

Division 7. Density Bonuses and Concessions

16.13.310 Purpose and Intent

This Division is intended to implement State law requirements to provide housing opportunities for very low, low and moderate-income persons. All projects qualifying for a density bonus are subject to the City's growth management allocation procedures and requirements. In enacting this Division it is the City's intent to implement Government Code §§ 65915, *et seq.* as follows:

- A. Allow higher density for residential projects when developers guarantee that a portion of their housing development will be affordable to households of very low, low or moderate income and seniors;
- B. Allow higher density for residential projects when developers donate land to develop dwelling units for very low, low or moderate-income households;
- C. Ensure affordable units are constructed and located to appear similar to market-rate units;
- D. Allow higher density, incentives, or concessions for residential projects where developers provide child care facilities; and
- E. Allow certain concessions when needed to offset the costs of developing affordable housing for very low, low and moderate-income households.

16.13.311 Definitions

Unless the contrary is stated or clearly appears from the context, the following definitions govern the construction of the words and phrases used in this division. Words and phrases not defined by this division have the meaning set forth elsewhere in this Code, the California Health and Safety Code, or California Government Code.

"Affordable Housing Costs," has the same meaning as set forth in Health and Safety Code § 50052.5, or any successor statute or regulation.

"Affordable Rents" has the same meaning as set forth in Health and Safety Code § 50053, or any successor statute or regulation.

"Affordable Sale Price" means the price for a dwelling unit that can be financed by a fixed rate mortgage where the monthly payment constitutes an affordable housing cost. The monthly payment must include the

principal plus interest plus taxes plus homeowner's association fees (if applicable).

“Affordable Units” means those dwelling units which will be guaranteed by the developer to be rented or sold for a period of time, agreed to by the City and developer, to low- or very low-income households.

“Density Bonus” means an increase over the otherwise allowable maximum residential density for a property.

“Density Bonus Units” means additional units that may be allowed to be built if the density bonus is granted.

“Incentive or Concession” means a relaxation of development standards or zoning requirements which results in identifiable cost reductions where such incentives and concessions are consistent with the general plan, including, without limitation, reductions in setback; square footage or lot size requirements; the ratio of vehicle parking spaces that would otherwise be required; or approval of mixed use zoning if commercial, office or other land uses would be compatible with the housing project as well as the existing or planned development in the area where the proposed housing project will be located.

“Senior or Senior Citizen” means a person 62 years of age or older or 55 years of age or older in a senior citizen housing development of at least 150 senior dwelling units, or a qualified permanent resident as defined in Civil Code §§ 51.2 and 51.3. All qualifying senior projects must have significant facilities and services for seniors as defined in 42 U.S.C. 3607(b)(2).

16.13.312 Density Bonuses and Concessions – In General

Nothing in this division constitutes a waiver of any discretionary or ministerial approval required by this Code.

16.13.313 Determination of Bonus

Applicants who request a density bonus and agree to construct a residential project of five or more dwelling units may be granted a density bonus. All density bonuses referred to in this section are a specified percentage over the maximum density permitted in the underlying zone district.

- A. A density bonus of twenty percent (20%) will be granted to projects in which one or more of the following is included:
 - 1. At least five percent (5%) of the total dwelling units of a housing development are restricted to very low income households. An additional two and one-half percent (2.5%)

density bonus will be granted for each additional one percent (1%) increase of very low income restricted dwelling units above five percent (5%), to a maximum density bonus of thirty-five (35%), as illustrated in Table 1, Application of Density Bonus; or

2. At least ten percent (10%) of the total dwelling units of a housing development are restricted to low income households. An additional one and one-half percent (1.5%) density bonus will be granted for each additional one and one-half percent (1.5%) of low income restricted dwelling units above ten percent (10%), to a maximum density bonus of thirty-five (35%), as illustrated in Table 1, Application of Density Bonus; or
 3. Senior citizen housing developments of 35 or more units in which 100% of the units are provided to qualifying residents.
- B.** A density bonus of five percent (5%) will be granted to a condominium project or a planned unit development, that provides at least ten percent (10%) of the total number of units to households of moderate income. An additional one percent (1%) density bonus will be granted for each additional one percent (1%) of moderate income restricted dwelling units above ten percent (10%), up to a maximum of thirty-five percent (35%), as illustrated in Table 1, Application of Density Bonus.

| Table 1 | | | | | | | |
|---|---------------------------|---------------------------|---------------------------|-----------------------------------|---------------------------|----|----|
| Application of Density Bonus For Very Low, Low and Moderate Income Units | | | | | | | |
| Very Low Income Units | | Low Income Units | | Moderate Income Units | | | |
| % Very Low Income Units | Permitted % Density Bonus | % Low Income Units | Permitted % Density Bonus | % Moderate Income Condo/PUD units | Permitted % Density Bonus | | |
| 5 | 20 | 10 | 20 | 10 | 5 | | |
| 6 | 22.5 | 11 | 21.5 | 11 | 6 | | |
| 7 | 25 | 12 | 23 | 12 | 7 | | |
| 8 | 27.5 | 13 | 24.5 | 13 | 8 | | |
| 9 | 30 | 14 | 26 | 14 | 9 | | |
| 10 | 32.5 | 15 | 27.5 | 15 | 10 | | |
| 11 | 35 | 16 | 29 | 16 | 11 | | |
| 35% Maximum Density Bonus | | 17 | 30.5 | 17 | 12 | | |
| | | 18 | 32 | 18 | 13 | | |
| | | 19 | 33.5 | 19 | 14 | | |
| | | 20 | 35 | 20 | 15 | | |
| | | 35% Maximum Density Bonus | | 21 | | 21 | 16 |
| | | | | 22 | | 22 | 17 |
| | | | | 23 | | 23 | 18 |
| | | | | 24 | | 24 | 19 |
| | | | | 25 | | 25 | 20 |
| | | | | 26 | | 26 | 21 |
| | | | | 27 | | 27 | 22 |
| | | | | 28 | | 28 | 23 |
| | | | | 29 | | 29 | 24 |
| | | | | 30 | | 30 | 25 |
| | | | | 31 | | 31 | 26 |
| | | | | 32 | | 32 | 27 |
| | | | | 33 | | 33 | 28 |
| | | | | 34 | | 34 | 29 |
| | | | | 35 | | 35 | 30 |
| | | | | 36 | | 36 | 31 |
| 37 | | | | 37 | 32 | | |
| 38 | | | | 38 | 33 | | |
| 39 | | | | 39 | 34 | | |
| 40 | | 40 | 35 | | | | |
| | | | | 35% Maximum Density Bonus | | | |

- C. A density bonus of fifteen percent (15%) will be granted to applicants that donate sufficient real property to restrict at least ten percent (10%) of the units for very low-income households. A density bonus will increase by one percent (1%) for every additional one percent

(1%) of very low income restricted dwelling units above ten percent (10%), up to a maximum of thirty-five percent (35%). All of the following conditions must be met to allow this density bonus:

1. Real property must be conveyed in fee simple to the City or a person who is qualified to construct affordable housing approved and designated by the City.
2. Real property must measure a minimum of one acre in size or be able to accommodate 40 units per acre.
3. Transferred real property must be appropriately designated by the General Plan for high density residential development before final project approval.
4. Transferred real property must be zoned for high density residential use before final project approval.
5. Transferred real property must be adequately served by infrastructure before final project approval

16.13.314 Construction and Location of Affordable

All units that are constructed for very low, low or moderate income households must meet the following minimum standards:

- A. **Distribution.** Except as otherwise required, affordable units must be constructed concurrently with, or before, construction of market rate units. All affordable units must be reasonably distributed throughout the project as approved by the Planning Commission, must be constructed of similar materials and both interior and exterior must be finished at a comparable quality as the market rate units. Affordable dwelling units must measure not less than 90% of the average square footage of market rate units with the same number of bedrooms.
- B. **Comparable Amenities.** Residents of affordable units may not be charged for amenities not charged to other residents, including without limitation, access to recreational facilities, parking, cable TV, and interior amenities like dishwashers and microwave ovens. Optional services for all residents must be the same. Tenants of affordable units cannot be required to purchase additional services.

16.13.315 Affordability

Affordable units must generally be reserved for occupancy by very low or low income households for at least thirty (30) years after the City issues certificates of occupancy. Affordable units offered for sale to moderate income households in condominiums or planned developments must generally be reserved for occupancy for at least ten (10) years after the City issues certificates of occupancy. Such reservations must be accomplished by a recorded deed restriction or other long-term legal mechanism in a form approved by the City Attorney.

16.13.316 Affordable Housing Density Bonus Agreement

Persons conditionally granted an affordable housing density bonus, development concession, or reduction in parking standards must enter into an agreement with the City in a form approved by the City Attorney. The agreement must, at a minimum, include the following:

- A. The total number of units that will be constructed and the number of units that will be made affordable to very low, low or moderate-income households must be clearly stated;
- B. The affordable units must be reserved for very low and low income households;
- C. The affordable units must be reasonably interspersed throughout the development and must be identified on building plans submitted to the Planning Department and described in the application for a density bonus;
- D. Resale controls must be included as a deed restriction consistent with this subsection;
- E. If reduced parking standards were approved for the project, the number of bedrooms of each unit must be identified;
- F. Applicant must provide written evidence to the City that initial occupants of all affordable units meet the necessary income qualifications. The property owner must provide an annual report to the City certifying tenants of qualifying rental units meet the income and rent limit requirements;
- G. Every purchaser of moderate-income owner-occupied units must certify the unit will be the purchaser's primary place of residence, and every renter of low or very low income units must certify the unit will be occupied by the household renting the unit;
- H. Applicant must provide written evidence to the City that initial owner occupants of moderate income units meet the necessary income qualifications. Subsequent sale of moderate income units must be limited to moderate income households, as approved by the City. In addition, sale proceeds of moderate income units sold after the first ten years of occupancy by moderate income household(s) must be distributed as follows:
 - 1. Initial owner is entitled to receive the value of the down payment, documented improvements to the property and a proportional share of the unit's appreciation, in accordance with the formula in Government Code § 65915.

2. The City must receive its proportional share of appreciation of the unit in addition to the amount of the original subsidy. The City must use the proceeds within three years to promote affordable, owner-occupied housing.

16.13.317 Child Care Facilities

- A. The City will grant either of the following to projects that include a proposal for a child care facility located on the premises of the project:
 1. A density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility; or
 2. An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility. The applicant must provide substantial evidence that any such concession is needed for the economic feasibility of the child care facility.
- B. In order to receive the additional child care density bonus, the project must comply with the following requirements:
 1. The child care facility must remain in operation for a period of time that is as long or longer than the period of time during which the density bonus units are required to remain affordable; and
 2. Of the children who attend the child care facility, the percentage of children of very low income, low income, and moderate income households must be equal to or greater than the percentage of dwelling units that are proposed to be affordable to very low income, low income, and moderate income households.
- C. Notwithstanding any requirement in this section, the City is not required to provide a density bonus or concession for a child care facility if it finds, based on substantial evidence, that the community has adequate existing child care facilities.

16.13.318 Development Concessions

An applicant may request, and the City must allow, development concessions for a project that meets the criteria for a density bonus. The following requirements apply:

A. The City will approve one or more concessions or incentives for a proposed project if the applicant provides substantial evidence that the waiver or modification is required to make the housing units economically feasible. The City may deny one or more requested concessions or incentives if, based on substantial evidence, the City makes either of the following findings:

1. The concession or incentive is not required to ensure housing costs meet affordability standards, as defined in Health and Safety Code § 50052.5, or to ensure rents in affordable units meet the requirements of this Division.
2. The concession or incentive would have a specific adverse impact, as defined in Government Code § 65589.5(d)(2), upon the public health and safety, or physical environment, or any real property that is listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to very low, low, and moderate-income households.

B. The number of City zoning or development standards that can be waived or modified must be consistent with the following table, Table 2, Affordable Housing Development Concessions:

| Table 2 Affordable Housing Development Concessions | | | |
|---|--------------------------------------|------------|-------------------------------------|
| Number of Concessions | Percentage Affordable Housing | | |
| | Very Low | Low | Moderate Condos and/or PUD's |
| 1 | 5% | | 10% |
| 2 | 10% | | 20% |
| 3 | 15% | | 30% |
| Income categories cannot be combined to achieve a greater number of concessions than that identified in this table. | | | |

C. The applicant must provide substantial evidence that any such concession is needed to sufficiently reduce the cost of the housing development.

D. The Planning Commission must approve proposed development concessions consistent with this Section if all of the following findings can be made:

1. Applicant submitted substantial financial evidence that shows a waiver or modification of development standards is needed to make the housing units economically feasible;
2. Waiving or reducing development standards will not result in a specific, adverse impact upon the health, safety or physical environment for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact;
3. Waiving or reducing development standards will not result in an adverse impact on any real property that is listed in the California Register of Historical Resources; and
4. The Planning Commission considered the specific site for which a waiver or modification of development standards is requested and determined that, based upon substantial evidence, the specified concession is required to allow for the use of a density bonus.

16.13.319 Parking Standards

If a project qualifies for a density bonus, an applicant may request reduced parking standards for the entire project site. Reduced parking standards may be requested and will be approved even if a density bonus is not being requested. Reduced parking requirements must include guest and handicapped parking, may be provided as tandem spaces, and may be uncovered, provided the spaces are located on-site. Reduced parking standards will be as follows:

- A. One on-site parking space per unit for units with one bedroom or less.
- B. One and one-half (1.5) on-site parking spaces per unit for units with two bedrooms.
- C. Two (2) on-site parking spaces per unit for units with three or more bedrooms.

16.13.320 Other Development Standards

Applicant may request waiver of any additional development standards if the applicant provides substantial evidence that such waivers are necessary to make the project economically feasible and do not have unmitigatable impacts.

16.13.321 Inclusionary Housing Requirements

The inclusionary housing requirements set forth in this Title continues to apply to all development projects, whether or not a density bonus is requested or granted. Units constructed pursuant to the inclusionary housing requirements cannot be used to seek concessions as part of the density bonus ordinance. The units requested under the density bonus ordinance are in addition to any units required under the inclusionary housing ordinance.

16.13.322 Condominium Conversions

Any developer converting existing rental apartments of five (5) units or more to condominiums who seeks a density bonus, must make such application in conjunction with its tentative map application pursuant to the Subdivision Map Act, this Code, and consistent with Government Code § 65915.5. Any appeal or any concession or incentive or review by the Planning Commission or City Council, automatically requires an appeal of the underlying map to that body.

(Ord. 1173, 2007)