

PH-1

From: [Stephen Brahs](#)
To: [PC Public Comments](#)
Subject: Fwd: Outdoor Dining Permanent Approval
Date: Monday, November 13, 2023 11:43:35 AM
Attachments: [image.png](#)
[125 Cabrillo Outdoor Seating Approval. - stevebrahs@gmail.com - Gmail.pdf](#)
[Approved outdoor seating \(1\).pdf](#)
[Temporary Expansion of Restaurant Seating -- 9-20.pdf](#)

Thank you Staff and Planning Commission for your resolution converting temporary seating to Permanent Seating. Outdoor seating will be beneficial to everybody. We fully support all of your efforts.

Please consider adding our restaurant to the list of 22 approved temporary locations. We are getting ready to open soon and we will not be able to have any administrative delays or the delays involved for a Minor Conditional use Permit. Please see the email below regarding our approval for outdoor seating.

Thank you,

Steve Brahs

----- Forwarded message -----

From: **Stephen Brahs** <stevebrahs@gmail.com>
Date: Thu, Nov 9, 2023 at 7:33 PM
Subject: Outdoor Dining Permanent Approval
To: caitlyn.curley@costamesaca.gov <caitlyn.curley@costamesaca.gov>
Cc: INLOES, DANIEL <DANIEL.INLOES@costamesaca.gov>, DRAPKIN, SCOTT <SCOTT.DRAPKIN@costamesaca.gov>, <jennifer.le@costamesaca.gov>

Dear Caitlyn, Thank you for completing the staff report Modifying Outdoor Dining. Allowing outdoor seating has, and will be good for our residents and our Restaurant Owners.

In your report you include 22 locations that have been approved on a temporary basis. My property has also been approved pursuant to Urgency Ordinance 2020-15. We have actively constructed this outdoor seating area according to our approved temporary plan. We are getting ready to open and I would like to ensure that we don't have further administrative delays.

Please see the attached approvals that have been provided and you are welcome to visit our restaurant at any time to confirm that we are compliant.

I anticipate that we will be included as an approved permanent location probably in a modification to the second reading of the Ordinance since the Staff report is already on the agenda for Monday November 13. If my assumption is incorrect, or if I need to do anything to obtain automatic permanent status, please let me know.

Thank you for working so hard on this very beneficial ordinance.

Highest Regards,

Steve Brahs
125 Cabrillo St Costa Mesa, Ca 92627
949-422-3211
stevebrahs@gmail.com



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----- Forwarded message -----

From: **BOUWENS-KILLEEN, WILLA** <WILLA.BOUWENS-KILLEEN@costamesaca.gov>

Date: Thu, Feb 18, 2021 at 11:58 AM

Subject: 125 Cabrillo Site plan pdf

To: Stephen Brahs <stevebrahs@gmail.com>

Good morning, Stephen,

Thanks for the site plan!! Based on the information, you are approved for temporary outdoor seating. Please be aware that the temporary outdoor seating at the restaurant at the property have been finalized off by the City of Costa Mesa.

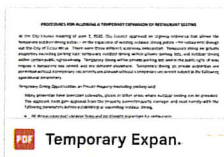
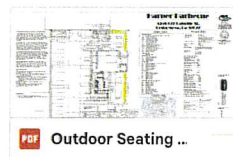
At this point in time, the temporary outdoor dining needs to be removed no later than December 31, 2021 – unless the City Council make it permanent, you will need to contact the Planning Division to see what needs to be done. It may require the filing of another application.

I've attached both your site plan as well as the City standards for allowing the temporary outdoor seating. Please remember that you cannot have outdoor seating at restaurants. Outdoor entertainment is prohibited.

Please let me know if you have any additional questions!!

Will

2 Attachments • Scanned by Gmail



PROCEDURES FOR ALLOWING A TEMPORARY EXPANSION OF RESTAURANT SEATING

At the City Council meeting of June 2, 2020, City Council approved an urgency ordinance that allows the temporary outdoor dining patios – or the expansion of existing outdoor dining patios – for restaurants throughout the City of Costa Mesa. There were three different scenarios anticipated: Temporary dining on private properties excluding parking lots; temporary outdoor dining within private parking lots; and outdoor dining within certain public rights-of-way. Temporary dining within private parking lots and in the public right-of-way require a temporary use permit and are detailed elsewhere. Temporary dining on private properties are permitted without a temporary use permit subject to the following operational parameters:

Temporary Dining Opportunities on Private Property (excluding parking lots)

Many properties have oversized sidewalks, plazas or other areas where outdoor seating can be provided. The applicant must gain approval from the property owner/property manager and must comply with the following parameters before establishing or expanding outdoor dining.

- All dining areas shall observe State and local health guidelines for restaurants
- Temporary outdoor seating is restricted to serving existing, on-site restaurants
- Temporary outdoor seating may not be placed in required setbacks or landscaping areas
- Temporary outdoor seating is located within a reasonable proximity to the restaurant
- A minimum 4-foot-wide pedestrian access is provided to accommodate wheelchairs
- Pedestrian ingress/egress to the subject or other businesses may not be obstructed
- Any service of alcoholic beverages in these temporary areas will be subject to approval by the ABC
- Any canopies or tents will require Fire and Building Department approval prior to installation
- Temporary outdoor dining on a property within 200 feet of a residential zone will be required to be closed between 11 PM and 6 AM
- Patio will be posted with a contact phone number so any noise concerns can be reported to the business owner or her/his representative.
- Businesses which are permitted to have indoor entertainment shall maintain all such entertainment inside the premises, with no amplification or speakers to broadcast or pipe the entertainment to the outdoor areas.
- Approval for temporary use shall be for a period of no longer than 180 days (from the date the urgency ordinance was adopted by City Council on June 2, 2020) unless the temporary approvals are extended, subject to a similar reconsideration and potential extension at that time. **All temporary improvements – such as barriers, tents, canopies, etc. -- will be required to be removed by December 2, 2020 unless Urgency Ordinance No. 2020-15 is extended by the City Council**
- The combined occupancy of the existing and temporary indoor and/or outdoor spaces shall not exceed the approved occupant load listed on the certificate of occupancy under non-COVID pandemic conditions

PARTIDA, ANNA

From: Jennifer Tanaka <jletanaka@gmail.com>
Sent: Monday, November 13, 2023 7:36 AM
To: PC Public Comments; LE, JENNIFER; HUYNH, NANCY
Subject: Comments re: Inclusionary Housing Ordinance
Attachments: Draft IHO - Planning Commission Comments for Nov 13 2023.pdf

Dear Planning Commissioners, Director Le and Principal Planner Huynh:

Please find attached a letter regarding the Planning Commission's consideration of the first draft of the proposed inclusionary housing ordinance.

Best,
Jenn Tanaka
321 Broadway, Costa Mesa

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November 13, 2023

Via Email

Planning Commission of the City of Costa Mesa
Jennifer Le, Director of Economic and Development Services
Nancy Huynh, Principal Planner
77 Fair Drive
Costa Mesa, CA 92626
PCPublicComments@costamesaca.gov
jennifer.le@costamesaca.gov
nancy.huynh@costamesaca.gov

Dear Planning Commissioners, Director Le and Principal Planner Huynh:

Thank you for providing a draft of the City's inclusionary housing ordinance (IHO). I appreciate that the public will be involved in this process as it is one of the most important pieces of legislation in the City's history. It has the potential to have long lasting effects on our housing market and, hopefully, it will make a meaningful difference in the lives of those struggling to afford their homes.

I have only a few significant comments as the IHO appears to be fairly reasonable and conservative as proposed. It is clear that the City's Staff has done a good job including relevant stakeholders and taking advantage of the expertise available through the City's consultant, Keyser Marston Associates (KMA). However, I think there are still a few areas that deserve a second (third?) look.

First, a couple high-level thoughts. It is my view that the top reasons that a housing policy is successful are (1) thoughtful tailoring to the jurisdiction's specific context (economy, demographics, current land use, etc.) and (2) features that ensure that the jurisdiction is an attractive development site compared to neighboring cities sharing the same labor market.

With respect to the first factor, I still do not think enough weight is being given to the blow that's been dealt to Costa Mesa's development pipeline by Measure Y. As I have noted in earlier letters, Measure Y has left few properties in the hands of those interested in redevelopment. Thus many infill projects will require the land to transact prior to building. This adds substantial capital costs to our projects, and those capital costs will be multiplied by persistently high interest rates.

This issue is potentially further complicated by the possibility that cannabis retail sites may compete for housing sites within the Measure K area, which I haven't seen analyzed. As we have seen, cannabis site competition is fierce and we still have many applicants. To the extent cannabis is successful in Costa Mesa, it presents a land use that requires comparably minimal improvements compared to housing production and potentially high long-term revenues. It would be unfortunate to find that some of our housing opportunity sites would be more profitable and easier to develop as cannabis sites.

Additionally, I wonder if the second factor — the IHO's competitiveness compared to other cities — has been adequately analyzed. Investors, and thus the developers they fund, do not have allegiance to any particular city. Rather, they are more interested in the *labor markets* reachable by any parcel, as such markets will justify the rents and provide steady access to new tenants. Provided a developer can select from parcels with comparable access to the labor market, they will choose to develop in the city with the best mix of regulatory certainty and incentives.

This implies that less restrictive jurisdictions within the same labor market will experience better rates of development, and this seems supported by the inclusionary housing literature. For example, a often-cited paper by the NYU Furman Center for Real Estate and Urban Policy, [*The Effect of Inclusionary Zoning on Local Housing Markets*](#), found that, when comparing the performance of inclusionary zoning in several jurisdictions in San Francisco, “...the number of units built increases with the presence of a density bonus and minimum project size that triggers [inclusionary zoning]. These results suggest that *less stringent programs actually produce more affordable units*, a plausible explanation if developers avoid jurisdictions with highly stringent programs” (emphasis mine). Another study from the Furman Center looked at “[*upzoning with strings*” in Seattle, WA](#), an approach similar to what we are attempting here, also found that inclusionary zoning encouraged developers to relocate projects to nearby parcels that did not require inclusionary zoning, even if those parcels were not upzoned: “Our quasi-experimental border design finds strong evidence of developers strategically siting projects away from MHA-zoned plots—despite their upzoning—and *instead to nearby blocks and parcels not subject to the program’s affordability requirements*” (emphasis mine).

So in other words: although counterintuitive, *lower* inclusionary housing requirements can produce *more* inclusionary units overall, provided that the inclusionary housing requirements are light enough to maintain economic competitiveness for redevelopment compared to parcels in the same area. Thus, in general, more development with a relatively low inclusionary requirement will produce more units than little development with a high inclusionary requirement, especially if that high inclusionary requirement is more stringent than neighboring cities.

With that context in mind, I have the following suggestions regarding the draft IHO:

Increase the minimum project size to at least 25 units. Twenty-five units is the minimum project size where the lowest inclusionary set aside — 4% for Very Low Income Households in projects with a base density of less than 60 du/ac — will result in the set-aside requirement of one whole Inclusionary Unit. Raising the minimum project size to this level (or higher) will also safely exempt developments on smaller lots, which may have high densities but will result in fewer units and poorer economies of scale compared to developments on bigger lots.

As an aside, the Agenda Report notes that, “of the [City’s] housing projects [greater than two units from 2014-2021], which were either located in the City’s urban plan areas or along major commercial or industrial corridors, all were more than ten units.” One wonders, though, if those projects would have been built if our IHO had applied to them at the 10-unit threshold at the time of entitlement. Have we asked the developers of those projects if the IHO as drafted would have changed their minds? If it would have been a factor, this would be further evidence that we should rethink the minimum project size.

Lower the inclusionary thresholds and think about the “regulatory cliff”

I am pleased to see that KMA was requested to reanalyze its findings regarding the likelihood of redevelopment given our sky high land values and profitable “going concern” land uses. However, even if the resulting thresholds are “conservative” under KMA’s analysis, I would encourage the City to be *even more conservative*. This is due to competitive concerns with our peer cities that share our labor market. For example, Huntington Beach only requires a 10% set aside for low income households at any density, while developments greater than 60 du/ac in Costa Mesa would require an 11% set aside for Low Income Households. And while these thresholds look attractive compared to the requirements in Santa Ana, it is worth noting that [*Santa Ana has been struggling to get its inclusionary housing program to work as intended*](#).

Additionally, we should keep in mind that Newport Beach, Tustin, Fountain Valley and Orange are not listed on the comparison chart provided by Staff. That is because, to date, these jurisdictions *do not have an inclusionary housing requirement*, though admittedly several are considering one.

In order to remain competitive with our neighbors, I would recommend dialing back the inclusionary housing requirements for the high density developments, perhaps from 11% for Low Income Households or 6% for Very Low Income Households as proposed to 10% for Low Income Households or 5% for Very Low Income Households (or even less). This brings us more in line with Huntington Beach and offers a competitive advantage compared to Santa Ana.

Bringing down the requirements for higher densities also reduces the severity of the “regulatory cliff” created by the distinction between 60 du/ac+ projects and those under 60 du/ac. As density will be determined on a *project basis*, the unit difference between 59 du/ac and 61 du/ac could be minimal, especially in smaller developments. However, as drafted, the regulatory drag for the two projects could be very different. It would be worth investigating how this will impact developer behavior.

Consider removing ownership requirements entirely. Multifamily ownership projects are already strongly disincentivized by insurance requirements, the Federal tax code and our high construction costs. Therefore, even without inclusionary requirements, it is very unlikely many condominiums will be developed even with the benefit of “free” upzoning. So if we are serious about wanting to make a dent in our “renter-homeowner ratio”, we should be putting as few restrictions on the development of ownership properties as possible. I would also note that, with ownership units targeting moderate income families, an ownership program does not align with the City Council's expressed interest in “deep affordability”.

Additionally, administering affordable ownership units can be very expensive (especially on a cost-per-unit basis), as it requires extensive vetting of new buyers as well as constant maintenance to ensure the properties aren't sublet for profit. It may also lead to strange and unintended outcomes, such as persons with plenty of resources occupying affordable ownership units for very long periods of time. [As a local example, the Mayor of Huntington Beach, Tony Strickland, lives in an affordable ownership unit that he inherited through marriage, a result likely not intended by the program.](#)

Consider reducing affordability covenant duration. I recognize that the logic behind the 55-year affordability covenant is that it aligns with the State Density Bonus Law. However, it would be worth investigating the likelihood that all or most developments will avail themselves of the State Density Bonus Law, especially in light of the IHO's reduced parking requirements. As any development must comply with the most restrictive requirement, the State Density Bonus Law will require 55-year durations for any developments that use it. However, for those developments where using the State Density Bonus Law isn't feasible, the long tail of affordability is a disincentive as it impacts long-term economics. Therefore, consider whether the IHO's required duration should be shorter than the State Density Bonus Law to reduce the impact of the IHO on non-State Density Bonus Law developments.

Allow in-lieu fees to always be available, regardless of project size. According to the Agenda Report, the IHO will permit all ownership housing projects to use in-lieu fees, but only rental housing projects fewer than 100 units be permitted to do so. I think there is a reasonable argument that in-lieu fees should be available for all projects. First of all, 100 units is a somewhat arbitrary threshold other than it feels “big enough” to support on-site development, an assumption that may or may not be correct depending on any number of contextual factors. Second, there is no reason why we could not build consideration for improved economics with scale into the fee schedule itself. [For example, Minneapolis increases the](#)

[in-lieu fee as the project size increases \(proxied by building height\)](#). Allowing the in lieu fee to apply to all projects may give the City valuable data about the value of inclusionary units over time.

It must be stressed that the in-lieu fee will be much easier to adjust than the inclusionary thresholds or other aspects of the program. Since in-lieu fees are easy to change, they are useful tools to “dial in” the ordinance and to adjust it for changing economic conditions.

As always I hope that these comments are helpful. As I said above, I believe this is one of the most important ordinances in Costa Mesa’s history. I know you will give it the time, consideration and attention that it deserves. And again I am deeply appreciative that the public will be a part of that process.

Best,
Jenn Tanaka
321 Broadway, Costa Mesa

PH-2

From: [HUYNH, NANCY](#)
To: [PARTIDA, ANNA](#)
Cc: [LE, JENNIFER](#)
Subject: FW: Affordable Housing Ordinance - Planning Commission Meeting
Date: Monday, November 13, 2023 10:57:30 AM
Attachments: [image001.png](#)

Hi Anna,

Please include email below as part of the public comment record for PH-2 for tonight's PC agenda.

Thanks,

Nancy



Nancy Huynh
Principal Planner
Development Services Department
77 Fair Drive | Costa Mesa | CA 92626 | (714) 754-5609

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Have you met...



Costa Mesa is launching a new permit and license processing system called TESSA in August. TESSA will replace our existing system and all land use, building and business license applications currently in process will be transferred to the new system. To learn more about TESSA, visit our FAQ page at <https://www.costamesaca.gov/tessa>.

From: Tim O'Brien <TOBrien@legacypartners.com>
Sent: Monday, November 13, 2023 10:35 AM
To: LE, JENNIFER <JENNIFER.LE@costamesaca.gov>; HUYNH, NANCY <NANCY.HUYNH@costamesaca.gov>
Cc: David Pinto <DPinto@legacypartners.com>; Benjamin Mount <BMount@legacypartners.com>
Subject: Re: Affordable Housing Ordinance - Planning Commission Meeting

Dear Jennifer and Nancy- I wanted to let you know that I have had an opportunity to do an initial review of the updated KMA analysis and proposed staff recommendations/ordinance. We are going to review the economics in further detail this week as well as review the proposed ordinance with

our entitlement counsel.

I am traveling for business until Wednesday, so will not be able to participate in the planning committee meeting tonight. (I will listen to the replay when I return on Wednesday for sure) I appreciate being included in the stakeholder meetings and look forward to providing feedback after we meaningfully review.

Could you please forward this e-mail to the City Clerk so that it can be included in the record for tonight's meeting? I would appreciate it.

Best Regards,

Tim

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From: HUYNH, NANCY <NANCY.HUYNH@costamesaca.gov>

Sent: Thursday, November 9, 2023 3:47 PM

Subject: Affordable Housing Ordinance - Planning Commission Meeting

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Dear Stakeholders:

Thank you for all your time and valuable input during our outreach meetings regarding the City's Affordable (Inclusionary) Housing Ordinance. We appreciate your efforts to assist the City with developing a well-balanced and successful affordable housing program for the Costa Mesa community.

Based on our discussions, KMA has prepared a supplemental analysis to the July 2023 Financial Evaluation (previously posted online). The supplemental analysis contains modified recommendations for affordable housing set-aside percentages that we believe better reflects the existing improved land value of available properties in Costa Mesa.

Staff has now prepared draft content for the proposed Affordable Housing Ordinance. The draft content is based on the analysis and findings of the Financial Evaluation as supplemented and completed by the City's consultant, Keyser Marston Associates (KMA). The draft content will be presented to the Planning Commission at their upcoming regular meeting on Monday, November 13, 2023. We welcome you to attend the meeting or reach out to staff directly for more information.

Staff will be recommending the Planning Commission receive staff's presentation and public comment, review and recommend any changes to the draft content, and continue the item to a date certain for staff to return to the Planning Commission with a final draft ordinance. Should the Planning Commission continue the item, it will likely be scheduled for the December 11, 2023

Planning Commission meeting. Ultimately, the City Council is the final decision-making body.

The November 13, 2023 Planning Commission agenda will be available online at this link at least 72 hours prior to the meeting date: <https://costamesa.legistar.com/DepartmentDetail.aspx?ID=46588&GUID=9C7D1973-0EC7-43FD-A70F-D1141FA85D03>.

The [City's Affordable Housing Ordinance webpage](#) will also be updated with the above information.



Nancy Huynh
Principal Planner
Development Services Department
77 Fair Drive | Costa Mesa | CA 92626 | (714) 754-5609

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TOTALLY ELECTRONIC SELF-SERVICE APPLICATION

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Correspondence
received after the 12
noon deadline.

PARTIDA, ANNA

PH-2

From: HUYNH, NANCY
Sent: Monday, November 13, 2023 8:34 PM
To: PARTIDA, ANNA
Subject: Fw: Affordable Housing Ordinance - Planning Commission Meeting

Hi Anna,

Please include the email public comment below as part of the record for PH-2 from tonight's PC meeting.

Thanks,
Nancy

From: George Sakioka <gmks@sakiokacompany.com>
Sent: Monday, November 13, 2023 12:52:29 PM
To: LE, JENNIFER; HUYNH, NANCY
Cc: Amy R. Forbes - Gibson, Dunn & Crutcher (aforbes@gibsondunn.com)
Subject: RE: Affordable Housing Ordinance - Planning Commission Meeting

Hello Jennifer and Nancy,

Thank you for including us in the process. We *truly* appreciate it.

I had Amy Forbes review the DRAFT ordinance and below are our comments and thoughts.

I plan on attending the PC meeting tonight.

Please feel free to call me if you have any questions.

Thanks,
George

gmks@sakiokacompany.com

949-702-3132 (mobile)
714-545-8611 (main office)
714-545-6116 (direct)

Here are our thoughts:

1. The ordinance represents an improvement over the original proposal from July. Essentially, for projects that are rezoned at 60 units per acre or above, the affordability requirement will be 11% low income or 7% very low income, where the original requirement was 19% and 12%, respectively. This likely puts the requirement in line with other cities. We appreciate staff's additional work to respond to stakeholder concerns.
2. The ordinance states in Section 13-330(d) that the inclusion units shall be "constructed *and occupied* concurrently with or prior to the construction and occupancy of the market rate units." (emphasis added)

That language is a bit confusing. Does that mean the affordable units have to be “occupied” before construction can begin on the market rate units? Is it enough that construction of the affordable units has commenced? Also, in many cities, the requirement is that the affordable unit need only have to commenced construction by the time of the issuance of the first certificate of occupancy for an associated market rate unit. We think that approach is preferable. In any event, the provision for “timing of construction” in section 13-330(d) seems to be at odds with the much clearer provision in section 13-330(i), which states that no “certificate of occupancy will be issued for any corresponding market rate unit in a new residential project prior to completion of the required” affordable unit. The more precise language of section (i) is preferable.

3. The provision dealing with unit size is confusing. The first sentence of Section 13-330 (e) says that the inclusionary units shall be the same size as the market rate units. But the second sentence seems to allow for 15% smaller units for the affordable units if the “final reviewing authority”, approves it. Perhaps the sentence could be revised to say the size of the inclusionary units shall be “substantially the same as the market rate units, provided that the final review authority may consider and approve Inclusionary Units no more than 15% smaller in square footage than the average square footage of the market rate units.”

4. The ordinance provides that Inclusionary Units “shall be dispersed and evenly distributed throughout a residential development and not clustered in a particular area of the development.” Therefore, the ordinance *does not* expressly make allowances for a master planned community composed of multiple buildings. It makes sense to allow for the development of an “affordable only” building or buildings in the context of a larger development. The “affordable only” building could provide services for residents and have access to financing and tax credits that may not be available if the units are required to be disbursed within a single building. We suggest the inclusion of language like this:

Master Plans. In the case of a residential development located in a planned development district, required affordable units may either be located within the boundaries of the development’s approved master plan or on the site of the proposed building project, or an alternative location acceptable to the City. Within an approved master plan area, the affordable housing units may be located in building projects that have up to 100 percent affordable units, but if there is more than one such building, such buildings shall be distributed throughout the master planned area to prevent a concentration of lower income households in a specific geographic location. The applicant’s preliminary master plan or master plan application shall show the general allocation and intensity of uses and the proposed location of the affordable units or land dedications proposed to satisfy the affordable housing requirements for such development.

5. We appreciate the inclusion of an option for dedication of land as a means of satisfying the affordability requirement. However, under Section 13-331, use of that method *is limited* to circumstances where there is a determination that it is “economically infeasible” or would it “impose an extreme hardship”. Also, the language only speaks of “dedication” and doesn’t clarify that the dedication can be to the City, or a City-approved public or non-profit entity. For a large master planned community, direct conveyance of land to an affordable housing developer may more efficiently result in the maximization of affordable units. Land dedication should be allowed as an independent means of satisfying the affordability requirement without resort to proving in feasibility or hardship, and dedication to the City or a City-approved public or non-profit entity for the purpose of creating affordable units should be allowed as a means of satisfying the ordinance.

6. Section 13–335 of the draft ordinance sets particular parking requirements. It provides that a lower parking requirement is allowed if it supported by a parking study. However, under the state density bonus laws, developers have the right to specified parking requirements based upon the number of bedrooms. in addition,

AB 2097 limits parking requirements that can be imposed on a residential development located within half a mile of public transit, absent specific findings. Accordingly, as recognized elsewhere in the ordinance, Section 13-335 should add that the specified requirements are subject to the requirements of state law.

From: HUYNH, NANCY <NANCY.HUYNH@costamesaca.gov>
Sent: Thursday, November 9, 2023 3:47 PM
Subject: Affordable Housing Ordinance - Planning Commission Meeting

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Nancy Huynh
Principal Planner
Development Services Department
77 Fair Drive | Costa Mesa | CA 92626 | (714) 754-5609

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