

**ORDINANCE NO. CS-474**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, APPROVING A ZONE CODE AMENDMENT AND A LOCAL COASTAL PROGRAM AMENDMENT TO TITLE 15, GRADING AND DRAINAGE, AND TITLE 21, ZONING ORDINANCE OF THE CARLSBAD MUNICIPAL CODE TO COMPLETE VARIOUS MISCELLANEOUS CLEANUP CHANGES

CASE NAME: 2024 ZONE CODE CLEANUP  
CASE NO.: ZCA 2024-0001/LCPA 2024-0020/MCA 2024-0001 (PUB 2024-0005)

WHEREAS, on May 15, 2024, the Planning Commission held a duly noticed public hearing as prescribed by law to consider ZCA 2024-0001/LCPA 2024-0020; and

WHEREAS, the Planning Commission adopted Planning Commission Resolution No. 7514 recommending to the City Council that ZCA 2024-001/LCPA 2024-0020 be approved; and

WHEREAS, as required by state law, a six-week notice of availability was issued for LCPA 2024-0020 from May 10, 2024, to June 21, 2024, and no comments were received; and

WHEREAS, the City Council of the City of Carlsbad held a duly noticed public hearing as prescribed by law to consider ZCA 2024-0001/LCPA 2024-0020/MCA 2024-0001; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the City Council considered all factors, including written public comments, if any, related to ZCA 2024-0001/LCPA 2024-0020/MCA 2024-0001.

NOW, THEREFORE, the City Council of the City of Carlsbad, California, ordains as follows that:

1. The above recitations are true and correct.
2. That the findings of the Planning Commission in Planning Commission Resolution No. 7514 shall also constitute the findings of the City Council.
3. Ordinance CS-449 as adopted by the City Council on June 6, 2023, is pending Coastal Commission review and is incorporated into this ordinance.
4. That Section 15.16.060 of the Carlsbad Municipal Code is amended to read as follows:

**15.16.060 Work exempt from grading permit.**

A. A grading permit shall not be required for the following:

1. Cemetery graves.
2. Refuse disposal sites controlled by other regulations.
3. Excavations for wells, tunnels, utilities, or swimming pools/spas.

4. Exploratory excavations under the direction of soil engineers or engineering geologists.
5. Clearing and grubbing of vegetation done for the purpose of routine landscape maintenance, the removal of dead or diseased trees or shrubs or the removal of vegetation done upon order of the fire marshal to eliminate a potential fire hazard or for the abatement of weeds.
6. Clearing and grubbing of vegetation done preparatory to agricultural operations on land which has been used for agricultural purposes within the previous five years.
7. Grading on a site where the city engineer finds that the following conditions exist:
  - a. The amount of soil material moved does not exceed 200 cubic yards (excluding excavation for basements, foundations and footings);
  - b. No fill material is placed on an existing slope steeper than five units horizontal to one vertical;
  - c. No cut or fill material exceeds four feet in vertical depth at its deepest point, measured from the existing ground surface.
8. Grading in an isolated, self-contained area.
9. Grading associated with stem wall construction.
10. Retaining walls with a maximum height of 6 feet and the soil material moved does not exceed 200 cubic yards.
11. City capital improvement program (CIP) projects and city-initiated improvement and maintenance projects.
12. Notwithstanding the above, a grading permit shall be required if the city engineer determines that the work may adversely affect existing drainage patterns, result in a condition which may cause damage to adjacent property now or in the future, or may have a detrimental effect on the public health, safety or welfare.

5. That Section 15.16.065 E. of the Carlsbad Municipal Code is amended to read as follows:

**15.16.065 Application for grading plan.**

E. Grading plan applications for which a permit is not granted within three years following the date of application shall be deemed withdrawn, provided the improvement plans are not associated with a tentative map, tentative parcel map, vesting tentative map, or vesting tentative parcel map, in which case the grading plan application shall be deemed withdrawn on the date of the expiration of the associated tentative map. The grading plans and other documents submitted for review may thereafter be returned to the applicant or destroyed by the City Engineer. In order to renew action on an application after withdrawal, the applicant shall resubmit a new application and pay a new grading plan review application fee.

6. That Chapter 21.04.024 of the Carlsbad Municipal Code is amended by the addition of a new section as shown below:

**21.04.024 Agriculture/aquaculture/flower stands.**

Agriculture/aquaculture/flower stands mean a structure of no larger than 200 square feet ancillary to active agriculture/aquacultural uses on the property and for the display and sale of products produced on or off-site. There shall be no space for customers within the structure itself.

7. That Table A, Permitted Uses, of Section 21.07.020 (E-A Exclusive Agricultural Zone) of the Carlsbad Municipal Code is amended by the addition and deletion of the following use listings, modification of related footnote 3 and the addition of footnote 7 to read as follows:

**21.07.020 Permitted uses.**

**Table A**

**Permitted Uses**

<b>Use</b>	<b>P</b>	<b>CUP</b>	<b>Acc</b>
Agriculture (see note 7 below)	X		
Agriculture/aquaculture/flower stands (see note 3 below) (defined: Section 21.04.024)			X

**Notes:**

3. Agriculture/aquaculture/flower stands. Provided that the floor area of the stand shall not exceed two hundred square feet, that the stand is located not nearer than twenty feet to any street or highway, and that the stand is only allowed accessory to an active agricultural or aquacultural use.

7. Only the following agricultural uses, and buildings accessory to such agricultural uses, under this use type are permitted in the E-A zone: (A) Field and seed crops, (B) Truck crops, (C) Horticultural crops, (D) Orchards and vineyards, (E) Tree farms, (F) Fallow lands.

8. That Table A, Permitted Uses, of Section 21.08.020 (R-A Residential Agricultural Zone) of the Carlsbad Municipal Code is amended by the modification of the following use listings and the addition of related footnotes 8 and 9 to read as follows:

**21.08.020 Permitted uses.**

**Table A**

**Permitted Uses**

<b>Use</b>	<b>P</b>	<b>CUP</b>	<b>Acc</b>
Agriculture (see note 8 below)	X		
Agriculture/aquaculture/flower stands (see note 9 below) (defined: Section 21.04.024)			X

**Notes:**

8. Only the following agricultural uses, and buildings accessory to such agricultural uses, under this use type are permitted in the R-A zone: (A) Field and seed crops, (B) Truck crops, (C) Horticultural crops, (D) Orchards and vineyards, (E) Tree farms, (F) Fallow lands.

9. Agriculture/aquaculture/flower stands. Provided that the floor area of the stand shall not exceed two hundred square feet, that the stand is located not nearer than twenty feet to any street or highway, and that the stand is only allowed accessory to an active agricultural or aquacultural use.

9. That Table A, Permitted Uses, of Section 21.09.020 (R-E Rural Residential Estate Zone) of the Carlsbad Municipal Code is amended by the addition and deletion of the following use listing and the addition of related footnotes 7 and 8 to read as follows:

**21.09.020 Permitted uses.**

**Table A**

**Permitted Uses**

<b>Use</b>	<b>P</b>	<b>CUP</b>	<b>Acc</b>
Agriculture (see note 7 below)	X		
Agriculture/aquaculture/flower stands (see note 8 below) (defined: Section 21.04.024)			X

**Notes:**

7. Only the following agricultural uses, and buildings accessory to such agricultural uses, under this use type are permitted in the R-A zone: (A) Field and seed crops, (B) Truck crops, (C) Horticultural crops, (D) Orchards and vineyards, (E) Tree farms, (F) Fallow lands.

8. Agriculture/aquaculture/flower stands. Provided that the floor area of the stand shall not exceed two hundred square feet, that the stand is located not nearer than twenty feet to any street or highway, and that the stand is only allowed accessory to an active agricultural or aquacultural use.

10. That Section 21.10.030 E. deletes the allowance to require owner-occupancy and renumbers sections E.3 – E.12 to correct a numbering error in CS-449 to read as follows:

**21.10.030 Accessory dwelling units and junior accessory dwelling units.**

E. Other Requirements and Standards. ADUs and JADUs shall comply with all the following requirements and standards:

3. The maximum size of an ADU or JADU shall be limited as follows, consistent with California Government Code Sections 65852. 2 (effective Jan. 1, 2023) and 65852.22 (effective Jan. 1, 2023):
  - a. Attached ADUs — 50% of the total floor area of the main dwelling or 1, 200 square feet, whichever is less, but not less than 800 square feet;
  - b. Detached ADUs —1, 200 square feet
  - c. JADUs — 500 square feet
4. The maximum height of an ADU or JADU shall be limited as follows, consistent with California Government Code Sections 65852. 2 (effective Jan. 1, 2023) and 65852. 22 effective Jan. 1, 2023):
  - a. A detached ADU on a lot with an existing or proposed single-family, two-family or multiple -family dwelling unit shall be allowed a height up to 16 feet and one story.
  - b. A detached ADU on a lot with an existing or proposed single-family, two-family dwelling, or multiple -family dwelling unit that is within one- half of one mile walking distance of a major transit stop (Carlsbad Village Station or Poinsettia Station), shall be allowed a height up to 18 feet. An additional two feet in height (20 feet maximum) is allowed to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary dwelling.
  - c. A detached ADU on a lot with an existing or proposed two-family, multiple -family, multistory dwelling shall be allowed a height up to 18 feet.
  - d. An attached ADU is allowed a height up to 25 feet, or the height limits of the applicable zoning for the primary dwelling, but not to exceed two stories.
  - e. An ADU constructed above or below a detached garage shall be permitted and shall conform to the height limits applicable to the zone. Structures that contain an ADU located above or below a detached garage shall be limited to a maximum of two stories including the garage.
5. Roof decks shall not be permitted on detached ADUs.
6. The construction of an ADU or JADU that is all new construction, or is a conversion of a portion or all of an existing structure, or expands the square footage of an existing structure, shall be consistent with all habitat preserve buffers, geologic stability

- setbacks, and visual resource protection policies in the certified local coastal program, habitat management plan, general plan, or geotechnical report, as applicable.
7. On lots with one -family dwelling(s), the exterior roofing, trim, walls, windows and the color palette of the ADU or JADU shall incorporate the same features as the primary dwelling unit.
  8. On lots with two-family or multiple -family dwellings, the exterior roofing, trim, walls, windows and the color palette of the ADU addition shall incorporate the same features as the existing building that the ADU would be provided within. For detached ADUs, it shall be reflective of the nearest building as measured from the wall of the existing building to the nearest wall of the proposed unit.
  9. Parking.
    - a. An ADU shall provide off-street parking in compliance with Chapter 21. 44 Parking), unless it qualifies for an exemption as specified in California Government Code Section 65852. 2 (effective Jan. 1, 2023).
    - b. No off-street parking is required for a JADU if it meets the requirements specified in California Government Code Section 65852.22 (effective Jan. 1, 2023).
    - c. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or converted to an ADU, the loss of parking for the primary dwelling does not need to be replaced, except on lots located west of the rail corridor and on lots located east of the rail corridor and west of Interstate 5 between Avenida Encinas to the north and Batiquitos Lagoon to the south. In which case, the loss of parking for the primary dwelling shall be replaced subject to the parking requirements in Chapter 21.44 Parking), except as follows:
      - i. The replacement parking spaces may be covered, uncovered, or tandem spaces, or provided by the use of mechanical automobile parking lifts within a garage); and may be located in the front, side or rear yard, provided the parking area is an improved parking surface, such as paving, hardscape, decomposed granite, etc.
      - ii. The location of the replacement parking spaces shall be consistent with all habitat preserve buffers, geologic stability setbacks, and visual resource protection policies in the certified local coastal program.
  10. ADUs intended to satisfy an inclusionary requirement shall comply with the requirements of Chapter 21.85, including, but not limited to, the applicable rental rates and income limit standards.
  11. A Notice of Restriction shall be recorded on the property declaring that:
    - a. An ADU(s) or JADU shall not be used for short-term rentals of less than 30 days. This requirement does not apply to any unit that was issued a building permit prior to January 1, 2020.
    - b. The obligations and restrictions imposed on the approval of the ADU(s) per California Government Code Section 65852. 2 (effective Jan. 1, 2023) or JADU per California Government Code Section 65852. 22 (effective Jan. 1, 2023) are binding on all present and future property owners.

- c. For a JADU, the property owner must reside in either the primary residence or the JADU. Sale of the JADU separate from the single-family residence is prohibited; said prohibition is binding on all present owners and future purchasers.
12. An ADU may be sold separately from the primary dwelling only in limited situations pursuant to California Government Code Section 65852.26 (effective Jan. 1, 2023).
11. That Section 21.10.040 of the Carlsbad Municipal Code is amended to read as follows:

#### **21.10.040 Home occupations.**

- A. Home occupations which are not disruptive to the residential character of the neighborhood shall be permitted as an accessory use, subject to the following conditions:
  1. The use of the dwelling for a home occupation shall be clearly incidental and subordinate to its use for residential purposes by its inhabitants. The establishment and conduct of a home occupation shall not change the principal character or use of the dwelling unit or property involved.
  2. The home occupation may not utilize an area greater than twenty percent of the combined total floor area of all on-site structures.
  3. There shall be no exterior evidence of the conduct of a home occupation, including outdoor display of equipment, materials, or supplies related directly or indirectly to the home occupation activity. A home occupation shall be conducted entirely within a dwelling, or an attached garage with the exception of tutoring in sports.
  4. No employees shall be employed on the premises unless required by local or state law.
  5. There shall be no signs, banners or flags identifying or advertising the home occupation.
  6. The home occupation shall not create vehicular or pedestrian traffic in excess of that which is normal for the zone in which it is located.
  7. The required residential off-street parking shall be maintained.
  8. Limited indoor storage of goods or supplies (125 cubic feet maximum) may take place within no more than one room of the dwelling and/or in the attached garage (provided required parking on-site is maintained and properly located).
  9. There shall be no separate entrance or exit way specifically provided in the dwelling or on the premises for the conduct of the home occupation, unless required by local or state law.
  10. There shall be no process, procedure, substance, or chemical used which is hazardous to public convenience, health, safety, or general welfare or that changes the fire safety or occupancy classifications of the residence.
  11. Electrical or mechanical equipment which creates visible or audible interference in radio or television receivers or causes fluctuations in line voltage outside the dwelling unit shall be prohibited. Home occupation activities shall not produce dust, glare, noxious matter, excessive noise, or vibrations beyond the subject property lines.
- B. Maximum number of customers and vendors.

1. Home occupations may have a maximum of one customer or vendor on the premises at any one time, between 7:00 a.m. and 7:00 p.m., Monday through Saturday. Home occupations shall not host customers or vendors on the premises more frequently than one customer or vendor within a 2-hour time period.
  2. Home occupations involving tutoring students in music, academics, dance swimming or tennis at a residence may have a maximum of six non-resident students at any one time, and no more than 18 non-resident students during any one day. Sports related tutoring may be conducted between 7:00 a.m. and 7:00 p.m., Monday through Saturday.
  - C. Notwithstanding the provisions above, the following uses are prohibited:
    1. Automotive repair or other vehicle repair, body or mechanical;
    2. Welding or machining;
    3. Medical clinics or labs;
    4. Animal hospitals, kennels and grooming facilities (see exception in Section 21.10.040 D); and
    5. Uses that require explosives or highly combustible or toxic materials.
  - D. Notwithstanding 21.10.040 C.4., animal sitting or grooming facilities may be permitted when conducted entirely indoors. Grooming services shall be limited to one customer on the premises at any one time, between 7:00 a.m. and 7:00 p.m., Monday through Saturday with no more than one customer within a 2-hour time period.
  - E. The home occupation use shall not have utility services modifications, other than those required for normal residential use, that would be classified as commercial or industrial in load or design.
  - F. Cottage Foods Operation.
    1. Cottage Foods Operations shall be permitted as defined by Health and Safety Code Section 113758, conducted only within a dwelling that contains the dwelling's kitchen and shall not be allowed in a garage or other accessory building.
    2. There shall be no on-premise sale of goods except as allowed for a Cottage Food Operation by Health and Safety Code Section 114365 and with a valid County of San Diego Cottage Food permit from Department of Environmental Health. Occasional transport of goods from the premises for off-site sale may occur. Internet sales are not considered on-premise sale of goods.
  - G. No person shall commence or carry on a home occupation/cottage food operation without first having received approval of a city business license.
  - H. Home occupations shall comply with all noise, lighting, nuisance, health/safety, and other applicable city and state regulations.
13. That Table A, Permitted Uses, of Section 21.26.010 (C-1 Neighborhood Commercial Zone) of the Carlsbad Municipal Code is amended by the addition of the following use listing to read as follows:



**21.26.010 Permitted uses.**

**Table A**  
**Permitted Uses**

<b>Use</b>	<b>P</b>	<b>CUP</b>	<b>Acc</b>
Mixed use developments (defined: Section 21.26.015)	X		

14. That Table A, Permitted Uses, of Section 21.28.010 (C-2 General Commercial Zone) of the Carlsbad Municipal Code is amended by the addition of the following use listing to read as follows:

**21.28.010 Permitted uses.**

**Table A**  
**Permitted Uses**

<b>Use</b>	<b>P</b>	<b>CUP</b>	<b>Acc</b>
Mixed use developments (defined: Section 21.28.015)	X		

15. That Table A, Permitted Uses, of Section 21.29.030 (C-T Commercial Tourist Zone) of the Carlsbad Municipal Code is amended by the deletion and addition of the following use listings and the addition of related footnote 3 to read as follows:

**21.29.030 Permitted uses.**

**Table A**  
**Permitted Uses**

<b>Use</b>	<b>P</b>	<b>CUP</b>	<b>Acc</b>
Agriculture/aquaculture/flower stands (see note 3 below) (defined: Section 21.04.024)			X

**Notes:**

3. Agriculture/aquaculture/flower stands. Provided that the floor area of the stand shall not exceed two hundred square feet, that the stand is located not nearer than twenty feet to any street or highway, and that the stand is only allowed accessory to an active agricultural or aquacultural use.

16. That Table A, Permitted Uses, of Section 21.30.010 (C-M Heavy Commercial Zone) of the Carlsbad Municipal Code regarding the permitting of educational facilities is amended to read as follows:

**21.30.010 Permitted uses.**

**Table A**  
**Permitted Uses**

Use	P	CUP	Acc
Educational facilities, other (defined: Section 21.04.137)	X		

17. That Table A, Permitted Uses, of Section 21.31.030 (C-L Local Shopping Center Zone) of the Carlsbad Municipal Code is amended by the addition of the following use listing to read as follows:

**21.31.030 Permitted uses.**

**Table A**  
**Uses Permitted in the C-L Zone**

Use	P	CUP	Acc
Mixed Use Development (defined: Section 21.31.065)	X		

18. That Table A, Permitted Uses, of Section 21.32.010 (M Industrial Zone) of the Carlsbad Municipal Code regarding the permitting of educational facilities is amended to read as follows:

**21.32.010 Permitted uses.**

**Table A**  
**Permitted Uses**

Use	P	CUP	Acc
Educational facilities, other (defined: Section 21.04.137)	X		

19. That Table A, Permitted Uses, of Section 21.36.020 (P-U Public Utility Zone) of the Carlsbad Municipal Code is amended by the addition and deletion of duplicative agricultural use listings and the addition of related footnotes 2 and 3 to read as follows:

**21.36.020 Permitted uses.**

**Table A**  
**Permitted Uses**

<b>Use</b>	<b>P</b>	<b>CUP</b>	<b>Acc</b>
Agriculture (see note 2 below)	X		
Agriculture/aquaculture/flower stands (see note 3 below) (defined: Section 21.04.024)			X

**Notes:**

2. Only the following agricultural uses, and buildings accessory to such agricultural uses, under this use type are permitted in the P-U zone: (A) Field and seed crops, (B) Truck crops, (C) Horticultural crops, (D) Orchards and vineyards, (E) Tree farms, (F) Fallow lands.

3. Agriculture/aquaculture/flower stands. Provided that the floor area of the stand shall not exceed two hundred square feet, that the stand is located not nearer than twenty feet to any street or highway, and that the stand is only allowed accessory to an active agricultural or aquacultural use.

20. That Table A, Permitted Uses, of Section 21.39.020 (L-C Limited Control Zone) of the Carlsbad Municipal Code is amended by the deletion of the outdated terminology and addition of the following use listings and the addition of related footnote 3 to read as follows:

**21.39.020 Permitted uses.**

**Table A**  
**Permitted Uses**

<b>Use</b>	<b>P</b>	<b>CUP</b>	<b>Acc</b>
Agriculture/aquaculture/flower stands (see note 3 below) (defined: Section 21.04.024)			X

**Notes:**

3. Agriculture/aquaculture/flower stands. Provided that the floor area of the stand shall not exceed two hundred square feet, that the stand is located not nearer than twenty feet to any street or highway, and that the stand is only allowed accessory to an active agricultural or aquacultural use.

21. That Table F, Residential Additions and Accessory Uses to One-Family Dwellings and Twin-Homes on Small Lots, of Section 21.45.090 (Planned Developments Zone) of the Carlsbad Municipal Code and the table's footnotes are amended by deleting footnote 2 and renumbering the remaining footnotes to read as follows:

**21.45.090 Residential additions and accessory uses.**

**Table F**

**Residential Additions and Accessory Uses to One-Family Dwellings and Twin-Homes on Small Lots**

Addition/Accessory Use	Minimum Front Yard Setback	Minimum Side and Rear Yard Setbacks
Attached/detached patio covers	10 feet to posts (2-foot overhang permitted)	5 feet to posts (2-foot overhang permitted)
Non-habitable detached accessory buildings/structures (e.g., garages, workshops, decks over 30 inches in height) <sup>(1) (2)</sup>	20 feet	5 feet
Habitable detached accessory buildings (i.e. guest houses and accessory dwelling units) <sup>(2) (3) (4)</sup>	Same setbacks as required for the primary dwelling	
Additions to dwelling (attached)	Same setbacks as required for the dwelling	

**Notes:**

- (1) Maximum building height is 1 story and 14 feet with a 3:12 roof pitch or 10 feet with less than a 3:12 roof pitch.
- (2) Must be architecturally compatible with the existing structure.
- (3) Except as otherwise permitted for accessory dwelling units pursuant to Section 21.10.030.
- (4) Refer to California Government Code Section 65852.2 (effective Jan. 1, 2023) for front yard setback requirements for 800 sq. ft. maximum ADUs with four-foot side and rear yard setbacks and constructed in compliance with all other development standards.

22. That Section 21.58.030 of the Carlsbad Municipal Code is amended to read as follows:

**21.58.030 Expiration of permits.**

A. Any permit or approval granted pursuant to this title becomes null and void if not exercised within three years of the date of approval; however, permits or approvals which are issued in conjunction with a tentative map or tentative parcel map, shall not expire sooner than the approved tentative map or tentative parcel map. The permit or approval may be extended pursuant to Section 21.58.040.

B. A project shall be considered “exercised” when:

- (1) A vesting tentative map has been approved pursuant to California Government Code section 66498.1 and has not expired; or

(2) A valid building or grading permit has been issued and substantial work has been performed with at least one inspection conducted by the city to ensure compliance with codes and approved construction documents; or

C. If no building or grading permits are required, the action granting an approval pursuant to this title shall specify the terms and limitations of a use or activity.

23. That Section 21.85.020 A. of the Carlsbad Municipal Code is amended to read as follows:

**21.85.020 Definitions.**

Whenever the following terms are used in this chapter, they shall have the meaning established by this section:

A. "Affordable housing" means housing for which the allowable housing expenses paid by a qualifying household shall not exceed a specified fraction of the county median income, adjusted for household size, as follows:

1. Extremely low-income, rental units: the product of thirty percent times thirty percent of the county median income, adjusted for household size, in accordance with California Health and Safety Code Section 50053;
2. Extremely low-income, ownership units: the product of thirty percent times thirty percent of the county median income, adjusted for household size, in accordance with California Health and Safety Code Section 50052.5;
3. Very low-income, rental units: the product of thirty percent times fifty percent of the county median income, adjusted for household size, in accordance with California Health and Safety Code Section 50053;
4. Very low-income, ownership units: the product of thirty percent times fifty percent of the county median income, adjusted for household size, in accordance with California Health and Safety Code Section 50052.5;
5. Low-income, ownership units: the product of thirty percent times seventy percent of the county median income, adjusted for household size, in accordance with California Health and Safety Code Section 50052.5; and
6. Low-income, rental units: the product of thirty percent times sixty percent of the county median income, adjusted for household size, in accordance with California Health and Safety Code Section 50053.

24. That Section 21.85.040 of the Carlsbad Municipal Code is amended to read as follows:

**21.85.040 Affordable housing standards.**

The affordable housing standards are as follows:

A. All qualifying residential developments pursuant to Section 21.85.030(A) are subject to and must satisfy the inclusionary housing requirements of this chapter, notwithstanding a developer's request to process a residential development under other program requirements,

laws or regulations, including, but not limited to, Chapter 21.86 (Residential Density Bonus) of this code. If an applicant seeks to construct affordable housing to qualify for a density bonus in accordance with the provisions of Chapter 21.86 (Residential Density Bonus), those affordable dwelling units that qualify a residential development for a density bonus shall also be counted toward satisfying the inclusionary housing requirements of this chapter.

B. Whenever reasonably possible, inclusionary units should be built on the residential development project site.

C. The required inclusionary units shall be constructed concurrently with market-rate units unless both the final decision-making authority of the city and developer agree within the affordable housing agreement to an alternative schedule for development.

D. Inclusionary rental units shall remain restricted and affordable to the designated income group for fifty-five years. In addition to the income of a targeted group, limitations on assets may also be used as a factor in determining eligibility for rental or ownership units.

Notwithstanding anything to the contrary in this chapter, no inclusionary unit shall be rented for an amount which exceeds ninety percent of the actual rent charged for a comparable market unit in the same development, if any. For projects with both inclusionary units and market-rate units, the inclusionary units shall be provided in the same tenure as the market-rate units, consistent with California Civil Code 714.7.

E. After the initial sale of the inclusionary ownership units at a price affordable to the target income level group, inclusionary ownership units shall remain affordable to subsequent income eligible buyers pursuant to a resale restriction with a term of thirty years or ownership units may be sold at a market price to other than targeted households provided that the sale shall result in the recapture by the city or its designee of a financial interest in the units equal to the amount of subsidy necessary to make the unit affordable to the designated income group and a proportionate share of any appreciation. Funds recaptured by the city shall be used in assisting other eligible households with home purchases at affordable prices. To the extent possible, projects using ownership units to satisfy inclusionary requirements shall be designed to be compatible with conventional mortgage financing programs including secondary market requirements.

F. Inclusionary units should be located on sites that are in proximity to or will provide access to employment opportunities, urban services, or major roads or other transportation and commuter rail facilities and that are compatible with adjacent land uses.

G. Both the internal and external design of the inclusionary units shall be reasonably consistent or compatible with the design of the total project development in terms of appearance, materials and finished quality. Interior finishes and amenities may differ from those provided in the market rate units, but neither the workmanship nor the products may be of substandard or inferior quality as determined by the city.

H. Inclusionary projects shall provide a mix of number of bedrooms in the affordable dwelling units in response to affordable housing demand priorities of the city. Bedroom count and unit sizes of inclusionary units shall be commensurate with market rate units.

I. No building permit shall be issued, nor any development approval granted for a development which does not meet the requirements of this chapter. No inclusionary unit shall be rented or sold except in accordance with this chapter.

J. For Mixed-Income projects, where both inclusionary units and market rate units exist, the inclusionary units shall be dispersed throughout the project, and not congregated to specific areas or floors, consistent with California Health and Safety Code Section 17929.

25. That Section 21.85.140 D. of the Carlsbad Municipal Code is amended to read as follows:

**21.85.140 Affordable housing agreement as a condition of development.**

D. An affordable housing agreement will not be required for projects which will be satisfying their inclusionary housing requirement through payment to the city of an in-lieu fee or credit purchase.

26. That Section 21.86.100 of the Carlsbad Municipal Code is amended to read as follows:

**21.86.100 Design and quality.**

A. The city may not issue building permits for more than 50 percent of the market rate units until it has issued building permits for all of the affordable units, and the city may not approve any final inspections or certificates of occupancy for more than 50 percent of the market rate units until it has issued final inspections or certificates of occupancy for all of the affordable units.

B. Affordable units shall be comparable in exterior and interior appearance and overall quality of construction to market rate units in the same housing development. Interior finishes and amenities may differ from those provided in the market rate units, but neither the workmanship nor the products may be of substandard or inferior quality as determined by the city.

C. The number of bedrooms of the affordable units shall at least equal the minimum number of bedrooms of the market rate units. Bedroom count and unit size shall also be commensurate with market rate units.

D. For Mixed-Income projects, where both inclusionary units and market rate units exist, the inclusionary units shall be dispersed throughout the project, and not congregated to specific areas or floors, consistent with California Health and Safety Code Section 17929.

27. That the Carlsbad Municipal Code is amended by the addition of new Chapter 21.89 Substantial Conformance Review to read as follows:

**Chapter 21.89 SUBSTANTIAL CONFORMANCE REVIEW**

21.89.010 Purpose and Intent.

After a discretionary project is approved, the applicant may need to request minor revisions, usually as the result of a plan check or new requirement. Minor changes may be approved by the city planner if found to be in “substantial conformance” with the original project description, findings, and conditions.

The purpose of this section is to provide a process that determines if a post-entitlement permit or ministerial permit application is substantially consistent and in conformance with a previously approved discretionary action when changes to the previous approval are proposed. This includes a review of the post-entitlement permit or ministerial permit application against approved exhibits, permit conditions, and environmental documentation associated with the authorizing discretionary permit, and applicable land-use policies and standards.

21.89.020      Applicability.

Unless otherwise stated as a permit condition or as required by the municipal code, substantial conformance review is an optional service available to applicants who are proposing to modify their project after an authorizing discretionary permit has been approved by the city.

21.89.030      Immaterial Changes.

The city planner may determine changes are immaterial, do not require substantial conformance review, and may be approved as part of the ministerial application. Immaterial changes are very minor changes to the project and incidental in nature, are consistent with all development standards, and are of no substantial consequence to the project approval, including its exhibits, conditions, and environmental documentation. The city documents the approval of immaterial changes in the post-entitlement permit or ministerial permit application. Examples of immaterial changes may include but are not limited to:

- A. Floor plan revisions that do not increase parking demand or modify the building footprint.
- B. Modification of the length, height and location of garden, perimeter, and retaining walls.
- C. Reconfiguration or addition of parking lot planters.
- D. Resizing of a minor feature, such as a window, that does not exceed a 10 percent change from the original dimensions.
- E. Repainting a structure or appurtenance in a hue that is substantially similar to the approved project.

21.89.040      Substantial Conformance Request.

An application for a substantial conformance review shall be on a form provided by the city planner, which shall require that information necessary to make the findings specified within this chapter.

21.89.050      Fees.

The City Council may impose by resolution a nonrefundable fee to reimburse the city for its reasonable and necessary costs in receiving, processing, and reviewing applications for a substantial conformance review.

21.89.060      Review Authority and Procedure.

- A. A request for substantial conformance review may be approved by the city planner and shall be processed independently of any other required development permits.
- B. The filing of an application for request for substantial conformance review shall not require public notice.
- C. If necessary to reach a determination on the request for substantial conformance review, the city planner may request:



1. Further information from the applicant, specifying in detail the information that is required.
  2. Information from other city departments and divisions or other agencies.
- D. Conditions of approval cannot be removed or revised as a substantial conformance request.
- E. Within 30 days after receipt of a complete substantial conformance review application, the city planner shall notify the applicant of the decision to approve or deny the request, with the reasons for denial stated according to the findings contained in Section 21.89.070.
- F. If the city planner denies the request, the applicant may pursue the request to change the project by filing an amendment to the authorizing discretionary permit(s) pursuant to Section 21.54.125 of this title.

#### 21.89.080 Required Findings.

A. A project revision may be determined to be consistent with the approved discretionary action if the following findings can be made:

1. That the proposed revision provides an architectural style of development that is substantially consistent with the building forms, building colors, and building materials that were approved as part of the authorizing discretionary action.
2. That the proposed revision complies with all relevant development standards and design criteria and will not result in any health, safety, or welfare impacts.
3. That the proposed revision is consistent with the density, intensity, or use from what was approved as part of the authorizing discretionary action.
4. That the proposed revision is minor and authorizes a deviation or deviations of no more than 10 percent, provided that it is consistent with the authorizing discretionary action and maintains compliance with all relevant development standards. Examples of deviations that may be granted include but are not limited to:
  - a. On an individual lot or structure basis: yards, setbacks, lot coverage and building height (height reductions of greater than 10 percent are permitted).
  - b. On an aggregate project basis: parking, open space, common area, or landscaping, including planting area, quantity and size.
  - c. A deviation permitted under this section does not increase the intensity of the project or have a potentially detrimental effect.
5. That the proposed revision maintains, in their entirety, all of the project conditions required as part of the authorizing discretionary action.
6. That the proposed revision is consistent with the previously evaluated environmental findings and will not result in any significant environmental impact, and/or require further environmental review.
7. That the proposed revision is consistent with the standards set forth in the Village and Barrio Objective Design Standards or the Citywide Objective Design Standards, as applicable.

#### 21.89.090 Public Parks.

Modifications to approved discretionary permits for public parks also may be permitted subject to Section 21.42.140 B. 100 of this title.

#### 21.89.100 Appeal.

The effective date of the city planner's decision and method for appeal of such decision shall be governed by Chapter 21.54.140 of this title.

**21.89.110 Severability.**

If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held invalid or unconstitutional by the decision of any court of competent jurisdiction, the decision will not affect the validity of the remaining portions of this chapter. The city council declares that it would have passed the ordinance codified in this chapter and each section, subsection, sentence, clause, or phrase contained in it irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases are declared invalid or unconstitutional.

28. That Section 21.201.130 A. 3. of the Carlsbad Municipal Code is amended to read as follows:

**21.201.130 Developments appealable to the coastal commission.**

A. The following developments, due to their type or location, are within the appeal jurisdiction of the coastal commission. Only decisions approving a coastal development permit for these developments are appealable to the coastal commission, unless otherwise noted. Areas subject to appeal jurisdiction are shown on the post LCP certification map which is on file in the planning division.

3. Developments approved by the city not included within subsection A of this section which are located in a sensitive coastal resource area.

29. That Section 21.210.030 of the Carlsbad Municipal Code is amended to include new subsection C. to read as follows:

**21.210.030 Applicability.**

C. No removal of habitat, including mowing, shall occur until all the processing and permitting requirements of this chapter are satisfied.

30. That Section 21.210.100 of the Carlsbad Municipal Code is amended to update A.2 to read as follows:

**21.210.100 Enforcement measures – Violations and remedies.**

A. Whenever the City Planner determines that a violation of this chapter has occurred or an individual has impacted habitat without the benefit of an HMP permit, the following enforcement measures and remedies may be undertaken by the City Planner, in lieu of or in addition to any remedial actions undertaken in accordance with Section 15.16.140 of the municipal code.

1. Stop Work Notice. The City Planner shall issue a stop work order demanding that all activities in violation of this chapter be stopped until a valid HMP permit is obtained and corrective action is authorized by the City Planner.
2. Corrective Action. The City Planner, in consultation with the wildlife agencies, shall determine the extent of corrective action necessary to cure the violation. Corrective action may include a higher mitigation ratio than specified in Table 11 of Section D.6 of the HMP. The owner of the property shall be responsible for correcting any grading, clearing, or removal of habitat on the property, which occurred in violation of this chapter, including a violation which occurred prior to the owner's acquisition of the property and which continues after the acquisition of the property.
  
31. That all instances of the abbreviation "O-S" in Title 21 of the Carlsbad Municipal Code shall be replaced with "OS."

EFFECTIVE DATE OF THIS ORDINANCE APPLICABLE TO PROPERTIES OUTSIDE THE COASTAL ZONE: This ordinance shall be effective thirty days after its adoption; and the City Clerk shall certify the adoption of this ordinance and cause the full text of the ordinance or a summary of the ordinance prepared by the City Attorney to be published at least once in a newspaper of general circulation in the City of Carlsbad within fifteen days after its adoption.


EFFECTIVE DATE OF THIS ORDINANCE APPLICABLE TO PROPERTIES INSIDE THE COASTAL ZONE: This ordinance shall be effective thirty days after its adoption or upon Coastal Commission approval of LCPA 2024-0020, whichever occurs later; and the City Clerk shall certify the adoption of this ordinance and cause the full text of the ordinance or a summary of the ordinance prepared by the City Attorney to be published at least once in a newspaper of general circulation in the City of Carlsbad within fifteen days after its adoption.

INTRODUCED AND FIRST READ at a Regular Meeting of the Carlsbad City Council on the 30th day of July, 2024, and thereafter

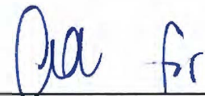
PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council of the City of Carlsbad on the 20th day of August, 2024 by the following vote, to wit:

- AYES: BLACKBURN, BHAT-PATEL, ACOSTA, BURKHOLDER, LUNA.
- NAYS: NONE.
- ABSTAIN: NONE.
- ABSENT: NONE.

APPROVED AS TO FORM AND LEGALITY:

  
CINDIE K. McMAHON, City Attorney

  
KEITH BLACKBURN, Mayor

  
SHERRY FREISINGER, City Clerk  
(SEAL)

