

Policy No.	43
Date Issued:	July 9, 2013
Effective Date:	July 9, 2013
Resolution No.	2013-177
Cancellation Date:	N/A
Supersedes No.	43, issued 4/26/05

## *Council Policy Statement*

**Category: "EXCESS DWELLING UNIT BANK"**

**Specific Subject: Policy for number and allocation of Proposition E "excess" dwelling units**

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### **PURPOSE:**

To establish the City Council's policy regarding the number and the criteria for allocation of "excess" Dwelling Units (as defined in Carlsbad Municipal Code Section 21.04.120). Excess Dwelling Units become available as a result of residential projects being approved and constructed with fewer Dwelling Units than would have been allowed by the growth management control points of the Growth Management Plan approved by voters on November 4, 1986, as Proposition E and as set forth in Carlsbad Municipal Code (CMC) Section 21.90.045.

### **BACKGROUND:**

Dwelling Units that become "excess" shall be added to the then-existing citywide balance contained in the "Excess Dwelling Unit Bank." Excess Dwelling Units may be allocated to projects located in any quadrant so long as the number of Dwelling Units built in each quadrant is consistent with the Dwelling Unit limitations for each quadrant established by Proposition E.

A project does not need an allocation of excess Dwelling Units if its proposed density does not exceed the growth management control point as set forth in CMC 21.90.045.

An allocation of excess Dwelling Units to a project is an "incentive," as defined in CMC Section 21.86.020 A.12 and Government Code Section 65915(k), in that it is a regulatory concession that modifies the requirements of CMC Chapter 21.90 of the Carlsbad Municipal Code by permitting developments with more Dwelling Units than otherwise permitted by the growth management control point established in CMC Section 21.90.045. The allocation of excess Dwelling Units to a project will result in identifiable, financially sufficient, and actual cost reductions to the project by permitting more Dwelling Units on a site than would otherwise be allowed by the underlying General Plan land use designation and so reducing land cost per Dwelling Unit.

### **POLICY:**

Provision Of Inclusionary Units

An applicant for excess Dwelling Units shall agree to provide the number of inclusionary housing units required by CMC Section 21.85.050 and to execute an affordable housing agreement according to CMC Section 21.85.140. The calculation of the required number of inclusionary units shall be based on all the Dwelling Units in the project and not just those for which the excess Dwelling Unit allocation is sought. The applicant shall otherwise agree to comply with the requirements of CMC Chapter 21.85 applicable to the inclusionary units.

If the applicant desires to rent any Dwelling Units in the project, the application for excess Dwelling Units shall be accompanied by an affidavit stating that any rental inclusionary units proposed by the applicant to comply with CMC Chapter 21.85 will not be subject to Civil Code Section 1954.52(a) nor any other provision of the Costa Hawkins Rental Housing Act (Civil Code Sections 1954.51 et seq.) inconsistent with controls on rents, because, pursuant to Civil Code Sections 1954.52(b) and 1954.53(a)(2), prior to approval of the project, the developer will enter into a contract (affordable housing agreement) with the city agreeing to the limitations on rents required by CMC Chapter 21.85 in consideration for the allocation of excess Dwelling Units, which is a form of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.

These requirements shall be considered minimum requirements for the allocation of excess Dwelling Units. As determined by the decision-maker designated by the Carlsbad Municipal Code, these minimum requirements may be increased depending on various factors, such as project scope and size and the amount of the allocation request.

#### Exceptions

The City Council also authorizes the decision-maker designated by the Carlsbad Municipal Code to allocate excess Dwelling Units to projects that do not meet the minimum requirements specified above under the limited circumstances identified below.

1. Any residential project with a General Plan designation of Residential Low Density (RL) or Residential Low-Medium Density (RLM) and a base zoning that permits a slightly higher yield of units than would be allowed by the RL or RLM General Plan designation; provided, the proposed density does not exceed the maximum density of the RL or RLM density range by more than an additional 25 percent, the project is compatible with the objectives, policies, general land uses and programs expressed in the General Plan, and all of the necessary infrastructure is in place to support the project.
2. Any residential project with a General Plan designation of Residential Medium-High Density (RMH) or Residential High Density (RH) which requires an allocation of excess Dwelling Units to meet the minimum density used to determine compliance with housing element law as identified in the latest adopted Housing Element since this minimum density exceeds the growth management control point. This exception does not apply to projects on RH-designated properties in the Beach Area Overlay Zone.
3. Any residential project in which the density used for calculation results in a Dwelling Unit yield that includes a fractional unit of .5 or greater and is the minimum density, growth management control point density, or the density used to determine compliance with housing element law (as identified in the latest adopted Housing Element). In this circumstance, a fraction of a unit may be granted in order to achieve, but not to exceed, the next whole unit; provided, the maximum density of the applicable General Plan land use designation or applicable Carlsbad Village Master Plan and Design Manual land use district is not exceeded. The procedure for determining Dwelling Unit yield and allocating fractional units is contained in CMC 21.53.230(e).

#### Allocating Excess Dwelling Units

The number of excess Dwelling Units allocated shall be at the sole discretion of the decision-maker designated by the Carlsbad Municipal Code. The City Council, Planning Commission or the City Planner retains the discretion to deny approval of the project or approve the proposed project without any

excess Dwelling Units. In approving a request for an allocation of excess Dwelling Units, the City Council, Planning Commission, or City Planner shall make the following findings:

1. That the project location and density are compatible with existing adjacent residential neighborhoods and/or nearby existing or planned uses.
2. That the project location and density are in accordance with the applicable provisions of the General Plan and any other applicable planning document.
3. That the project complies with the findings stated in the General Plan Land Use Element for projects that exceed the growth management control point for the applicable density range. (This finding applies only to properties outside the Village Review Zone.)
4. That the project complies with the findings stated in the Carlsbad Village Master Plan and Design Manual, Chapter 3, Development Standards, for projects that exceed the maximum densities set forth therein. (This finding applies only to properties inside the Village Review Zone.)