

PROGRAM 3B: Modify regulations that constrain the development of housing

Governmental constraints are policies, standards, requirements or actions imposed by the various levels of government upon land, housing ownership and development. Although federal and state agencies play a role, the City cannot modify the policies of these agencies and they are therefore not addressed in this program section.

Ground-Floor Commercial Uses Only:

Portions of the North 101 Corridor Specific Plan and Downtown Encinitas Specific Plan have mixed-use zones where residences are allowed. However, 1) ground floor uses in a storefront location are limited to retail-serving uses only; or 2) residential uses are permitted only above or behind a primary use. However, it may be difficult to market and develop a property with these ground floor commercial requirements because there is a finite economic market available to support retail uses. Mixed-use thrives when it is focused in a compact area, not over lengthy corridors, as is currently mandated in these specific plans. For mixed-use projects, the City will amend zoning regulations to require ground floor commercial uses only at key locations or preference areas based on context or planning objectives to ensure future projects are feasible and the desired community character is preserved. Key locations will be determined by the City Council.

Findings for Residential Projects Related to Density and Design:

The City requires design review approval for most proposed developments. Unless exempt, residential projects need to be consistent with the City's design guidelines and comply with certain findings before they may be constructed. Among these findings is the requirement that the project "would not tend to cause the surrounding neighborhood to depreciate materially in appearance or value (EMC 23.08.080)."

Under the Housing Accountability Act, the inability to make this subjective finding cannot be used by the City to deny or reduce the density of any residential development. As noted in the Constraints Analysis, there is no history that a residential project was denied solely on the basis of this finding, and its effectiveness in assuring high-quality development is minimal. As such, the City will amend the language for residential projects. The City will also review other findings that may result in denial of a project to ensure that they are consistent with the Housing Accountability Act.

Specifically, the City will modify any standards related to the ability to achieve maximum densities allowed in a zoning district to ensure that such standards are objective if they will be used to evaluate a residential development project. This program includes repealing EMC 30.16.010, paragraph (B)(2)(b) and amending Land Use Element Policy 8.3 which limits projects to the mid-range density unless certain findings can be made.

The City will also undertake revisions to its design guidelines to adopt more clear and objective standards related to the architectural review of residential developments.

Separate Lot or Airspace Ownership Requirements in North Highway 101 Specific Plan:

The North 101 Corridor Specific Plan requires that all new residential detached and attached dwelling units in residential-only or mixed-use developments must be constructed on a legally subdivided lot or must be subdivided to permit ownership of airspace in the form of a dwelling unit with an undivided

share in common elements. While this requirement may be appropriate for single-family homeownership projects, it is inconsistent with provisions of State law that require that the City not discriminate against multifamily rental housing. As such, the City will amend the North 101 Corridor Specific Plan to eliminate the airspace requirement for multi-family housing.

Funding:	<ul style="list-style-type: none"> • Departmental budgets
Responsible Agencies:	<ul style="list-style-type: none"> • Development Services Department • Planning Commission • City Council • Coastal Commission
Objectives:	<ul style="list-style-type: none"> • Remove the above constraints to residential development.
Timeframe:	<ul style="list-style-type: none"> • April 2019 repeal of EMC sections 23.08.080 and 30.16.010(B)(2)(b) and repeal sections of the North 101 Corridor Specific Plan to eliminate the airspace requirement for multi-family housing. • December 2019 adoption of code amendments relating to density and ground floor commercial uses • June 2020 adoption of code amendments relating to architectural review • August 2020 Coastal Commission certification of Local Coastal Program Amendments for code amendments relating to density and ground floor commercial uses. • February 2021 Coastal Commission certification of Local Coastal Program for code amendments relating to architectural review.

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Design Review Findings for Residential Projects [Related to Density and Design](#):

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Under the Housing Accountability Act, the inability to make this subjective finding cannot be used by the City to deny or reduce the density of any residential development. As noted in the Constraints Analysis, there is no history that a residential project was denied solely on the basis of this finding, and its effectiveness in assuring high-quality development is minimal. As such, the City will amend the language for residential projects. The City will also review other findings that may result in denial of a project to ensure that they are consistent with the Housing Accountability Act.

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Separate Lot or Airspace Ownership Requirements in North Highway 101 Specific Plan:

~~Section 3.1.1(A)(4) of the~~ [The](#) North 101 Corridor Specific Plan requires that "all ~~{new}~~ residential detached and attached dwelling units in residential-only [or mixed-use](#) developments must be constructed on a legally subdivided lot or must be subdivided to permit ownership of airspace in the form

of a dwelling unit with an undivided share in common elements.” While this requirement ~~is~~ may be appropriate for single-family homeownership projects, it is inconsistent with provisions of State law that require that the City not discriminate against multifamily rental housing. As such, the City will amend the North 101 Corridor Specific Plan to eliminate the airspace requirement for multi-family housing.

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Objectives:	<ul style="list-style-type: none"> • Remove the above constraints to residential development.
Timeframe:	<ul style="list-style-type: none"> • January <u>April 2019 repeal of EMC sections 23.08.080 and 30.16.010(B)(2)(b) and repeal sections of the North 101 Corridor Specific Plan to eliminate the airspace requirement for multi-family housing.</u> • <u>December 2019 adoption of code amendments relating to density and ground floor commercial uses</u> • <u>June 2020 adoption of all code amendments relating to architectural review</u> • <u>August 2020 Coastal Commission certification of Local Coastal Program Amendments for code amendments relating to density and ground floor commercial uses.</u> • June 2020 adopt zoning amendments • <u>January</u> February <u>2021 Coastal Commission certification of Local Coastal Program</u> Amendments <u>May 2021 Coastal Commission certification of Local Coastal Program</u> for code amendments relating to architectural review.