



AGENDA REPORT

City Council

MEETING DATE: October 13, 2021

PREPARED BY: Jennifer Gates, Planning
Manager

DEPARTMENT Roy Sapa'u
DIRECTOR:

DEPARTMENT: Development Services

CITY MANAGER: Pamela Antil

SUBJECT:

Public hearing for the adoption of Resolution No. 2021-77 establishing an inclusionary housing in-lieu fee as an alternative method of compliance, and adoption of Resolution No. 2021-78 establishing a new affordable housing impact fee for residential care facilities.

RECOMMENDED ACTIONS:

1. Adopt Resolution No. 2021-77 titled "A Resolution of the City of Encinitas, California, 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." (Attachment 1)
2. Adopt Resolution No. 2021-78 titled "A Resolution of the City of Encinitas, California, Establishing the Affordable Housing Impact Fee for Residential Care Facilities, General, as allowed by Chapter 30.41 of the City's Zoning Ordinance." (Attachment 2)

STRATEGIC PLAN:

The proposed amendments relate to the Community Planning focus area.

FISCAL CONSIDERATIONS:

Resolution No. 2021-77 establishes an affordable housing in-lieu fee of \$20 per square foot, to be updated annually and Resolution No. 2021-78 establishes an affordable housing impact fee for residential care facilities, general of \$20 per square foot, to be updated annually. The fees collected for both are to be placed in the Affordable Housing Fund.

BACKGROUND:

In 2018, the City of Encinitas ("City" hereinafter) received community input through a variety of meetings and workshops for an update to the City's inclusionary housing ordinance. At its meeting of June 13, 2018, the City Council introduced Ordinance No. 2018-03, which amended the City's inclusionary housing regulations. Additionally, City Council directed staff to prepare a nexus study, gap analysis, and economic feasibility analysis to evaluate further opportunities for affordable housing units citywide and on sites proposed to be upzoned to 30 dwelling units per

acre (du/ac). The City of Encinitas engaged the consulting firm of Keyser Marston Associates, Inc. (KMA) to prepare an inclusionary housing economic financial feasibility and nexus analysis. KMA is a qualified consultant with demonstrated expertise preparing economic feasibility studies. Since 2018, City staff and KMA have been working on the feasibility studies and nexus analysis. A complete history of the City Council and Planning Commission meetings is available on the June 23, 2021 Staff Report ([Link to Staff Report and Video](#)).

At the Joint City Council and Planning Commission Study Session held on December 11, 2019, City staff and KMA presented the results of the Inclusionary Affordable Housing Real Estate Financial Feasibility Analysis ([Feasibility Analysis](#)) and the Affordable Housing Nexus Analysis ([Nexus Analysis](#)) for potential increase in inclusionary housing requirements, an in-lieu fee, and an impact fee for residential care facilities. The study methodology follows best professional practices and is sufficiently rigorous to allow an assessment of whether the rental inclusionary requirement, in combination with other factors that influence feasibility, is economically feasible as identified in their methodology on page 4 of the Feasibility Analysis and pages 6 and 31 of the Nexus Analysis. Although it has never been determined whether fees for affordable housing must be adopted in compliance with the Mitigation Fee Act (Government Code Section 66000 et seq.), the Nexus Analysis complies with the Fee Act's requirements.

At the meeting, direction was provided to staff to move forward with the recommendations for an increase in the inclusionary requirement, an in-lieu fee, and an affordable housing impact fee for residential care facilities. Staff prepared Draft Ordinance No. 2021-02 amending EMC Chapter 30.41 Affordable Housing and presented to planning Commission on February 18, 2021.

The Planning Commission discussed Ordinance No. 2021-02 and the findings of the Feasibility Analysis and Nexus Analysis on February 18, March 18, May 6 and on May 20, 2021. The Planning Commission made and voted on three motions on May 20, 2021:

1. Recommend City Council approval of Ordinance No. 2021-02 with modifications inclusive of prior recommendations on March 18, 2021, for items 1-4 and 6 (listed above). (5-0)
2. Recommend City Council approval of Ordinance No. 2021-02 with additional modification to include 25 percent "very-low" and 25 percent "low" (for a total of 50 percent) inclusionary housing requirements for R-30 Overlay Zone sites. (4-1 with Commissioner Dalton voting "No")
3. Recommend an additional economic feasibility study be conducted that fully captures developer and landowner profits due to rezoning of R-30 Overlays sites and provide direction to staff. (3-2 with Commissioner Dalton and Flicker voting "No")

On June 23, City Council held a public meeting, heard public comments, and discussed Ordinance No. 2021-02. At that meeting, City Council introduced Ordinance No. 2021-02 as recommended by City Staff, not inclusive of the 50 percent inclusionary requirement for properties zoned with an R30 Overlay. City Council also provided direction to staff to proceed with Resolutions for an inclusionary in-lieu fee of \$20 per square foot and an affordable housing impact fee of \$20 per square foot for residential care facilities of seven or more. Additional economic feasibility studies were not recommended.

Prior to the City Council meeting on August 11, 2021, City Council received a letter from Beau Brand of Greystar with concerns regarding the proposed ordinance and its potential application to their recently approved residential care facility and affordable housing project. Staff reviewed the concerns with special counsel and decided to pull the item from the Agenda to further review the request. On September 22, 2021, City Council re-introduced Ordinance No. 2021-02 with

slight modifications that addressed these concerns. On October 13, 2021, City Council will consider adoption of the Ordinance.

ANALYSIS:

In its 2015 decision upholding inclusionary housing, *California Building Industry Ass'n v. City of San Jose*, the California Supreme Court explained that an inclusionary ordinance was most equivalent to rent and price controls, which are constitutional so long as they are not "confiscatory" and allow a property owner a "fair and reasonable return" on its property. Therefore, for an inclusionary housing program to be an effective tool for creating housing, it must not unduly burden new development to such a degree that it renders new development financially infeasible. To that end, the recommended inclusionary percentages and proposed in-lieu fee, although not at the highest maximum threshold that could be imposed on new development under the nexus study, provides for more affordable housing to be built on-site, and, if a fee is allowed, captures the cost to build that affordable housing unit off-site while allowing owners a reasonable return from new development.

Inclusionary In-Lieu Fees

Currently, the City's in-lieu fees are established on a project-by-project basis and are based on the difference or "gap" between what a target household could afford to pay and the median home price for the area. The KMA Nexus Analysis looks at the need for lower income households to support the lower compensation jobs created by the rise of new market-rate households and the cost of mitigating the increased affordable housing need. The KMA nexus study determined that the maximum fee supported by the nexus study is estimated to range between \$32 to \$66 per square foot. If the City were to adopt a per square foot fee for all market-rate housing, the study supports a maximum fee of \$32 per square foot for residential. The funding level required for the City to create affordable housing off-site averages approximately \$23.50 per square foot across all the prototypes analyzed, or \$19 per square foot for for-sale prototypes, excluding higher off-site costs for apartment projects from the average.

At the City Council meeting on June 23, 2021, City Council directed staff to draft a resolution to adopt an inclusionary in-lieu fee of \$20 per square foot (Attachment 2). For residential projects of six or fewer units, it is recommended that the affordable housing fee be applied based on a sliding scale in order to enhance project feasibility. The fee may be adjusted annually administratively based on the Engineering News Record Construction Cost Index for the LA region. The residential in-lieu fee would be applied to the residential floor area (habitable space) of the project excluding garages and parking areas as well as shared common areas and hallways exterior to the residential units.

No building permit may 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. If a project requests a density bonus, incentive or concession, waiver, or parking ratio, or is in the R-30 Overlay Zone, there is no option to pay an in-lieu fee and the affordable unit(s) must be built either on-site or in another location. The fees would be deposited in the affordable housing fund described in EMC Section 30.41.110.

Affordable Housing Impact Fee for Residential Care Facilities

KMA completed a nexus analysis of residential care facilities that quantifies the number of jobs added by development of new residential care facilities, housing needs by income level for workers who hold these jobs, and the net cost per square foot of building area required to mitigate

the increased affordable housing need. The analysis was prepared to support a potential affordable housing impact fee applicable to development of new residential care facilities and represents the maximum supportable or legally defensible impact fee levels based on the impact of new residential care facility development on the need for affordable housing. The KMA nexus analysis identifies the maximum impact fee for residential care facilities in the City, based on the cost of mitigating the affordable housing impacts of these facilities, at \$48.70 per square foot or \$44,300 per bed. Because these facilities are licensed by the state, the City cannot require that units in the facilities include affordable units.

At the City Council meeting on June 23, 2021, City Council directed staff to draft a resolution to adopt an affordable housing impact fee of \$20 per square foot for residential care facilities of seven or more (Attachment 3). The fee may be adjusted annually administratively based on the Engineering News Record Construction Cost Index for the LA region. The fee is to be paid prior to issuance of the certificate of occupancy. The fee would be applied to the aggregate floor area excluding parking. The fees would be deposited in the affordable housing fund described in EMC Section 30.41.110.

ENVIRONMENTAL CONSIDERATIONS:

The adoption of the Resolution 2021-77 and Resolution No. 2021-78 are not a project under the California Environmental Quality Act (CEQA) because the adoption of Affordable Housing In-Lieu Fees and Affordable Housing Impact 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 Resolutions commit no fees to any specific project.

ATTACHMENTS:

1. Resolution No. 2021-77 titled "A Resolution of the City of Encinitas, California, 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."
2. Resolution No. 2021-78 titled "A Resolution of the City of Encinitas, California, Establishing the Affordable Housing Impact Fee for Residential Care Facilities, General, as allowed by Chapter 30.41 of the City's Zoning Ordinance."

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 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:
NOES:
ABSENT:
ABSTAIN:

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 ____ day of _____, 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RESOLUTION NO. 2021-78

**A RESOLUTION OF THE CITY OF ENCINITAS CITY COUNCIL
ESTABLISHING THE AFFORDABLE HOUSING IMPACT FEE FOR
RESIDENTIAL CARE FACILITIES, GENERAL, 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, although 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, the City cannot control the rents of units that are contained in licensed residential care facilities;

WHEREAS, to assure that residential care facilities in the City mitigate their impact on the need for residential units in the City that are affordable to very low, low- and moderate-income households, 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, which authorizes the adoption of Affordable Housing Impact Fees to mitigate the impact of residential care facilities on the need for affordable housing;

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 Impact 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 KMA Studies identify the maximum impact fee for residential care facilities in the City, based on the cost of mitigating the affordable housing impacts of these facilities, at \$48.70 per square foot or \$44,300 per bed;

WHEREAS, the KMA Studies demonstrate that assisted care facilities have an impact on the demand for affordable housing in the City, and an impact fee may be established to mitigate those impacts;

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 Impact 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 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 development of affordable housing; and

WHEREAS, the City Council now desires to adopt Affordable Housing Impact Fees for residential care facilities, general, 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 Impact Fee is to provide funds to the City to develop and construct affordable housing and to mitigate the burdens created by residential care facilities on the need for extremely low, very low, low and moderate-income housing.
- B. In compliance with the Affordable Housing Ordinance, all affordable housing impact 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 Impact Fees are 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 Impact 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 30.41.085 B of the Encinitas Municipal Code, the City Council hereby adopts the following Affordable Housing Impact Fee for Residential Care Facilities, General:

1. Residential Care Projects – Seven or More Units/Beds

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

*Note: The Affordable Housing Impact Fee is applied to the livable floor area excluding parking and unfinished basement and utility areas of a residential care facility. 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.

SECTION 4: The Affordable Housing Impact Fee 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 Impact 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:
NOES:
ABSENT:
ABSTAIN:**

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 _____ day of _____, 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN: