental dwellings units were occupied by low income and very low-income renter households as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database.~~

21.32.130 Continued Availability.

~~The units that qualified the housing development for a density bonus and other incentives shall continue to be available as affordable and/or senior units in compliance with the following requirements:~~

- ~~A. Duration of Availability. The applicant shall record a covenant on the property that the units that qualified the housing development for a density bonus and other incentives are restricted as affordable units for at least fifty-five (55) years, or a longer time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.~~
- ~~B. Affordable Costs. The rents and owner-occupied costs charged for the housing units shall not exceed the following amounts during the period of continued availability required by this section:~~
- ~~1. Rental Units. Rents for density bonus units shall be set at an affordable rent as defined in Health and Safety Code Section 50053; and~~
 - ~~2. Owner-Occupied Units. Owner-occupied units shall be available at an affordable housing cost as defined in Health and Safety Code Section 50052.5.~~

21.32.140 Occupancy and Resale of Ownership Units.

~~A housing development that includes for-sale units that are restricted and affordable to moderate-income households shall limit the occupancy and resale of the units as set forth in this section.~~

- ~~A. Initial Occupancy. A for-sale unit, which qualified the applicant for the award of the density bonus, shall meet either of the following requirements:~~
- ~~1. The unit is initially occupied by a very low-, low-, or moderate-income household, offered at an affordable housing cost as defined in Section 50052.5 of the Health and Safety Code, and subject to an equity sharing agreement; or~~
 - ~~2. The unit is purchased by a qualified nonprofit housing corporation pursuant a contract that is recorded on the property, and all of the following are satisfied:~~
 - ~~a. The nonprofit housing corporation is organized pursuant to Internal Revenue Code Section 501(c)(3) and has received a welfare exemption under Revenue and Taxation Code Section 214.15 for properties intended to be sold to low-income families who participate in a special no interest loan program;~~
 - ~~b. The contract restricts the use of the land for at least thirty (30) years to owner-occupied housing that is available at an affordable housing cost;~~
 - ~~c. The contract includes a deed of trust on the property in favor of the nonprofit corporation to ensure compliance with the terms of the program, which has no value unless the owner fails to comply with the covenants and restrictions of the terms of the home sale;~~
 - ~~d. The City Attorney finds that the long-term deed restrictions in the contract serve a public purpose;~~
 - ~~e. A repurchase option that requires a subsequent purchaser of the property that desires to sell or convey the property to offer the qualified nonprofit corporation the right to repurchase the property prior to selling or conveying that property to any other purchaser; and~~
 - ~~f. Affordability restrictions on the sale and conveyance of the property that ensure that the property will be preserved for lower income housing for at least forty-five (45) years for owner-occupied housing units and will be sold or resold only to very low-, low-, or moderate-income households.~~
- ~~B. Resale. As part of the affordable housing agreement required pursuant to Section 21.32.160, the applicant shall enter into an equity sharing agreement with the City for the resale of affordable common interest units, unless it would be in conflict with the requirements of another public funding source or law. In lieu of an equity sharing agreement, the housing project could sell the units to a nonprofit housing corporation pursuant to Section 21.32.140(A)(2). The following requirements apply to the equity sharing agreement:~~
- ~~1. Upon resale, the seller of the unit shall retain the value of any improvements, the down payment, and the seller's proportionate share of appreciation; and~~

2. The City shall recapture any initial subsidy and its proportionate share of appreciation, which shall then be used within five (5) years for any of the purposes described in Health and Safety Code Section 33334.2(e) that promote home ownership. For the purposes of this section:
 - a. The City's initial subsidy shall be equal to the fair market value of the home at the time of initial sale, minus the initial sale price, plus the amount of any down payment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value;
 - b. The City's proportionate share of appreciation shall be equal to the ratio of the initial subsidy to the fair market value of the home at the time of initial sale; and
 - c. The initial subsidy shall include any incentives granted by the City and shall be equal to the monetary equivalent of the incentives.

21.32.040150 Approval Process.

An applicant requesting a density bonus, incentive, concession, or waiver pursuant to this chapter shall require approval of an Affordable Housing Implementation Plan pursuant to Sections 20.50.030 and 20.52.015.

21.32.160 Affordable Housing Agreement.

The applicant approved for a density bonus, concession, incentive, or waiver under this chapter shall agree to construct, operate and maintain the affordable units in accordance with an affordable housing agreement. The affordable housing agreement shall be executed in a recordable form prior to the issuance of a building permit for any portion of a housing development subject to the requirements of this chapter. The affordable housing agreement shall be binding upon all future owners and successors in interest.

- A. Review. The terms of the affordable housing agreement shall be reviewed and revised as appropriate by the Director and City Attorney.
- B. Fees. The City may establish fees associated with the setting up and monitoring of the affordable units.
- C. Contents. The affordable housing agreement shall include at least the following:
 1. Identification of Affordable Units. Affordable units shall be identified by address and legal description, type (floor area, number of bedrooms/baths, unit size, etc.), and designated household income category. The affordable housing agreement shall also identify the total number of affordable units and total number of units approved for the housing development.

- ~~2. Term of Affordability. Unless specified elsewhere in this chapter a minimum term of fifty-five (55) years of the specified affordability shall be required. Such reservation period shall begin on the date a certificate of occupancy is granted for the affordable units.~~
- ~~3. Maximum Allowable Rent or Sales Price:~~
 - ~~a. Rental Housing Developments. In the case of rental housing developments, the affordable housing agreement shall provide for the following conditions governing the use of the affordable housing units during the use restriction period:
 - ~~i. The rules and procedures for qualifying tenants, establishing affordable rent, filling vacancies, and maintaining the affordable units for qualified tenants.~~
 - ~~ii. Provisions requiring owners to verify tenant incomes and maintain books and records to demonstrate compliance with this chapter.~~
 - ~~iii. Provisions requiring owners to submit an annual report to the City, which includes the name, address and income of each person occupying each affordable unit, and which identifies the bedroom size and monthly rent or cost of each affordable unit.~~
 - ~~iv. A maximum rent schedule shall be submitted to the City prior to the issuance of an occupancy permit for the affordable units, and updated annually on the anniversary date of occupancy.~~
 - ~~v. Total move-in costs for eligible tenants occupying affordable units shall be limited to first month's rent plus a security/cleaning deposit not to exceed one month's rent.~~
 - ~~vi. When a tenant occupying an affordable unit no longer qualifies under the income requirements, verified through the monitoring program required as part of the affordable housing agreement, that tenant may then be charged market rate rent. If this occurs, any currently vacant unit of similar type to the affordable unit in question shall then be designated as an affordable unit, and the owner shall immediately attempt to secure tenants in accordance with this chapter. The owner is required to maintain at all times during the use restriction the minimum number of affordable units identified in the affordable housing agreement.~~
 - ~~vii. No subletting or short-term occupancy of designated affordable units shall be allowed.~~~~
 - ~~b. Ownership Projects. In the case of for sale housing developments, as a condition of approval of the housing development, the City shall require an affordable housing agreement that includes the following conditions governing the initial sale and use of affordable units during the applicable use period:~~

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- ~~i. Affordable units shall, upon initial sale, be sold to eligible very low- and low-income households at an affordable sales price and housing cost, or to qualifying residents in the case of a senior citizen housing development.~~
- ~~ii. Affordable units shall be initially owner-occupied by eligible very low- or low-income households, or by qualifying residents in the case of a senior citizen housing development.~~
- ~~iii. The initial purchaser of each affordable housing unit shall execute an instrument or agreement approved by the City restricting the sale of the affordable housing unit in accordance with this chapter during the applicable use restriction period. Such instrument or agreement shall be recorded against the parcel containing the affordable housing unit and shall contain such provisions as the City may require to ensure continued compliance with this chapter and State Density Bonus Law.~~
- ~~iv. The affordable housing agreement shall stipulate that, when the terms of affordability expire on an affordable unit, the City and/or a non-profit housing organization shall have a first right of purchase option sixty (60) days prior to the affordable unit being advertised on the market.~~
- ~~v. Rental of affordable units shall not be allowed.~~
- ~~vi. When an equity sharing agreement is required by this chapter, the affordable housing agreement shall specify the equity sharing agreement comply with Section 21.32.140.~~
- ~~4. Monitoring of Compliance to Agreement. A monitoring program shall be required, specifying the party responsible for certifying tenant incomes and sales price, maintaining the required number of affordable units for the property, marketing and filling unit vacancies.~~
- ~~5. Remedies. Description of remedies for breach of the affordable housing agreement by either party (the City may identify tenants or qualified purchasers as third-party beneficiaries under the agreement).~~
- ~~6. Description of Density Bonus. A description of the incentives and/or concessions, if any, being provided by the City.~~
- ~~7. Schedule. A schedule for completion and occupancy of the affordable units.~~
- ~~8. Other Provisions. Other provisions to ensure implementation and compliance with this chapter.~~

Section 3: Section 21.70.020 (Definitions of Specialized Terms and Phrases) of Title 21 (Local Coastal Program Implementation Plan) of the NBMC is amended to include the following definitions with all other definitions to remain unchanged:

“Density bonus” See Section 21.32.020. means, as defined by Government Code Section 65915 et seq., an increase over the maximum density otherwise allowed by the applicable zoning district that is granted to the owner/developer of a housing project who agrees to construct a prescribed percentage of dwelling units that are affordable to very-low- and low-income households. See “Very low-income household” and “Low-income household.”

“Extremely low-income household” means persons and families whose income does not exceed thirty (30) percent of the area median income for Orange County, as published by the California Department of Housing and Community Development, adjusted for family size and revised annually.

“Low-income household” means persons and families whose income is greater than fifty (50) percent but does not exceed eighty (80) percent of the area median income for Orange County, as published by the California Department of Housing and Community Development, adjusted for family size and revised annually. a household whose income is between fifty (50) percent and eighty (80) percent of the Orange County median income (“Area median income”), adjusted for actual household size, as determined by the California Department of Housing and Community Development.

“Moderate-income household” means persons and families whose income is greater than eighty (80) percent but does not exceed one hundred twenty (120) percent of the area median income for Orange County, as published by the California Department of Housing and Community Development, adjusted for family size and revised annually. a household whose income is between eighty (80) percent and one hundred twenty (120) percent of the Orange County median income (“Area median income”), adjusted for actual household size, as determined by the California Department of Housing and Community Development.

“Very low-income household” means persons and families whose income is greater than thirty (30) percent but does not exceed fifty (50) percent of the area median income for Orange County, as published by the California Department of Housing and Community Development, adjusted for family size and revised annually. a household whose income is fifty (50) percent or less of the Orange County median income (“Area Median Income”), adjusted for actual household size, as determined by the California Department of Housing and Community Development.

APPENDIX B: LCPA IP Amendment Clean Text Including Suggested Modifications

Clean Version of Title 21 (Local Coastal Program Implementation Plan) Revisions

Local Coastal Program Amendment No. LC2020-004

Section 1: Subsection (C)(1) of Section 21.12.020 (Rules of Interpretation) of Chapter 21.12 (Interpretation of Implementation Plan Provisions) of Title 21 (Local Coastal Program Implementation Plan) of the NBMC is hereby amended to read as follows:

Cl. Calculations.

2. Residential Density. Except for projects that include a density bonus in accordance with Section 21.32.040(A), when the number of dwelling units allowed on a site is calculated based on the minimum site area per dwelling unit, any fraction of a unit shall be rounded down to the next lowest whole number. For example, where a residential zoning district requires a minimum site area per dwelling unit of one thousand five hundred (1,500) square feet; a site of ten thousand (10,000) square feet would be allowed six (6) dwelling units (10,000 sq. ft./1,500 sq. ft. per dwelling unit = 6.66 dwelling units, which is rounded down to six (6) dwelling units).

Section 2: Chapter 21.32 (Density Bonus) of Title 21 (Interpretation of Implementation Plan Provisions) of the NBMC is hereby added to read as follows:

Chapter 21.32 DENSITY BONUS

Sections:

- 21.32.010 Purpose.**
- 21.32.020 Coastal Act Consistency**
- 21.32.030 Density Bonus, Concessions, Incentives, and Waivers**
- 21.32.040 Approval Process**

21.32.010 Purpose.

The purpose of this chapter is to provide a means for granting density bonus and incentives in compliance with State Density Bonus Law Government Code Sections 65915 through 65918, as the same may be amended from time to time. This chapter provides regulations for considering density bonus and incentive requests for the development of housing that is affordable to extremely low-, very low-, low-, and moderate-income households, foster youth, disabled veterans, homeless persons, lower-income students, senior citizens, and childcare.

21.32.20 Coastal Act Consistency.

A. California Government Code Section 69515(m) provides that density bonus law shall not be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976. Any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which the applicant is entitled under California State Government Code § 65915 et. seq., shall be permitted in a manner that is consistent with that section and the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code).

B. A requested density bonus and any requested incentive, concession, waiver, modification, or modified parking standard shall comply with all applicable standards and use regulations of the certified Local Coastal Program Implementation Plan, with the exception of the development standards waived, reduced, or modified through density bonus provisions. In no case shall the coastal resource protection development regulations of Sections 21.28.040 (Bluff (B) Overlay District), 21.28.050 (Canyon (C) Overlay District), 21.28.015(D) (Waterfront Development), 21.30.015(E)(2) (Development in Shoreline Hazardous Areas) and 21.30.100 (Scenic and Visual Quality Protection), or Chapters 21.30A (Public Access and Recreation) Chapter 21.30B (Habitat Protection) be waived, reduced, or modified.

21.32.030 Density Bonuses, Concessions, Incentives, and Waivers

Unless restricted by Section 21.32.020, eligible housing development or mixed-use development projects may be granted density bonuses, concessions, incentives, and waivers pursuant to California State Government Code § 65915 et. seq., which may be amended from time to time.

21.32.040 Approval Process.

An applicant requesting a density bonus, incentive, concession, or waiver pursuant to this chapter shall require approval of an Affordable Housing Implementation Plan pursuant to Sections 20.50.030 and 20.52.015 and a coastal development permit pursuant to Chapter 21.52 (Coastal Development Review Procedures).

Section 3: Section 21.70.020 (Definitions of Specialized Terms and Phrases) of Title 21 (Local Coastal Program Implementation Plan) of the NBMC is amended to include the following definitions with all other definitions to remain unchanged:

“Density bonus” See Section 21.32.020.

“Extremely low-income household” means persons and families whose income does not exceed thirty (30) percent of the area median income for Orange County, as published by the California Department of Housing and Community Development, adjusted for family size and revised annually.

“Low-income household” means persons and families whose income is greater than fifty (50) percent but does not exceed eighty (80) percent of the area median income for

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Orange County, as published by the California Department of Housing and Community Development, adjusted for family size and revised annually.

“Moderate-income household” means persons and families whose income is greater than eighty (80) percent but does not exceed one hundred twenty (120) percent of the area median income for Orange County, as published by the California Department of Housing and Community Development, adjusted for family size and revised annually.

“Very low-income household” means persons and families whose income is greater than thirty (30) percent but does not exceed fifty (50) percent of the area median income for Orange County, as published by the California Department of Housing and Community Development, adjusted for family size and revised annually.