

ORDINANCE NO. 1740

AN ORDINANCE OF THE CITY COUNCIL OF SAN CLEMENTE, CALIFORNIA AMENDING SECTION 17.24.070 OF THE SAN CLEMENTE MUNICIPAL CODE REGARDING DENSITY BONUSES AND OTHER AFFORDABLE HOUSING INCENTIVES REQUIRED BY STATE LAW AND FINDING THE ACTION TO BE EXEMPT FROM CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

WHEREAS, California's Density Bonus Law (Gov. Code, § 65915 et seq.) encourages developers to build affordable housing (e.g., very low-, low- and moderate-income units) by requiring cities to grant a density bonus, concessions, incentives, and waivers of developments standards for projects that commit certain percentages of their units to affordable housing; and

WHEREAS, Government Code Section 65915 requires cities to adopt an ordinance specifying how the city will implement State Density Bonus Law; and

WHEREAS, Section 17.24.070 of the San Clemente Municipal Code ("SCMC") contains the City's regulations implementing State Density Bonus Law; and

WHEREAS, SCMC section 17.24.070 was last amended via Ordinance No. 1652, which was adopted on May 15, 2018; and

WHEREAS, the California Legislature frequently amends the State Density Bonus Law; and

WHEREAS, the City desires to remain in compliance with the requirements of State Density Bonus Law; and

WHEREAS, this ordinance ("Ordinance") updates SCMC section 17.24.070 by replacing the contents thereof with a provision that incorporates the State Density Bonus Law by reference. As amended by this Ordinance, SCMC section 17.24.070 will provide that density bonuses and other affordable housing incentives required by State law (including but not limited to Government Code section 65915 et seq.) will be available to applicants on the terms and conditions specified in State law; and

WHEREAS, incorporating the State Density Bonus Law by reference will ensure that the SCMC remains current whenever the Legislature amends the State Density Bonus Law; and

WHEREAS, on November 2, 2022, the Planning Commission conducted a duly noticed public hearing to consider the staff report, recommendations by staff, and public testimony concerning the Ordinance. Following the public hearing, the Planning Commission voted to forward the Ordinance to the City Council with a recommendation in favor of its adoption; and

WHEREAS, on November 23, 2022, the City gave public notice of a City Council public hearing to be held to consider this Ordinance by advertisement in a newspaper of general circulation; and

WHEREAS, on December 6, 2022, the City Council conducted a duly noticed public hearing to consider the Ordinance, including: (1) the public testimony and agenda reports prepared in connection with the Ordinance; (2) the policy considerations discussed therein; and (3) the consideration and recommendation of the Planning Commission; and

WHEREAS, all legal prerequisites to the adoption of the Ordinance have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Incorporation of Recitals. The recitals above are true and correct and are hereby adopted as findings as if fully set forth herein.

SECTION 2. CEQA. The City Council finds that adoption of this Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15358 (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Moreover, the proposed action is also exempt under CEQA Guidelines Section 15305 as a minor alteration in land-use limitation, as the proposed action does not allow any more density than before; it merely incorporates California's density-bonus statute and allowances by direct reference to the statute. Lastly, the City Council finds that this Ordinance is also exempt under CEQA pursuant to Guidelines Section 15061(b)(3) (there exists no possibility that the activity will have a significant adverse effect on the environment) because this Ordinance will not cause a change in any of the physical conditions within the area affected by the Ordinance.

SECTION 3. Required Findings. In accordance with subsection (F) of San Clemente Municipal Code section 17.16.040, the City Council hereby makes the following findings:

1. *General Plan.* This Ordinance's amendments to San Clemente Municipal Code section 17.24.070 are consistent with the City's adopted General Plan. Specifically, Land Use Element Policy LU-1.01 provides that the City should accommodate the development of a variety of housing types, styles and densities. This Ordinance is consistent with—and effectuates—Policy LU-1.01 by ensuring that qualifying housing projects are afforded the requisite concessions, incentives, and density bonuses required under State law. Collectively, this will facilitate housing projects with a variety of housing types, styles and densities in the City. Furthermore, this Ordinance is consistent with, and in furtherance of, the General Plan as it implements a component of Program 14 from the City's Sixth Cycle Housing Element

“Housing Action Plan”—which, in relevant part, provides that the City will update its density bonus ordinance to comply with recent changes in State law.

2. *Health, Safety, and Welfare.* Adoption of the Ordinance will not adversely affect the public health, safety, and welfare as it simply updates the San Clemente Municipal Code to comply with state law requirements governing the instances where the City must provide density bonuses and other affordable housing incentives required by state law. Adoption of this Ordinance is also consistent with—and contemplated by—the City’s Sixth Cycle Housing Element, the adoption which the City Council determined will not adversely impact the public health, safety and welfare. For these reasons, adoption of this Ordinance will not adversely affect the public health, safety, and welfare.

SECTION 4. Code Amendment. Section 17.24.070 of Title 17 of the San Clemente Municipal Code is hereby amended to read in its entirety as follows:

“Section 17.24.070 - Density Bonuses and Other Affordable Housing Incentives

- A. Purpose. The purpose of this Section is to allow density bonuses and other affordable housing incentives to qualifying projects in accordance with State law.
- B. Density Bonus and Affordable Housing Incentives. The density bonuses and other affordable housing incentives required by State law, including, but not limited to, Government Code Section 65915 et seq., shall be available to applicants on the terms and conditions specified in State law.”

SECTION 5. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid by a court of competent jurisdiction, such invalidity has no effect on the other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this Ordinance are severable. The City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any portion thereof.

SECTION 6. Publication. The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published once within 15 days of adoption in a newspaper of general circulation printed and published within the City of San Clemente, and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk in accordance with California Government Code, section 36933.

SECTION 7. Records. The documents and materials associated with this Ordinance that constitute the record of proceedings on which the City Council’s findings and determinations are based are located at City Hall, 910 Calle Negocio, San Clemente, CA 92673.


SECTION 7. Effective Date. This Ordinance shall become effective 30 days after its adoption.

APPROVED AND ADOPTED this 20 day of December, 2022.

ATTEST:



Laura Campagnolo, City Clerk



Chris Duncan, Mayor

APPROVED AS TO FORM:



Scott Smith, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF SAN CLEMENTE)

I, **Laura Campagnolo**, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. 1740 having been regularly introduced at the meeting of December 6, 2022, was again introduced, the reading in full thereof unanimately waived, and duly passed and adopted at a regular meeting of the City Council held on the 20 day of December, 2022, and said ordinance was adopted by the following vote:

AYES: CABRAL, ENMEIER, KNOBLOCK, MAYOR DUNCAN

NOES: NONE

ABSENT: JAMES

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this 20 day of December, 2022.



Laura Campagnolo, City Clerk