

ORDINANCE NO. 2024-1251**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, AMENDING TITLE 19 (ZONING) OF THE IMPERIAL BEACH MUNICIPAL CODE TO PROVIDE FOR BY RIGHT APPROVAL OF CERTAIN SITES DESIGNATED FOR LOWER INCOME HOUSING AND TO UPDATE THE CITY'S DENSITY BONUS ORDINANCE TO REFLECT CHANGES IN STATE LAW.**

WHEREAS, Government Code Section 65863.2, subdivision (c), requires that certain sites designated for lower income housing and included in the site inventory for previous housing elements, be zoned to permit by right approval, as defined in Government Code Section 65863.2, subdivisions (h) and (i); and

WHEREAS, Program 9 (By-Right Approval for Projects with 20 Percent Affordable Units) of Section 5.2.3 (Provision of Adequate Housing Sites) of the City's Housing Element, which was adopted on July 16, 2021 and subsequently approved by the California Department of Housing and Community Development, provides that the City will amend the Zoning Ordinance to require by-right approval of housing that includes 20 percent of the units affordable to lower income households on certain sites designated in the Housing Element; and

WHEREAS, Sections 65915 et seq. of the California Government Code, known as State Density Bonus Law, require a city to provide a developer that proposes a housing development containing affordable and other types of housing with a density bonus and other incentives; and

WHEREAS, California Government Code Section 65915(a) requires that all cities adopt an ordinance that specifies how compliance with State Density Bonus Law will be implemented; and

WHEREAS, since adoption of the City's density bonus ordinance, the State Legislature has passed, and the Governor has signed into law, changes to State Density Bonus Law; and

WHEREAS, Program 11 of Section 5.2.4 (Removal of Governmental Constraints) of the City's Housing Element, which was adopted on July 16, 2021 and subsequently approved by the California Department of Housing and Community Development, provides that the City will "[r]evise the Zoning Ordinance to update density bonus provisions consistent with State law"; and

WHEREAS, a Public Notice of Availability of Proposed General Plan/Local Coastal Program Amendments was issued, which opened a six-week public review period that ran from August 22, 2024, to October 7, 2024; and

WHEREAS, the City Council conducted a public hearing on November 6, 2024 to consider the proposed amendments to the zoning ordinance and considered all evidence, including but not limited to public testimony and the evaluations and recommendations of staff; and

WHEREAS, notice of said public hearing was made at the time and in the manner required by law.

NOW, THEREFORE, the City Council of the City of Imperial Beach hereby ordains as follows:

Section 1. All of the statements set forth in the recitals above are true and correct and are incorporated herein as substantive findings.

Section 2. Title 19 (Zoning) of the Imperial Beach Municipal Code is hereby amended to read as shown in Exhibit "A" attached hereto and incorporated herein by reference.

Section 3. The City Council finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) (the common sense exemption) because it can be seen with certainty that there is no possibility that the adoption of this ordinance may have a significant effect on the environment, in that the ordinance merely implements the provisions of state law and includes no provisions beyond those required by Government Code Section 65863.2 and State Density Bonus Law that that may result in a direct or indirect impact on the physical environment.

Section 4. The Community Development Director or designee is hereby authorized to submit this Ordinance as part of a Local Coastal Program Amendment to the California Coastal Commission for their review and adoption.

Section 5. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of the Ordinance, or its application to any person or circumstance, is for any reason held to be invalid and unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 6: This Ordinance shall take effect upon approval by the California Coastal Commission.

Section 7. The City Clerk is directed to prepare and have published a summary of this Ordinance no less than five (5) days prior to the consideration of its adoption and again within fifteen (15) days after adoption indicating votes cast.

INTRODUCED AND FIRST READ at a regular meeting of the City Council of the City of Imperial Beach held on the on the 6th day of November, 2024; and thereafter **PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Imperial Beach, California, on the 20th day of November, 2024, by the following vote:

AYES: Councilmembers –

NOES: Councilmembers –

ABSENT: Councilmembers –

PALOMA AGUIRRE, MAYOR

ATTEST

**JACQUELINE M. KELLY, MMC
CITY CLERK**

APPROVED AS TO FORM:

**JENNIFER LYON
CITY ATTORNEY**

EXHIBIT "A"

1.) Title 19, Chapter 19.04 (Definitions), of the Imperial Beach Municipal Code is hereby amended by adding or amending the following sections and shall read as follows:

19.04.056 Affordable rent

"Affordable rent" means the maximum allowable rent for a unit affordable to lower income households, equal to one-twelfth (1/12th) of 30 percent of 60 percent of area median income adjusted for assumed household size of one person in a studio affordable unit, two persons in a one-bedroom affordable unit, and one additional person for every additional bedroom; or as determined by the financing for the project, such as rents established for projects receiving tax credits.

19.04.058 Affordable sales price

"Affordable sales price" means means the maximum purchase price that will be affordable to a lower income household. The purchase price shall be considered affordable only if it is based on a reasonable down payment, and monthly housing payments (including interest, principal, mortgage insurance, property taxes, homeowners insurance, homeowners association dues, property maintenance and repairs, and a reasonable allowance for utilities), all as determined by the city, that total no more than one-twelfth (1/12th) of 30 percent of 70 percent of area median income adjusted for assumed household size of one person in a studio affordable unit, two persons in a one-bedroom affordable unit, and one additional person for every additional bedroom; or as determined by the financing for the project.

19.04.091 Area median income

"Area median income" means the area median income applicable to San Diego County, adjusted for household size, as published and periodically updated in the California Code of Regulations, Title 25, Section 6932.

19.04.187 By right review

"By right review" is as defined in Government Code Section 65583.2(i). By right review does not exempt the use from design review or approval of a coastal development permit. By right review that includes design review approval is described in Section 19.83.065.

19.04.526 Lower income household

"Lower income household" means a household whose household income does not exceed the low income limits applicable to San Diego County, adjusted for household size, as published and periodically updated in the California Code of Regulations, Title 25, Section 6932.

2.) Title 19, Subsection 19.26.020(C), of Chapter 19.26, C/MU-1 General Commercial And Mixed-Use Zone, of the Imperial Beach Municipal Code, is hereby amended by revisions as follows:

C. Site plan review by the City Council will be required if any of the following applies to proposed uses located in the C/MU-1 zone:

1. All proposed developments involving new construction.

2. Any addition, construction, or alteration of existing buildings resulting in an increase of ten percent or greater of the gross floor area of a commercial structure or in an individual commercial space within the structure or within a commercial shopping center.
3. Any proposed use or structure requiring the approval of a conditional use permit.
4. Any development including residential dwelling units, except Accessory Dwelling Units and Junior Accessory Dwelling Units as allowed in Chapter 19.66.
5. Notwithstanding any other provisions of this subsection C, the following uses shall be subject only to by right review that includes design review approval as described in Section 19.83.065:
 - a. Low-barrier navigation centers;
 - b. Permanent supportive housing;
 - c. Housing development projects where 20 percent of the total number of housing units in the project are proposed to be available to lower income households at affordable rent or affordable sales price, located on sites shown in Table C-2 of the Housing Element as designated for lower income housing and identified in the 5th cycle; and
 - d. Other uses eligible for by right approval by state law.

3.) Title 19, Subsection 19.27.020(B), of Chapter 19.27, C/MU-2 Seacoast Commercial and Mixed-Use Zone, of the Imperial Beach Municipal Code is hereby amended by revisions as follows:

B. Site plan review by the City Council will be required if any of the following applies for proposed uses located in the C/MU-2 zone:

1. All proposed developments involving new construction;
2. Any addition, construction, remodeling or alteration of existing buildings resulting in an increase of ten percent or greater of the gross floor area of a commercial structure or in an individual commercial space within the structure or within a commercial shopping center;
3. Any proposed commercial use, residential use, or structure requiring the approval of a conditional use permit;
4. Any development including residential dwelling units except Accessory Dwelling Units and Junior Accessory Dwelling Units as allowed in Chapter 19.66;
5. Public parking lots; and
6. Notwithstanding any other provisions of this subsection B, the following uses shall be subject only to by right review that includes design review approval as described in Section 19.83.065:
 - a. Low-barrier navigation centers;
 - b. Permanent supportive housing;
 - c. Housing development projects where 20 percent of the total number of housing units in the project are proposed to be available to lower income households at affordable

rent or affordable housing cost, located on sites shown in Table C-2 of the Housing Element as designated for lower income housing and identified in the 5th cycle; and

d. Other uses eligible for by right approval by state law.

4.) Title 19, Subsection 19.28.020(B), of Chapter 19.28, C/MU-3 Neighborhood Commercial And Mixed-Use Zone, of the Imperial Beach Municipal Code is hereby amended by revisions as follows:

B. Site plan review by the City Council will be required if any of the following applies for proposed uses located in the C/MU-3 zone:

1. All proposed developments involving new construction;
2. Any addition, construction, remodeling, or alteration of existing buildings resulting in an increase of ten percent or greater of the gross floor area of a commercial structure or in an individual commercial space within the structure or within a commercial shopping center;
3. Any proposed commercial use or structure requiring the approval of a conditional use permit;
4. Any development including residential dwelling units except Accessory Dwelling Units and Junior Accessory Dwelling Units as allowed in Chapter 19.66;
5. Public parking lots; and
6. Notwithstanding any other provisions of this subsection B, the following uses shall be subject only to by right review that includes design review approval as described in Section 19.83.065:
 - a. Low-barrier navigation centers;
 - b. Permanent supportive housing;
 - c. Housing development projects where 20 percent of the total number of housing units in the project are proposed to be available to lower income households at affordable rent or affordable housing cost, located on sites shown in Table C-2 of the Housing Element as designated for lower income housing and identified in the 5th cycle; and
 - d. Other uses eligible for by right approval by state law.

5.) Title 19, Subsection 19.65.030(C)(3), of Chapter 19.65, Affordable Housing Density Bonus, of the Imperial Beach Municipal Code, is hereby amended by revisions as follows:

3. Requested waivers. The application shall include the following minimum information for each waiver requested on each lot, shown on a site plan (if applicable), the City's usual development standard and the requested development standard.

6.) Title 19, Subsection 19.65.070(C), of Chapter 19.65, Affordable Housing Density Bonus, of the Imperial Beach Municipal Code, is hereby amended by revisions as follows:

- C. Except where a housing development is eligible for an additional bonus pursuant to Government Code Section 65915(v), each housing development is entitled to only one density bonus. If a housing development qualifies for a density bonus under more than one category, the applicant shall identify the category under which the density bonus is requested to be granted.

7.) Title 19, Subsection 19.65.070(D), of Chapter 19.65, Affordable Housing Density Bonus, of the Imperial Beach Municipal Code, is hereby amended by revisions as follows:

- D. The density bonus units shall not be included in determining the number of affordable units required to qualify a housing development for a density bonus pursuant to State Density Bonus Law.

8.) Title 19, Subsection 19.83.020(A), of Chapter 19.83, Design Review, of the Imperial Beach Municipal Code is hereby amended by revisions as follows:

A. Design review by the Design Review Board is required as follows:

1. Any development adjacent to the following corridors within the City limits:

- a. Highway 75;
- b. Palm Avenue;
- c. Silver Strand Boulevard;
- d. Rainbow Drive;
- e. Imperial Beach Boulevard;
- f. Seacoast Drive;
- g. 9th Street; and,
- h. 13th Street;

2. All commercial development within the City;

3. All development requiring site plan review by the Planning Commission or a conditional use permit;

4. All sign permits when deemed necessary by the Community Development Department;

5. All City projects, except street repair, resurfacing, etc.

6. Those projects referred by the Community Development Department for action.

7. Those projects eligible for by right approval that includes design review approval, subject to the provisions of Section 19.83.065.

9.) Title 19, Subsection 19.83.065, is added to Chapter 19.83, Design Review, of the Imperial Beach Municipal Code to read as follows:

19.83.065 By right approval that includes design review approval.

- A. As provided by Government Code Section 65583.2(i), design review approval for projects eligible for by right approval is exempt from the California Environmental Quality Act. Review of these projects shall be limited to conformance with objective standards established by the general plan, zoning ordinance, and design guidelines and conformance with the local coastal plan.
- B. Permanent supportive housing shall be reviewed consistent with the provisions of Government Code Sections 65650 *et seq.*
- C. Low barrier navigation centers shall be reviewed consistent with the provisions of Government Code Section 65660 *et seq.*
- D. Any subdivision of the site shall be subject to all laws, including but not limited to Title 18 (Subdivisions).
- E. The project shall comply with the development standards for the affordable units contained in Section 19.65.090.
- F. The applicant shall enter into an affordable housing agreement with the city as follows:
 - 1. The affordable housing agreement shall set forth the conditions and guidelines to be met regarding the affordable housing included in the project, including but not limited to the type, size and location of each affordable unit; the eligible occupants; affordable rents and sales prices, as applicable; phasing of the affordable units in relation to the market-rate units; and other relevant provisions approved by the City Attorney. The affordable housing agreement shall run with the land, to be executed by the City Manager or designee.
 - 2. The agreement shall require the continued affordability of rental units that qualified the applicant for by-right approval for a minimum of 55 years and shall require the continued affordability of for-sale units for 45 years.
 - 3. The executed affordable housing agreement shall be recorded against the housing development prior to final or parcel map approval, or prior to issuance of building permits for the housing development, whichever is earliest.