



CITY OF ENCINITAS
Development Services Department
505 S. Vulcan Ave
Encinitas, CA 92024
www.encinitasca.gov
Phone: 760-633-2723
Email: housing@encinitasca.gov

INCLUSIONARY HOUSING IN-LIEU FEE FAQ

WHAT IS INCLUSIONARY HOUSING?

The Inclusionary Housing Ordinance requires new residential housing developments adding new units to a site or an addition or expansion of residential floor area in excess of 500 square feet to either designate a specified percentage of units for affordable housing on site or pay an inclusionary in-lieu fee. The inclusionary housing requirements vary based on housing type, project size, project location, and affordability level. On October 13, 2021, [Ordinance No. 2021-02](#) was approved by the City Council, which amended the City's affordable housing regulations in [Chapter 30.41](#) of the municipal code (EMC) and established the City's in-lieu fee provisions. The Ordinance became effective on May 12, 2022, after the California Coastal Commission certified the local coastal program amendment.

WHAT ARE THE INCLUSIONARY HOUSING REQUIREMENTS?

Residential development projects (ownership or rental developments) of seven units or more are required to provide:

- a. Twenty percent of the dwelling units designated in perpetuity to low-income households, or
- b. Fifteen percent of the dwelling units designated in perpetuity to very low-income households.

When calculating the number of affordable units, any fractions of affordable dwelling units shall be rounded up to the next whole number. However, in cases where the fractional unit is less than one-half, the applicant may choose to pay an in-lieu fee instead of rounding up.

Residential development projects (ownership or rental developments) of six or fewer units, and expansions of 500 square feet or greater to existing residential units (includes single-family residential homes) are required to provide:

- a. An affordable ADU designated in perpetuity to a low- or very low-income household; or
- b. Pay an Affordable Housing In-Lieu Fee. ([City Council Resolution No. 2021-77](#))

WHAT IS AN IN-LIEU FEE?

In some circumstances, the affordable housing requirement may alternatively be satisfied by the payment of a fee to the City in-lieu of constructing the inclusionary units.

WHERE DOES THE IN-LIEU FEE PAYMENT GO?

All in-lieu fees shall be deposited into the City's Affordable Housing Fund.

WHAT PROJECTS ARE SUBJECT TO THE IN-LIEU FEE?

The projects listed below are typically subject to the in-lieu fee; however, this list is not inclusive of all possible projects. See [EMC Chapter 30.41.080](#) for more information.

1. Any residential development of less than seven units.
2. Addition or expansion of 500 square feet or more of habitable space.
3. The reconstruction or replacement of any residential unit that results in a net increase of 500 square feet or more of habitable space.
4. Fractional unit less than one-half.
5. Where the in-lieu fee will be used to provide financial assistance to an identified residential development that:
 - a. Is providing more inclusionary units than required,
 - b. Is proposed by an affordable housing developer,
 - c. Has received all discretionary approvals from the City,
 - d. Requires additional funds to commence construction, and/or
 - e. Where the in-lieu fee will provide more affordable units than required.
6. Provision of the in-lieu fee will create more affordable units than would be created by on-site provision of the affordable units.

WHEN DOES THE FEE NEED TO BE PAID?

The fee is required to be paid prior to building permit issuance. No building permit shall be issued by the City for any market-rate unit in the residential development until all in-lieu fees for the residential development have been paid to the City.

HOW IS THE IN-LIEU FEE RATE DETERMINED?

Inclusionary in-lieu fees shall be established periodically by the City Council and adjusted annually based on the Construction Cost Index for the local region, or similar index selected at the discretion of the City Manager.

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

ARE THERE ANY EXEMPTIONS TO THE IN-LIEU FEE OPTION?

- Habitable additions less than 500 square feet (*May 2022*)
- Development Agreements [[Gov Code 65864](#)]
- Tentative Map [[Gov Code 66474.2](#)] or Vesting Tentative Map [[Gov Code 66498.1](#)]
- A Housing Development Project that filed a complete SB 330 application [[Gov Code 65589.5\(o\)](#)] unless a code or ordinance (*May 2022*):
 - Mitigates or avoids an adverse impact to public health or safety; or
 - Avoids or substantially lessens a CEQA impact.
 - Construction has not commenced within 2.5 years, or 3.5 years for an affordable housing project, from the final approval date.
 - Affordable Housing Project includes the requirement of an Affordable Housing

Agreement (deed restriction) and includes a 100 percent affordable housing project.

- SB 330 application results in a 20 percent change to the project.
- Replacement of a destroyed or demolished structure within two years of permit issuance to remove structure unless (*May 2022*):
 - Expansion of 500 square feet or more, or
 - Increase in the number of units.
- ADUs – ADUs shall not be counted toward a project's total unit count regarding inclusionary requirements. (*May 2022*)

Density Bonus Units constructed in accordance with [EMC 30.16.020\(C\)](#) (*May 2022*)

ARE THERE ANY EXCEPTIONS?

Projects requesting a density bonus, incentive or concession, waiver, or parking ratio under Government Code Section 65915 or Section 30.16.020.C, or located within the R-30 OL Zone, shall not be permitted to pay in-lieu fees as an alternative to satisfying the affordable housing requirements.

WHERE CAN I LEARN MORE?

For more information on Inclusionary Housing and the in-lieu fee option, please review Chapter 30.41 of the Encinitas Municipal Code. Please note that State Inclusionary Housing Law is complex, and this fact sheet only summarizes major provisions. For additional questions, please contact the Housing Section at 760-633-2723 or housing@encinitasca.gov.

Sample Calculations for Fractional In-lieu Fee Project Scenarios

In accordance with Encinitas Municipal Code Sections [30.41.050](#) and [30.41.080](#), if the applicant elects to pay Affordable Housing In-Lieu Fees for a fractional unit of less than one-half, the fractional In-Lieu Fee payment shall be calculated as follows:

Fractional Unit / Total Affordable Unit Requirement x Per Square Foot Fee* x Total Square Footage in the project.

Type of Residential Project	Number of Housing Units ¹	Project Residential Floor Area (Sq. Ft.)	Fee Based on Project Square Footage
New 7-unit residential development	7 Units (7 Net New Units with 15% designated in perpetuity to very low-income households)	14,00 SF total	7 units x 15% = 1.05 affordable units = .05 fractional unit. .05/1.05 x \$24.08 x 14,000 = \$16,053.33
New 8-unit residential development	8 Units (8 Net New Units with 15% designated in perpetuity to very low-income households)	15,246 SF total	8 units x 15% = 1.2 affordable units = 0.2 fractional unit. 0.2/1.2 x \$24.08 x 15,246 = \$61,187.28

¹The number of housing units includes only the base density units of the housing development project, excluding any state density bonus units or ADUs.

*Note: Fees adjusted annually on July 1st based upon the Construction Cost Index

Sample Calculations for In-lieu Project Scenarios

Type of Residential Project	Number of Housing Units ¹	Percentage of Fee (\$24.08*)	Fee Per Sq. Ft.	Project Residential Floor Area (Sq. Ft.)	Fee Based on Project Sq. Ft.
Addition to SFR	No Change	14%	\$3.37	496 SF new	\$0
Addition to SFR	No Change	14%	\$3.37	800 SF new	\$2,696.96
Demo existing 930 SF SFR and construct new 1,429 SF SFR	1 Unit Total	14%	\$3.37	499 SF increase (1,429 SF new – 930 SF existing < 500 SF expansion)	\$0
Demo existing 930 SF SFR and construct new 2,000 SF SFR	1 Unit Total	14%	\$3.37	1,070 SF net increase (2,000 SF new – 930 SF existing > 500 SF expansion)	\$6,742.40
New SFR on vacant lot	1 Unit Total	14%	\$3.37	4,949 SF new	\$16,684.07
Demo existing single-family residence and construct new duplex	2 Units Total	28%	\$6.74	Unit A – 1,500 SF (exempt from fee) ² Unit B – 2,500 SF (subject to fee)	\$16,856.00
New 4-plex on vacant lot	4 Units	56%	\$13.48	18,736 SF total	\$252,651.21
New 5-unit subdivision of vacant lot	5 Units	70%	\$16.86	23,420 SF total	\$394,767.52
New 7-unit subdivision of vacant lot	7 Units	100%	\$24.08	32,788 SF total	\$789,535.04

¹ The sample calculation for the in-lieu fee is applicable to a project that is not requesting a state density bonus per EMC 30.41.080(g).

² The smaller of the two residential units shall be exempted from the in-lieu fee.