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ORDINANCE NUMBER O-_____ (NEW SERIES)

ADOPTED ON _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 14, ARTICLE 3, DIVISION 7, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 143.0710, 143.0715, 143.0720, 143.0730, 143.0740, AND 143.0750; AND BY ADDING SECTIONS 143.0718, 143.0735, 143.0770 AND 143.0780, ALL RELATING TO AFFORDABLE HOUSING DENSITY BONUS REGULATIONS.

WHEREAS, the City of San Diego desires to perpetuate housing which is affordable to moderate income households through the continued financing, by the City, of moderate income household home ownership and to prevent windfall profit to the initial moderate income household purchasers; NOW THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter 14, Article 3, Division 7, of the San Diego Municipal Code is amended by amending sections 143.0710, 143.0715, 143.0720, 143.0730, 143.0740, and 143.0750, and by repealing section 143.0760, to read as follows:

§143.0710 Purpose of Affordable Housing Density Bonus Regulations

The purpose of these regulations is to provide increased residential densities to developers who guarantee that a portion of their residential *development* will be available to *low income*, *very low-income*, or senior households or to *moderate income condominium* or planned development owners, as condominium and

planned development are defined in Civil Code section 1351(k). The regulations are intended to materially assist the housing industry in providing adequate and affordable shelter for all economic segments of the community and to provide a balance of housing opportunities for *low income*, *very low-income*, and senior households, and *moderate income* owners of condominium or planned developments as defined in Civil Code section 1351(k), throughout the City. It is intended that the affordable housing *density* bonus and any additional development incentive be available for use in all residential developments of a size that allows for actual construction of the respective percentage of affordable units described in Section 143.0720(b). It is also intended that these regulations implement the provisions of California Government Code Sections 65915 through 65918. It is further intended that these regulations will allow for an increase to residential units where, in accordance with the inclusionary zoning regulations, developers construct affordable housing within the same development site as the market rate housing; however, in no event shall the number of residential units constructed exceed 135% of the *density* permitted by the applicable zone.

§143.0715 When Affordable Housing Density Bonus Regulations Applies

- (a) This division applies to any residential *development* of five or more *dwelling* units, where an *applicant* proposes *density* beyond that permitted by the applicable zone in exchange for a portion of the total *dwelling units* in the development being reserved for *low* or *very low-income* households, *senior citizens* or *moderate income condominium* or planned development as defined in Civil Code section 1351(k) owners.

- (b) An *applicant* proposing *development* as provided in Section 143.0715(a) shall be entitled to a *density* bonus as provided in Sections 143.0720 and 143.0730 and shall be granted a development incentive as provided in Sections 143.0740 and 143.0750.

§143.0718 When Onsite Building Bonus Regulations Apply

Section 143.0735 applies to any residential development that contains affordable housing as required by Chapter 14, Article 2, Division 13 and is constructed on the same site as the proposed project site.

§143.0720 Affordable Housing Density Bonus Agreement

- (a) An applicant shall be entitled to a density bonus for any residential development for which an agreement is entered into by the applicant and the San Diego Housing Commission as provided in Section 143.0720(b).
- (b) The *density* bonus agreement shall include the following provisions:
 - (1) Number of affordable units provided and Level of Affordability:
 - (A) Percent of the pre-bonus units in the *development* will be affordable, including an allowance for utilities, to *low-income* households at a rent that does not exceed 30 percent of 60 percent of area median income, as adjusted for assumed household size; or
 - (B) At least 5 percent of the pre-bonus units in the *development* will be affordable, including an allowance for utilities, to *very low-income* households at a rent that does not exceed

30 percent of 50 percent of the area median income, as adjusted for assumed household size; or

(C) A *senior citizen* housing development as defined in Civil Code sections 51.3 and 51.12; or

(D) At least 10 percent of the pre-bonus units in a *condominium project* will be available for sale to *moderate income* households, or

(2) In lieu of complying with Section 143.0720(b)(1), an *applicant* for a tentative map, parcel map or *development permit* may donate land to the Housing Commission in accordance with the following requirements:

(A) The *applicant* donates and transfers the land no later than the date of approval of the final map, parcel map, or residential *development permit* application.

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to *very low income* households in an amount not less than 10 percent of the number of residential units of the proposed *development*.

(C) The transferred land is at least 1 acre in size or of sufficient size to permit development of at least 40 units, has the

appropriate general plan designation, is appropriately zone for development as affordable housing, and is or will be served by adequate public facilities and infrastructure. The land shall have appropriate zoning and development standards to make the development of the affordable units feasible. No later than the date of approval of the final map, parcel map, or of the residential *development permit*, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the *very low income* housing units on the transferred land, except that the City of San Diego may subject the proposed development to subsequent design review to the extent authorized by Government Code Section 65583.2(i) if the design is not reviewed by the City of San Diego prior to the time of transfer.

- (D) The transferred land and the affordable units shall be subject to a deed restriction, approved by the San Diego Housing Commission ensuring continued affordability of the units in accordance with Sections 143.0720 (b)(4) or 143.0720(b)(5) and shall be recorded on the property at the time of dedication.
- (E) The land is transferred to the San Diego Housing Commission or to a housing developer approved by the

Housing Commission. The San Diego Housing Commission may require the applicant to identify and transfer the land to the developer.

(F) The transferred land shall be within the boundary of the proposed *development* or, if the City agrees, within one-quarter mile of the boundary of the proposed *development*.

(3) With respect to “for sale” housing:

(A) Affordability for the *moderate income condominium* or planned development units shall be comprised of both initial occupancy restrictions on the purchasers as well as initial restricted sales prices. Initial *moderate income density* bonus units shall be initially sold to and occupied by persons and families of *moderate income*. The initial moderate income restricted sales price shall be established at a maximum sales prices that does not exceed a price that generates a monthly housing cost as defined in Section 50052.5 of the Health and Safety Code, for moderate income purchasers, assuming a down payment of 5 percent of the restricted sales price and utilizing standard underwriting criteria at the date of initial sale and assuming prevailing interest rates for the *moderate income* restricted density bonus units.

(B) *Density* bonus units shall be owner occupied by the initial purchaser of the units at all times until the resale of the *density* bonus unit(s) by the initial *moderate income* purchaser.

(C) Upon the resale of the *moderate income* restricted *density* bonus unit by the initial *moderate income* purchaser, the San Diego Housing Commission shall be entitled to its share of appreciation and payoff of its note. Resale for the purposes of Section 143.0720 shall mean the sale, transfer, conveyance, hypothecation, pledging, refinancing with cash out (refinancing without cash out to reduce interest rates shall not be deemed a resale), further encumbrance, leasing of the property, failure to occupy the property as a primary place of residence, or other similar action or disposition of the *moderate income* restricted *density* bonus unit, or any portion thereof, without the express, advance written consent of the San Diego Housing Commission. Fair market values and restricted market values, if and when required to calculate and determine shares of appreciation, shall be determined by state certified real estate appraisals selected by the San Diego Housing Commission, in their sole discretion.

(4) The *density* bonus units affordable to *low income, very low income* residents or senior citizens shall remain available and affordable as provided in Section 143.0720(b)(1)(A)-(C) for a period of thirty years, or longer if required by a construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy programs.

(5) The *density* bonus units affordable to *moderate income* condominium or planned development owners shall initially sold to and occupied by a person or families meeting the income requirements of subsection 143.0720 (b) (3)(A). Upon the resale of the *density* bonus units affordable to *moderate income* condominium or planned development unit owners, as resale is defined in Section 143.0720 (b)(3)(C), the initial seller shall retain the value of any down payments, any San Diego Housing Commission approved improvements to the property, and the initial seller's proportionate share of the appreciation. The Housing Commission shall recapture its proportionate share of appreciation, which shall be used by the San Diego Housing Commission within three (3) years of the resale for any of the purposes described within Health and Safety Code Section 33334.2(e) that promote homeownership.

(A) For purposes of Section 143.0720(b)(5), the City's proportionate share of appreciation shall be equal to the

percentage by which the initial sale price to the moderate-income household was less than the fair market value of the unit at the time of initial sale.

(B) For purposes of Section 143.0720(b)(5), appreciation shall mean the amount of increase, if any, in the fair market unrestricted value of the *density* bonus unit on the date of the resale of the *density* bonus unit less the initial fair market unrestricted value of the *density* bonus unit at the time of the initial sale, less the value of any San Diego Housing Commission approved permanent improvements in the *density* bonus unit. In addition to the share in the appreciation to be received by the San Diego Housing Commission, the San Diego Housing Commission shall, in addition, be entitled to retain the sum of money which is equal to the difference in the initial *moderate income* restricted sales price and the initial fair market sales price at the time of the initial sale, which difference shall be evidenced by a note, secured by a deed of trust, in favor of the San Diego Housing Commission at the time of the initial sale.

(C) For purposes of Section 143.0720(b)(5), value shall mean the actual written documented cost of such permanent improvements, but only when the owner of the *density*

bonus unit has given advance written notice of the improvements to the San Diego Housing Commission of said owner's intention of making a permanent improvement in the *density* bonus unit and, provided, further, that such permanent improvement(s) have been approved by the San Diego Housing Commission in advance of such improvement.

(6) The *density* bonus units shall be designated units which are comparable in size, bedroom mix, location, and other similar characteristics, to the market-rate units in the development.

(7) Provision shall be made for certification of eligible tenants and purchasers, annual certification of property owner compliance by the Housing Commission, and payment of a monitoring fee, as adjusted from time to time, for monitoring of affordable unit requirements by the Housing Commission.

(8) Where the *applicant* seeks a *density* bonus as provided in Section 143.0750:

(A) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the *density* bonus units are required to remain affordable pursuant to this Division;

(B) Of the children who attend the child care facility, the children of *very low income* households, *low income* households or families of *moderate income* shall equal a percentage that is equal to or greater than the percentage that is equal to or greater than the percentage of *dwelling units* that are required for *very low income* households, *low income* households, or families of *moderate income*.

(9) Any other term necessary to implement the provisions and intent of this Division and State law.

(C) The applicant shall submit a pro forma analysis to the Housing Commission that documents project feasibility on a form acceptable to the San Diego Housing Commission, which shall be approved in the reasonable discretion of the San Diego Housing Commission. The analysis also shall include information explaining why the concession or incentive is necessary to meet recognized affordability standards.

§143.0730 Density Bonus Provisions

A residential *development* proposal requesting an affordable housing *density* bonus in accordance with Section 143.0715 is subject to the following:

(a) Except as described herein, the *development* shall be permitted a *density* bonus equal to the number of units requested by the *applicant*, up to a total

project dwelling unit count of 120 percent of the units permitted by the *density* regulations of the applicable base zone on the date the *development application* is deemed complete, for those projects subject to Section 143.0720(b)(1)(A) through 143.0720(b)(1)(C). For each 1% increase above 10% in the percentage of units affordable to *lower income* households, the *density* bonus shall be increased by 1.5% up to a maximum of 35%. For each 1% increase above 5% in the percentage of units affordable to *very low income* households, the *density* bonus shall be increased by 2.5% up to a maximum of 35%. This increase shall be in addition to any increase in *density* mandated or allowed under this Division, up to a maximum combined *density* increase of 35%.

- (b) The *development* shall be permitted a *density* bonus of the amount of units requested by the *applicant*, up to a total project dwelling unit count of 120% of the units permitted by the *density* regulations of the applicable base zone, for those projects subject to Section 143.0720(b)(1)(D). For each 1% increase above the minimum 10% land donation described in Section 143.0720(b)(2), the *density* bonus shall be increased by 1%, up to a maximum of 35%. This increase shall be in addition to any increase in *density* mandated or allowed under this Division, up to a maximum combined *density* increase of 35%.
- (c) The *development* shall be permitted a *density* bonus of the amount of units requested by the *applicant*, up to a total project dwelling unit count of 115% of the units permitted by the *density* regulations of the applicable

base zone, for those projects subject to Section 143.0720(b)(2). For each 1% increase above the minimum 10% land donation described in Section 143.0720(b)(2), the density bonus shall be increased by 1%, up to a maximum of 35%. This increase shall be in addition to any increase in *density* mandated or allowed under this Division, up to a maximum combined *density* increase of 35%.

- (d) Where the applicable zone requires that each *lot* be occupied by no more than one *dwelling unit*, the *development* requires a Site Development Permit. If any deviation from the development regulations of the applicable zone is proposed, a Planned Development Permit is required.
- (e) If the *development* is located in two or more zones, the number of *dwelling units* permitted in the *development* is the sum of the *dwelling units* permitted in each of the zones. Within the *development*, the permitted number of *dwelling units* may be distributed without regard to the zone boundaries.
- (f) Where the development consists of two or more specifically identified parcels, whether contiguous or noncontiguous, the maximum number of *dwelling units* permitted on each parcel is calculated based on the area of that parcel.
- (g) Where the development consists of two or more noncontiguous parcels lying within two or more community planning areas, the *dwelling units* reserved at levels affordable by *low-income* households, *very low-income*

households, or *moderate income condominium* owners shall be distributed among community planning areas in the same proportion as the total number of *dwelling units* constructed within the *development*.

(h) All *density* calculations resulting in fractional units shall be rounded up to the next number.

(i) All *density* calculations shall be based on the pre-bonus number of units.

§143.0735 On-Site Building Bonus Provisions

A residential *development* proposal requesting an increase in residential units in accordance with Section 143.0718 is subject to the following:

(a) The *development* shall be permitted an on-site building bonus of the amount of units requested by the *applicant*, up to a total project dwelling unit count of 110 percent of the units permitted by the *density* regulations of the applicable base zone.

(b) The residential *development* shall contain affordable units on the same site as the market rate units, in accordance with Section 142.1306(b)(1).

§143.0740 Development Incentive or Concessions for Affordable Housing

(a) In addition to the density bonus provisions contained in Section 143.0730(a) and Section 143.0730(b), the *applicant* shall be entitled to, upon request, one of the following *development* incentives or concessions when providing residential units in accordance with Section 143.0720(b)(1)(A),(B) or (D):

- (1) A deviation from applicable development regulations of the underlying zone, such as setback, parking, lot size, height, or FAR, pursuant to Section 143.0760; or
- (2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing *development* and if the commercial, office, industrial, or other land uses are compatible with the housing development and the existing or planned *development* in the area where the proposed housing development will be located; or
- (3) Other regulatory incentives or concessions proposed by the *applicant* or the City that result in identifiable and actual cost reductions.

(b) In addition to the density bonus provisions contained in Section 143.0730(a) and Section 143.0730(b), the *applicant* shall be entitled to, upon request, two of the *development* incentives or concessions described in section 143.0740(a)(1)-(4) when providing residential units that included at least 20 percent of the total pre-bonus units for *lower income* households, at least 10 percent for *very low income* households, or at least 20 percent for persons and families of *moderate income* in a condominium or planned development.

(c) In addition to the density bonus provisions contained in Section 143.0730(a) and Section 143.0730(b), the *applicant* shall be entitled to,

upon request, three of the *development* incentives or concessions described in section 143.0740(a)(1)-(4) when providing residential units that included at least 30 percent of the total pre-bonus units for *lower income* households, at least 15 percent for *very low income* households, or at least 30 percent for persons and families of *moderate income* in a condominium or planned development.

§143.0750 Development Incentive or Concessions for Affordable Housing with Child Care Facility

Where the *applicant* proposes to construct a residential *development* that conforms to the requirements of this Division and includes a child care facility that will be located on the *premises*, as a part of, or adjacent to the residential *development*, the *applicant* is entitled to:

- (a) an additional *density* bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet of the child care facility or;
- (b) an additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

§143.0760 Rules for Granting Development Incentives or Concessions

- (a) An application for the incentive or concession pursuant to Section 143.0740 or Section 143.0750 shall be decided in accordance with Process 4.

(1) The City shall grant the additional concession or incentive pursuant to Section 143.0740 unless the decision-maker makes one of the following *findings*, in writing:

(A) the incentive or concession is not required in order to provide for affordable housing costs as defined in Health and Safety Code section 50052.5, as amended from time to time, or for rents for the targeted units to be set in accordance with Section 143.0720(b)(1)(A) or (B); or

(B) granting the incentive would have a specific adverse impact, as defined in Government Code section 65589.5(d)(2), as amended from time to time, upon public health and safety or upon the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to *low-income* and *moderate income* households.

(2) The City shall grant the additional concession or incentive pursuant to Section 143.0750 unless the decision-maker makes one of the following *findings*, in writing:

- (A) The additional *density* bonus is not an amount of square feet of residential space equal to or greater than the amount of square feet of the child care facility or;
- (B) The additional concession or incentive does not contribute significantly to the economic feasibility of the construction of the child care facility.

§143.0770 Waiver or Reduction of Development Standards for Affordable Housing Density Bonus Developments

An *applicant* may request a waiver or reduction of any development standard that will have the effect of precluding the construction of development under Section 143.0720(b)(1)(A)-(D) or with receiving the concessions or incentives allowed under Section 143.0740. The request shall show that the waiver or modification is necessary to make the housing units economically feasible.

§143.0780 Rules for Granting a Waiver or Reduction of Development Standards for Affordable Housing Density Bonus Developments

- (a) An *applicant* requesting a waiver or reduction of development standards pursuant to Section 143.0770 shall be decided in accordance with Process 4.
 - (1) The City shall grant the reduction or waiver of development standards, whichever is minimally required to allow for construction of the development under 143.0720(b)(1)(A)-(D) or with receiving the concessions or incentives allowed under Section

143.0740, unless the decision-maker makes one of the following *findings*, in writing:

- (A) granting the reduction or waiver of development standards is not necessary to make the housing units economically feasible; or
- (B) granting the reduction or waiver of development standards would have a specific adverse impact, as defined in Government Code section 65589.5(d)(2), as amended from time to time, upon public health and safety, or upon the physical environment for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact; or
- (C) granting the reduction or waiver of development standards would have an adverse impact on real property that is listed in the California Register of Historical Resources.

Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 3. This ordinance shall take effect and be in force on the thirtieth day after it is effectively certified by the California Coastal Commission as a local coastal program amendment.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By _____
Mary Jo Lanzafame
Deputy City Attorney

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Or.Dept: Planning

O-2004-48

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