

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 14, ARTICLE 3, OF THE SAN DIEGO MUNICIPAL CODE BY ADDING NEW DIVISION 10, SECTIONS 143.1001, 143.1002, 143.1005, 143.1010, 143.1015, 143.1020, AND 143.1025 RELATING TO COMPLETE COMMUNITIES: HOUSING SOLUTIONS REGULATIONS.

WHEREAS, in 2008 the City adopted a new General Plan, which includes the “City of Villages” strategy to focus mixed-use activity centers that are pedestrian-friendly, centers of community, and linked to the regional transit system. The strategy is an important component of the City’s goal of reducing local greenhouse gas (GHG) emissions; and

WHEREAS, the City is experiencing a housing affordability crisis and therefore amended the Inclusionary Housing Ordinance in 2019 to help meet the City’s goals of providing affordable housing in a balanced manner, to increase the supply of affordable housing in the City, and to combat the adverse effects of insufficient affordable housing; and

WHEREAS, the City must proactively identify ways to continue to streamline the development process and remove regulatory barriers to housing construction where possible; and

WHEREAS, the City must also prioritize opportunities to improve quality of life for residents by both locating housing near jobs, transit, schools, and community amenities and providing community infrastructure improvements that create a sense of place and promote active forms of transportation; and

WHEREAS, the City has developed the Complete Communities: Housing Solutions Regulations (Housing Solutions Regulations) to increase affordable and market rate housing

citywide, implement the General Plan City of Villages strategy and the Climate Action Plan (CAP), and improve quality of life; and

WHEREAS, the Housing Solutions Regulations is an opt-in incentive program that will help the City meet its Regional Housing Needs Allocation targets for affordable housing and the City's CAP goals by incentivizing the construction of housing in multi-family and mixed-use commercial areas served by transit, while investing in neighborhood amenities, such as recreational opportunities, linear parks, urban plazas, cultural amenities, and promenades; and

WHEREAS, the City hired Keyser Marston Associates, Inc., to prepare a series of real estate financial feasibility analyses related to the Housing Solutions Regulations, which the Council considered along with this Ordinance; and

WHEREAS, development eligible to receive the benefits under the Housing Solutions Regulations must comply with the following requirements: (1) be located on a parcel within a Transit Priority Area; (2) meet inclusionary housing requirements and provide an additional 10 percent of rental dwelling units to households earning up to 120 percent area median income; (3) replace equivalently-sized existing affordable units; (4) pay \$9.00 per square foot of lot area, or \$11.00 per square foot of the lot area if the building is more than 95 feet in height, into the Neighborhood Enhancement Fund or construct an on-site public promenade on a premises 25,000 square feet or larger with at least 200 linear feet of street frontage; and (5) meet design requirements, including pedestrian-oriented design, CAP consistency checklist requirements, and implementation of special standards for structures over 95 feet in height, adjacent to a single-unit zone, or adjacent to a freeway; and

WHEREAS, developments that meet all five requirements will receive the following incentives: (1) ministerial approval with limited exceptions; (2) development density governed

by a new floor area ratio as indicated on the “FAR Tier” allowances map and Building Code minimums; (3) development height governed by the allowed FAR (except in the Coastal Height Overlay Zone); (4) affordable housing incentives and waivers; and (5) scaling of development impact fees (DIF) based on development square footage, NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 14, Article 3 of the San Diego Municipal Code is amended by adding new Division 10, sections 143.1001, 143.1002, 143.1005, 143.1010, 143.1015, 143.1020, and 143.1025, to read as follows:

Article 3: Supplemental Development Regulations

Division 10: Complete Communities Housing Solutions Regulations

§143.1001 Purpose, Intent, and Definitions

- (a) Purpose. The purpose of these regulations is to provide an incentive program for *development* within *Transit Priority Areas* that provides housing for *very low income*, *low income*, or *moderate income* households and provides neighborhood-serving infrastructure amenities. These regulations are intended to materially assist in providing adequate housing for all economic segments of the community; to provide a balance of housing opportunities within the City of San Diego with an emphasis on housing near transit; and to encourage use of mobility alternatives through the construction of neighborhood-serving infrastructure amenities.
- Investment in neighborhood-serving infrastructure that creates destinations and encourages walking, biking and use of transit, particularly within *Transit Priority Areas*, is critical to the City’s Climate Action Plan goal to reduce greenhouse gas emissions. These regulations do not implement

California Government Code Section 65915 (State Density Bonus Law), which is implemented through San Diego Municipal Code Chapter 14, Article 3, Division 7.

(b) Definitions. For purposes of this Division, the following definitions shall apply:

(1) FAR Tier 1 means any *premises* where any portion of the *premises* is located within the Downtown Community Planning Area.

(2) FAR Tier 2 means any *premises* where any portion of the *premises* is located in an area located within a *Transit Priority Area* that is located in an area as defined in Section 143.1103(a)(3) as Mobility Zone 3.

(3) FAR Tier 3 means any *premises* where any portion of the *premises* is located in an area located within a *Transit Priority Area* that is located in an area as defined in Section 143.1103(a)(4) as Mobility Zone 4.

(4) Community of Concern means a census tract that has been identified as having very low or low access to opportunity as identified in the Citywide Climate Equity Index.

§143.1002 Application of Complete Communities Housing Solutions Regulations

(a) At the request of the *applicant*, the regulations in this Division shall apply to any *development* within a *Transit Priority Area* where any portion of the *premises* contains zoning or a *land use plan* designation that is commercial, residential, or mixed-use and allows for five or more *dwelling*

units, not including additional units permitted under this Division, if all of the following requirements are met:

- (1) The *development* includes *dwelling units* affordable to *very low income*, *low income*, or *moderate income* households, in accordance with Section 143.1015 and the following criteria.
 - (A) Within the categories of *very low income*, *low income*, and *moderate income* households, affordable *dwelling units* may be further targeted or restricted for senior citizens, as defined in California Civil Code Sections 51.3 and 51.11.
 - (B) Within the *very low income* category, affordable *dwelling units* may be further targeted or restricted for transitional foster youth, as defined in Section 66025 of the California Education Code; disabled veterans as defined in Section 18541 of the California Government Code; or homeless persons as defined in the McKinney-Vento Homeless Assistance Act.
 - (C) The affordable *dwelling units* may be provided through either of the following means:
 - (i) A portion of the total *dwelling units* in the *development* shall be reserved for *very low income*, *low income*, or *moderate-income* households, in accordance with Section 143.1015; or

- (ii) The construction of off-site *dwelling units* shall be reserved for *very low income*, *low income*, or *moderate income* households, in accordance with Section 143.1015. To be eligible for the regulations in this Division, the off-site *dwelling units* shall be constructed within a *Transit Priority Area* within the boundaries of the same community planning area in which the *development* is located, or within one mile of the *premises* of the *development*.
 - (2) The *development* includes neighborhood-serving infrastructure amenities, in accordance with Section 143.1020.
 - (3) The *dwelling units* within the *development* shall not be used for a rental term of less than 30 consecutive days.
- (b) The regulations in this Division shall not apply to the following types of *development*:
- (1) *Development* outside of the Centre City Planned District and the mixed-use base zones that propose a total number of *dwelling units* that equates to a residential *density* that is less than 80 percent of the maximum permitted *density* of the applicable base zone(s) or Planned District.
 - (2) Residential *development* within the Centre City Planned District that does not meet the Base Maximum FAR found in Figure H of the Centre City Planned District.

- (3) *Development* zoned mixed-use that does not meet the maximum *floor area ratio* of the base zone.
 - (4) *Development* that proposes to concurrently utilize the *density* bonus provided in Chapter 14, Article 3, Division 7 (Affordable Housing Regulations). Existing *development* that was constructed in accordance with the Affordable Housing Regulations and an *applicant* proposes to construct additional *dwelling units* through a new *development* application may utilize this Division to add *gross floor area* and *density* if the existing *development* was constructed using the maximum *density* bonus available based on the affordability level of the *development*.
 - (5) *Development* located within Proposition A lands.
 - (6) *Development* located within a designated *historical district* or subject to the Old Town San Diego Planned District.
 - (7) *Development* that includes visitor accommodations.
- (c) The regulations in this Division may be utilized to add *gross floor area* to an existing *development* through the construction of additional *dwelling units*. The additional *gross floor area* allowed shall be determined as follows:
- (1) The additional *gross floor area* is determined by multiplying the remaining *lot* area by the applicable *floor area ratio* in Section 143.1010(a). The remaining *lot* area is the difference between the *lot coverage* of the existing *development* and the *lot* area.

- (2) The minimum number of *dwelling units* is determined by multiplying the maximum number of *dwelling units* that could be constructed on the remaining *lot* area by 0.80. The maximum number of *dwelling units* that could be constructed on the remaining *lot* area is calculated by dividing the remaining *lot* area by the maximum permitted *density* under the base zone. If the number calculated for the minimum number of *dwelling units* exceeds a whole number by more than 0.50, the minimum number of *dwelling units* shall be rounded up to the next whole number.
- (d) The required number of affordable *dwelling units* shall be calculated in accordance with Section 143.1015 based upon the number of *dwelling units* proposed in accordance with Sections 143.1002(c)(1) and 143.1002(c)(2). Existing covenant-restricted affordable *dwelling units* shall not be counted towards the affordable housing requirement in this Division.
- (e) The regulations in this Division shall not supersede the regulations of any other Land Development Code Section, unless specified.

§143.1005 Required Replacement of Existing Affordable Units

- (a) An *applicant* is ineligible for any incentive under this Division if the *premises* on which the *development* is proposed contains, or during the five years preceding the application, contained, rental *dwelling units* that have had the rent restricted by law or covenant to persons and *families* of *moderate income, low income, or very low income*, or have been occupied

by persons and *families of moderate income, low income, or very low income*, unless the proposed *development* replaces the affordable *dwelling units*, and either:

- (1) Provides affordable *dwelling units* at the percentages set forth in Section 143.1015 (inclusive of the replacement *dwelling units*), or
- (2) Provides all of the *dwelling units* in the *development* as affordable to *low income* or *very low income* households, excluding any manager's unit(s).

(b) The number and type of required replacement affordable *dwelling units* shall be determined as follows:

- (1) For *development* containing any occupied affordable *dwelling units*, the *development* must contain at least the same number of replacement affordable *dwelling units*, of equivalent size and *bedrooms*, and must be made affordable to and occupied by persons and *families* in the same or a lower income category as the occupied affordable *dwelling units*. For unoccupied affordable *dwelling units* in the *development*, the replacement affordable *dwelling units* shall be made affordable to and occupied by persons and *families* in the same or lower income category as the last household in occupancy. If the income category of the last household is unknown, it is rebuttably presumed that the affordable *dwelling units* were occupied by lower income renter households in the same proportion of lower income renter households to all

renter households within the City of San Diego, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database, and replacement affordable *dwelling units* shall be provided in that same percentage.

- (2) If all of the affordable *dwelling units* are vacant or have been demolished within the seven years preceding the application, the *development* must contain at least the same number of replacement affordable *dwelling units*, of equivalent size and *bedrooms*, as existed at the highpoint of those units in the five-year period preceding the application, and must be made affordable to and occupied by persons and *families* in the same or a lower income category as those in occupancy at that same time. If the income categories are unknown for the highpoint, it is rebuttably presumed that the *dwelling units* were occupied by *very low income* and *low income* renter households in the same proportion of *very low income* and *low income* renter households to all renter households within the City of San Diego, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database, and replacement *dwelling units* shall be provided in that same percentage.

- (3) All replacement affordable *dwelling unit* calculations resulting in fractional units shall be rounded up to the next whole number.
- (4) All rental replacement affordable *dwelling units* shall be affordable for at least 55 years.
- (5) Any existing residents will be allowed to occupy their *dwelling units* until six months before the start of construction activities with proper notice, subject to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the California Government Code.
- (6) The *applicant* agrees to provide relocation benefits to the occupants of those affordable residential *dwelling units*, and the right of first refusal for a comparable *dwelling unit* available in the new housing *development* at a rent affordable to *very low* or *low income* households.
- (7) For a *development* located within a Community of Concern, residents living within one-half mile of the *development* at the time of application shall receive priority for 60 percent of the affordable *dwelling units* in the *development* that are reserved for *very low income*, *low income*, or *moderate income* households.
- (8) All for-sale replacement affordable *dwelling units* shall be subject to the provisions of Section 143.1015(a)(4).

§143.1010 Incentives in Exchange for Transit Priority Area Housing and Infrastructure Amenities

An *applicant* proposing *development* that is consistent with the criteria in Section 143.1002 shall be entitled to the following incentives:

- (a) Waiver of the existing *floor area ratio* and a new *floor area ratio* based upon whether the *development* is located in FAR Tier 1, FAR Tier 2, or FAR Tier 3. If a mixed-use *development* is proposed, the *floor area ratio* of the non-residential portion of the *development* shall not exceed the maximum *floor area ratio* of the applicable base zone or Planned District. *Development* located within the Coastal Overlay Zone and the Coastal Height Limit Overlay Zone as shown on Map No. C-380, filed in the office of the City Clerk as Document No. 743737, shall be limited to a maximum floor area ratio of 4.0, with the exception of those areas located within the FAR Tier 1.
 - (1) Within FAR Tier 1, there shall be no maximum *floor area ratio* for residential *development*.
 - (2) Within FAR Tier 2, the new maximum *floor area ratio* shall be 8.0.
 - (3) Within FAR Tier 3, the new maximum *floor area ratio* shall be 4.0.
- (b) Waiver of the maximum permitted residential density of the land use designation(s) in the applicable land use plan. Density shall be limited by the allowable *floor area ratio* and the requirements of the California Building Code as adopted and amended by the City of San Diego.

- (c) Waiver of the following applicable base zone or Planned District regulations:
- (1) Maximum permitted residential density.
 - (2) Maximum structure height.
 - (3) Maximum lot area.
 - (4) Street frontage requirements, if safe and adequate access to the premises can be provided to the satisfaction of the City Building Official and the Fire Department.
 - (5) Maximum lot coverage.
 - (6) Floor Area Ratio Bonus for Residential Mixed-Use. *Development* utilizing the regulations in this Division shall not be eligible for other FAR or density bonuses.
 - (7) Maximum front setback or street side setback if the maximum is less than 20 feet and the *development* is constructing a promenade, in accordance with Section 143.1020.
- (d) Waiver of any of the following applicable overlay zone regulations:
- (1) Maximum permitted residential density.
 - (2) Outside the Coastal Height Limit Overlay Zone and the Airport Land Use Compatibility Overlay Zone, maximum structure height.
 - (3) The requirement to obtain a Site Development Permit in areas mapped as CPIOZ Type B, if the *development* complies with the *development* standards or criteria in the applicable community plan. Compliance with the *development* standards or criteria in the

applicable community plan does not include compliance with maximum permitted residential density and/or maximum structure height.

- (e) Waiver of the personal storage area requirement in Section 131.0454 and the private exterior open space requirement in Section 131.0455 for all *dwelling units* in the *development* if at least 10 percent of the total *dwelling units* in the *development* are three *bedroom dwelling units*.
- (f) Scaling of Development Impact Fees based on square footage, rather than number of *dwelling units* in the proposed *development*, in accordance with Section 142.0640(b)(4).
- (g) Waiver of Development Impact Fees for all covenant-restricted affordable *dwelling units* and all *dwelling units* that do not exceed 500 square feet.
- (h) Use of up to five Affordable Housing Incentives. An *applicant* utilizing the regulations in this Division shall be entitled to incentives as described in Section 143.1010(h) for any *development* for which a written agreement and a deed of trust securing the agreement is entered into by the *applicant* and the President and Chief Executive Officer of the San Diego Housing Commission. The City shall process an incentive requested by an *applicant* in with Section 143.1010(h).
 - (1) An incentive means any of the following:
 - (A) A deviation to a *development* regulation, with the exception of any regulations or requirements of this Division;

- (B) Any other incentive proposed by the *applicant*, other than those identified in Section 143.1010(h)(2), that results in identifiable, actual cost reductions.
- (2) Items not considered incentives by the City of San Diego include, but are not limited to the following:
- (A) A waiver of a required permit;
 - (B) A waiver of fees or dedication requirements, except as allowed under Section 143.0101(g);
 - (C) A direct financial incentive;
 - (D) Approval of mixed-use zoning in conjunction with a residential *development*;
 - (E) A waiver of any of the requirements, regulations or standards of this Division.
- (3) An incentive requested as part of a *development* meeting the requirements of this Division shall be processed according to the following:
- (A) Upon an *applicant's* request, *development* that meets the applicable requirements of this Division shall be entitled to incentives pursuant to Section 143.1010(h) unless the City makes a written finding of denial based upon substantial evidence, of any of the following:
 - (i) The incentive is not required in order to provide for affordable housing costs, as defined in California

Health and Safety Code Sections 50052.5 and 50053;

- (ii) The incentive would have a specific adverse impact upon public health and safety as defined in Government Code Section 65589.5, the physical environment, including environmentally sensitive lands, or on any real property that is 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 income* and *moderate income* households;
- (iii) The incentive would be contrary to state or federal law. Requested incentives shall be analyzed in compliance with the California Environmental Quality Act as set forth in Chapter 12, Article 8, and no incentive shall be granted without such compliance; or
- (iv) Within the Coastal Overlay Zone, the incentive would be inconsistent with the resource protection standards of the City's Local Coastal Program or the environmentally sensitive lands regulations, with the exception of density.

- (B) The granting of an incentive shall not require a General Plan amendment, zoning change, a *development permit*, or other discretionary approval.
 - (C) When a *development permit* is otherwise required, the decision to deny a requested incentive shall be made by the decision maker for the *development permit*.
- (4) The number of incentives available are as follows:
- (A) Two incentives for a *development* that includes at least 10 percent of the total *dwelling units* for lower income households and at least 10 percent for persons and *families of moderate income* in a common interest development.
 - (B) Three incentives for a *development* that includes at least 30 percent of the total *dwelling units* for lower income households, at least 10 percent for *very low income* households, and at least 20 percent for persons and *families of moderate income* in a common interest development.
 - (C) Five incentives for a *development* that includes 100 percent of the total *dwelling units*, exclusive of a manager's unit(s), for lower income households, as defined by Section 50079.5 of the Health and Safety Code, except that up to 20 percent of the total *dwelling units* in the *development* may be for *moderate income* households, as defined in Section 50053 of the Health and Safety Code.

- (i) Affordable Housing waivers may be granted, except that waivers cannot be used to deviate from the requirements of this Division. An *applicant* utilizing the regulations in this Division shall be entitled to a waiver as described in Section 143.1010(i) for any *development* for which a written agreement and a deed of trust securing the agreement is entered into by the *applicant* and the President and Chief Executive Officer of the San Diego Housing Commission.
 - (1) A waiver means a request by an *applicant* to waive or reduce a *development* standard that physically precludes construction of *development* meeting the criteria of this Division.
 - (2) Upon an *applicant's* request, *development* that meets the applicable requirements of this Division shall be entitled to a waiver unless the City makes a written finding of denial based upon substantial evidence, of any of the following:
 - (A) The waiver would have a significant, quantifiable, direct, and unavoidable impact upon health, safety, or the physical environment for which there is no feasible method to mitigate or avoid the impact;
 - (B) The waiver would have an adverse impact on any real property that is listed in the California Register of Historical Resources;
 - (C) The waiver would be contrary to state or federal law.
- Requested waivers shall be analyzed in compliance with

the California Environmental Quality Act as set forth in Chapter 12, Article 8, and no waiver shall be granted without such compliance; or

- (D) Within the Coastal Overlay Zone, the waiver would be inconsistent with the resource protection standards of the City's Local Coastal Program or the environmentally sensitive lands regulations, with the exception of density.
- (3) The granting of a waiver shall not require a General Plan amendment, zoning change, *development permit*, or other discretionary approval.
- (4) There is no limit on the number of waivers an *applicant* may request.
- (j) Compliance with the regulations in this Division shall satisfy compliance with the City's Inclusionary Affordable Housing Regulations in Chapter 14, Article 2, Division 13 and the *applicant's* affordable housing obligations.

§143.1015 Required Provision of Affordable Dwelling Units

- (a) In accordance with Section 143.1002(a)(1), an *applicant* requesting application of the regulations in this Division shall provide a written agreement to provide affordable *dwelling units*, entered into by the *applicant* and the President and Chief Executive Officer of the San Diego Housing Commission and secured by a deed of trust, that meets the following requirements:

- (1) Provides a percentage of affordable *dwelling units*, excluding any additional *dwelling units* allowed under the *floor area ratio* bonus, in accordance with the following:
 - (A) Rental *dwelling units*: At least 10 percent of rental *dwelling units* shall be made available for rent by *low income* households at a cost, including an allowance for utilities, that does not exceed 30 percent of 60 percent of the area *median income*, as adjusted for household size.
 - (B) For-sale *dwelling units*:
 - (i) At least 10 percent of total *dwelling units* in the *development* shall be made available for purchase at a cost affordable to households whose income does not exceed 100 percent of area *median income*; or
 - (ii) At least 15 percent of total *dwelling units* in the *development* shall be made available for purchase at a cost affordable to households whose income does not exceed 120 percent of area *median income*.
- (2) Provides an additional percentage of the *dwelling units* in the *development*, excluding any additional *dwelling units* allowed under the *floor area ratio* bonus. The additional percentage required shall be determined by subtracting the percentage of affordable *dwelling units* provided in accordance with Section 143.1015(a)(1)(A) from 20 percent.

- (A) Rental *dwelling units* shall be made available for rent, including an allowance for utilities, that does not exceed 30 percent of 120 percent of area median income, as adjusted for household size; or
 - (B) For-sale *dwelling units* shall be made available for purchase at a cost affordable to households whose income does not exceed 120 percent of area median income.
- (3) The number of required affordable *dwelling units* for *development* located in FAR Tier 1 shall be determined by multiplying the proposed number of *dwelling units* permitted with the maximum base *floor area ratio*, illustrated in Figure H of the Centre City Planned District, by the percentages of affordable *dwelling units* required in Section 143.1015(a)(1-2).
- (4) For rental *dwelling units* to be counted as affordable and meet the requirements of this Division, the following qualifying criteria shall be met:
- (A) The affordable *dwelling units* shall be designated be comparable in *bedroom* mix and amenities to the market-rate *dwelling units* in the *development*, as determined by the San Diego Housing Commission, except that the affordable *dwelling units* shall not be required to exceed three *bedrooms per dwelling unit*. The affordable *dwelling units* shall have access to all common areas and amenities

provided by the *development*. The square footage and interior features of the affordable units shall be good quality and consistent with current building standards for new housing in the City of San Diego.

- (B) The affordable *dwelling units* shall remain available and affordable for a period of at least 55 years.
- (5) For for-sale *dwelling units* to be counted as affordable and meet the requirements of this Division, the following qualifying criteria shall be met:
- (A) Prior to, or concurrent with, the sale of each affordable *dwelling unit*, the *applicant* shall require the buyer to execute and deliver a promissory note in favor of the San Diego Housing Commission so that the repayment of any initial subsidy is ensured.
 - (B) Each for-sale *dwelling unit* shall be occupied by the initial owner at all times until the resale of the *dwelling unit*.
 - (C) Upon the first resale of a *dwelling unit*, the seller shall comply with all conditions regarding the sale of a *dwelling unit*, as applied by the San Diego Housing Commission, and as set forth in California Government Code Section 65915(c)(2).
 - (D) The affordable *dwelling units* shall be designated units, be comparable in *bedroom* mix and amenities to the market-

rate *dwelling units* in the *development*, and be dispersed throughout the *development*, except that the affordable *dwelling units* shall not be required to exceed three *bedrooms* per *dwelling unit*. The square footage and interior features of the affordable units shall be good quality and consistent with current building standards for new housing in the City of San Diego.

- (b) A *development* may provide all or a portion of the required affordable *dwelling units* off-site in accordance with the following:
- (1) Off-site affordable *dwelling units* shall be located within a *Transit Priority Area* either within the boundaries of the same community planning area in which the *premises* of the *development* are located, or within a one mile radius of the *premises* of the *development*. The distance shall be measured in a straight line from the *property lines* of the proposed housing *development*.
 - (2) At a minimum, the same number of affordable *dwelling units* required of the *development* must be provided, at the same affordability levels and the same total *bedroom* count as the *development*. The *applicant* may provide different *bedroom* mixes to meet the total *dwelling unit* and *bedroom* count minimums.
 - (3) The *applicant*, prior to the issuance of the first building permit for the *development*, shall secure the required number of off-site affordable *dwelling units* and enter into an agreement with the

President and Chief Executive Officer of the San Diego Housing Commission establishing the same terms and conditions set forth in Section 143.1015 for the applicable type of *dwelling units*.

- (4) Off-site affordable *dwelling units* may be located in an existing *structure*, provided the *applicant* provides evidence that the existing *structure* has a remaining useful life of at least 55 years from the issuance of a Certificate of Occupancy pursuant to Section 143.0745(f)(2)(B) and complies with current Building Code standards, to the satisfaction of the City Manager. Off-site affordable *dwelling units* that are occupied at the time the *applicant's* application is *deemed complete* shall comply with the State Relocation Act pursuant to Government Code Section 7260.
- (5) Prior to the issuance of the first building permit, the *applicant* shall record a deed restriction against the off-site *development* that:
 - (A) Documents the required number of affordable *dwelling units* to be provided; and
 - (B) Assigns foreclosure rights of the *development premises* to the San Diego Housing Commission as follows:
 - (i) For new *development*, if the affordable *dwelling unit(s)* has not received a Certificate of Occupancy within 54 months of the issuance of the first building permit.

- (ii) For an existing *structure*, if the affordable *dwelling unit(s)* has not received a Certificate of Occupancy within 36 months of the issuance of the first building permit.
- (c) Nothing in this Division shall preclude an *applicant* from using affordable *dwelling units* constructed by another *applicant* to satisfy the requirements of this Division, including contracting with an affordable housing developer with experience obtaining tax-exempt bonds, low income housing tax credits, and other competitive sources of financing, upon approval by the San Diego Housing Commission pursuant to the standards set forth in the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual on file with the San Diego Housing Commission.

§143.1020 Required Provision of Infrastructure Amenities

In accordance with Section 143.1002(a)(2), an *applicant* requesting application of the regulations in this Division shall provide infrastructure amenities as follows:

- (a) Neighborhood Enhancement Fund. All *developments* shall pay a fee to the “Neighborhood Enhancement Fund”, as established by City Council Resolution. This fund shall be used for design, construction, or maintenance of neighborhood-serving infrastructure amenities.
 - (1) The fee shall be set at \$9.00 per square foot of *lot* area. *Structures* over 95 feet in height shall pay an additional 25 percent of the established fee.

(2) The fees paid shall be divided with 50 percent of the fee invested in infrastructure improvements within the same community planning area as the *development*, and 50 percent of the fee invested in infrastructure improvements within Communities of Concern, as determined by the City Manager, until it is defined in the City's General Plan.

(b) Public promenade alternative. In lieu of the fee described in Section 143.1020(a), *development* on a *premises* of 25,000 square feet in area or larger with at least 200 linear feet of *street frontage* or a separately-owned parcel within the *Transit Priority Area* where the *development* is located and with an equivalent-sized *premises* of the *development* or larger with at least 200 linear feet of *street frontage*, may construct public amenities in the form of a public promenade.

(1) The *applicant* shall hold a minimum of two design charettes for the community to receive information and provide feedback on proposed promenade design concepts.

(2) A notice describing the public promenade shall be posted in a prominent and accessible location within a common area of the *development* or parcel adjacent to the promenade where it can be viewed by the public. The notice shall include contact information of the *applicant* and a statement that the public promenade is required pursuant to the San Diego Municipal Code.

- (3) Prior to issuance of a Certificate of Occupancy, the *applicant* shall provide the City Manager documentation that all required on-site public amenities have been constructed and are operational.
- (4) The *applicant* shall record a public recreation easement against all parcels comprising the *premises* of the *development*, to the satisfaction of the City Manager.
- (5) The *applicant* shall record a maintenance agreement ensuring that the required on-site public amenities are maintained in perpetuity.
- (6) *Development* that includes a promenade in accordance with Section 143.1020 shall be exempt from requirements to provide private or common open space for the residential *dwelling units*.
- (7) A promenade is a public open space that adjoins or is visible from a public *right-of-way* along the longest *street frontage*. The promenade shall meet the following standards and will be exempt from Council Policy 600-33.
 - (A) The promenade shall span the length of the longest *street frontage* and shall extend inward from the *property line* abutting the longest *street frontage* at a distance of at least 20 feet.
 - (B) The sidewalk within the *public right-of-way* adjacent to the promenade shall be widened to a minimum of 8 feet, measured perpendicular to the *street*.

- (C) The promenade shall be publicly accessible from 7:00 a.m. to 7:00 p.m. The promenade shall include landscape designs that provide viewable surveillance, including visibility from surrounding properties, with plantings controlled to allow clear sight lines into the promenade.
- (D) A minimum of 50 percent of a promenade shall be free of physical barriers or obstructions, such as walls or gates.
- (E) Garage entrances, driveways, parking spaces, passenger drop-offs, loading berths, trash storage facilities, utility boxes, as well as the access or service for these facilities are not permitted within a promenade.
- (F) Pedestrian circulation paths within the promenade shall connect to all *streets* and building entrances that front the promenade.
- (G) Landscaping shall be provided as follows:
 - (a) At least one, 24-inch box canopy form tree is required for each 25 feet of street frontage on each side of the required sidewalk.
 - (b) At least 15 percent and not to exceed 20 percent of the promenade area shall be comprised of planting, which can include hanging plants, planting beds or living walls.

- (H) Lighting shall be provided to ensure adequate visibility, and the lighting design shall be coordinated with lighting used in the *public right-of-way* and with the building's architectural lighting.
- (I) Wayfinding signage shall be prominently displayed near the *public right-of-way* that directs pedestrians and cyclists to nearby attractions and transit connections. Attractions include recreational facilities, such as *public parks*, trails, or recreation centers; landmarks; and community assets, such as libraries or community centers.
- (J) Seating shall be provided in the promenade. This may be satisfied by providing movable seats, fixed individual seats, benches with or without backs, and design feature seating, such as seat walls, ledges, and seating steps.
- (K) One trash receptacle and one recycling container shall be provided for every 150 feet of *street frontage*.
- (L) At least one of the following recreation amenities must be provided:
 - (i) Playground equipment;
 - (ii) Fitness circuit equipment; or
 - (iii) Game equipment, such as a bocce ball court or an oversized chess set.

- (M) At least one of the following additional amenities must be provided:
 - (i) Water feature;
 - (ii) Art installation; or
 - (iii) Food and beverage kiosk.
- (N) Patios, tables, and seating operated by on-site commercial tenants may be included within the promenade, if they are accessible to the public during non-business hours and are limited to no more than 20 percent of the promenade area.
- (O) Required best management practices (BMPs) for storm water may be constructed within the required landscaped area of the promenade, including within the *public right-of-way*, so long as pedestrian access to and within the promenade is not hindered by the BMPs.
- (P) The *development* may utilize the *public right-of-way* adjacent to the promenade to implement the standards required in Section 143.1020(b)(7)(I–M). Utilization of the *public right-of-way* is subject to an Encroachment Maintenance and Removal Agreement in accordance with Section 129.0715. If the *applicant* is required to remove the amenities within the *public right-of-way*, they shall be replaced within the promenade on the *premises*.

- (8) If site constraints such as topography or the desire to avoid archaeological, tribal, cultural, historical or environmental resources make siting the promenade along the *public right-of-way* infeasible, the promenade may be located on another portion of the *premises*, subject to the following:
 - (A) The square footage of the promenade must be equal to or greater than the length of the longest *street frontage* multiplied by 20 and must be contiguous.
 - (B) The promenade must comply with Sections 143.1020(b)(7)(C-O).

§143.1025 Supplemental Development Regulations

Development utilizing the regulations in this Division must comply with the following Supplemental Development Regulations, and may not utilize incentives or waivers provided in Section 143.1010(h) to deviate from the requirements in Section 143.1025.

- (a) Pedestrian Circulation Space. All *development* shall include the following pedestrian circulation improvements:
 - (1) Sidewalk Widening. A sidewalk widening enlarges a pre-existing or required sidewalk by at least five additional feet measured perpendicular to the street.
 - (2) At least one, 24-inch box canopy form tree is required for each 25 feet of street frontage on each side of the required sidewalk.
 - (3) Above-ground utility placement within the sidewalk and/or pedestrian path is prohibited.

- (4) Gated entryways and *street yard* fencing is prohibited.
- (b) Bulk Standards for Buildings over 95 Feet in Height on *Premises* over 20,000 Square Feet in Area. For purposes of Section 143.1025, bulk and scale are divided into the two main areas of the building base and the tower. Buildings over 95 feet in height located on a *premises* over 20,000 square feet in area shall comply with the following requirements:
 - (1) For the purposes of Section 143.1025, building base means the *structural envelope* located immediately above *existing grade*, *proposed grade*, or a *basement*. The maximum height of the building base shall be 95 feet.
 - (2) The minimum height of the *street wall* shall be 30 feet, except as required under the Centre City Planned District.
 - (3) A *street wall* shall be provided for 70 percent of the building frontage along the *public right-of-way*, with the following exceptions, which may be subtracted from the length of the frontage:
 - (A) Publicly or privately-owned plazas or promenades;
 - (B) Courtyard entrances up to 30 feet wide for residential uses;
 - (C) Recessed entrances up to a maximum of 25 feet in width and a maximum of 15 feet in depth;
 - (D) Entries into interior or auto courts, or auto drop-offs may be allowed behind the required *street wall*; and

- (E) Areas where the *existing grade* of the *public right-of-way* differs from the building pad by more than two feet.
- (4) For the purposes of Section 143.1025, tower means the *structural envelope* located immediately above the building base to the top of the building.
 - (A) The maximum *lot coverage* of the tower shall be 75 percent of the *lot coverage* of the building base.
 - (B) Within a single *development*, towers shall be separated by a minimum of 50 feet.
- (5) *Development* must comply with the private open space and common open space requirements of the applicable base zone or Planned District.
- (c) Buffer from Adjacent Freeways. *Development*, except for *development* within the Centre City Planned District, on a *premises* within 500 feet of a freeway shall comply with the following:
 - (1) A 10-foot minimum landscaped buffer shall be provided between the residential and commercial uses and the freeway; and
 - (2) Outdoor areas such as balconies, patios, parks, plazas, and other spaces occupied by residents, customers or members of the public shall be oriented away from the freeway.
- (d) Transition to Adjacent Residential Single-Unit Zones. *Development* on a *premises* directly adjacent to a Residential Single--Unit (RS) zone, shall comply with the following criteria:

- (1) The height incentive shall be limited to a height increase of up to 3 stories or 33 feet above the height limit of the base zone, whichever is less.
 - (2) Incorporate a transition plane in the *development* that does not exceed a 65-degree angle. The transition plane for the *development* shall start from the shared *property line* with the RS zone and extend 1/3 of the *lot* depth.
- (e) Climate Action Plan (CAP) Consistency Checklist Requirements. To ensure consistency with the City's CAP, all *development* shall comply with each of the measures identified in Step 2 of the CAP Consistency Checklist.

Section 2. That a full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 3. That prior to becoming effective, this Ordinance shall be submitted to the San Diego County Regional Airport Authority (SDCRAA) for a consistency determination.

That if the SDCRAA finds this Ordinance consistent with the Airport Land Use Compatibility Plans (ALUCP) for San Diego International Airport, Marine Corps Air Station Miramar, Gillespie Field, Montgomery Field, and Brown Field Airports (collectively, Airports), this Ordinance shall take effect and be in force on the thirtieth day from and after the finding of consistency, or on the thirtieth day from and after its final passage, whichever is later, except that the provisions of this Ordinance inside the Coastal Overlay Zone, which are subject to California Coastal Commission jurisdiction as a City of San Diego Local Coastal Program amendment,

shall not take effect until the date the California Coastal Commission unconditionally certifies those provisions as a local coastal program amendment.

That if the SDCRAA determines that this Ordinance is inconsistent or conditionally consistent, subject to proposed modifications, with the ALUCPs for the Airports, the Ordinance shall be submitted to the City Council for reconsideration.

That if the SDCRAA determines that this Ordinance is conditionally consistent with the ALUCPs for the Airports, but that consistency is subject to proposed modifications, the City Council may amend this Ordinance to accept the proposed modifications, and this Ordinance as amended shall take effect and be in force on the thirtieth day from and after its final passage, except that the provisions of this Ordinance as amended inside the Coastal Overlay Zone, which are subject to California Coastal Commission jurisdiction as a City of San Diego Local Coastal Program amendment, shall not take effect until the date the California Coastal Commission unconditionally certifies those provisions as a local coastal program amendment.

That a proposed decision by the City Council to overrule a determination of inconsistency or to reject the proposed modifications for a finding of conditional consistency shall include the findings required pursuant to Public Utilities Code section 21670 and require a two-thirds vote. The proposed decision and findings shall be forwarded to the SDCRAA, the California Department of Transportation, Division of Aeronautics, and the airport operators for the Airports. The City Council shall hold a second hearing not less than 45 days from the date the proposed decision and findings were provided, at which hearing any comments submitted by the public agencies shall be considered and a final decision to overrule a determination of inconsistency shall require a two-thirds vote.

That if the City Council makes a final decision to overrule a determination of inconsistency, this Ordinance shall take effect and be in force on the thirtieth day from and after that final decision, except that the provisions of this Ordinance inside the Coastal Overlay Zone, which are subject to California Coastal Commission jurisdiction as a City of San Diego Local Coastal Program amendment, shall not take effect until the date the California Coastal Commission unconditionally certifies those provisions as a local coastal program amendment.

Section 4. That no permits shall be issued for development that is inconsistent with the provisions of this Ordinance, unless complete applications for such permits are submitted to the City prior to the date on which the applicable provisions of this Ordinance become effective.

APPROVED: MARA W. ELLIOTT, City Attorney

By _____
Corrine L. Neuffer
Deputy City Attorney

CLN:als
06/12/2020
Or.Dept: Planning
Doc. No.: 2379695_4

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor