

RESOLUTION NO. 2022-xxx

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA ANA APPROVING DENSITY BONUS AGREEMENT NO. 2022-03 AS CONDITIONED TO ALLOW A FIFTY-ONE UNIT SINGLE-FAMILY ATTACHED TOWNHOME DEVELOPMENT FOR THE PROPERTY LOCATED AT 717 SOUTH LYON STREET

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANTA ANA AS FOLLOWS:

Section 1. The City Council of the City of Santa Ana hereby finds, determines and declares as follows:

- A. Greg Ocasek, representing Warmington Residential California, Inc. (applicant), on behalf of Wesley T. Geller, trustee of the Orange County Electrical Joint Apprenticeship Trust (property owner), is requesting approval of Density Bonus Agreement Application No. 2022-03 to allow the construction of a fifty-one unit attached townhome development, eight of which are proposed as onsite low-income affordable units.
- B. California Senate Bill 330, the Housing Crisis Act of 2019 (HCA), became effective on January 1, 2020, and established a statewide "housing emergency" until January 1, 2025.
- C. On January 1, 2022, the HCA was extended until January 1, 2030, with the passage of Senate Bill 8.
- D. The proposed development is being submitted as a Senate Bill No. 330 (SB 330) application and in consultation with City Staff and pursuant to Appendix A of the General Plan Land Use Element, the applicant has selected the Corridor District zoning designation within the Harbor Mixed Use Transit Corridor Plan (SP-2), as the proposed zoning for the project.
- E. The Harbor Mixed Use Transit Corridor Plan (SP-2) was adopted in 2014 as a result of interest in developing mixed-use residential and commercial projects in its project area. The regulating plan, which establishes land uses and development standards, allows a variety of housing projects, including multi-family and mixed-use residential communities, as well as live/work units. The selection of the SP-2 development standards for this project is consistent with the overall character of the surrounding community.
- F. The California Density Bonus law allows developers to seek increases in base density for providing on-site housing units in exchange for providing

affordable units on site. To help make constructing on-site affordable units feasible, the law allows developers to seek incentives/concessions or waivers that would help the project be built without significant burden and without detriment to public health.

- G. The Applicant's request has been thoroughly evaluated by the City's Development Review Committee (DRC) through Development Project No. 2021-38. Through this review, the DRC has considered the subject site, proposed development, and the applicant's requests for incentives/concessions and waivers pursuant to the State's Density Bonus Law.
- H. On September 26, 2022, the Planning Commission of the City of Santa Ana held a duly noticed public hearing and at that time considered all testimony, written and oral and unanimously (6-0-0-1) recommended that the City Council approve Density Bonus Agreement No. 2022-03 as conditioned. As part of its actions, the Planning Commission also voted unanimously (6-0-0-1) to approve Vesting Tentative Tract Map No. 2022-03 for condominium purposes to facilitate construction of the community as a for-sale development.
- I. On December 6, 2022, the City Council of the City of Santa Ana held a duly noticed public meeting and at that time considered all testimony, written and oral.
- J. The City Council hereby determines that the following findings, which must be established in order to grant this Density Bonus Agreement pursuant to SAMC Section 41-1607, have been established for Density Bonus Agreement No. 2022-03 to allow construction of the proposed project:
 - 1. That the proposed development will materially assist in accomplishing the goal of providing affordable housing opportunities in economically balanced communities throughout the city.

The proposed development will provide a fifty-one-unit single-family attached townhome development, eight of which are proposed as low-income affordable units, contributing toward the City's ownership housing stock to serve the needs of diverse and underserved populations. The area in which the project is proposed currently contains multiple low- to medium-density, multi-family residential communities. The construction of this project will contribute toward an economically balanced community by providing housing for different demographic and income levels in an area rich with employment opportunities, commercial development, and market-rate housing.

2. That the development will not be inconsistent with the purpose of the underlying zone or applicable designation in the general plan land use element.

The application is being submitted as a Senate Bill No. 330 application. As such, the proposed development site will not be required to be rezoned since it has been found to be consistent with the objective general plan standards for the property. The project site is in an area already identified in the general plan (the Land Use and Housing elements) for new residential communities, with a density of 15 dwelling units per acre (du/ac). Moreover, the City's General Plan land use designation for the project site is Medium Density Residential (MR-15), which applies to residential areas characterized by a mix of single-family and multifamily housing. Residential building types include apartments, townhomes, live-work units, and small-lot subdivisions, typically resulting in neighborhoods with a mix of low- and medium-rise buildings. Lastly, the proposed density of 22.16 du/ac is below the density bonus provisions in the California Density Bonus Law for low-income rental projects (46.25-percent density bonus) which allows 22.6 du/ac on the project site.

3. That the deviation is necessary to make it economically feasible for the Applicant to utilize a density bonus authorized for the development pursuant to section 41-1603.

The proposed project requires one deviation through incentives/concessions: open space; as well as three deviations through a waiver in (1) maximum building setback; (2) fencing height; and (3) stoop frontage and minimum ground floor height requirements. The four deviations are described as follows:

Open Space (Incentive/Concession)

The total common open space required for the project site is equal to 15 percent of the lot, or approximately 15,028 square feet. Instead, the project provides a 6,949-square-foot of common open space (7 percent), which is a difference of 8,079 square feet or 8 percent.

Providing the required open space standard would lead to the elimination of three or more units, which would affect the feasibility to construct the project. In order to maintain the current proposed unit count, the developer would be required to construct additional floor levels, which would exceed the maximum allowable height as part of the Harbor Mixed Use Transit Corridor Plan (SP-2), and would further increase development costs. To help alleviate the

open space deficiency, the project proposes an average of 213 square feet of private open space per unit, through use of private balconies/decks. This would exceed the minimum required private open space of 90 square feet per unit.

Maximum Building Setback (Waiver)

Pursuant to SP-2, the maximum building setback from the public right-of-way and/or easement is 8'-0". As proposed, the project is designed to exceed the maximum allowed setback, as two of the proposed buildings would be located 9'-7" and 11'-4" from a utilities easement line.

The maximum setback outlined in SP-2 was originally intended for a more urban corridor of Santa Ana (Harbor Boulevard), as a means of regulating land development to achieve a specific urban form and which envisioned a more multi-modal boulevard. The proposed project is located in a suburban area of the City, with multi-family low- to medium-density developments. The existing multi-family residential developments immediately adjacent to the project site provide average front setbacks that exceed 10'-0" and extend to 20'-0". Although exceeding the maximum allowable setback, the proposed development is consistent with the existing multi-family residences. Moreover, the design is focused on the placement of the proposed buildings as a way to continue the existing character and overall neighborhood pattern along Lyon Street.

Fencing Height (Waiver)

For residentially zoned properties, the fencing height within the front yard setback is limited to 3'-0" in height. The development proposes a 6'-0" tall tubular fencing proposed within the front yard setback.

Maintaining the fencing height limit of 3'-0" would affect the feasibility of the proposed units to be sold to prospective buyers, and would therefore affect the feasibility of the project to be constructed. The proposed fence provides security for the proposed townhouse community, which provides a sense of comfort and safety to prospective homebuyers. In addition, the fencing would be in keeping with the existing character and overall neighborhood pattern along Lyon Street, specifically the multi-family developments to the north and south of the project site. Las Fuentes multi-family community to the south has existing fencing and gates, while the Saddleback Park Villas have existing perimeter block walls. Moreover, the proposed design is further

improved with additional small hedges and/or shrubs that will be between the public right-of-way and the proposed fencing, to soften the transition of the future sidewalk.

Stoop Frontage and Minimum Ground Floor Height (Waiver)

The development standards in SP-2 require a specific building frontage (e.g., forecourt, shop front, stoop, etc.) and minimum floor heights, based on a frontage type. As proposed, the project design does not provide a frontage type and the ground floor heights are proposed below the minimum required of 10'-0" to 15'-0". The ground floor height is designed at a minimum of 9'-1"

Maintaining the required frontage type minimum floor heights would result in a complete site and architectural redesign, involving more of the site area dedicated to the frontage designs. In order to maintain the current proposed unit count, the developer would be required to redesign the site and elevation design construct, further increasing development costs and potentially leading to a loss of residential units, and a loss of further open space.

Moreover, SP-2 was originally intended to achieve a specific urban form. The existing multi-family residential developments immediately adjacent to the project site do not provide a frontage type, nor do they maintain a minimum building floor height. Therefore, the proposed design is consistent with the existing multi-family residences.

Section 2. In accordance with the California Environmental Quality Act (CEQA), the recommended action is exempt from further review under Section 15195 (Residential Infill Exemption), as this project meets all the threshold criteria set forth in Section 15192 (Threshold Requirements for Exemptions). This exemption applies to projects or sites that:

1. Meet the threshold criteria set forth in section 15192; provided that with respect to the requirement in section 15192(b) regarding community-level environmental review, such review must be certified or adopted within five years of the date that the lead agency deems the application for the project to be complete pursuant to Section 65943 of the Government Code.
2. Meet both of the following size criteria:
 - A. The site of the project is not more than four acres in total area.
 - B. The project does not include any single level building that exceeds 100,000 square feet.
3. Meet both of the following requirements regarding location:
 - A. The project is a residential project on an infill site.
 - B. The project is within one-half mile of a major transit stop.
4. Meet both of the following requirements regarding number of units:
 - A. The project does not contain more than 100 residential units.

- B. The project promotes higher density infill housing. The lead agency may establish its own criteria for determining whether the project promotes higher density infill housing except in either of the following two circumstances:
 - 1) A project with a density of at least 20 units per acre is conclusively presumed to promote higher density infill housing.
 - 2) A project with a density of at least 10 units per acre and a density greater than the average density of the residential properties within 1,500 feet shall be presumed to promote higher density infill housing unless the preponderance of the evidence demonstrates otherwise.
- 5. Meets the following requirements regarding availability of affordable housing: The project would result in housing units being made available to moderate, low, or very low income families as set forth in either A or B below:
 - A. The project meets one of the following criteria, and the project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units as set forth below at monthly housing costs determined pursuant to paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code.
 - 1) At least 10-percent of the housing is sold to families of moderate income, or
 - 2) Not less than 10-percent of the housing is rented to families of low income, or
 - 3) Not less than 5-percent of the housing is rented families of very low income.
 - B. If the project does not result in housing units being available as set forth in subdivision (A) above, then the project developer has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units that would otherwise be required pursuant to subparagraph (A).

The project site is not more than four acres in area, the project does not include any single level building exceeding 100,000 square feet, and the project is an infill development within one-half mile of a major transit stop. Moreover, the development promotes higher density infill housing, does not contain more than 100 residential units, and results in housing units made available to low income families. Lastly, the project is providing eight (8) onsite units available for sale to low-income households, which exceeds the abovementioned 10-percent requirement to be sold for moderate-income households. Based on this analysis, a Notice of Exemption, Environmental Review No. 2022-08 will be filed for this project.

Section 3. The Applicant shall indemnify, protect, defend and hold the City and/or any of its officials, officers, employees, agents, departments, agencies, authorized volunteers, and instrumentalities thereof, harmless from any and all claims, demands, lawsuits, writs of mandamus, referendum, and other proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to arbitrations, mediations, and such other procedures), judgments, orders, and decisions (collectively “Actions”), brought

against the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, any action of, or any permit or approval issued by the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City) for or concerning the project, whether such Actions are brought under the Ralph M. Brown Act, California Environmental Quality Act, the Planning and Zoning Law, the Subdivision Map Act, Code of Civil Procedure sections 1085 or 1094.5, or any other federal, state or local constitution, statute, law, ordinance, charter, rule, regulation, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve the legal counsel providing the City's defense, and that Applicant shall reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the Applicant of any Action brought and City shall cooperate with Applicant in the defense of the Action.

Section 4. The City Council of the City of Santa Ana, after conducting the public hearing, hereby approves Density Bonus Agreement No. 2022-03 as conditioned in Exhibit A attached hereto and incorporated as though fully set forth herein. This decision is based upon the evidence submitted at the above said hearing, which includes, but is not limited to: the Request for Planning Commission Action dated September 26, 2022, and exhibits attached thereto; the Request for City Council Action dated December 6, 2022, and exhibits attached thereto; and the public testimony, written and oral, all of which are incorporated herein by this reference.

Section 5. This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall attest to and certify the vote adopting this resolution.

ADOPTED this ____ day of _____, 2022.

Vicente Sarmiento
Mayor

APPROVED AS TO FORM:

Sonia R. Carvalho
City Attorney

By: 
John M. Funk
Chief Assistant City Attorney

AYES: Councilmembers _____

NOES: Councilmembers _____

ABSTAIN: Councilmembers _____

NOT PRESENT: Councilmembers _____

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, _____, Clerk of the Council, do hereby attest to and certify the attached Resolution No. 2022-XX to be the original resolution adopted by the City Council of the City of Santa Ana on _____, 2022.

Date: _____

Clerk of the Council
City of Santa Ana

Conditions for Approval for Density Bonus Agreement No. 2022-03

Density Bonus Agreement No. 2022-03 are approved subject to compliance, to the reasonable satisfaction of the Planning Manager, with applicable sections of the Santa Ana Municipal Code, the California Administrative Code, the California Building Standards Code, and all other applicable regulations. In addition, it shall meet the following conditions of approval:

The Applicant must comply with each and every condition listed below prior to exercising the rights conferred by this site plan review.

The Applicant must remain in compliance with all conditions listed below throughout the life of the development project. Failure to comply with each and every condition may result in the revocation of the site plan review.

A. Planning Division

1. All proposed site improvements must conform to the Development Project (DP) approval of DP No. 2021-38.
2. Any amendment to the DP No. 2021-38, including modifications to approved materials, finishes, architecture, site plan, landscaping, unit count, mix, and square footages must be submitted to the Planning Division for review. At that time, staff will determine if administrative relief is available or if the Development Project Review must be amended.
3. Walls and Fencing.
 - a. The applicant shall construct a minimum six-foot (6') tall perimeter wall, as measured from nearest adjacent finished sidewalk, surrounding the project site. The perimeter wall shall conform to all applicable Citywide Design Guidelines, including a split-face or painted design with regularly-spaced pilasters and decorative cap. The applicant is responsible for coordination with any adjacent property owners to avoid double-walls or gaps between walls where possible.
 - b. Climbing vines shall be planted at regularly-spaced intervals along all exposed walls and wrought-iron fencing to deter graffiti. All solid walls shall be finished with anti-graffiti coating.
4. All mechanical equipment shall be screened from view from public and courtyard areas.

5. Prior to submittal of a landscape application, the applicant shall be required to meet with planning staff to explore and implement ways to maximize the onsite landscaping.
6. Prior to issuance of building permits, the Applicant shall submit a construction schedule and staging plan to the Planning Division for review and approval. The plan shall include construction hours, staging areas, parking and site security/screening during project construction.
7. A final detailed amenity plan must be reviewed and approved prior to issuance of any building permits. The plan shall include details on the hardscape design, lighting concepts and outdoor furniture for amenity, plaza, or courtyard areas as well as an installation plan. The exact specifications for these items are subject to the review and approval by the Planning Division.
8. Prior to installation of landscaping, the Applicant shall submit photos and specifications of all trees to be installed on the project site for review and approval by the Planning Division. Specifications shall include, at a minimum, the species, box size (24 inches minimum), brown trunk height (10-foot minimum), and name and location of the supplier.
9. After project occupancy, landscaping and hardscape materials must be maintained as shown on the approved landscape plans.
10. Property Maintenance Agreement. Subject to review and applicability by the Planning and Building Agency, the Community Development Agency, the Public Works Agency, and the City Attorney to ensure that the property and all improvements located thereupon are properly maintained, Applicant (and the owner of the property upon which the authorized use and/or authorized improvements are located if different from the Applicant) shall execute a maintenance agreement or incorporate the form of this condition within the Project's CC&R's with the City of Santa Ana which shall be recorded against the property and which shall be in a form reasonably satisfactory to the City Attorney. The maintenance agreement shall contain covenants, conditions and restrictions relating to the following:
 - a. Compliance with operational conditions applicable during any period(s) of construction or major repair (e.g., proper screening and securing of the construction site; implementation of proper erosion control, dust control and noise mitigation measure; adherence to approved project phasing etc.);

- b. Compliance with ongoing operational conditions, requirements and restrictions, as applicable (including but not limited to hours of operation, security requirements, the proper storage and disposal of trash and debris, enforcement of the parking management plan, and/or restrictions on certain uses);
- c. Ongoing compliance with approved design and construction parameters, signage parameters and restrictions as well as landscape designs, as applicable;
- d. Ongoing maintenance, repair and upkeep of the property and all improvements located thereupon (including but not limited to controls on the proliferation of trash and debris about the property; the proper and timely removal of graffiti; the timely maintenance, repair and upkeep of damaged, vandalized and/or weathered buildings, structures and/or improvements; the timely maintenance, repair and upkeep of exterior paint, parking striping, lighting and irrigation fixtures, walls and fencing, publicly accessible bathrooms and bathroom fixtures, landscaping and related landscape improvements and the like, as applicable);
- e. If Applicant and the owner of the property are different (e.g., if the Applicant is a tenant or licensee of the property or any portion thereof), both the Applicant and the owner of the property shall be signatories to the maintenance agreement and both shall be jointly and severally liable for compliance with its terms.
- f. The maintenance agreement shall further provide that any party responsible for complying with its terms shall not assign its ownership interest in the property or any interest in any lease, sublease, license or sublicense, unless the prospective assignee agrees in writing to assume all of the duties and obligations and responsibilities set forth under the maintenance agreement.
- g. The maintenance agreement shall contain provisions relating to the enforcement of its conditions by the City and shall also contain provisions authorizing the City to recover costs and expenses which the City may incur arising out of any enforcement and/or remediation efforts which the City may undertake in order to cure any deficiency in maintenance, repair or upkeep or to enforce any restrictions or conditions upon the use of the property. The maintenance agreement shall further provide that any unreimbursed costs and/or expenses incurred by the City to cure a deficiency in maintenance or to enforce use restrictions shall become a

lien upon the property in an amount equivalent to the actual costs and/or expense incurred by the City.

- h. The execution and recordation of the maintenance agreement shall be a condition precedent to the final map being recorded.