

RESOLUTION NO. 2021-77

A RESOLUTION OF THE CITY OF ENCINITAS CITY COUNCIL ESTABLISHING THE AMOUNT OF FEES PAYABLE IN-LIEU OF PROVIDING AFFORDABLE HOUSING UNITS AS ALLOWED BY CHAPTER 30.41 OF THE CITY'S ZONING ORDINANCE

WHEREAS, on April 7, 2021, the City of Encinitas ("City") adopted the 2021-2029 Housing Element of the General Plan in compliance with State law, which includes the goal of encouraging the development of affordable housing to meet the City's assigned share of the regional housing need;

WHEREAS, the City adopted an affordable housing program in 1990 to assist with meeting the demand for affordable housing and meeting the City's goals;

WHEREAS, the original Affordable Housing Ordinance ("Ordinance") was adopted to address the City's need for increased supply of affordable housing;

WHEREAS, the Ordinance gave developers the option to provide at least 10 percent of the dwelling units in new residential development of ten units or more as affordable units or pay an in-lieu fee;

WHEREAS, California Government Code Section 65580(d) states that all cities have a responsibility to use the powers vested in them to facilitate the improvement and development of housing and to make adequate provision for the housing needs of all economic segments of the community;

WHEREAS, in 2017, AB 1505 amended California Government Code Section 65850 and added Section 65850.1, to "reaffirm the authority of local jurisdictions to include within these inclusionary housing ordinances requirements related to the provision of rental units" and "does not modify or in any way change or affect the authority of local jurisdictions to require, as a condition of the development of residential units, that the development include a certain percentage of residential for-sale units affordable to, and occupied by, households with incomes that do not exceed the limits for moderate-income, lower income, very low income, or extremely low income households;"

WHEREAS, state law supports the City's ability to require a portion of rental residential development be made available for extremely low, very low, low, median and moderate-income households;

WHEREAS, to assure that future housing developments in the City contribute to the production of residential units in the City that are affordable to very low, low- and moderate-income households and mitigate their impact on the need for affordable housing in the City, the City Council has considered and introduced an ordinance to amend the Affordable Housing Ordinance (Chapter 30.41 of the City's Municipal Code) (the "Affordable Housing Ordinance") on June 23, 2021, reintroduced the Ordinance on September 22, 2021 and adopted the Affordable Housing Ordinance on October 13, 2021;

WHEREAS, the Affordable Housing Ordinance authorizes the imposition of Affordable Housing In-Lieu Fees on the for-sale and rental residential developments to provide funds equal

to the cost of providing affordable housing on-site and to mitigate the impact of market-rate housing developments on the need for affordable housing, where applicants are allowed to pay Affordable Housing In-Lieu Fees rather than provide affordable units on- or off-site; and

WHEREAS, to ensure that the Affordable Housing In-Lieu Fees adopted by this Resolution do not exceed the cost of providing affordable housing on-site or the actual affordable housing impacts attributable to the development projects on which the fee is imposed, and to ensure that the construction of residential care facilities remains feasible after the imposition of Affordable Housing In-Lieu Fees, the City Council has received and considered reports from Keyser Marston Associates dated December 2019 and entitled "Inclusionary Affordable Housing Real Estate Financial Feasibility Analysis (feasibility study), and the "Affordable Housing Nexus Analysis (nexus study), (which collectively will be referred to as the "KMA Studies"), which include, among other information, an affordability gap analysis, a residential nexus analysis, a financial feasibility analysis, and an on-site compliance cost analysis;

WHEREAS, the City retained Keyser Marston Associates, Inc. (KMA), a qualified consultant with demonstrated expertise preparing economic feasibility studies, to prepare the affordable housing real estate financial feasibility analysis, gap analysis and nexus study related to the Ordinance, which the Council considered along with amendments to Chapter 30.41 of the Encinitas Municipal Code;

WHEREAS, the KMA Inclusionary Affordable Housing Real Estate Financial Feasibility Analysis (Feasibility Analysis) and the Affordable Housing Nexus Analysis (Nexus Analysis) were provided to the public in December 2019 and have been available on the City's website since December 2019;

WHEREAS, the Nexus Analysis demonstrates the impact of large additions and new market-rate housing on the need for affordable housing and supports the imposition of an in-lieu fee to mitigate the impact;

WHEREAS, the KMA Studies demonstrate that to fully mitigate the burdens created by new residential developments on the need for affordable housing, the maximum supported fee is \$32 to \$66 per square foot depending on building type;

WHEREAS, the KMA Studies found that the Affordable Housing In-Lieu Fees imposed by this Resolution are economically feasible and will not pose a constraint on the construction of housing in the City;

WHEREAS, the Affordable Housing In-Lieu fees established by this resolution are equal to or lower than the amount needed to fully mitigate the impacts of new for sale and rental residential projects as shown in the Nexus Analysis;

WHEREAS, in accordance with Government Code Section 66016, at least 14 days prior to the public hearing at which the City Council first considered the adoption of the Affordable Housing In-Lieu Fee, notice of the time and place of the hearing was mailed to eligible interested parties who filed written requests with the City for mailed notice of meetings on new or increased fees or service charges;

WHEREAS, notice was published in the Coast News on September 24, 2021, and October 1, 2021, setting forth the time and manner of compliance with the requirements of law

of providing notice of the time and place for the public hearing in the form and manner required by Government Code sections 66018, 6062(a) and 66019. Notice was also provided 14 days prior to the public hearing to those interested parties who have requested in writing, notification from the City of any fee increases;

WHEREAS, in accordance with Government Code Section 66016, the Affordable Housing Nexus Analysis containing the data supporting the imposition of the Fee, was made available for public review and comment for 10 days prior to the public hearing at which the Council first considered the adoption of the Fee;

WHEREAS, ten days advance notice of the public hearing at which the City Council first considered the adoption of the Fee was given by publication in accordance with Section 6062a of the California Government Code;

WHEREAS, the City Council finds that there is a reasonable relationship between the amount of the fee and the cost attributable to new development; and

WHEREAS, the City Council now desires to adopt Affordable Housing In-Lieu Fees for residential developments as authorized by Ordinance No. 2021-02;

NOW, THEREFORE, the City Council of the City of Encinitas resolves as follows:

SECTION 1: The recitals above are each incorporated by reference and adopted as findings by the City Council.

SECTION 2: The City Council further finds:

- A. The purpose of the Affordable Housing In-Lieu Fee is to provide funds to the City to develop and construct affordable housing as would otherwise be provided on-site and to mitigate the burdens created by new residential development on the need for extremely low, very low, low and moderate-income housing. An applicant for a residential housing development project may elect to provide affordable units on-site, to provide units off-site or meet the Affordable Housing Ordinance requirements through other means, to include the payment of Affordable Housing In-Lieu Fees in some situations if authorized by the City.
- B. In compliance with the Affordable Housing Ordinance, all affordable housing impacts fees collected shall be deposited in the City's Affordable Housing Fund to be used solely to provide housing affordable to extremely low, very low, low and moderate-income households and any special needs populations in the City (including reasonable administration and compliance monitoring of the affordable housing program).
- C. There is a need in the City for housing affordable to households of extremely low, very low, low and moderate-income.
- D. The KMA Studies set forth cost estimates that are reasonable for constructing affordable housing, and the fees expected to be generated by new development will not exceed these costs.

- E. Based on the KMA Studies, the proposed Affordable Housing In-Lieu Fee is economically feasible and will not pose a constraint on housing production.
- F. The adoption of the Resolution is not a project under the California Environmental Quality Act (CEQA) because the adoption of Affordable Housing In-Lieu Fees consists of the creation of a governmental funding mechanism that does not involve any commitment to any specific project (CEQA Guidelines section 15378(b)(4)); and the Resolution commits no fees to any specific project.
- G. The City Manager is hereby authorized to take whatever actions are necessary and appropriate to carry out the purpose and intent of this Resolution.

SECTION 3: Per Section 30.41.080 E of the Encinitas Municipal Code, The City Council hereby adopts the following Affordable Housing In-Lieu Fee for residential developments:

1. Affordable Housing In-Lieu Fee

Residential Developments \$20.00/Square Foot of Floor Area*

*Note: The Affordable Housing In-Lieu Fee is applied to the residential floor area of the project excluding garages, parking areas, shared common areas, and hallways exterior to the residential units. Floor area as defined in Section 30.04.010 of the Encinitas Municipal Code shall mean the area included within the exterior walls of a building or portion thereof, exclusive of vent shafts, courts and architectural projections not utilized as livable area.

2. Residential Development Projects – One to Six Units

Residential development projects of one to six units, replacement units expanded or enlarged by five hundred (500) square feet or more of habitable space, and additions of 500 square feet or more of habitable space to an existing unit shall pay the following percentage of the fee calculated pursuant to Section 1 above:

<u>Number of Units in Project</u>	<u>Percentage of Calculated Fee</u>
1 or addition/expansion greater than 500 square feet	14%
2	28%
3	42%
4	56%
5	70%
6	84%

Per Square Foot Fee x Percentage of Calculated Fee Based on Total Units x Total New Floor Area (as calculated in Section 3 (1) above)

Example: 1,000 square foot addition of floor area to an existing house. \$20 x 14% x 1,000= \$2,800

Example: New 4-plex on a vacant lot. \$20 x 56% x 18,736 square feet = \$209,843.20

3. Fractional Units. 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 (as calculated in Section 1 above) in the Project

Example: 7-unit single family home project totaling 14,000 square feet of floor area has an on-site requirement of 15% affordable units or 1.05 units. Developer provides 1 affordable unit and pays an in-lieu fee for the .05 fractional unit. The payment is calculated as follows: $.05/1.05 \times \$20 \times 14,000 = \$13,333.33$

SECTION 4: The Affordable Housing In-Lieu Fees shall be adjusted administratively annually based on the percentage change in the most current Engineering News Record Construction Cost Index for the Los Angeles region, which is also used for the San Diego region. The first annual adjustment of the Affordable Housing In-Lieu Fees shall take place July 1, 2022.

SECTION 5: This Resolution shall go into full force and effect either 60 days after the adoption of this fees, or on the date that Ordinance No. 2021-02 goes into effect, whichever date is later.

SECTION 6: Any judicial action or proceeding to attack, review, set aside, void or annul this Resolution shall be brought within the 90-day time period as established by Code of Civil Procedure Section 1094.6.

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Encinitas, California, held on the 13th day of October 2021, by the following roll call vote:

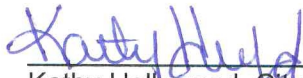
AYES: Blakespear, Hinze, Kranz, Lyndes, Mosca
NOES: None
ABSENT: None
ABSTAIN: None

APPROVED:



Catherine S. Blakespear, Mayor

ATTEST:



Kathy Hollywood, City Clerk

APPROVED AS TO FORM:

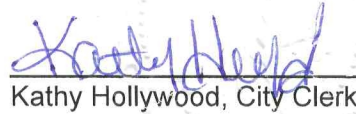


Leslie E. Devaney, City Attorney

CERTIFICATION

I, Kathy Hollywood, City Clerk of the City of Encinitas, California, do hereby certify under penalty of perjury that the foregoing Resolution was duly adopted at a regular meeting of the City Council on this 14 day of October, 2021 by the following vote:

AYES: Blakespear, Hinze, Kranz, Lyndes, Mosca
NOES: None
ABSENT: None
ABSTAIN: None



Kathy Hollywood, City Clerk

