

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 236-6220

DATE: February 10, 2023

TO: Honorable Mayor and Councilmembers

FROM: City Attorney

SUBJECT: Construction of Affordable Dwelling Units Under the Complete Communities Housing Solutions Regulations

INTRODUCTION

On February 14, 2023, the San Diego City Council (City Council) is scheduled to hear the 2022 Land Development Code Update (LDC Update). As part of this LDC Update, staff is proposing an amendment to clarify language in the Complete Communities Housing Solutions Regulations (Complete Communities Regulations) related to affordable dwelling units. On January 12, 2023, the Land Use and Housing Committee considered the LDC Update and requested a legal interpretation about whether the Complete Communities Regulations require the affordable dwelling units to be constructed onsite and the process required to allow the affordable dwelling units to be constructed offsite.

QUESTIONS PRESENTED

1. Do the Complete Communities Regulations under the San Diego Municipal Code (Municipal Code or SDMC) require the affordable dwelling units to be provided onsite?
2. If the affordable units are required to be onsite, what process would need to be followed for the City Council to change the requirement to allow affordable units to be constructed offsite?

SHORT ANSWERS

1. Yes. While the language in the Complete Communities Regulations concerning the construction of the affordable dwelling units is ambiguous, a court would look to extrinsic evidence, including the legislative history and staff's consistent interpretation, to define the regulation's meaning. Here, the record demonstrates the City's intent to have the affordable dwelling units constructed onsite.

2. Under state law and the Municipal Code, an amendment to a zoning ordinance requires compliance with specific noticing provisions and a hearing and recommendation by the planning commission. The amendment should be consistent with the City's General Plan by furthering, and not hindering, its objectives and policies. Furthermore, there are other legal considerations that apply to all legislative actions, including compliance with the Ralph M. Brown Act¹ (Brown Act), San Diego Charter section 275, and the California Environmental Quality Act² (CEQA).

ANALYSIS

I. LEGISLATIVE INTENT OF THE COMPLETE COMMUNITIES REGULATIONS

Ordinances are interpreted by rules of statutory interpretation. *See Castaneda v. Holcomb*, 114 Cal. App. 3d 939, 942 (1981); *City of Berkeley v. Cukierman*, 14 Cal. App. 4th 1331, 1338-41 (1993); *Howard Jarvis Taxpayers Ass'n v. County of Orange*, 110 Cal. App. 4th 1375, 1381 (2003). The fundamental rule of statutory construction is to determine the intent of the Legislature in enacting the statute and intent is determined first by the language of the statute itself. *People v. Aston*, 39 Cal. 3d 481, 489 (1985). Courts generally give the words of statutes their plain meaning and avoid rendering words surplusage. *McPherson v. City of Manhattan Beach*, 78 Cal. App. 4th 1252, 1260 (2000); *see also In re Rudy L.*, 29 Cal. App. 4th 1007, 1010 (1994). If the words of a statute are clear and unambiguous, a court's inquiry would end and the plain meaning of the statute would govern. *McPherson*, 78 Cal. App. 4th at 1260 ("rules of statutory construction are applied only where there is ambiguity or conflict in the provisions of the charter or statute, or a literal interpretation would lead to absurd consequences" (citation omitted)).

If there is any question or ambiguity, the statute should be interpreted to harmonize with the rest of the statutory scheme. "The language must be construed in the context of the statutory framework as a whole, keeping in mind the policies and purposes of the statute, and where possible the language should be read so as to conform to the spirit of the enactment." *Conrad v. Medical Bd. of California*, 48 Cal. App. 4th 1038, 1046 (1996) (citation omitted).

Here, the statute at issue involves providing affordable dwelling units under the Complete Communities Regulations. The Complete Communities program is an opt-in program for certain specifically located properties that provide a certain percentage of affordable units, among other things. Specifically, the Complete Communities Regulations:

¹ Cal. Gov't Code §§ 54950 – 54963.

² Cal. Pub. Res. Code §§ 21000 – 21189.70.10.

[A]pply to any *development* within a *Transit Priority Area* where any portion of the *premises* contains zoning that is commercial, residential, or mixed-use and the *premises* is zoned 20 *dwelling units* per acre or greater or has a land use plan designation that allows for 20 dwelling units per acre or greater and is within one quarter mile of a rail station, not including additional units permitted under this Division, if all of the following requirements are met: (1) The *development* includes *dwelling units* affordable to *very low income*, *low income*, or *moderate income* households, in accordance with Section 143.1015 and the following criteria.

SDMC § 143.1002(a).

The Complete Communities Regulations require certain percentages of affordable dwelling units at *very low income*, *low income*, or *moderate income* households depending on the level of affordability. SDMC § 143.1015(a)(1)-(4). An applicant may use the “affordable *dwelling units* constructed by another *applicant* to satisfy” the affordable dwelling unit requirements. SDMC § 143.1015(b).

While the Complete Communities Regulations state that the affordable dwelling units must be included in the development, the language is not specific as to whether the units must be onsite or can be located offsite. Development is a broadly defined term in the City’s Land Development Code to mean “the act, process, or result of dividing a parcel of land into two or more parcels; of erecting, placing, constructing, reconstructing, converting, establishing, altering, maintaining, relocating, demolishing, using, or enlarging any building, *structure*, improvement, *lot*, or *premises*....” SDMC § 113.0103. However, under the Complete Communities Regulations, development as it applies to the opt-in program only applies to those locations within a Transit Priority Area and with specific zoning criteria that include affordable dwelling units. SDMC § 143.1002(a). This qualification suggests the affordable dwelling units must be constructed in the same location as the overall development; however, the broad definition of development along with the applicant’s ability to use the affordable dwelling units constructed by another applicant to satisfy the regulation requirements makes the statutory language ambiguous.

A. The Legislative History and Staff Interpretation of the Complete Communities Regulations Suggest the Affordable Units Must Be Constructed Onsite

In the face of ambiguity, courts may look extrinsically to determine the meaning of the statute, including the legislative history and how the statute has been interpreted and applied by the agency. A court can take into consideration the context, the history at time of legislation, the public policy, and contemporaneous construction. *Alford v. Pierno*, 27 Cal. App. 3d 682, 688 (1972). If the statutory language supports more than one reasonable construction, a court may

consider a “variety of extrinsic aids in interpreting the statute, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part.” *People v. Johnson*, 79 Cal. App. 5th 1093, 1109 (2022) (citation omitted).

An agency’s interpretation of its statute will be given greater deference “where “the agency has expertise and technical knowledge....” *Citizens for Responsible Equitable Env’t Dev. v. City of San Diego*, 184 Cal. App. 4th 1032, 1041 (2010) (citing *Yamaha Corp. of America v. State Bd. of Equalization*, 19 Cal. 4th 1, 12, 13 (1998)); *Yamaha*, 19 Cal. 4th at 14-15 (emphasis and citation omitted). If an agency has an interpretation of a statute, evidence that the agency has been consistently maintaining that interpretation will be considered and will warrant increased deference. *Citizens for Responsible Equitable Env’t Dev.*, 184 Cal. App. 4th at 1042; *Yamaha*, 19 Cal. 4th at 13. However, deference will not be given when such an interpretation is unreasonable, clearly erroneous or unauthorized. *Pac. Legal Found. v. Unemployment Ins. Appeals Bd.*, 29 Cal. 3d 101, 111 (1981).

In reviewing the legislative history of the Complete Communities Regulations, there are references in the backup materials presented to City Council on November 9, 2020, which state that the required affordable dwelling units must be built onsite. Specifically, the PowerPoint included in the backup materials for the item and part of the presentation from City staff includes slide 41, which explicitly states “Required Affordable Units to be Built On-Site,” as one of the key improvements of the program in response to public feedback. *See* Attachment A, slide 41. The Keyser Marston Associates, Inc. updated feasibility evaluation of the Complete Communities: Housing Solutions program dated November 4, 2020, states that to qualify for the program the development must incorporate the affordable units onsite. *See* Attachment B, pages 2-3. In addition, City staff has interpreted the Complete Communities Regulations to require the affordable dwelling units to be built onsite based upon the regulatory language and the Complete Communities Regulations’ legislative history.

A court would most likely find that the language in the Complete Communities Regulations is ambiguous as to where the affordable dwelling units are required to be built because it is not specific whether the units must be onsite or can be built offsite. Based upon that ambiguity, a court would look to factors such as the legislative history and the City’s past practice. The references in the materials at the time of passage to the requirement that affordable dwelling units must be onsite, as well as the City’s practice of requiring affordable dwelling units be onsite, would be considered by a court in resolving the ambiguity.

B. The Omission of Offsite Specific Language in the Complete Communities Regulations Suggests It Was Intentional

Although the Complete Communities Regulations do not include specific language allowing the required affordable units to be built offsite, the City’s Affordable Housing Regulations and the Inclusionary Housing Regulations do include such language. The courts recognize that the legislature generally acts intentionally when it uses particular language in one section of a statute

but omits it in another. When a term is used in one place and excluded in another, the term should not be implied where excluded. *Hicks v. E.T. Legg & Assoc.*, 89 Cal. App. 4th 496, 507 (2001).

The Affordable Housing Regulations state that “*development* that complies with the Affordable Housing Regulations may provide all or a portion of the required affordable dwelling units off-site in accordance” with detailed locational criteria. SDMC § 143.0745. In addition, language in the Inclusionary Affordable Housing Regulations allows developers to meet inclusionary requirements by constructing the units on a premises different than the development. SDMC § 142.1305(a)(2)-(3). As this language is not included in the Complete Communities Regulations regarding the construction of affordable dwelling units, rules of statutory construction suggest that the omission is intentional. [“When language is included in one portion of a statute, its omission from a different portion addressing a similar subject suggests that the omission was purposeful.” *Lee v. Kotyluk*, 59 Cal. App. 5th 719, 730 (2021) (citation omitted).] If the City intended to allow for the units to be constructed offsite, it would have used language similar to the Affordable Housing Regulations or the Inclusionary Affordable Housing Regulations.

II. THE PROCESS FOR AMENDING A ZONING ORDINANCE WOULD BE USED TO ALLOW THE AFFORDABLE DWELLING UNITS TO BE CONSTRUCTED OFFSITE

At this time, City staff is proposing an amendment to the Complete Communities Regulations in the LDC Update to clarify the requirement for affordable dwelling units to be constructed onsite.³ If adopted by the City Council, this proposed amendment will comply with the process and procedural requirements for amending a zoning ordinance. If the City Council would like to accelerate this proposal and alter this language at the February 14th hearing, this Office would need additional time to research and draft the amendments, as described below.

A. Procedural Requirements for Amending a Zoning Ordinance

In general, all proposed zoning ordinances and amendments to a zoning ordinance must meet certain procedural requirements, which include a hearing and recommendation from the planning commission and specific noticing requirements. The planning commission must “hold a public hearing on the proposed zoning ordinance or amendment to a zoning ordinance.” Cal. Gov’t Code § 65854; *see also* SDMC § 111.0107(a). At the hearing, the planning commission is required to recommend approval, conditional approval, or denial of the zoning ordinance or amendment to a zoning ordinance. SDMC § 111.0107. This Municipal Code requirement is similar to the state requirement that the planning commission provide a written recommendation to the legislative body, which “shall include the reasons for the recommendation, the relationship

³ The proposed amendment would reflect the regulatory language, previous public feedback, and the legislative history.

of the proposed ordinance or amendment to applicable general and specific plans, and shall be transmitted to the legislative body in such form and manner as may be specified by the legislative body.” Cal. Gov’t Code § 65855.

Specific noticing requirements must be met before a hearing on proposed zoning ordinances and amendments to a zoning ordinance are approved. Municipal Code section 122.0106 provides that when the City Council considers an amendment to the Local Coastal Program (LCP), which includes a majority of the City’s Land Development Code,⁴ the City must distribute a Notice of Availability six weeks before the hearing and make the draft amendment language available to the public. The California Coastal Act provides that with respect to LCPs, the public “shall be provided maximum opportunities to participate.” Cal. Pub. Res. Code § 30503. The Coastal Commission regulations further provide that “[n]otice of the availability of review drafts of LCP . . . materials and transmittal of said documents . . . shall be made as soon as such drafts are available, but at a minimum at least six (6) weeks prior to any final action on the documents by the local government . . .” Cal. Code Regs., tit. 14, § 13515(c). This noticing action is typically provided at the time a Notice of Public Hearing is provided for the planning commission hearing.

In addition, before a zoning ordinance or zoning ordinance amendment may be considered by the City Council, the City must submit a Notice of Public hearing for publication at least ten business days before the public hearing. SDMC § 112.0303. The notice is required to “include the date, time, and place of the hearing, the identity of the hearing body, a general explanation of the matter to be considered, and a general description of the location of the real property, if any, that is the subject of the hearing.” SDMC § 112.0305.

B. General Plan Consistency

State law requires zoning ordinances to be consistent with the general plan in general law cities. Cal. Gov’t Code § 65860. Like general law cities, charter cities must have consistency between zoning ordinances and the general plan. Cal. Gov’t Code § 65860(d). A zoning ordinance “is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and will not inhibit or obstruct their attainment.” Governor’s Office of Planning and Research, State of California General Plan Guidelines at 255 (2017) (citing 58 Op. Cal. Att’y Gen. 21, 25 (1975)); *see also Naraghi Lakes Neighborhood Preservation Ass’n v. City of Modesto*, 1 Cal. App. 5th 9, 17 (2016). It “need not be in perfect conformity with each and every [general plan] policy” since “no project [can] completely satisfy every policy stated in [a general plan].” *Sequoyah Hills Homeowners Ass’n v. City of Oakland*, 23 Cal. App. 4th 704, 719 (1993); *Friends of Lagoon Valley v. City of Vacaville*, 154 Cal. App. 4th 807, 817 (2007).

⁴ There are certain portions of the Land Development Code that are not part of the LCP because they are not required to be included under the California Coastal Act.

C. Other Legal Considerations for Legislative Actions

On March 8, 2022, this Office issued a legal memorandum advising the City Council of general legal considerations when engaging in the legislative process and considering alterations to proposed legislation. City Att’y MS 2022-3 (Mar. 8, 2022). This guidance advises that all legislative items must be properly noticed and placed on the agenda in accordance with the Brown Act, including providing a “brief general description of each item of business to be transacted or discussed at the meeting.” Cal. Gov’t Code §§ 54952.2, 54954, 54954.2(a)(1).

It also sets forth the Charter section 275 requirement that all ordinances be introduced to the City Council in writing. San Diego Charter § 275(a). As such, if at the time of the hearing the City Council makes significant substantive amendments to an ordinance, its introduction may be continued, in some instances, or the ordinance may require reintroduction at a later date to allow proper notice to the public and preparation of an ordinance that incorporates the amendments. *See* 1986 City Att’y MOL 619 (86-116; Sep. 29, 1986). These substantive changes include changes that require additional legal or staff review or involve substantive drafting or policy changes.

Lastly, any legislative item must be properly considered in accordance with CEQA. Unless otherwise exempt, CEQA applies to discretionary projects proposed to be carried out. Cal. Pub. Res. Code § 21080(a). Before considering changes to any legislative item, the City Council should consider whether those changes require evaluation for consistency with the environmental determination for the project already in the record. This Office is available to work with City staff before the introductory hearing to determine whether the desired changes require further environmental review. A need for additional environmental review could require the matter to be brought back to the City Council at a later date, after the proper review is completed.

CONCLUSION

The Complete Communities Regulations require the affordable dwelling units to be constructed onsite. While the language concerning the construction of the affordable dwelling units is ambiguous, a court would look to extrinsic evidence, including the legislative history and staff’s consistent interpretation, which demonstrate the intent to have the affordable dwelling units constructed onsite. If the City Council would like to amend the zoning ordinance to allow for the affordable dwelling units to be constructed offsite, both state law and the Municipal Code require compliance with specific noticing provisions and a hearing and recommendation by the planning commission. In addition, the amendment must be consistent with the City’s General Plan by furthering its objectives and policies rather than obstructing their attainment.

Honorable Mayor and Councilmembers

February 10, 2023

Page 8

Furthermore, there are other legal considerations that apply to all legislative actions, including compliance with the Brown Act, Charter section 275, and CEQA.

MARA W. ELLIOTT, CITY ATTORNEY

By /s/ Corrine L. Neuffer

Corrine L. Neuffer

Chief Deputy City Attorney

CLN:nsf:jvg:cm

MS-2023-1

Doc. No. 3217654

Attachments:

- A. PowerPoint prepared by the Planning Department titled "Complete Communities: Mobility Choices & Housing Solutions," (Feb. 2023)
- B. Memorandum from Keyser Marston Associates, Inc. to Brian Schoenfisch, Planning Department, titled "Complete Communities: Housing Solutions - Updated Feasibility Evaluation," dated November 4, 2020

cc: Heidi Vonblum, Planning Department Director

Elyse Lowe, Development Services Department Director

Christopher Ackerman-Avila, Policy Advisory, Office of the Mayor

Charles Modica, Independent Budget Analyst

ATTACHMENT A

San Diego City Council

PHONE-IN TESTIMONY PERIOD NOW OPEN FOR Item 601: Complete Communities: Mobility Choices & Housing Solutions

To call in and make your public comment:



Dial 619-541-6310



Enter Access Code 877861 then press #



Listen and wait until you hear,
"Your phone has been unmuted."



When it's your turn, state your name and make your comments. When finished, hang up.

Planning Department

Complete Communities: Mobility Choices & Housing Solutions

Mobility Choices



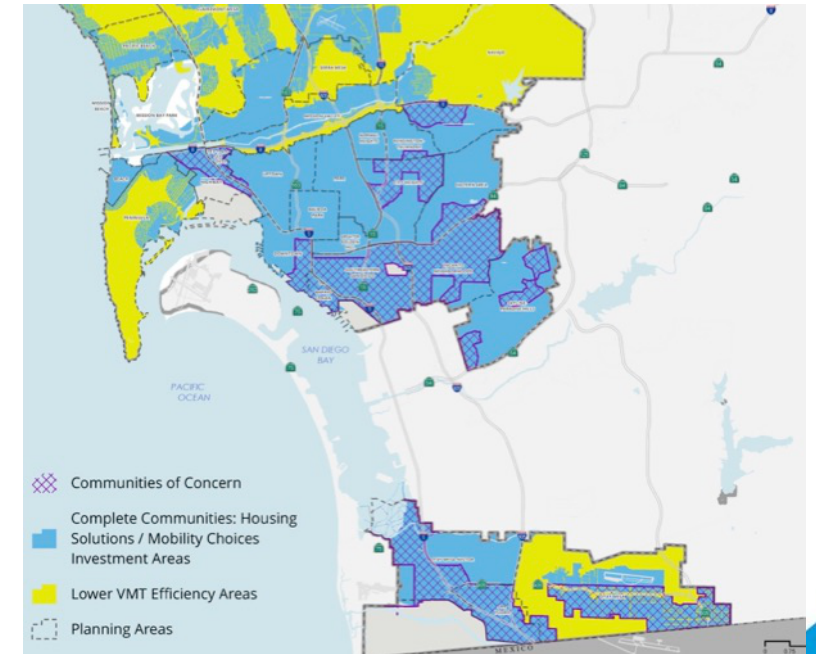
Addressing Inequities

Since the 1980s, less than 5 percent
of all Development Impact Fees
have been spent in Communities of Concern

Neighborhood
Enhancement
Amenities

Active
Transportation
Infrastructure

50 %



ONE CITY



TWO REALITIES





ONE CITY



TWO REALITIES





ONE CITY



TWO REALITIES



ONE CITY

ONE SYSTEM





Strategic Investments

A photograph of a residential street lined with mature trees. A dark grey Mercedes-Benz is parked on the left side of the road. In the background, other cars are visible on the street. A large, semi-transparent circular overlay is positioned on the right side of the image, containing the text 'Safer Roads' and 'Cleaner Air' in blue, with a horizontal line under 'Cleaner Air'.

Safer Roads
Cleaner Air

A family of five is walking across a street intersection. In the foreground, a man in a blue tank top and jeans walks on the left. Next to him is a man in a yellow shirt and blue jeans, holding the hand of a young girl in a white shirt and denim overalls. To their right, another man in a white tank top and jeans is walking, holding the hand of a young girl in a white shirt and denim skirt. They are all walking away from the camera towards a crosswalk. In the background, there are trees, a building with a green awning, and a traffic light pole with a green light. A street sign on the pole reads "Broadway" and "2500". A circular graphic on the right side of the image contains the text "More Connected Neighborhoods".

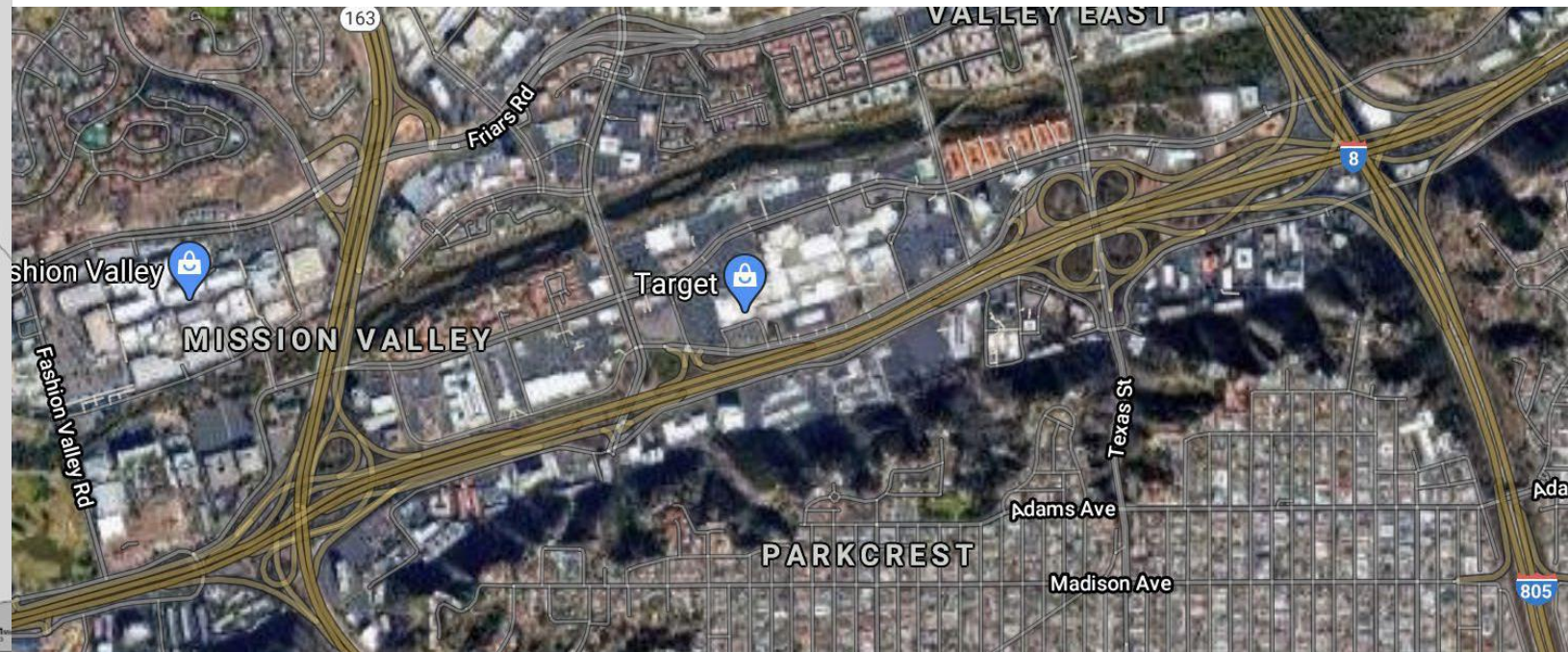
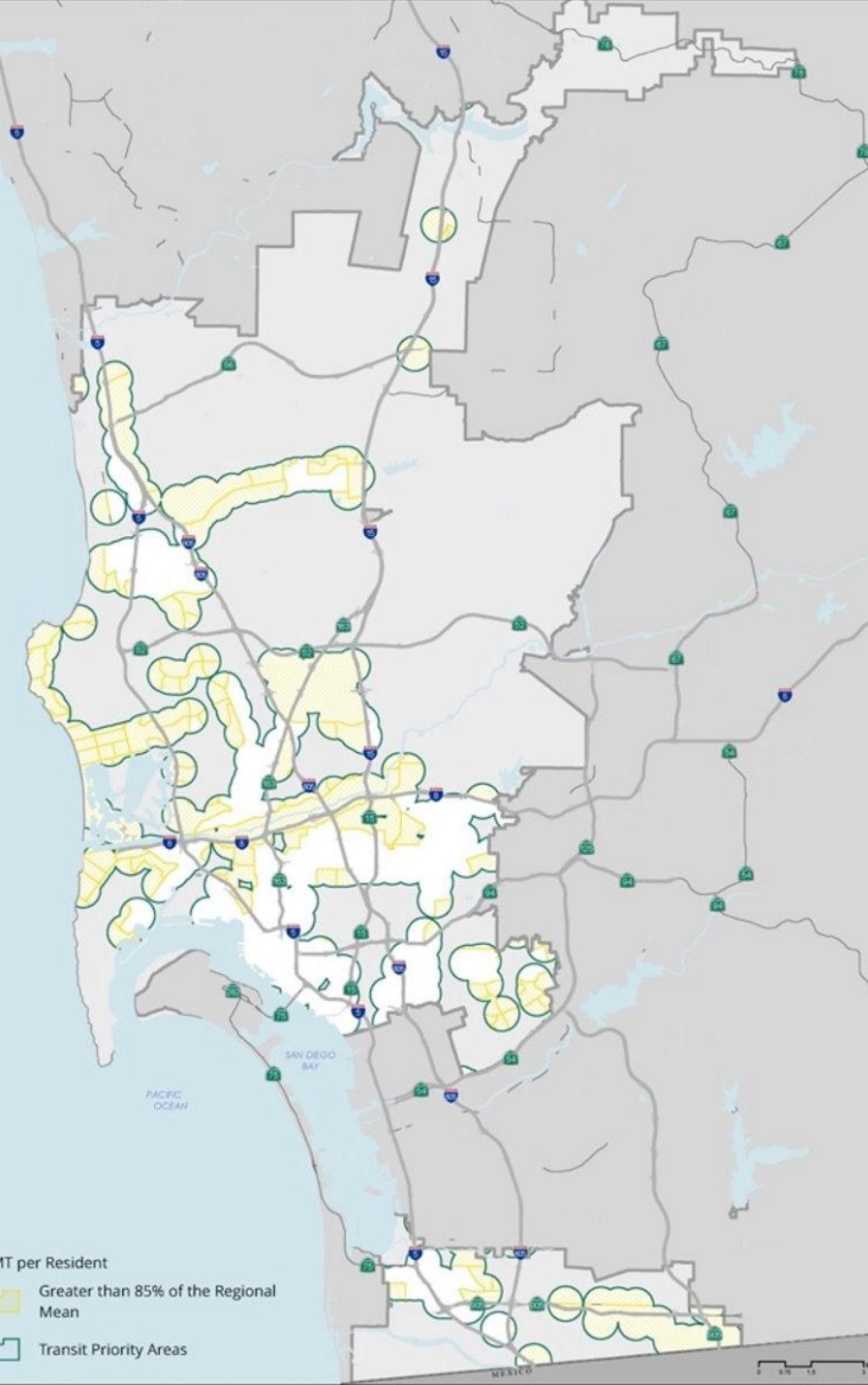
More Connected Neighborhoods



Space for
recreation
and exercise

UNAPPROPRIATE VEHICLES
NOT ALLOWED
UNAPPROPRIATE PLAYERS
OR EQUIPMENT PLAYERS
THE PLAYERS MUST
BE AT LEAST 10 YEARS
OLD
AND BE RECORDED AT
THE PLAYGROUND
AT ALL TIMES

Without Mobility Choices, **67 percent** of the City's Transit Priority Areas – where we need development to occur - would face immense **regulatory hurdles**



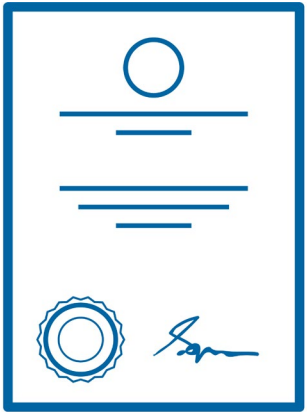
SB 743: Level of Service to Vehicle Miles Traveled



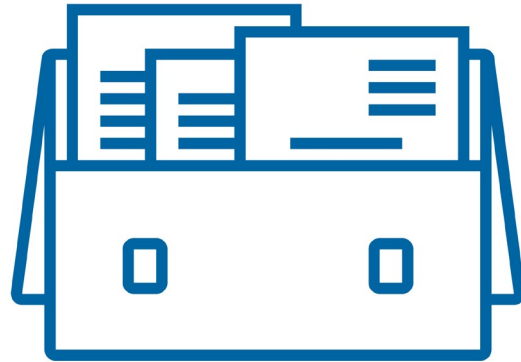
VMT = number or trips x length of trips

↓TRIPS and/or ↓DISTANCE = ↓VMT

Program Components



Mobility Choices
Regulations



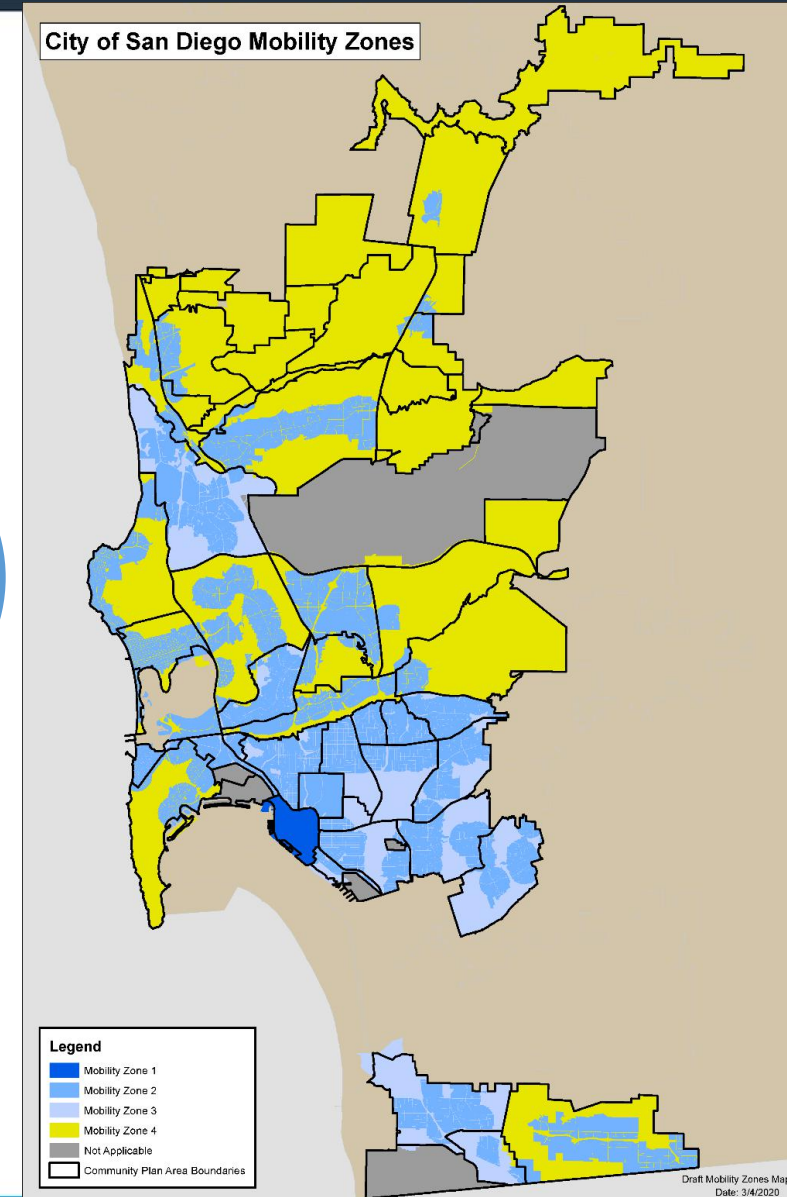
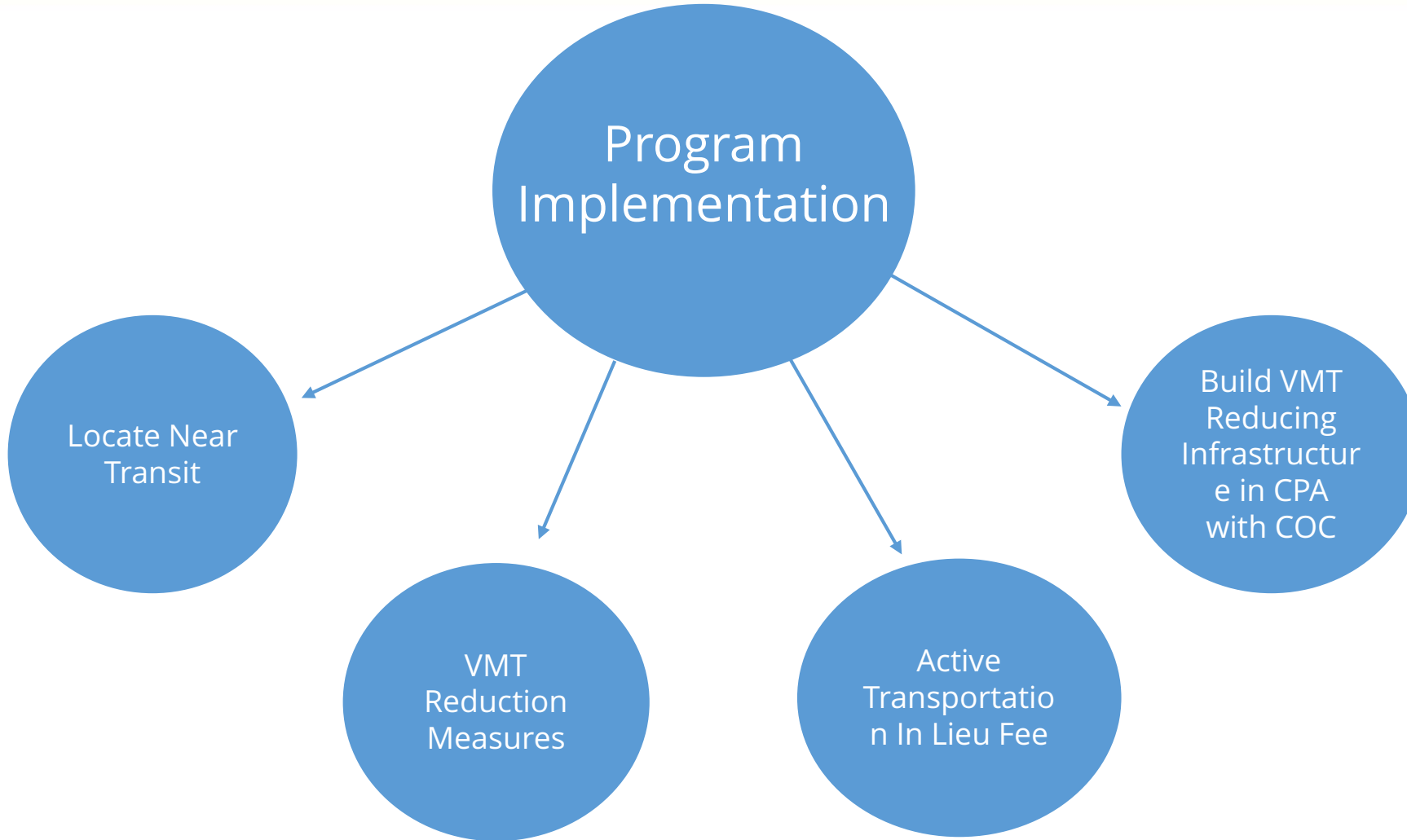
Land Development
Manual
Amendments



Active
Transportation In
Lieu Fee



VMT Calculator





VMT-Reducing Active Transportation Infrastructure



VMT Reduction Measures

Key Refinements

New
Incentives

Prioritized
Funding

Innovation

Monitoring

ONE CITY

State law requires City to
adopt new CEQA VMT
metric no later than July 1,
2020.

TWO REALITIES





Housing Solutions





Beginning in 2021
Need 108,000
units for the next
8-year cycle



Need to **TRIPLE**
annual housing
production



Especially Very Low,
Low, and Moderate
Income

California's Sustainable and Affordable Housing Act (CASA)

- Signed into law in October 2018
- Encourages the formation of new housing incentive programs
- Housing Solutions is the City of San Diego's implementation of CASA



Housing Solutions



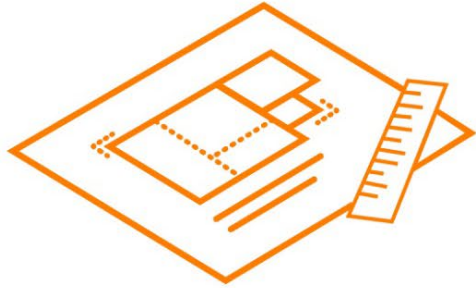
**New Opt-in
Affordable
Housing
Incentive
Program**

**City's
Strongest
Affordable
Housing
Requirements**

**Construction
of New
Affordable
Homes and
Preservation
of Existing
Homes**

**Equitable
Investments
in
Neighborhood
Amenities**

Program Incentives



**Expedited
Permitting**



**FAR-Based
Height**



**FAR-Based
Density**

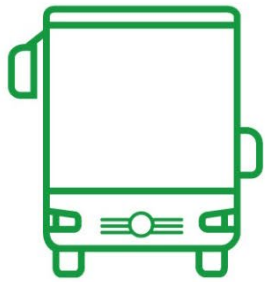


**Affordable
Housing
Incentives &
Waivers**



**Right-Sizing
the DIF**

Program Requirements



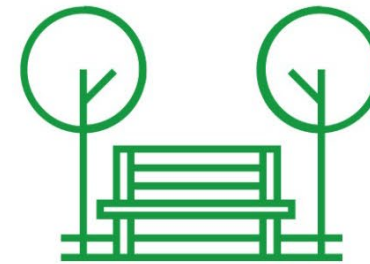
**Location in
Transit
Supportive
Areas**



**Build
Affordable
Housing**



**Replace
Existing
Affordable
Units**



**Add
Neighborhood
Amenities**

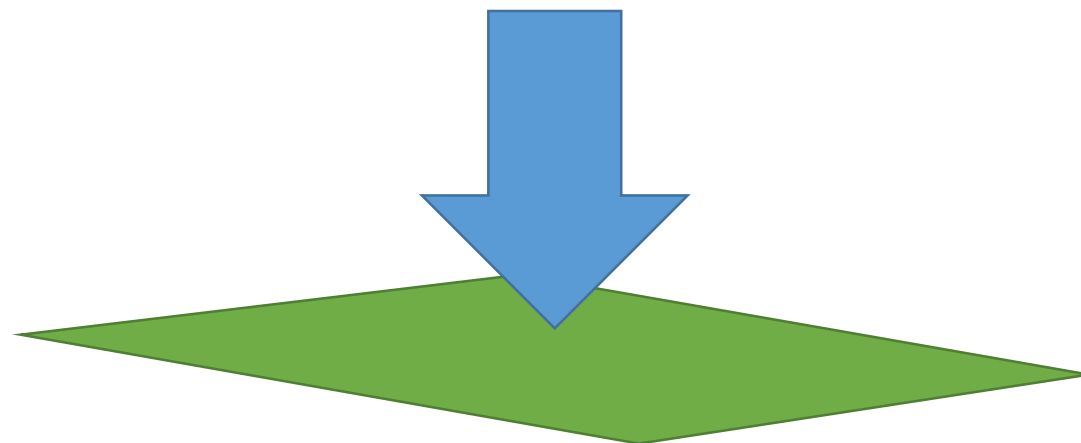


**Meet Design
Requirements**

Well-Balanced Program



- + More affordable units
 - + Preserves existing units
 - + Tenant protections
 - + Community infrastructure
- = Adds 10-20% more units a year
while holding land values steady



Affordable Housing



Adding and Preserving affordable housing



Provide 15% of base units at 50% AMI and 10% at 60% AMI and 15% of at 120% AMI



Aging NOAH units must be replaced with new deed-restricted units



New deed-restricted units must be provided



50 percent of new funds will be reserved for affordable housing preservation

Anti-Displacement

Relocation
Assistance



Right of
First
Refusal



Priority
Preference
within
Communities
of Concern



Equity and Neighborhood Enhancements

50% of the funds collected for amenities will be spent within Communities of Concern



Summary of Key Improvements in Response to Public Feedback

**Doubled Affordable
Housing
Requirements
(20% to 40%)**



Response to Public Feedback



Added Affordable Housing Preservation Funding



Response to Public Feedback



Added Community Review for Buildings + 95 ft



Response to Public Feedback



Expanded anti-displacement measures



Response to Public Feedback



Enhanced Outreach in Communities of Concern



Response to Public Feedback



Reduced FAR Levels in Tiers 3,4, and Coastal



Response to Public Feedback



Removed Lower Density Zones



Response to Public Feedback



**Added Ability to
Convert Existing
Commercial Space
to Residential**



Response to Public Feedback



**Waived DIF for all
Affordable Units
and Micro-Units**



Response to Public Feedback



**Required
Affordable Units to
be Built On-Site**



Response to Public Feedback



Added a Sunset to the Program



Response to Public Feedback



**Requires Annual
Monitoring**

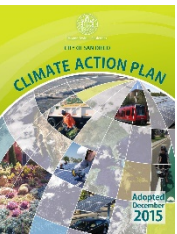
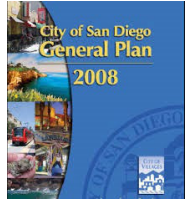


Response to Public Feedback





Planning Department



CASA
Act

SB
743

January 8
MC info item
at Mobility
Board

March 12
90-Day EIR
comment
period
closed

May 14
MC/HS at
Planning
Commission

June 3
MC/HS at
Mobility
Board

June 24
Land Use &
Housing
Committee

July 16
Public
Webinar

January 28
MC/HS joint
info item at
Equity
Stakeholder
Working
Group

May 1
Posted
MC/HS
focused
surveys

May 26
MC/HS action
item at
Community
Planner's
Committee

June 15
Engagement
tool (Dec.)
and surveys
(May) close

July 7
Equity
Stakeholder
Working
Group

May/June
HS kickoff
stakeholder
workshops

August 30
MC held "Transit
and Tacos" pop-
up event

December 5
Launched
Complete
Communities
engagement
tool

December 10
MC/HS info item
at Community
Planners
Committee

June 26
EIR scoping
meeting

October 2
MC info item at
ATI Committee

December 6
HS info item at
LU&H
Committee

December 18
Draft
Regulations and
Draft EIR
Published for 90
Day Review
Period

2019

2020

Complete
Communities
Housing
Solutions &
Mobility
Choices

STAFF RECOMMENDATION:

RECOMMEND CERTIFICATION of the Complete Communities: Housing Solutions and Mobility Choices Final Environmental Impact Report, SCH No. 2019060003, and adopting the Findings and Statement of Overriding Considerations.

RECOMMEND ADOPTION of a resolution amending the Land Development Manual, including amending Appendix A of the Land Development Manual, adding a new CEQA Significance Determination Threshold for Transportation in accordance with SB743; adding a new Appendix R to the Land Development Manual: Transportation Study Manual; and adding a new Appendix T to the Land Development Manual to implement new Mobility Choices Regulations.

RECOMMEND ADOPTION of an ordinance adding new Mobility Choices Regulations, in new Division 11 in Chapter 14, Article 3 of the San Diego Municipal Code.

RECOMMEND ADOPTION of a resolution approving a new Active Transportation In Lieu Fee to offset project VMT to fund active transportation projects that reduce VMT within the City's most VMT efficient areas. ADOPT an ordinance adding new Housing Solutions Regulations, in new Division 10 in Chapter 14, Article 3 of the San Diego Municipal Code.

RECOMMEND ADOPTION of an ordinance amending Chapter 14, Article 2, Division 6 of the San Diego Municipal Code to scale Development Impact Fees for residential dwelling units through the Housing Solutions program and exempting units under 500 square feet from the requirement to pay Development Impact Fees.

RECOMMEND ADOPTION of a resolution approving a new Neighborhood Enhancement In Lieu Fee to be used to fund housing preservation and active transportation and neighborhood amenities within the City's Transit Priority Areas (TPAs).

Complete Communities



San Diego City Council

PHONE-IN TESTIMONY PERIOD NOW OPEN FOR Item 601: Complete Communities: Mobility Choices & Housing Solutions

To call in and make your public comment:



Dial 619-541-6310



Enter Access Code 877861 then press #



Listen and wait until you hear,
"Your phone has been unmuted."



When it's your turn, state your name and make your comments. When finished, hang up.

ATTACHMENT B



KEYSER MARSTON ASSOCIATES™
ADVISORS IN PUBLIC/PRIVATE REAL ESTATE DEVELOPMENT

MEMORANDUM

To: Brian Schoenfisch, Program Manager
Housing, Ordinance, and Policy Team – City of San Diego Planning Department

ADVISORS IN:
REAL ESTATE
AFFORDABLE HOUSING
ECONOMIC DEVELOPMENT

From: KEYSER MARSTON ASSOCIATES, INC.

Date: November 4, 2020

Subject: Complete Communities: Housing Solutions
Updated Feasibility Evaluation

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I. KEY FINDINGS

Keyser Marston Associates, Inc. (KMA) has prepared this updated feasibility evaluation of the proposed Complete Communities: Housing Solutions program (CCHS Program). Key features in the current CCHS Program proposal have changed since the prior KMA feasibility analysis conducted in June 2020. The KMA key findings from the updated feasibility evaluation are as follows:

- Developers will find the current CCHS Program proposal viable under certain site, planning, and market conditions. A key feasibility factor is whether developers are able to utilize the CCHS Program bonus to achieve a substantial increase in total units without advancing to a significantly more costly construction type and/or parking configuration.
- A key purpose of the KMA financial feasibility evaluation was to assist the City of San Diego (City) in formulating the proposed CCHS Program so that it captures the value enhancement for community benefits, rather than creating a windfall in increased land value to property owners. The proposed CCHS Program -- with its combination of affordability requirements and incentives -- is appropriately formulated to strike this balance.
- It is difficult to forecast with any accuracy anticipated housing unit production as a result of the CCHS Program. However, for illustrative planning purposes, KMA believes it is reasonable to assume potential participation in the CCHS Program, within eligible areas, on the order of 10% to 20%. This low/high range yields a potential increase in multi-family unit production on the order of 300 to 800 units per year.

II. CURRENT PROGRAM PROPOSAL

KMA prepared a feasibility analysis of the proposed CCHS Program dated June 12, 2020. Since that time, City staff has modified the proposed program that will be presented for consideration by the San Diego City Council.

The key features of the current proposal include the following:

- Eligible areas include existing multi-family zoned areas of 20 units per acre or greater within Transit Priority Areas (TPAs).
- To qualify for the CCHS Program, a residential development must incorporate on-site: 15% of pre-bonus units at 50% of Area Median Income (AMI), 10% of pre-bonus units at 60% of AMI, and 15% of pre-bonus units at 120% of AMI.
- The CCHS Program defines five geographic areas with maximum allowable Floor Area Ratios (FARs) as follows: (1) Tier 1 with no maximum FAR, (2) Tier 2 with a maximum FAR of 8.0, (3) Tier 3 with a maximum FAR of 6.5, (4) Tier 4 with a maximum FAR of 4.0, and (5) the Coastal Zone with a maximum FAR of 2.5.
- Participating projects will be required to pay a Neighborhood Enhancement Fund fee in the amount of \$9 per square foot (SF) of site area.
- All units will be eligible for scaling of Development Impact Fees (DIFs) based on unit size.
- DIFs will be waived for all covenant-restricted affordable units.

III. UPDATED FEASIBILITY EVALUATION

In order to evaluate the revised CCHS Program, KMA reviewed the financial feasibility analysis that we prepared for a series of prototypical development sites (June 12, 2020 report). The KMA feasibility analysis also evaluated 11 alternative affordability requirements. For both the June 2020 feasibility analysis and this updated feasibility evaluation, KMA worked with urban designer Citythinkers to ensure that the assessment considered prototypical development sites, and potential development concepts, that represent real world conditions from both a market and design perspective. The KMA June 2020 analysis concluded that the following key factors would contribute to the viability of the proposed CCHS Program:

- The total affordability set-aside requirement does not exceed 20% of pre-bonus units.
- The required proportion of units at 60% AMI or below does not exceed 10% of pre-bonus units.
- An off-site option for the affordability units is available to developers.

The current proposal does not conform to the above parameters, i.e., 40% of pre-bonus units must be covenant-restricted; 25% must be restricted at 50%-60% AMI levels; and affordable units must be incorporated on-site. These requirements are more restrictive than previously contemplated for the CCHS Program. However, based on KMA's updated feasibility evaluation for the requirements and incentives in the current CCHS Program proposal, KMA finds that developers will still find the current CCHS Program proposal viable under certain site, planning, and market conditions. The following key factors contribute to the likelihood that developers will use the CCHS Program.

- The project does not otherwise trigger discretionary review. Over the course of industry research and stakeholder outreach conducted for the proposed CCHS Program, numerous developers indicated that the opportunity for ministerial review provides intangible benefits in the form of time and reduced development costs.
- The project is able to utilize the CCHS Program bonus, in terms of height and density, to achieve a substantial increase in total units without advancing to a significantly more costly construction type and/or parking configuration. Density bonuses do not always result in improved economics for multi-family development projects. In many cases, developers are already maximizing the achievable building height and density within the most feasible construction type (e.g., wood, steel, or concrete) and parking configuration (e.g., surface, tuck-under, wrap, podium, or subterranean). Additional height or density may trigger a change in construction type, thereby rendering the entire project more expensive to build and potentially infeasible.
- The project is located in a submarket with strong demand for smaller units, in multi-family or mixed-use buildings, that support competitive market rents.

A key purpose of the KMA financial feasibility evaluation was to assist the City in formulating the proposed CCHS Program so that it captures the value enhancement for community benefits. In any density bonus program, a jurisdiction seeks to incentivize developers to use the additional density in exchange for providing public exactions in the form of desired community benefits. Under the proposed CCHS Program, the community benefits take the form of creation of additional affordable units and neighborhood-serving infrastructure amenities. It is important to calibrate the value enhancement (density bonus) vs. community benefits (developer exactions) formula so that

developers are motivated to use the CCHS Program and create the community benefits. In particular, an effective density bonus program should not generate a windfall in increased land value to existing property owners (sellers). It is the KMA conclusion that the proposed CCHS Program, inclusive of its specific affordability requirements and offsetting incentives, is appropriately formulated to strike this balance.

IV. PROJECTED HOUSING PRODUCTION DUE TO CCHS PROGRAM

As noted above, there are a variety of site, planning, and market factors that contribute to the viability of the CCHS Program in general, and the feasibility of individual development proposals in particular. For these reasons, it is difficult to forecast with any accuracy anticipated housing unit production as a result of the CCHS Program. However, for illustrative planning purposes, KMA believes that a reasonable estimate of potential participation in the CCHS Program, within eligible areas, is on the order of 10% to 20%. Eligible areas include existing multi-family zoned areas of 20 units per acre or greater within TPAs. This low/high range yields a potential increase in multi-family unit production on the order of 300 to 800 units per year, as summarized below.

| Projected Housing Production due to CCHS Program | | | |
|---|--|--|-------------|
| | No CCHS Program | With CCHS Program | |
| | <i>Estimated New Multi-Family Units Developed Annually</i> | <i>Projected New Multi-Family Units Developed Annually (Participating and Non-Participating in CCHS Program)</i> | |
| | | Low @ 10% | High @ 20% |
| Total Annual New Multi-Family Units | 2,300 units ⁽¹⁾ | 2,600 units | 3,100 units |
| Increase due to CCHS Program | -- | 300 units | 800 units |
| (1) Based on recent historical trends within existing multi-family zoned areas of 20 units per acre or greater within TPAs. Includes market-rate and affordable units. Excludes 100% affordable projects. | | | |

V. LIMITING CONDITIONS

1. KMA has made extensive efforts to confirm the accuracy and timeliness of the information contained in this document. Although KMA believes all information in this document is correct, it does not guarantee the accuracy of such and assumes no responsibility for inaccuracies in the information provided by third parties.

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November 4, 2020

Page 5

2. The analysis, opinions, recommendations, and conclusions of this document are KMA's informed judgment based on market and economic conditions as of the date of this report. Due to the volatility of market conditions and complex dynamics influencing the economic conditions of the building and development industry, conclusions and recommended actions contained herein should not be relied upon as sole input for final business decisions regarding current and future development and planning.
3. KMA is not advising or recommending any action be taken by the City with respect to any prospective, new or existing municipal financial products or issuance of municipal securities (including with respect to the structure, timing, terms and other similar matters concerning such financial products or issues);
4. KMA is not acting as a municipal advisor to the City and does not assume any fiduciary duty hereunder, including, without limitation, a fiduciary duty to the City pursuant to Section 15B of the Exchange Act with respect to the services provided hereunder and any information and material contained in KMA's work product; and
5. The City shall discuss any such information and material contained in KMA's work product with any and all internal and/or external advisors and experts, including its own municipal advisors, that it deems appropriate before acting on the information and material.