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## **Chapter 20.34 – Conversion or Demolition of Affordable Housing**

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### **20.34.010 – Purpose**

The purpose of this Chapter is to:

- A. Be consistent with and implement the provisions of the Mello Act (Government Code Section 65590); and
- B. Maintain the number of low- and moderate-income dwelling units within the coastal zone.

### **20.34.020 – Applicability**

The provisions of this Chapter shall apply to the conversion or demolition of existing residential dwelling units within the coastal zone occupied by persons or families of low- or moderate-income (“affordable units”), as defined in Health and Safety Code Section 50093, when either of the following occurs:

- A. The conversion or demolition of 11 or more dwelling units located in 2 or more structures; or
- B. The conversion or demolition of 3 or more dwelling units located in one structure.

### **20.34.030 – Exemptions**

The provisions of this Chapter shall not apply to the following:

- A. Demolition of a public nuisance.** The demolition of a residential structure that has been declared a public nuisance in compliance with the provisions of Health and Safety Code Division 13 (commencing with Section 17000) or any City ordinance enacted pursuant to those provisions shall be exempt from the provisions of this Chapter. For purposes of this Chapter, no structure, which conforms to the standards that were applicable at the time the structure was constructed and that does not constitute a substandard structure, as provided in Section 17920.3 of the Health and Safety Code, shall be deemed to be a public nuisance solely because the structure does not conform to one or more of the current provisions of Municipal Code Title 15;

- B. Replacement with a coastal dependent use.** The conversion or demolition of a residential structure for purposes of a nonresidential use that is either "coastal dependent," as defined in Public Resources Code Section 30101, or "coastal related," as defined in Public Resources Code Section 30101.3; or
- C. Land availability.** The conversion or demolition of a residential structure when there are less than 50 acres, in aggregate, of privately owned, vacant land available for residential use within the City's coastal zone or within 3 miles inland of the coastal zone.

#### **20.34.040 – Review Authority**

- A. Director.** The administration of this Chapter shall be delegated to the Director and shall comply with the Mello Act, as it may be amended from time to time.
- B. Determination.** The Director shall make a determination as to the applicability of this Chapter when a residential structure is to be converted or demolished. If applicable and based on the documentation provided in compliance with Section 20.34.060, below, the Director shall make determinations as to:
  - 1. How many units were occupied by low- and moderate-income persons or families;
  - 2. Whether the conversion or demolition proposes to go from residential to nonresidential and if so whether the proposed new use is coastal dependent;
  - 3. Whether a feasibility analysis is required to be prepared;
  - 4. The feasible number of affordable units required to be replaced, if any; and
  - 5. Whether the required replacement affordable units are to be located on-site or off-site.
- C. Referral to Commission.** The Director may defer action and refer a determination to the Commission for a decision on any of the matters outlined in Subsection B, above.
- D. Administrative act.** Determinations made by the Director under the provisions of this Chapter are an administrative function. The determinations made by the Director for the purpose of complying with the purpose of this Chapter shall not be construed as amendments to this Zoning Code.

#### **20.34.050 – Replacement of Affordable Housing**

- A. One for one replacement.** If the Director determines that the proposed conversion or demolition activities involve affordable dwelling units, replacement of the affordable dwelling units shall be provided on a one for one basis, unless the Director determines that replacement is not feasible.
- B. Location of replacement units.** Replacement dwelling units shall be located on the site of the converted or demolished structure(s) or elsewhere within the coastal zone if feasible. If location on the site or elsewhere within the coastal zone is not feasible, the replacement units shall be located within 3 miles of the coastal zone.

**C. Period of affordability.**

1. **Restricted units.** Affordable dwelling units that were previously required to be restricted to low- or moderate-income persons or families because of an existing affordable housing agreement that are required to be replaced in compliance with the requirements of this Chapter shall remain affordable for the duration of time remaining on the existing affordable housing agreement.
2. **Nonrestricted units.** Affordable dwelling units that were not previously required to be restricted to low- or moderate-income persons or families through an existing affordable housing agreement, but are now required to be provided in compliance with this Chapter shall remain affordable for a minimum of 30 years.

**20.34.060 – Determining Requirements for Replacement Units.**

**A. Required documentation.** The property's affordability status shall be documented by the Department. Affordability is measured by the income level of all current tenants. This information, along with information provided by the current tenants to the Department, will be used to determine if affordable dwelling units currently exist and the need to replace those units in compliance with the requirements of this Chapter.

**B. Information to be provided.**

1. In order to make a determination of a property's affordability status, the applicant shall provide the following information regarding the subject property:
  - a. Address of the property;
  - b. Total number of existing units;
  - c. Income of the tenants;
  - d. Square footage and number of bedrooms per unit;
  - e. Names and addresses of current tenants;
  - f. Tenant family size in each unit;
  - g. Information on any evictions within the last year; and
  - h. Whether there are currently any vacant units and how long they have been vacant.
2. In addition to the information provided by the applicant, the Department shall document information regarding the income status and household size of current tenants.

**C. Eviction of tenants.**

1. For purposes of this Chapter, a residential dwelling unit shall be deemed occupied by a person or family of low- or moderate-income if the person or family was evicted from the subject dwelling unit within one year prior to the filing of an

application to convert or demolish the unit and if the eviction was for the purpose of avoiding the requirements of this Chapter.

2. If a substantial number of persons or families of low- or moderate-income were evicted from the subject residential structure within one year prior to the filing of an application to convert or demolish that structure, the evictions shall be presumed to have been for the purpose of avoiding the requirements of this Chapter and the applicant for the conversion or demolition shall bear the burden of proving that the evictions were not for the purpose of avoiding the requirements of this Chapter.

**D. Residential use not feasible.** If the conversion or demolition of a residential structure is for the purpose of replacement by a nonresidential use that is not "coastal dependent," and the Director has determined that a residential use is no longer feasible in that location the Director shall require replacement of any dwelling units occupied by persons and families of low- or moderate-income.

### **20.34.070 – Feasibility Analysis.**

**A. Feasibility analysis required.**

1. If the applicant claims that it is not feasible to provide affordable replacement dwelling units an independent feasibility analysis shall be prepared prior to any approvals being granted for the proposed project.
2. The test of feasibility shall be conducted using the income levels contained in the General Plan, Housing Element.

**B. Feasibility of replacing affordable units.**

1. "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technical factors.
2. If the feasibility analysis determines that it is not feasible to replace the affordable units, the analysis shall provide an explanation of why it is not feasible, including the provision of the units both on-site and off-site.

**C. Feasibility analysis preparation.** The feasibility analysis shall be prepared by an independent firm under the direction of the Department. The selected firm shall have prior experience in the preparation of real estate feasibility analysis and shall provide an unbiased, neutral opinion as to the feasibility of complying with the requirements of this Chapter.

### **20.34.080 – Administration and Feasibility Analysis Fees**

**A. Administration fee.** An application to convert or demolish residential units in the coastal zone shall be accompanied by an administration fee in compliance with the City's Master Fee Schedule.

- B. Feasibility analysis processing fee.** If a feasibility analysis is required in compliance with Section 20.34.070 (Feasibility Analysis), the total cost of the analysis plus a feasibility analysis processing fee shall also be paid. The feasibility analysis processing fee shall be a percentage of the total feasibility analysis cost and shall be used to cover the cost of processing the feasibility analysis.

#### **20.34.090 – Findings to Conclude that Replacement of Units is Not Feasible.**

- A. In order to conclude that the replacement of affordable dwelling units is not feasible the review authority shall first find all of the following:
- B. The feasibility analysis was prepared in a professional and appropriate manner, and the facts and information presented in the feasibility analysis are accurate to the best of the review authority's knowledge; and
- C. The feasibility analysis concluded that the provision of affordable housing as required by this Chapter and the Mello Act (Government Code Section 65590) is not feasible.

#### **20.34.100 – Affordable Housing Agreement**

An affordable housing agreement shall be executed in a recordable form prior to the issuance of a Building Permit for any portion of a residential development project subject to the requirements of this Chapter.

- A. Form of agreement.** The form of the agreement shall be similar in content to the agreement specified in Section 20.34.100 (Affordable Housing Agreement) and as required by the City Attorney.
- B. Period of affordability.** The agreement shall provide that the required affordable dwelling units remain affordable for a minimum of 30 years.
- C. Availability of affordable units.** The agreement shall provide that the replacement dwelling units be available for occupancy within 3 years from the date work commenced on the conversion or demolition of the existing dwelling units.

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