

ORDINANCE NO. 1712

A ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
SAN CLEMENTE, CALIFORNIA, ADOPTING UPDATES TO
THE CITY'S INCLUSIONARY HOUSING PROGRAM AND
AMENDMENTS TO THE CITY'S ZONING ORDINANCE
SECTION 17.24.120 INCLUSIONARY HOUSING

WHEREAS, the City Council initiated a Zoning Amendment to update the City's Inclusionary Housing Program, including amendments to Zoning Ordinance Section 17.24.120 and clarifying the inclusionary housing in-lieu fee, in compliance with Program 5 of the 2013-2021 Housing Element; and

WHEREAS, on September 2, 2008, the City Council approved an update to the City of San Clemente's fee schedule; and

WHEREAS, lack of access to affordable housing has a direct impact upon the health, safety, and welfare of the residents of the City. The City will not be able to contribute to the attainment of State and local housing goals without additional affordable housing. The City anticipates a RHNA allocation of approximately 978 housing units of which approximately 281 (28.7%) will be required for very low income households; and

WHEREAS, the housing problem has an impact upon a broad range of income groups, and no single housing program will be sufficient to meet the City's housing need. Federal and State funds for the provision of affordable units, whether through rehabilitation of existing units or construction of new units, are insufficient to fully address the problem of affordable housing within the City. The private housing market also has not provided adequate housing opportunities affordable to lower income households. The Inclusionary Housing Program provides one of several programs the City can implement in order to work towards meeting our State and local housing goals; and

WHEREAS, the Inclusionary Housing Program requires developers to provide affordable housing units in conjunction with projects that include six or more residential units; and

WHEREAS, the inclusionary housing unit requirements may be satisfied by constructing inclusionary housing units onsite or offsite; by the payment to the City of an inclusionary housing in-lieu fee as may be established by resolution of the City Council; or by provision of land for the development of inclusionary housing units within the City limits; and

WHEREAS, the City does not anticipate substantial proposals for new residential developments and anticipates future projects may consist of smaller residential developments (less than 25 units per development). These circumstances reduce or impair the ability of developers to provide the onsite inclusionary housing units, warranting the implementation of alternative methods for the provision of affordable housing. The City is required to provide alternate methods for the provision of affordable housing in the City, which would include permitting developers to choose the option of paying the in-lieu fee,

and the placement of those funds in the Inclusionary Housing In-Lieu Fee Fund to be used by the City for the provision of, and/or support of projects that provide, affordable housing; and

WHEREAS, the purpose of the inclusionary housing program and the in-lieu fee alternative is to offset the demand for affordable housing that is created by new residential development. Every new residential development creates a further demand for affordable housing to the extent that such development offers market-rate-only housing. It has been established that affordable housing ordinances applicable to new residential developments necessarily increase the supply of affordable housing. (*Homebuilders Assoc. v. City of Napa* (2001) 90 Cal. App. 4th, 188, 196). Therefore, there is a direct relationship between the in-lieu fee and the City's attainment of its affordable housing goals; and

WHEREAS, the City retained Economic & Planning Systems ("EPS") to evaluate the existing Inclusionary Housing Program and provide recommendations for program updates and on the method to determine the inclusionary in-lieu fees for residential developers to pay in-lieu of providing inclusionary housing units onsite should developers choose to do so (Draft Report Inclusionary Housing Program Update included as Attachment 7 of the March 3, 2021 Planning Commission staff report); and

WHEREAS, based on the recommendations of the EPS report, and in an effort to provide a clear and equitable in-lieu fee option, and to account for varying project sizes and types, the Planning Commission recommends adoption of an inclusionary housing in-lieu fee of \$7.36 per market rate unit square foot, and an annual adjust pursuant to a national index; and

WHEREAS, the proposed inclusionary housing in-lieu fee is reasonable related to the cost of providing the inclusionary units foregone by a developer's election to pay the inclusionary housing in-lieu fee in lieu of providing inclusionary housing units onsite or off-site; and

WHEREAS, the inclusionary housing in-lieu fees will be placed in the City's inclusionary housing in-lieu fee fund; and

WHEREAS, the Planning Commission is recommending incorporation of the updated inclusionary housing in-lieu fee into the City-wide fee schedule in light of the EPS report; and

WHEREAS, the Planning Commission held a duly noticed public hearing on March 3, 2021, on the subject recommendations, and considered evidence presented by City staff and other interested parties and recommended that City Council approve the amendment to the fee schedule and amendment to the City's Zoning Ordinance relating to Inclusionary Housing requirements contained in Section 17.24.120; and

WHEREAS, the City Council held a duly noticed public hearing on April 20, 2021, on the subject recommendations, and considered evidence presented by City staff and other interested parties; and

WHEREAS, the project is exempt from the California Environmental Quality Act

(CEQA) and not subject to further environmental review pursuant to Sections 15060(c), 15061(b)(3), and 15378. The project is covered by the general rule 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment, and where it can be seen with certainty that there is no possibility that the project may have a significant effect on the environment, the project is not subject to CEQA. The proposed adjustments to the Inclusionary Housing Program involve a policy action that is administrative in nature, related to the requirements for affordability for potential land development in the future, to implement Housing Element Program 5. Therefore, it can be seen with certainty that there is no possibility that this project may have a significant effect on the environment and is not subject to CEQA; and

WHEREAS, it is not possible to predict which properties in the City, if any, may be proposed to be developed with a project that is subject to the Inclusionary Housing Program, whether any development or density will result from the proposed changes, whether any development or density will result that would not already have occurred under the existing Inclusionary Housing Program or Zoning Ordinance, whether any project may elect to submit inclusionary housing in-lieu fees in-lieu of constructing affordable housing units onsite, or any possible significant environmental impacts peculiar to the adoption of the Inclusionary Housing Program update, including the associated in-lieu calculation modification and Zoning Ordinance updates, therefore, this action (1) will not result in any direct or reasonably foreseeable indirect physical change in the environment (CEQA Guidelines Section 15060(c)); (2) can be seen with certainty based on review of the facts to have no possible significant effect on the environment, including impacts to water or traffic (CEQA Guidelines Section 15061(b)(3)), and (3) do not constitute a project under CEQA (CEQA Guidelines Section 15378). Any development project subject to the Inclusionary Housing Program will be subject to environmental review under CEQA.

NOW, THEREFORE, the City Council of the City of San Clemente does hereby find as follows:

Section 1. The City Council finds that the lack of access to affordable housing has a direct impact upon the health, safety, and welfare of the residents of the City. The City anticipates a RHNA allocation of approximately 978 housing units of which approximately 281 (28.7%) will be required for very low income households. The housing problem has an impact upon a broad range of income groups, and no single housing program will be sufficient to meet the City's housing need. The Inclusionary Housing Program provides one of several programs the City can implement in order to work towards meeting our State and local housing goals, and the program should be amended as recommended by Economic & Planning Systems.

Section 2. Zoning Amendment Findings.

- A. The City Council finds that the proposed Zoning Amendment is consistent with the General Plan in that the project meets the following:
 - a. Primary Goal: "Achieve the City's Vision by establishing and maintaining balance of uses that provides: 1) a diversity of residential neighborhoods and housing opportunities; ..." The Zoning Amendment would support the City's goal to provide a diversity of housing opportunities by continuing a program that supports the

- provision of housing for lower income households.
- b. Policy LU-1.01. "General. We accommodate the development of a variety of housing types, styles, tenure and densities that are accessible to and meet preferences for different neighborhood types ... and income levels, pursuant to the Land Use Plan and Housing Element." The Zoning Amendment would meet the City's policy to accommodate a variety of housing types and income levels by continuing a program that supports the provision of housing for lower income households.
 - c. Goal: "Promote and support development in areas designated for Mixed Use that ... offers convenient and affordable housing opportunities for all income levels." The Zoning Amendment would support the City's goal to provide housing opportunities for all income levels by continuing a program that supports the provision of housing for lower income households.
- B. The City Council finds that the proposed Zoning Amendment will not adversely affect the public health, safety and welfare in that the amendment provides clarity to the existing inclusionary housing requirements to support the one of several programs the City can implement in order to work towards meeting our State and local housing goals to provide housing options for persons at all economic levels.

Section 3. Compliance with the California Environmental Quality Act.

The City Council finds that the project is exempt from the California Environmental Quality Act (CEQA) and/or not subject to further environmental review pursuant to Sections 15060(c), 15061(b)(3), and 15378. The project is covered by the general rule 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment, and where it can be seen with certainty that there is no possibility that the project may have a significant effect on the environment, the project is not subject to CEQA. The proposed adjustments to the Inclusionary Housing Program involve a policy action that is administrative in nature, related to the requirements for affordability for potential land development in the future, to implement Housing Element Program 5. Therefore, it can be seen with certainty that there is no possibility that this project may have a significant effect on the environment and is not subject to CEQA; and

It is not possible to predict which properties in the City, if any, may be proposed to be developed with a project that is subject to the Inclusionary Housing Program, whether any development or density will result from the proposed changes, whether any development or density will result that would not already have occurred under the existing Inclusionary Housing Program or Zoning Ordinance, whether any project may elect to submit inclusionary housing in-lieu fees in-lieu of constructing affordable housing units onsite, or any possible significant environmental impacts peculiar to the adoption of the Inclusionary Housing Program update, including the associated in-lieu calculation modification and Zoning Ordinance updates, therefore, this action (1) will not result in any direct or reasonably foreseeable indirect physical change in the environment (CEQA Guidelines Section 15060(c)); (2) can be seen with certainty based on review of the facts to have no possible significant effect on the environment, including impacts to water or traffic (CEQA Guidelines

Section 15061(b)(3)), and (3) do not constitute a project under CEQA (CEQA Guidelines Section 15378). Any development project subject to the Inclusionary Housing Program will be subject to environmental review under CEQA.

Section 4. The Inclusionary Housing Program is updated as recommended in the Inclusionary Housing Program Update report prepared by Economic & Planning Systems, except that there is no increase in the inclusionary housing in-lieu fee.

Section 5. Section 17.24.120 Inclusionary Housing Requirements of the City of San Clemente Zoning Ordinance is amended by replacing the existing Section 17.24.120 in its entirety, and replacing it as follows:

"17.24.120 - Inclusionary Housing Requirements.

- A. **Purpose and Intent.** The purpose of this section is to implement the inclusionary housing requirements included in the City's Housing Element.
- B. **Applicability.** The standards in this section shall apply to residential projects outlined in the Inclusionary Housing Program in the City's Housing Element. Please refer to the program for applicability.
- C. **Inclusionary Housing Standards.** The following are standards for affordable housing provided in the Inclusionary Housing Program in the City's Housing Element. Please refer to the program for guidelines related to affordable housing.
 1. **Number and Type of Units Required.** New and existing developments subject to the Inclusionary Housing Program in the City's Housing Element shall provide affordable residential units equal to two percent of the new units, according to the following requirements:
 - a. **Rental Units.** Two percent of the new units must be very low income units.
 - b. **For-Sale Units.** Two percent of the new units must be very low income units for rent.

For the purposes of this section, please refer to the California Department of Housing and Community Development for definitions of very low income units.

2. **Four Options for Providing Affordable Units.** The City may allow affordable units to be provided in the following four ways:
 - a. The affordable units may be provided with the development project being proposed; or
 - b. The affordable units may be provided off-site, but within City limits, either as new construction or as rehabilitated units with a deed restriction for an affordability requirement consistent with this code; or
 - c. The developer may provide an equivalent amount of land to a non-profit developer to build the required number of affordable units; or
 - d. The affordable units may be provided through the payment of an in-lieu fee by the developer. The in-lieu fee is the greater of one percent of construction costs as determined by the Building Division or two percent (the number of required very low income units) of the affordability gap determined by the formula outlined in the Housing Element.

- 3. Number of Bedrooms. Affordable units shall have the same proportionate number of bedrooms as other units in the project for which they are required.
- 4. Phasing. To the extent feasible, the required percentage of affordable units shall be constructed and occupied within the same general development phase as market rate units.
- 5. Require Term for Participation in the Program. Affordable units required under the provisions of this section shall be retained in the program for a minimum of 55 years.
- 6. Implementation Agreements. Prior to the issuance of Building Permits for the market-rate units, the developer shall enter into an implementation agreement with the City to provide affordable units at the earliest possible stage in the development process. The implementation agreement shall be recorded with the deed to the property in the office of the Orange County Recorder. The implementation agreement shall provide that the rent charged for an affordable unit shall be restricted for the term of the program to the appropriate level of affordability.

D. Conditions of Approval. Subsection (C)(6), Inclusionary Housing Standards, Implementation Agreements, of this title, shall be included as a condition of approval for projects complying with the provisions of this section."

Section 6. Severability.

If any section, sentence, clause or phrase of this Resolution or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Planning Commission hereby declares that it would have adopted this Resolution and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

PASSED AND ADOPTED this _____ day of _____, _____.

ATTEST:

 City Clerk of the City of
 San Clemente, California

 Mayor of the City of San
 Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) §
CITY OF SAN CLEMENTE)

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. _____ was adopted at a regular meeting of the City Council of the City of San Clemente held on the _____ day of _____, _____, by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this _____ day of _____, _____.

CITY CLERK of the City of
San Clemente, California

Approved as to form:

City Attorney