

**Attachment A - AN ORDINANCE
AMENDING THE SAN DIEGO
COUNTY ZONING ORDINANCE
RELATED TO THE
AFFORDABLE INCLUSIONARY
HOUSING PROGRAM (POD
20-007)
(clean copy)**

PRELIMINARY DRAFT

ORDINANCE NO-_____ (NEW SERIES)

AN ORDINANCE AMENDING THE SAN DIEGO COUNTY ZONING ORDINANCE RELATED TO THE INCLUSIONARY AFFORDABLE HOUSING PROGRAM

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. The Board of Supervisors finds and determines that the Zoning Ordinance should be amended to update and revise regulations for an inclusionary affordable housing program. The amendments made by this ordinance are intended to set forth reasonable standards and procedures for affordable housing development projects. The County desires to allow flexibility for affordable housing. This ordinance provides the amended standards for affordable housing projects within the County’s unincorporated areas.

Section 2. Section 1100 Definitions (A) of the Zoning Ordinance is amended to add new definitions:

Affordable rent: The maximum monthly rent at the specified income level in accordance with the California Tax Credit Allocation Committee Income and Rent Limits for the Low Income Housing Tax Credit program.

Affordable sales price: 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 County.

Area median income or AMI: 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 County in the event that such median income figures are no longer published periodically in the California Code of Regulations.

Section 3. Section 1100 Definitions (R) of the Zoning Ordinance is amended to add the following new definitions:

Rehabilitated Dwelling Unit: A dwelling unit for which painting, roofing, plumbing, electrical or other work has been accomplished that restores or preserves the habitable condition of the dwelling unit.

Section 4. Section 6341 is hereby added to the San Diego County Zoning Ordinance to read as follows:

6341 INCLUSIONARY AFFORDABLE HOUSING PROGRAM

6341.a TITLE AND PURPOSE

The provisions of Section 6341 shall be known as the Inclusionary Affordable Housing Program. The purpose of these provisions is to establish standards and procedures to require the development of housing that is affordable to a range of households with varying income levels in order to ensure the addition of affordable housing units to the County's housing stock in proportion with the overall increase in new housing units.

It is the policy of the County that this Section be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, affordable and inclusionary housing.

6341.b APPLICABILITY

1. Applicability. The requirements of this ordinance shall apply to all new residential and mixed-use development projects, for rent or for sale, approved after the date of this Ordinance, except as noted in Subsection 6341.b.1.ii (referred to herein as "Projects"). The requirements of this ordinance shall apply to all developers and their agents, successors-in-interest, and assigns proposing a Project. All inclusionary units required by this ordinance shall be sold or rented in compliance with this ordinance and the County's regulations for the implementation of the Inclusionary Affordable Housing Program. No building permit shall be issued, nor any development approval granted for a development that does not meet the requirements of this ordinance.

i. Project Size. The following Projects shall be subject to the requirements under this ordinance.

[The Board will have an option to direct one of the options below.]

Option 1

- a) A General Plan Compliant Project that proposes a minimum of five (5) dwelling units that will be developed for rental or for sale.
- b) A Project that seeks a General Plan Amendment to increase the maximum allowable density and that proposes a minimum of one (1) dwelling unit.

Option 2

- a) A General Plan Compliant Project that proposes a minimum of ten (10) dwelling units that will be developed for rental or for sale.
- b) A Project that seeks a General Plan Amendment to increase the maximum allowable density and that proposes a minimum of five (5) dwelling units.

Option 3

- a) A General Plan Compliant Project that proposes a minimum of twelve (12) dwelling units that will be developed for rental or for sale.

- b) A Project that seeks a General Plan Amendment to increase the maximum allowable density and that proposes a minimum of twelve (12) dwelling units.
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- ii. Exempt Projects. The following projects are exempt from the requirements of this ordinance:
- a) Project Type. Projects that provide 100% of all units in the development, including total units and density bonus units, but exclusive of a manager's unit or units, as affordable housing (up to 80% of the AMI). Additionally, to be eligible for an exemption under this subparagraph (a), applicants must demonstrate to County's satisfaction the property is or will be subject to a regulatory agreement that restricts the property under a federal, state, or local affordable housing program.
 - b) Residential developments for which an application for a ministerial permit has been received or for which a discretionary permit has been deemed complete no later than the effective date of this ordinance.
 - a. Permit Expiration. Upon the expiration of any discretionary permit that is not eligible for renewal, and unless otherwise exempted, the residential development shall be subject to the affordable housing requirements of this ordinance and shall not proceed until an affordable housing plan is approved in conjunction with any other required discretionary or ministerial permit or amendment thereto.
 - c) Accessory dwelling units developed in accordance with Section 6156.x 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 for the purposes of this section.
 - d) Additional units granted through density bonus shall not be counted for the purposes of this section.

6341.c AFFORDABLE HOUSING UNIT COMPLIANCE REQUIREMENTS

1. Minimum Affordable Set-Aside Requirement for Onsite Units. Unless exempt from this ordinance, Projects must provide a percentage of the base units as affordable housing units as described below:

[The Board will have the option to decide the set-aside requirement. The economically feasible set-aside scenarios will be used to inform this decision.]

[Minimum Set-Aside for General Plan Compliant For Rent]

- a) General Plan Compliant for Rent. If the Project is General Plan compliant and proposes rental units, the affordable housing set-aside units shall be provided as [Please refer to Table 50 of the Economic Analysis, which sets forth the required number of units that must be set aside at each level of affordability.]

[Minimum Set-Aside for General Plan Compliant For Sale]

General Plan Compliant for Sale. If the Project is General Plan compliant with for sale units, the affordable housing set-aside units shall be provided as [Please refer to Table 50 of the Economic Analysis, which sets forth the required number of units that must be set aside at each level of affordability].

[Minimum Set-Aside for General Plan Amendment]

- c) General Plan Amendment. If the Project proposes a General Plan Amendment, the affordable housing set-aside units shall be provided as [Please refer to Table 50 of the Economic Analysis, which sets forth the required number of units that must be set aside at each level of affordability].

i. Rounding rules.

- a) In calculating the required number of affordable housing units, if set-aside includes fractional units of 0.5 or above, one additional affordable unit shall be provided at the lowest affordability level required by the set-aside amount.

Total set-aside requirements below 0.5 unit shall be rounded up or paid for through an in-lieu fee [This section will be removed if the Board directs not to include in-lieu fee.].

ii. Comparability. Affordable housing units must conform to the following standards:

- a) Affordable housing 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, provided they are new, durable, and of good quality.
- b) Affordable housing units shall have the same amenities as the market-rate units, including the same access to and enjoyment of common open space, parking, storage, and other facilities in the residential development.
- c) The unit mix based on bedroom count provided for affordable housing units shall be proportional to the unit mix based on bedroom count provided for market-rate units.

- d) Affordable housing units shall be dispersed throughout the housing development, on each floor, elevation, and section of the building(s) and throughout the site.
 - iii. Density Bonus. If an applicant seeks to construct affordable housing to qualify for a density bonus in accordance with the provisions of Section 6350, those affordable dwelling units that qualify a residential development for a density bonus shall also be counted toward satisfying the inclusionary housing requirements of this ordinance.
- 2. Duration of Affordability.
 - i. Each affordable rental housing unit set aside pursuant to the requirements of this ordinance shall be limited to such below-market rates for a period of not less than 55 years, commencing from the date of the County’s authorization for occupancy of the unit.
 - ii. Each affordable for-sale housing unit set aside pursuant to the requirements of this ordinance shall be subject to the re-sale provisions contained in the Affordable Housing Agreement in accordance with County Zoning Ordinance 7430 and pursuant to California Government Code 65915.
- 3. Timing for Construction of Inclusionary Housing Units
 - i. All required affordable housing units, including offsite affordable housing units, shall be made available for occupancy concurrently with the market-rate units. For the purposes of this section, “concurrently” means the following, as applicable:
 - a) The County 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 County may not approve unit occupancy final inspections for more than 75% of the market-rate units until it has issued unit occupancy final inspections for all of the affordable units. The County and developer may agree on an alternative schedule for development that is included in the affordable housing agreement. A hold may be placed on the issuing of the permit and unit occupancy final inspection for market-rate developments if these requirements are not satisfied.
 - b) In-lieu fees, as appropriate, have been paid. [This section will be removed if the Board directs not to include in-lieu fee.]
 - c) The applicant has met, or made arrangements satisfactory to the County to meet, an alternative requirement as permitted by Section 6341.d.

6341.d ALTERNATIVE COMPLIANCE OPTIONS

- 1. In Lieu Fees. [The Board will have an option to direct one of the options below.]

[In Lieu Fee Applicability - Option 1]

- i. Applicability. Applicants may substitute up to one hundred percent (100%) of all set-aside requirements with the payment of in lieu fees only for Projects smaller than 10 housing units.

[In Lieu Fee Applicability - Option 2]

- i. Applicability. Applicants may substitute up to one hundred percent (100%) of all set-aside requirements with the payment of in lieu fees.

- ii. Fractional units. Applicant may meet compliance requirements by paying an in-lieu fee for any required fractional unit and using another approved compliance method for the required whole units. *[This section will be removed if the Board directs not to include in-lieu fee.]*
- iii. In-Lieu Fees. *[Please refer to Table 50 of the Economic Analysis, which sets forth the associated in-lieu fees based on the required number of units that must be set aside at each level of affordability] [This section will be removed if the Board directs not to include in-lieu fee.]*
- iv. In the case of multiple set-aside requirement options, the in-lieu fee paid shall be the highest in lieu fee option from the available set-aside requirement choices, per project type. *[This section will be removed if the Board directs not to include in-lieu fee.]*
- v. Affordable Housing Inclusionary Fund. *[This section will be removed if the Board directs not to include in-lieu fee.]*
 - a) All in-lieu fees or other funds collected under this ordinance shall be deposited into the County’s Inclusionary Affordable Housing Fund and shall be maintained and accounted for separately in an inclusionary housing program subaccount to be administered by the Health and Human Services Agency Deputy Chief Administrative Officer.
 - b) In-lieu fees shall be collected concurrently with other impact fees contingent on permitting and shall not be deferred.
 - c) Moneys deposited in the I n c l u s i o n a r y Affordable Housing Fund pursuant to this ordinance may be used to pay for direct costs associated with the administration and enforcement of the Inclusionary Housing Program established by this Section. Administration costs shall not exceed ten percent (10%) of fees paid by applicants and deposited in the Inclusionary Affordable Housing Fund.
 - d) After payment of expenses, if any, described in this ordinance, all of the remaining moneys held in the Inclusionary Affordable Housing Fund pursuant to this ordinance shall be expended in accordance with Section 7450.

2. Off-Site Construction of Affordable Units.

- i. The applicant may propose to construct the affordable units required by this Section on another site within the unincorporated area. The County may

approve the off-site construction only if the proposal meets all of the following requirements:

- a) Comparability. Off-site units must be comparable to or greater than on-site average market-rate units in terms of unit bedroom count and quality. Such comparability standards may be modified at the discretion

of the Director of Planning & Development Services on a project-by-project basis.

[The Board will have an option one or all of the options below.]

[Off-site Criteria – Options. Any combination of these options may be selected]

- b) Off-site development must provide an additional five percent (5%) of lower-income housing (0-80% of the AMI).
 - c) Off-site units must be located outside of High and Very High Fire Severity Zones.
 - d) Off-site unit land must be located within the unincorporated County and meet at least one of the following:
 - a. Off-site units and land must be located within the same Community Plan Area or within a maximum distance of 3 miles of the market-rate project site; or
 - b. Off-site units and land must be located within a vehicle miles traveled (VMT) Efficient area or an Infill area found to have less than significant VMT impacts; or
 - c. Off-site units must be located in High or Highest resource areas (as defined by the California Tax Credit Allocation Committee (CTCAC)).
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3. For Sale Accessory Dwelling Units. [The Board will have an option to include accessory dwelling units.]

- i. Notwithstanding subsection 6341.b.ii.(d) above, as an alternative to providing single-family detached dwelling units as affordable housing units, an applicant may instead provide for sale affordable accessory dwelling unit(s) for some of the required affordable housing, subject to the development standards in Section 6156.x, and provisions to sell accessory dwelling units contained in Section 6156.x.C Sale of ADUs for or by a Nonprofit or Section 6156.x.D ADUs Sold as Condominiums.
- ii. The term and affordability of the accessory dwelling units and the affordable housing agreement shall conform with the provisions of this ordinance applicable to for sale affordable housing units.
- iii. In no event shall a developer be allowed to construct more than 50% of the total required affordable housing units as accessory dwelling units or no more than five accessory dwelling units as required affordable housing units, whichever is less, in any given residential development to satisfy the requirements of this ordinance.
- iv. Comparability. ADUs must be comparable to the average on-site market-rate units in terms of unit bedroom count and quality. Such

comparability standards may be modified at the discretion of the Director of Planning & Development Services on a project-by-project basis.

4. Land Donation [The Board will have an option to include land donation.]
 - i. Applicability.
 - a) Land dedication may be allowed as an alternative to providing on-site units. Land dedication may be used to fulfill all or part of an applicant's development application.
 - b) The requirements of this ordinance may be satisfied by the donation of land if the donation is completed in accordance with California Government Section 65915(g) and if the value of the land on the date of donation is equal to or greater than the inclusionary in-lieu fee applicable to the Applicant's development on the date of donation.
 - ii. Site Suitability.
 - a) The County shall have the discretion to approve a developer's proposal to donate property. The developer must provide evidence of the following when the land donation proposal is submitted, and shall bear the cost of such evidence:
 - 1) The developer must provide a Preliminary Title Report for the property and have site control with a lien-free title. Any encumbrances or easements that adversely impact the property's title must be remediated to the County's satisfaction prior to conveyance of the site. Anything that cannot be remedied must be approved by County and factored into the estimated value of the interests proposed to be conveyed to the County.
 - 2) The developer must provide an appraisal report of the property that complies with the Uniform Standards of Professional Appraisal Practice (USPAP) and is prepared by a California Certified General license real estate appraiser. The purpose of the appraisal is to establish the "as-is" market value of the land. County of San Diego must be listed as an intended user. The appraisal report must be reviewed and approved by Department of General Services Real Estate Valuation. Definition of "market value" is based on the most current edition of The Appraisal of Real Estate published by the Appraisal Institute.
 - 3) An initial review of hazardous materials must be performed by Department of Environmental Health and Quality, and all recommendations based on the findings must be completed, including any potential Phase 1 or 2 Environmental Reports. The property must not contain any hazardous materials at the time the land donation proposal is submitted, and the developer must disclose whether any hazardous materials were previously

stored or located on the site; and if hazardous materials were previously remediated, the developer must provide evidence that the cleanup was performed in accordance with applicable law.

- 4) The property is not environmentally constrained and does not include steep slopes, wetlands, floodway, floodplain, prime farmland, farmland, conservation land, habitat land, or conservation easements. In addition, the project must be outside high and very-high fire hazard zones.
- 5) The property has not been improved with any residential use for at least five years prior to the submission of a land donation proposal.
- 6) The property owner has paid in full all property taxes and special taxes when the proposal is submitted and again at the time of conveyance of the property to the County.
- 7) The site has General Plan and Zoning designations that authorize residential uses, including multifamily and is zoned for residential development, including multifamily, at a density to accommodate at least the number of otherwise required affordable housing units within the residential development.
- 8) The developer provides the location of all utilities via a plot map (water, sewer, electric and gas). All necessary utilities must be located on the property or at minimum on a site that is immediately adjacent to the property.

iii. Location.

- a) The site of the land must be located within the unincorporated County and meet at least one of the following:
 - 1) Land must be located within the same Community Plan Area or within a maximum distance of 3 miles of the market-rate project site; or
 - 2) Land must be located within a vehicle miles traveled (VMT) Efficient area or an Infill area found to have less than significant VMT impacts; or
 - 3) Land must be located in High or Highest resource areas (as defined by the California Tax Credit Allocation Committee (CTCAC)).

5. Rehabilitation of Units [The Board will have an option to include rehabilitation of units]

i. Requirement.

- a) The affordable housing requirement may be satisfied by the rehabilitation and preservation of existing affordable housing 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 County to substitute the preservation or conversion of these units for the obligation to identify adequate sites in its Regional Housing Needs Assessment.

[The Board will have an option to include one of the options below.]

[Rate of Rehabilitation – Option 1]

- b) Rehabilitation/conversion of market-rate units into affordable housing units must be provided at twice the amount of required on-site units.

[Rate of Rehabilitation – Option 2]

- b) Rehabilitation/conversion of market-rate units into affordable units must be provided in the same number and level of affordability as required by the set-aside.

ii. Comparability

- a) Rehabilitated/converted affordable housing units must be comparable to or greater than the average market-rate units in terms of unit bedroom count and quality. Standards may be modified at the discretion of the Director of Planning & Development Services on a project-by-project basis.

iii. Value.

- a) The Applicant must provide evidence that the existing structure has a remaining useful life of at least 55 years from the approval of the dwelling unit as an inclusionary dwelling unit.
- b) The Applicant must provide evidence that the rehabilitation work complies with California Building Code requirements to the satisfaction of the Building Official.
- c) The Applicant must provide a physical needs assessment to the satisfaction of the County Planning and Development Services Department for each dwelling unit to be rehabilitated, for the premises where the dwelling units are located, and for any associated common area. All items identified in the physical needs assessment needing repair or replacement at the time of the assessment or that will likely require repair or replacement within three years of the assessment shall be completed by the applicant during the rehabilitation work.

- d) On or before the time the applicant’s application is deemed complete, the applicant must comply with the State Relocation Act codified in California Government Code Section 7260 and provide all costs of notice to, and relocation of, any existing residents occupying the dwelling units to be rehabilitated.

iv. Location.

- a) Rehabilitated/converted dwelling units shall be located in High or Highest resource areas (as defined by the California Tax Credit Allocation Committee (CTCAC)).

6341.e AFFORDABLE HOUSING INCENTIVES

The developer of a residential development providing all required affordable housing units upon the same site as the market-rate units may, at the developer’s 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 incentives if the residential development contains sufficient affordable housing units to qualify for a density bonus, per Section 6365. If the applicant requests a density bonus, the other incentives listed below may be provided only if each is individually requested as a regulatory incentive.

[The Board will have an option of either one or both of the options below.]

[Density Bonus – Option 1]

- 2. Additional Density Bonus. The developer may apply for an additional 5% density increase up to a total density bonus of 50%, and the developer may apply for one (1) additional regulatory incentive in addition to the County’s Density Bonus Program per Section 6365 if all required affordable housing units are provided on-site.

[Priority Review– Option 1]

- 3. Priority Review. The developer may apply for Priority Review if the developer provides at least 50% more affordable (up to 80% AMI) housing units than are required by this ordinance.



- 4. 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 of the Project, and any incentives approved by the County shall be included in the affordable housing plan.

6341.f AFFORDABLE HOUSING PLAN

An application for the first approval of a residential or mixed use development shall include an affordable housing plan describing how the development will comply with the provisions of this ordinance.

1. No application for a first approval for a residential or mixed use development subject to this section may be deemed complete unless an affordable housing plan is submitted in conformance with this ordinance.
2. The affordable housing plan shall be processed concurrently with all other permits required for the residential development. Before approving the affordable housing plan, Housing and Community Development Services and Planning and Development Services (the "approval body") shall find that the affordable housing plan conforms to this ordinance.
3. A condition shall be attached to the first approval of any residential development to require recordation of the Affordable Housing Agreement described in Section 7430 of the Zoning Ordinance 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 a discretionary 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 amendment of an approved affordable housing plan may be granted by the approval body if the amendment is substantially in compliance with the original affordable housing plan and conditions of approval. Other amendments to the affordable housing plan shall be processed in the same manner as the original plan. An affordable housing plan shall include, but not be limited to, the following:
 - i. The number of affordable housing units proposed;
 - ii. The unit square footage, and number of bedrooms for market rate and affordable housing units and tenure (ownership or rental);
 - iii. Detailed plot plan showing location/footprint of all affordable housing units, which shall be disbursed throughout the property.
 - iv. Amenities and services provided, such as daycare, transportation, job training/employment services and recreation;
 - v. Level of affordability for affordable housing units (very low, low or moderate);
 - vi. Schedule for production of dwelling units. The schedule must comply with Section 6341.c. 3.
 - vii. Incentives requested.
 - viii. Any information necessary to describe and evaluate the applicant's proposed compliance method (i.e. on-site units, in lieu fee, off-site, etc.).

Section 5. Section 7430 of the San Diego County Zoning Ordinance is hereby amended to read as follows:

SEC. 7430 AFFORDABLE HOUSING AGREEMENT

- a. Agreement Required. The applicant shall enter into a contract with County Health and Human Services Agency, Housing and Community Development Services, to the satisfaction of the Director of Planning & Development Services, agreeing to the specific terms and conditions of the Density Bonus / Inclusionary Affordable Housing Program and to periodic inspections of the housing by County employees. The provisions contained within the agreement shall be enforceable by the County, and a violation of the agreement shall constitute a violation of this Ordinance. The property owner must provide a copy of the approved Affordable Housing Plan prior to any of the following:
- i. The County's issuing a ministerial permit for the project.
 - ii. The County's issuing a discretionary permit for the project, as a condition of approval for the discretionary permit.
 - iii. Each final map or parcel map shall bear a note indicating the method of compliance with the requirements of the Density Bonus / Inclusionary Affordable Housing Programs and stating that an affordable housing agreement shall be recorded prior to issuance of a building permit with respect to any parcel created by the map.
 - iv. No building permit shall be issued for a residential unit until the applicant has demonstrated recordation of an Affordable Housing Agreement, including providing a copy of the recorded restriction for the inclusionary housing units.
- b. Execution of Agreement.
- i. Following execution of the Affordable Housing Agreement by all parties, the County shall record the completed agreement on the parcels created by the final or parcel map at the County Recorder's Office.
 - ii. The approval and recordation shall take place at the same time as recording of the final or parcel map or, where a map is not being processed, before issuance of a building permit.
 - iii. The agreement shall be binding on all future owners, developers, and/or successors-in-interest.

Section 6. This ordinance shall take effect and be in force thirty days after its passage, and before the expiration of fifteen days after its passage, a summary hereof shall be published once with the names of the members of this Board voting for and against it in the _____, a newspaper of general circulation published in the County of San Diego.

APPROVED AS TO FORM AND LEGALITY
Damon M. Brown, County Counsel

By: Jerod Markley, Supervising Deputy County Counsel