CITY OF CLAYTON

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# Agenda
## Planning Commission Meeting
## 7:00 P.M. on Tuesday, October 13, 2009
Hoyer Hall, 6125 Clayton Road, Clayton

## CALL TO ORDER, ROLL CALL, PLEDGE TO THE FLAG

### Administrative
1A. Review of agenda items.
1B. Chair Armstrong to report at the City Council meeting on October 20, 2009.

### Public Comment

### Approval of Minutes
2. Approval of minutes from the meeting of September 8, 2009.

### Public Hearings
3A. **ZOA 03-09, Municipal Code Amendment, City of Clayton.** A public hearing regarding possible amendments to the Clayton Municipal Code to allow manufactured homes within the City of Clayton, consistent with the requirements of State law.

Proposed Action: Review background information and provide direction.

3B. **ZOA 04-09, Municipal Code Amendment, City of Clayton.** A public hearing regarding possible amendments to the Clayton Municipal Code for the purpose of implementing the requirements of Senate Bill 1818 related to granting density bonuses and related incentives to support the construction of affordable housing references and to clarify the purpose of this Section.

Proposed Action: Review background information and provide direction.

### Old Business
4. None.

**New Business**

5. None.

**Communications**

6A. Staff.

6B. Commission.

**Adjournment**

7. The next meeting of the Planning Commission is scheduled for **Tuesday, October 27, 2009.**

Most Planning Commission decisions are appealable to the City Council within ten (10) calendar days of the decision. Please contact Community Development Department staff for further information immediately following the decision. If the decision is appealed, the City Council will hold a public hearing and make a final decision. If you challenge a final decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing(s), either in oral testimony at the hearing(s) or in written correspondence delivered to the Community Development Department at or prior to the public hearing(s). Further, any court challenge must be made within 90 days of the final decision on the noticed matter. If you have a physical impairment that requires special accommodations to participate, please contact the Community Development Department at least 72 hours in advance of the meeting at 925-673-7340. An affirmative vote of the Planning Commission is required for approval. A tie vote (e.g., 2-2) is considered a denial. Therefore, applicants may wish to request a continuance to a later Commission meeting if only four Planning Commissioners are present. Any writing or documents provided to the majority of the Planning Commission after distribution of the agenda packet regarding any item on this agenda will be made available for public inspection in the Community Development Department located at 6000 Heritage Trail during normal business hours.

# Minutes
# City of Clayton Planning Commission Meeting
# Tuesday, September 8, 2009

**Call to Order**

Chair Bob Armstrong called the meeting to order at 7:00 p.m. at Hoyer Hall, 6125 Clayton Road, Clayton.

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|---|---|
| Present: | Chair Bob Armstrong, Vice Chair Sandra Johnson, Commissioner Tuija Catalano, Commissioner Ted Meriam, Commissioner Dan Richardson |
| Absent: | None |
| Staff: | Community Development Director David Woltering<br>Assistant Planner Milan Sikela, Jr. |

**Administrative**

1A. Review of agenda items.

1B. Vice Chair Johnson to report at the City Council meeting on September 15, 2009.

**Public Comment**

Tony Thongurai, 70 El Molino Drive, indicated the following:

- He is with Boy Scout Troop 262.
- Going to earn a merit badge.
- Would like to learn more about the planning process.

Director Woltering indicated that Mr. Thongurai is welcome to contact the Clayton Community Development Department and staff would be glad to explain the planning process to him.

**Approval of Minutes**

2. Approval of minutes from the meeting of August 25, 2009.

**Commissioner Meriam moved and Vice Chair Johnson seconded a motion to approve the minutes from the meeting of August 25, 2009, as amended. The motion passed 5-0.**

**Public Hearings**

3. None.

**Old Business**

4. None.

**New Business**

5. Study session regarding future long-range planning projects.

Community Development Director David Woltering presented the staff report on this item.

Director Woltering indicated that the following long-range planning projects are likely to be the focus of staff's work effort given the slow down in current planning application activity:

1. Implementation of the Goals and Policies of the Clayton 2009-2014 Housing Element Update

Planning Commission questions included:

- Commissioners had questions regarding the application of the specific density bonus percentages required by Senate Bill 1818. Director Woltering indicated that the specifics of how the law could be implemented would be presented by staff when the matter comes back formally for discussion before the Planning Commission. He did indicate, though, that the law generally lowers the threshold for a developer being entitled to specified density bonuses.
- What will staff's approach be regarding informing the public about this provision of the law? Director Woltering indicated that educational materials will be provided at the Community Development Department counter.

2. Feasibility Analysis and Possible Preparation of "Paseo Plan" for Diablo and Morris Streets

Planning Commission comments and questions included:

- What is the status of the Town Center Retail Study? Director Woltering indicated that the Phase 1 study preparation has been completed. Phase 2 involves trying to actually follow guidance in the Study and market the Town Center area to retailers and restaurateurs. He indicated that marketing activities had been slow, but that a developer team from Sausalito and San Francisco did meet with the Mayor and staff and had shown interest in the Town Center.
- I think Napa provides good example of paseos—it's a unique type of environment with several stores, a cafes, and boutiques.
- As an option to closing off Diablo or Morris Streets would be to use the meandering parking lot that is located on the block between Main, Center, Diablo, and Morris Streets as a paseo.
- We have to strike a balance between expansion of retail and places where people congregate.
- I like the idea of abandoning the street right-of-way. It satisfies both retail expansion and congregation areas.
- I think good locations for paseos would be the area between the TLC and Cup of Joe's business locations or the Clayton Community Church property. Conversely, Morris Street would not be a good location for a paseo since it is the only access to the Village Market parking lot.
- The City of Walnut Creek had to struggle with striking such balances and adopted a precise plan for the project area. Maybe a precise plan is what the City of Clayton needs to adopt for our paseos.
- Does the paseo study budget expire? Director Woltering responded that it has been appropriated into this fiscal year.

3. Completion of Town Center Specific Plan Amendments

Planning Commission questions included:

- Has there been any discussion regarding adoption of Green Building codes within the Town Center Specific Plan. Director Woltering indicated that he is not aware of any official discussion as of yet, but the subject of Green Building is being considered and implemented in many communities at this point.

4. Update Local California Environmental Quality (CEQA) Guidelines

Planning Commission comments included:

- Commissioners acknowledged that it would be useful to update the local CEQA Guidelines, but acknowledged that the Community relies on the state Guidelines.

5. General Plan Update

Planning Commission had no additional comments or questions.

**Communications**

6A. Staff.

Director Woltering indicated the following:

- The Mayor, former Mayor Hoyer, City Manager Gary Napper, and he would be attending a Local Agency Formation Committee (LAFCO) meeting tomorrow.
- LAFCO will be acting on certain central County agencies', including Clayton's, Municipal Service Reviews and Sphere's of Influence (SOIs).
- LAFCO will be discussing retraction of the Clayton SOI to match the location of our urban limit line (ULL). He indicated that the City had submitted a letter in opposition to that possible action, indicating that the City has important interests in the Cemex quarry area and the Marsh Creek Road Specific Plan area. The city was opposed particularly to any retraction of the Clayton SOI in those areas.

Commission questions included:

- Will the currently unincorporated Diablo Downs subdivision ever be annexed to the City? Director Woltering answered that the area is within the City's SOI and that it is anticipated that the Diablo Downs subdivision would ultimately be annexed to the City.
- What do the operators of the quarry want to happen with the site? Director Woltering indicated that the operators are in support of eventual annexation of the site to the City.

6B. Commission – None.

**Adjournment**

7. The meeting was adjourned at 8:33 p.m.

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|---|---|
| Submitted by | Approved by |
| David Woltering, AICP | Bob Armstrong |
| Community Development Director | Chair |

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# Memorandum

**To:** Chair Armstrong and Planning Commissioners

**From:** David Woltering, Community Development Director JW

**Date:** October 13, 2009

**Subject:** Implementation of State Law Pertaining to Manufactured Housing (ZOA 03-09)

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We will initiate the process for preparing and then sending forward to the City Council an ordinance amendment to satisfy a State law that local jurisdictions like the City of Clayton allow for manufactured housing. Essentially, the law says that the siting and permit process for manufactured housing should be the same as a stick-built structures. Architectural requirements can vary, but manufactured housing should be subject to the same development standards to which a conventional, stick-built dwelling on the same lot would be subject. We have attached background information about manufactured housing from the California State Housing and Community Development Department and from the Federal Housing and Urban Development Department. In addition, we have attached a copy of a sample implementing ordinance from the City of Vallejo. At the October 13, 2009 Planning Commission meeting, I expect to review this information with you and request your comments and suggestions which would be used by staff to prepare a draft implementing ordinance for your subsequent consideration.

Attachments:

1. Department of Housing and Community Development Background Informational Handout related to Manufactured Housing.
2. Housing and Urban Development (HUD) Informational Handout related to Manufactured Housing.
3. City of Vallejo Sample Ordinance that implements requirements to allow for Manufactured Housing

comdev/ZOA/03-09.memorandum.pc.10.13.09

ATTACHMENT 1
(2 PAGES)

Department of
# Housing and Community Development

## Program History

In 1957, an industry group known as the Trailer Coach Association (TCA) representing "trailer" manufacturers sponsored legislation that made it unlawful after September 1, 1958 for any person to sell or offer for sale within California, any trailer not in compliance with construction regulations of the Department of Industrial Relations, Division of Housing. This was the first by any state to regulate trailer (also known as "trailer coaches") construction and the predecessor to today's modern codes regulating mobilehome, manufactured home, commercial modular, special purpose commercial modular, and recreational vehicle construction.

In the beginning, all types of trailers were entitled "trailer coaches" in the law and regulations. As time passed and manufacturers began manufacturing specific types of units for different markets and uses, the names "mobilehome" and "commercial modular" emerged. In 1979, the name "special purpose commercial modular" emerged in order to separate smaller vehicular type commercial modulars with a high degree of mobility from those which are larger transportable structures generally intended for extended or permanent installation.

In 1976, the U.S. Department of Housing and Urban Development (HUD) adopted preemptive federal regulations for the construction of mobilehomes (now manufactured homes). The HUD definition for "mobilehome" was essentially the same as California's existing definition except that it applied only to single-family dwellings while a California mobilehome could consist of two dwelling units. In 1980 the U.S. Congress legislated a change in terminology from "mobilehome" to "manufactured home," that was to take effect on January 1, 1981. In 1982, HUD changed the usage of "mobilehome" to "manufactured home."

The following may help in understanding the types of units subject to the Department's manufactured housing programs:

**Manufactured homes** (includes mobilehomes) are "single- family dwellings" transportable in one or more sections constructed to a federally preemptive standard. (Legal definition contained in Health and Safety Code Section 18007.)

**Multi-unit Manufactured Homes** are one or two family dwellings transportable in one or more sections built to Department regulations designed to contain no more than two dwelling units. (Legal definition contained in Health and Safety Code Section 18008.7.)

**Recreational Vehicles** are vehicles designed for recreational, seasonal, or emergency occupancy and are built to nationally recognized recreational vehicle standards. Effective January 1, 1999, chapter 293 of the 1998 Statutes (AB 1984, Miller) repealed the Department's authority to review and approve plans, conduct inspections, and issue insignia of approval to indicate compliance with applicable standards. The remaining authority is to investigate possible violations by a manufacturer, "at the factory." Park trailers are included within the definition of a recreational vehicle.

**Commercial Modulars** are transportable structures (not vehicles) greater than 8 ft. 6 in. wide or 40 feet long requiring a permit to be moved on the highways, which are designed for human occupancy for industrial, professional, or commercial purposes, and are built utilizing nationally recognized "model" building codes adopted by reference into Department regulations. (Legal definition contained in Health and Safety Code Section 18001.8.)

**Special Purpose Commercial Modulars** are vehicles which may be moved on the highways without a permit, without structural standards but with standards similar to plumbing, electrical and mechanical standards as used for commercial modulars. A special purpose commercial modular includes a mobile food preparation unit and other commercial modular occupancy vehicles no larger than 8 ft. 6 in. wide or 40 ft. long. (Legal definition contained in Health and Safety Section 18012.5).

**Manufactured Homes** have been built to federally preemptive construction standards since June 15, 1976. The Department of Housing and Community Development was once the exclusive HUD approved inspection agency for new manufactured home construction, but since July 1, 1986, that responsibility has been shared with HUD-approved private inspection agencies. The Department also provided design approval service for "manufactured homes" until January 1, 1987. All such design review is now provided by private design approval agencies approved by HUD for all manufactured housing produced in California.

On April 1, 1989, the design approval and in-plant inspection of mobilehomes, commercial modulars, special purpose commercial modulars, and recreational vehicles to assure compliance with state law and Department regulations was delegated to Department approved private Quality Assurance Agencies (inspection) and Design Approval Agencies (design approval).

The Department remains active in the promulgation of regulations for mobilehomes, commercial modulars, and special purpose commercial modulars construction, monitoring the performance of Department-approved Quality Assurance and Design Approval Agencies. The Department also, as applicable, approves designs and performs inspections when the construction, fire-life safety, electrical, plumbing or mechanical systems are altered from the originally approved design.

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ATTACHMENT 2 (2 PAGES)



# Frequently Asked Questions

Information by State
Print version

**What is a manufactured home?**

A manufactured home (formerly known as a mobile home) is built to the Manufactured Home Construction and Safety Standards (HUD Code) and displays a red certification label on the exterior of each transportable section. Manufactured homes are built in the controlled environment of a manufacturing plant and are transported in one or more sections on a permanent chassis.

**What is the difference between manufactured and modular homes?**

Manufactured homes are constructed according to a code administered by the U.S. Department of Housing and Urban Development (HUD Code). The HUD Code, unlike conventional building codes, requires manufactured homes to be constructed on a permanent chassis. Modular homes are constructed to the same state, local or regional building codes as site-built homes. Other types of systems-built homes include panelized wall systems, log homes, structural insulated panels, and insulating concrete forms.

**What are my options for financing the purchase of a manufactured home?**

There are many alternatives for financing your home, including a growing number of lending institutions that are providing conventional and government-insured financing plans for prospective owners. The most common method of financing a manufactured home is through a retail installment contract, available through your retailer. Some lending institutions that offer conventional, long-term real estate mortgages may require the homes to be placed on approved foundations. Manufactured homes are eligible for government-insured loans offered by the **Federal Housing Administration (FHA)**, the **Veterans Administration (VA)**, and the **Rural Housing Services (RHS)** under the U.S. Department of Agriculture.

For additional assistance, you may wish to contact HUD's **Housing Counseling Clearinghouse**. HUD-approved housing counseling agencies provide housing counseling to renters, first-time buyers, and homeowners. Homeowners with problems that could result in default of their mortgage or foreclosure on their property need to contact a HUD-approved housing counseling agency immediately. HUD's Housing Counseling Clearinghouse operates a toll-free 24-hour-a-day automated voice response system that provides referrals to local housing counseling agencies, at (800) 569-4287. Referrals are also available to Spanish-speaking consumers.

**Whom do I contact if my home was damaged during installation?**

Retailers may contract with their customers for the installation of their homes, in which case the retailer is your first contact for installation-related problems. If the retailer does not arrange for the installation and you choose the installation contractor, you should contact the installer who performed the work. If you are not satisfied with the repair, contact the local authority/SAA having jurisdiction. It is important that all services related to the installation be listed separately in the contract.

**What should I do if I'm having problems with my home and the Retailer and/or Manufacturer are no longer in business?**

Contact your **SAA** or State agency that regulates manufactured home manufacturers or retailers. Your State may administer a bonding or recovery fund program for such instances.

**My home was built before June 15, 1976. I've made some modifications to my home and believe it meets the HUD Standards. Can someone come inspect my home to make sure it's in compliance with the Standards?**

HUD does not inspect homes. Homes built prior to June 15, 1976, even with modifications, do not meet the HUD standards and cannot be accepted as compliant with the HUD Code. As the homeowner, you may find a licensed engineer willing to inspect your home for compliance with your state's housing code. FHA does not insure mortgages on manufactured homes built prior to June 15, 1976. Most other mortgage insurance firms follow FHA's policy.

**Will HUD issue certification labels (HUD tags) if my home was built before 1976?**

No. The Department will not issue tags for a manufactured (mobile) home constructed prior to the enforcement of the Manufactured Home Construction and Safety Standards, effective June 15, 1976.

**What kind of financing is available for my manufactured home?**

HUD's FHA program insures two types of mortgages. **Title II** insures mortgages on qualifying manufactured homes sold with land and meeting other requirements. FHA's **Title I** program can provide information to consumers interested in obtaining HUD-insured loans. You may also want to contact lending institutions in your area (or the area where you want to purchase your home) for additional financing options.

**What if HUD does not consider my home to meet its requirements for Title I or Title II insured loans? Are there still financing options available to me?**

You may wish to consult with private lending institutions such as Freddie Mac or Fannie Mae to see if financial assistance is available to you.

**I'm interested in purchasing a mobile home park or building a mobile home park. Where can I go for assistance?**

You may contact the Office of Multifamily Housing at 202-708-2495 for assistance. Section 207, which is an FHA mortgage insurance program for HUD-approved lenders, promotes the creation of manufactured home communities by increasing the availability of affordable financing and mortgages.

**I live in a mobile home park and I'm having problems with my landlord. Can HUD help me?**

HUD does not regulate manufactured (mobile) home parks; however, most states have an association **(http://www.mobilehomeparkstore.com/mhp_associations.htm)** that can assist manufactured (mobile) homeowners with problems they are encountering.

**I have a park model home and have made upgrades to my home. I was told I need a HUD label. How do I get one?**

Regardless of the upgrades made to your park model, it is not possible to obtain a HUD label on any structure that was not produced and inspected as a manufactured home in accordance with HUD's Manufactured Home Construction and Safety Standards and Regulations during its original construction. You may contact the Recreational Park Trailer Industry Association **(http://www.rptia.com)** for additional information and resources regarding park model homes.

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U.S. Department of Housing and Urban Development
451 7th Street S.W., Washington, DC 20410
Telephone: (202) 708-1112 TTY: (202) 708-1455
Find the address of a HUD office near you

ATTACHMENT 3

## City of Vallejo Municipal Code

**Title 16 Zoning 1**
**Part IV: General Regulations**

**16.75.060 Standards for manufactured housing projects.**
A. Manufactured Housing Including Mobilehomes on a Permanent Foundation System. Mobilehomes eligible to be placed on individual lots are those constructed after September 15, 1971, with an insignia of approval from the California Department of Housing and Community Development or constructed after July 1, 1976, with an insignia of approval from the U.S. Department of Housing and Urban Development, and which have not been altered in violation of applicable codes. Mobilehomes on a permanent foundation system to be placed on individual lots shall be subject to all applicable provisions of this Title 16, shall have a minimum width of twenty feet, and shall have the following features:
1. Covered parking and storage buildings shall have the same architectural treatment as the main structure;
2. Siding and roofing materials shall be compatible with the surrounding architecture; and
3. Eaves shall extend to provide appropriate solar screening and to be compatible with adjoining architecture.
Mobilehomes on permanent foundation systems in compliance with this part may be placed on lots zoned for single-family uses, except that no mobilehomes shall be permitted on nongraded hillside lots exceeding ten percent grade nor split-level graded lots, and except that no mobilehomes on permanent foundation systems shall be permitted on lots zoned for single-fly use in a neighborhood which has been designated or has the potential to be designated as having historical significance, unless such mobilehomes meet the design guidelines adopted for such neighborhoods or such other criteria as determined by the planning manager in order to assure proper integration of the use with the district as set forth in Section 16.75.040. Neighborhoods designated or having the potential to be designated as historically significant are indicated in the 1979 city-historic architectural survey, a copy of which is on file in the planning division.
B. Mobilehomes Having No Permanent Foundation System. A mobilehome having no permanent foundation system shall be placed in a mobilehome park. Mobilehome parks shall meet the standards and conditions of the mobilehome park standards, as adopted by the city council.
C. Manufactured Homes and the National Register of Historic Places. Any place, building, structure, or other object having a special character or special historical interest or value which is listed on the National Register of Historical Places shall be exempt from restrictions on architect review requirements for manufactured homes as allowed under State Government Code Section 65852.3(b). Manufactured homes in such locations shall be subject to all applicable city design review standards.
(Ord. 1292 N.C.(2d) § 1 (part), 1994.)
16.75.070 Reserved.5

# Memorandum

**To:** Chair Armstrong and Planning Commissioners

**From:** David Woltering, Community Development Director

**Date:** October 13, 2009

**Subject:** Implementation of State Law Pertaining to Senate Bill 1818, the Density Bonus Law (ZOA 04-09)

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The purpose of this agenda item is to initiate the process of preparing and then sending forward to the City Council an ordinance amendment to implement Senate Bill 1818, the density bonus law. This effort as well as a similar but separate effort to implement a State law pertaining to allowing for manufactured housing are implementation measures in the City's Draft 2009 Housing Element Update. Essentially, the purpose of SB 1818 is to promote the financial feasibility of development affordable to lower-income households utilizing density bonuses and incentives and concessions. We have attached background information from the American Planning Association (APA), a model density bonus ordinance from the California Department of Housing and Community Development, and a sample ordinance from the City of Hayward. At the October 13, 2009 Planning Commission meeting, I expect to review this information with you and request your comments and suggestions which would be used by staff to prepare a draft implementing ordinance for your subsequent consideration.

Attachments:

1. SB 1818 Q & A Handout from the American Planning Association (APA).
2. Model Density Bonus Ordinance from the California Department of Housing and Community Development.
3. Sample Density Bonus Ordinance from the City of Hayward

comdev/ZOA/04-09.memorandum.pc.10.13.09

ATTACHMENT 1
(10 PAGES)

APA California Chapter
American Planning Association

# SB 1818 Q & A

**CCAPA's Answers to Frequently Asked Questions Regarding SB 1818 (Hollingsworth) – Changes to Density Bonus Law - 2005**

Prepared by Vince Bertoni, AICP, Bertoni Civic Consulting & CCAPA Vice President for Policy and Legislation; Barbara Kautz, Esq., FAICP, Goldfarb & Lipman, LLP; Vivian Kahn, FAICP, Dyett & Bhatia; and Terry Rivasplata, AICP, Jones & Stokes Associates.

## Background

The State of California enacted significant changes to the state's density bonus law, which went into effect on January 1, 2005. The legislation, SB 1818 introduced by Senator Hollingsworth (chaptered as Government Code Section 65915-65918), requires cities and counties to overhaul their ordinances to bring them into conformance with new state mandates. The previous law allowed for a 25% density bonus when housing projects provided between 10 – 20% of the units affordable (depending upon the level of affordability). In addition, cities and counties needed to provide at least one "concession" such as financial assistance or a reduction in development standards. The new law significantly reduces the amount of units that a developer must provide in order to receive a density bonus and requires cities and counties to provide between one to three concessions, depending upon the percentage of affordable units that the developer provides. It also imposes a new land donation rule, and statewide parking standards. Given the sweeping changes that the state has put in effect, CCAPA received numerous questions from its members regarding the new law and the following are answers to the most frequently asked questions.

Please note that the information provided is the opinion of experts in State housing law, but are not intended as legal advice. Please seek the guidance of your city attorney or county counsel on implementing the provisions of the new law in your jurisdiction.

## Major Provisions

**Density Bonus.** The number of affordable units that a developer must provide in order to receive a density bonus is significantly reduced from prior law.

If at least 5% of the units are affordable to Very Low income households or 10% of the units are affordable to Low income households, then the project is eligible for a 20% density bonus.

If 10% of condominium or planned development units are affordable to Moderate income households, then the project is eligible to receive a 5% density bonus.

In addition, there is a sliding scale that requires:

?? an additional 2.5% density bonus for each additional increase of 1% Very Low income units above the initial 5% threshold;
?? a density increase of 1.5% for each additional 1% increase in Low income units above the initial 10% threshold; and
?? a 1% density increase for each 1% increase in Moderate income units above the initial 10% threshold.

These bonuses reach a maximum density bonus of 35% when a project provides either 11% Very Low income units, 20% Low income units, or 40% Moderate income units.

**Continued Affordability**. The continued affordability requirements for Very Low and Low income units have not changed. However, the requirements for Moderate income condominium units have changed significantly. The new law specifies that the city or county must insure that the initial occupants of Moderate income units meet the income qualifications. However, upon resale of the units the seller retains the down payment, the value of any improvements, and the seller's proportionate share of appreciation. The city or county recaptures its proportionate share of appreciation and those funds must be used within three years to promote Lower or Moderate income home ownership. It is unclear whether these units must be sold at market rate, or if a city or county can limit appreciation (see Question 7 below).

**Concessions and Incentives**. Cities and counties must grant more "concessions or incentives" reducing development standards, depending on the percentage of affordable units provided. "Concessions and incentives" include reductions in zoning standards, other development standards, design requirements, mixed use zoning, and any other incentive that would reduce costs for the developer. Any project that meets the minimum criteria for a density bonus is entitled to one concession from the local government agency, increasing up to a maximum of three concessions depending upon the amount of affordable housing provided. For example:

?? For projects that provide either 5% of the units affordable to Very Low income households,10% of the units affordable to Lower Income households, or 25% Moderate Income condominiums, then the developer is entitled to one concession.
?? When the number of affordable units is increased to 10% Very Low income units, 20% Lower income units, or 20% Moderate income units, then the developer is entitled to two concessions.
?? When the number of affordable units is increased to 15% Very Low income, 30% Lower income, or 30% Moderate income units, then the number of concessions is increased to three.

**Waivers and Modifications of "Development Standards."** A city or county may not impose a "development standard" that makes it infeasible to construct the housing development with the proposed density bonus. *In addition to* requesting "incentives and concessions," applicants may request the waiver of an unlimited number of "development standards" by showing that the waivers are needed to make the project economically feasible. The bill defines "development standards" as "site or construction conditions."

**Land Donation.** Additional density is available to projects that donate land for residential use. The land must satisfy all of the following requirements:

a) have the appropriate general plan designation and zoning to permit construction of units affordable to Very Low income households in an amount not less than 10% of the units in the residential development;
b) be at least one acre in size or of sufficient size to permit development of at least 40 units; and
c) be served by adequate public facilities and infrastructure.

The base density bonus is 15%, with increases in 1% increments for each percentage increase in the units that can be accommodated above the minimum 10% of the units described in (a), up to a maximum of 35%. The maximum combined density bonus is 35% under all rules. When the land is transferred, it must have all of the permits and approvals necessary for the development of the Very Low income housing units. The land and affordable units must be subject to deed restrictions ensuring continued affordability. The city or county may require that the land be transferred to a developer instead of the city.

**Parking Standards**. If a project qualifies for a density bonus, the developer may request (and the City and County must grant) new parking standards for the entire development project. The new standards are:

?? zero to one bedroom – one on-site parking space
?? two to three bedrooms – two onsite parking spaces
?? four or more bedrooms – two and one-half on-site parking spaces.

These numbers are inclusive of guest parking and handicapped parking and may be tandem or uncovered (but cannot be on-street). The parking standards may be requested even if no density bonus is requested.

## Questions

1. ***Does this law apply to charter cities and charter counties?***

   Yes.

2. ***Can inclusionary requirements be imposed on the bonus units?***

   Most experts agree that inclusionary requirements cannot be imposed on the density bonus units themselves. The reasoning is that the Legislature intended to give developers market-rate units in exchange for affordable units. For instance, if a 100-unit project becomes a 120-unit project after receiving a density bonus, the inclusionary requirements may be imposed only on the original 100 units, not the 20 bonus units. If a city has a 20% inclusionary requirement, normally the city would require 24 inclusionary units in a 120-unit project (20% of 120 units). However, if 20 units are density bonus units, then the 20% inclusionary requirement can only be imposed on 100 units, requiring only 20 inclusionary units (20% of 100 units). The net impact is that only 16.7% (20/120) of the total units will be affordable inclusionary units, rather than 20% (24/120) as intended by the inclusionary ordinance.

***3. Do inclusionary units qualify a project for a density bonus?***

The density bonus law applies when an applicant "seeks a density bonus" and "agrees to construct" the required percentages of affordable units. There have been two interpretations of this section.

Many localities interpret the bill to mean that if the inclusionary units meet the requirements of the density bonus law, then the inclusionary units will qualify the development for a density bonus. For instance, in these jurisdictions, if an inclusionary ordinance requires that ten percent of the units be affordable to Low income households, a project complying with the ordinance will be eligible for a 20% density bonus.

Other localities interpret this to mean that when a local jurisdiction <u>imposes</u> its inclusionary housing requirement, the applicant is not "agreeing to construct" the units and so is not eligible for a density bonus. The legislative history of the amendments to SB 1818 confirms that the changes in the law were not intended to affect an inclusionary zoning ordinance.

You may want to discuss this issue with your city or county attorney.

Note that no density bonus need be given in any case unless an applicant actually "seeks"--applies for--the bonus, even if the project would otherwise be eligible for a density bonus.

***4. Can a developer successfully argue that the inclusionary requirements make the project infeasible?***

No. Developers can only request a waiver of "development standards" that make a project infeasible. "Development standards" are defined as "site or construction conditions." The proponents of the bill included this definition specifically so that an inclusionary ordinance would not be considered a development standard. An inclusionary ordinance doesn't regulate site or construction conditions; it only affects the economics of the project. Consequently, a developer cannot request a waiver by arguing that the inclusionary ordinance makes the project infeasible.

Some inclusionary ordinances do have requirements that might be considered to be site and construction conditions such as requiring dispersal of units, similarity in design to market-rate units, etc. Presumably a developer could try to show that these are site or construction conditions and request that they be waived, following the procedures discussed in Question 9.

5. ***Can a city or county require design review for density bonus projects, even if it renders the project infeasible?***

The short answer is "no"--if, indeed, design review will make the project infeasible. As discussed in the previous question, no local agency can apply any development standard that will preclude the development of a density bonus project. How would this work in the case of design review? The process of design review is not a development standard, so no waiver could be requested. Design review conditions, however, usually involve site or construction requirements, so would probably be considered to be "development standards." The issue would most likely arise if an applicant argued that design review conditions made the project infeasible and presented evidence showing that the project would not be economically feasible with the conditions. Cities and counties should consider including in their local ordinances a process for evaluating requests for waivers including the type of economic information which must accompany the request and how the information will be evaluated.

6. ***Can a city or county place additional resale restrictions on a Moderate income condominium and planned developments?***

If an applicant receives no public subsidy and agrees to impose the equity-sharing required by SB 1818, the city or county cannot require additional resale restrictions (see discussion in Question 7 below).

However, if a city or county has an inclusionary ordinance that requires Moderate income units to have resale restrictions or longer periods of affordability, the city is under no obligation to count as inclusionary units, those Moderate income units that meet only density bonus standards. For instance, assume that a city has a 15% Moderate income inclusionary requirement and requires a 55-year resale restriction. A developer could propose 15% Moderate income units with the equity-sharing required by SB 1818 and receive a density bonus. However, since none of the units would meet the standards in the City's inclusionary ordinance, the City would not be required to count any of the units as inclusionary units. The developer would have to provide another 15% Moderate income units meeting the City's standards for resale restrictions and 55 years of affordability. In this case, most developers would choose to apply the city's standards to their Moderate income units.

7. ***Is there a requirement for continued affordability for Moderate income condominium and planned developments?***

No, only the initial occupant must meet the affordable income criteria. After the initial owner sells the unit, that person is entitled to receive the value of their down payment, improvements to the property, and proportional share of the appreciation of the unit. The City or County receives its proportional share of the appreciation and must use that money within three years to promote affordable, ownership housing.

The bill is not clear about how appreciation is defined. Proponents of the bill state that it was intended to work as follows: if a locality makes a unit available for

$200,000 to a moderate income purchaser but the unit has a value at the time of purchase of $300,000, then the locality gets to recapture the $100,000 subsidy upon resale. In addition, if the unit goes up in value another $30,000 between the date or purchase and the date of resale, the locality and purchaser split the appreciation per the formula in the bill. The bill does not specifically require that the units be re-sold at fair market price, which may allow localities to impose resale controls limiting the amount of appreciation.

***8. If a developer is proposing a mixture of affordable housing types (i.e., 5% Very Low plus 10% Low income units) how is the density bonus calculated?***

SB 1818 amended Government Code Section 65915 to delete the language in subsection (l), which previously stipulated that an applicant who "agrees to construct both 20 percent of the total units for Lower income households and 10 percent of the total units for Very Low income households is entitled to only one density bonus and at least one additional concession or incentive". Localities should assume, therefore, that if the proposed percentage of units by affordable housing type meets or exceeds the thresholds stipulated in subsection (g) they will have to grant the 20 percent density bonus to which the applicant is entitled for each type of affordable housing that exceeds the threshold specified in subsection (g) (1). Note, however, that this subsection now specifies that the maximum density bonus to which an applicant is entitled is 35 percent, in contrast to the previous requirement, which stated that the applicant was entitled to a minimum bonus of 25 percent but did not specify a maximum. If the applicant proposes a mixture of affordable housing types that meets or exceeds the threshold for more than one housing type, he or she is, therefore, not entitled to receive a bonus that exceeds 35 percent of the density that would otherwise be allowed by applicable zoning and the land use element.

Neither the former version of Sec. 65915 nor the amendments in SB 1818 provide more guidance about how agencies should calculate the density bonus for a project that includes a mixture of affordable housing types when the project does not meet the specified thresholds for each affordable housing type. For example, an applicant might propose to make 5 percent of the units affordable to Very Low income households plus 5 percent affordable to Low income households. In that case, one way to calculate the bonus would be to grant the incremental density allowed in subsection (g) for the Low income units (1.5 percent multiplied by 5 or a total of 7.5 percent for the Low income units) in addition to the 20 percent bonus to which the applicant is entitled for the 5 percent Very Low income units.

Another way to calculate a mixture of affordable housing types it to first evaluate the Very Low income units only. If a project has 5% Very Low income units then it would be entitled to a 20% bonus. Then evaluate the 5% Low income units by themselves. These don't qualify for any density bonus (10% Low income units required). Then, consider all 10% of the units as Low income units. This again permits a 20% bonus. Consequently, the project is only entitled to a 20% bonus. (This has the effect of encouraging developers to have more Very Low income units, since 8% Very Low income units would give the developer the 27.5% density bonus.) Since the law is silent on which manner to calculate a density bonus for a mixture of income levels, it is important for the city or county to choose a method and be clear and consistent in the implementation.

Also, cities and counties should amend their density bonus provisions to delete any reference to the "one density bonus" limit that Sec. 65915 previously imposed. They may want to amend their ordinances to also specify how to calculate both the minimum <u>and</u> the maximum number of additional units that might be granted pursuant to this section and to specify the 35 percent maximum stipulated as a result of SB 1818.

9. ***Can a city or county require the developer to choose from a specific list of concessions chosen by the local agency? What happens if they want a concession that is not on the list?***

A city or county can request that a developer choose a concession or incentive from a list that the city or county has prepared as acceptable concessions; however, under certain circumstances, the developer may be entitled to other incentives not on the city or county list.

Section 65915 (l) defines "concession or incentive" as a reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission. Examples include a reduction in setback and square footage requirements and reduction in parking ratios. Approval of mixed use zoning is a "concession" if the non-residential use is compatible with the housing project and the existing or planned development in the area. In addition, the developer may propose other regulatory incentives or concessions that result in "identifiable, financially sufficient, <u>and</u> actual cost reductions"

Subsection (d)(1) does make clear that the city or county may refuse to grant a concession or incentive if it makes certain findings based upon substantial evidence. The type of evidence that would be required to support such findings is spelled out in subsections (d)(1) (A) and (B) and includes a determination that the concession or incentive is not required in order to provide the proposed affordable housing units or "would have a specific adverse impact ... upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources" so long as there is no way to mitigate or avoid the specific impact without making the development unaffordable to Low and Moderate income households. As noted in subsection (d)(3), these are essentially the same findings that Government code Section 65589.5 requires in order to deny or impose certain conditions on an affordable housing development.

Local agencies are advised to pay close attention to these provisions because of the penalties that subsection (e) imposes on localities that refuse to waive standards and requirements in violation of the law. In addition to being ordered to grant the requested waiver, the local agency may be liable for the plaintiff's attorney's fees and litigation costs.

In addition to the required concessions and incentives, note that subsection (f) states that cities may not apply development standards that would preclude the development of the density bonus units. The applicant may request a waiver and "shall show that the waiver or modification is necessary to make the housing units economically feasible." Local agencies should, therefore, require that applicants provide financial data showing that the proposed waiver or modification is necessary to make the affordable units economically feasible. Pursuant to subsection (d) (3), agencies should also amend their ordinances to establish procedures for accommodating qualified projects by "waiving or modifying development and zoning standards that would otherwise inhibit the utilization of the density bonus on specific sites." Applicants proposing qualified projects should not be subjected to a variance procedure but, instead, should be able to apply for an exception or waiver based on specific findings, including economic considerations, that are spelled out in the ordinance.

***10. Do the new reduced parking requirements apply to the affordable units only or to the entire project?***

The new parking standards apply to the entire project, both affordable and market rate units but only upon request of the developer.

***11. Can cities and counties require guest parking for affordable projects?***

No. The new parking standards that apply upon request of the developer are inclusive of guest parking and handicapped parking. It should be noted that state law cannot preempt federal ADA requirements.

***12. Does a city or county need to conduct a CEQA analysis prior to adopting changes to their local ordinances in order to comply with the new law?***

Yes. A change in zoning or other land use ordinance is a project subject to CEQA (State CEQA Guidelines Section 15378(a)[1]; *Bozung v. LAFCO* [1975] 13 Cal.3d 263). Under CEQA, the baseline for determining the significance of a project is the existing environment. SB 1818 will require agencies to adopt ordinances that may result in significant indirect effects on the environment by reducing the effectiveness of existing protective standards. Adopting new, less restrictive standards may result in a significant effect.

For example, in *City of Redlands, et al. v. County of San Bernardino* (2002) 96 Cal.App.4th 398, Redlands and other cities sued San Bernardino County over a general plan amendment which modified existing County general plan provisions relating to development within City spheres of influence. Where previous County policy had been to defer to City development standards within the spheres (including more restrictive regulations and growth control measures), the general plan amendment would have provided the County more leeway to approve projects that did not conform to City standards. The County adopted a negative declaration for the general plan amendment.

The court found that the County's initial study "does not provide evidence to show how such a shift in policy would have little or no effect on the environment."

The court noted that "CEQA reaches beyond mere changes in the language in the agency's policy to the ultimate consequences of such changes to the physical environment." Although the CEQA analysis is not required to be as detailed as a project-specific analysis, it is required to analyze the expected secondary effects of the general plan amendment. The cities presented substantial evidence, in the form of specific examples of city standards that were more restrictive than County standards and that would no longer be required within unincorporated spheres if the general plan amendment were approved, that the general plan amendment may have a significant effect. The court ordered preparation of an EIR.

**13. *Are affordable projects exempt from CEQA or can a local government agency require negative declarations or environmental impact reports for affordable projects with inadequate parking?***

SB 1818 does not establish an exemption from CEQA requirements. The regulatory concessions that must be offered to a qualifying project do not and cannot include non-compliance with CEQA. CEQA operates independently of SB 1818 and is not limited by that statute. However, a project may qualify for a categorical exemption under State CEQA Guidelines Section 15332 (Infill Development Projects) if it meets the criteria set out in that section and is not subject to any of the exceptions established under Section 15300.2.

Separately, Public Resources Section 21159.24 provides a qualified, statutory exemption for specified inclusionary infill housing projects. This exemption would not apply if there is "a reasonable possibility that the project will have a project-specific, significant effect on the environment due to unusual circumstances."

An agency must prepare an initial study for any project (including an affordable project) that is not exempt from CEQA. If there is substantial evidence (e.g., facts or expert opinion based on facts) that the project may result in a significant effect on the environment, an EIR must be prepared. If there is no substantial evidence to that effect, a negative declaration or mitigated negative declaration can be prepared.

The baseline for determining the significance of a project impact is the existing environment. The significance of a project's impacts depends upon the extent of adverse change to the environment that would result from the project. Where a project involves a density bonus, the "project" for purposes of CEQA is the proposed activity including the bonus and any related concessions.

Government Code Section 65915 comprises the density bonus law. Subdivision (d) authorizes a local agency to deny a proposed incentive/concession when there is substantial evidence that the incentive/concession would have a "specific adverse impact" on "public health and safety" (as defined in Government Code Section 65589.5(d)[2]), or the physical environment, or on a property listed on 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 low- and moderate-income households." This would authorize an agency to deny a proposed incentive/concession when an EIR has been prepared that identifies significant project impacts that either cannot be avoided or that could be mitigated, but the mitigation would make the project unaffordable. Because a mitigated negative declaration can only be released when the applicant has agreed to the mitigation measures, a local agency could also deny incentives/concessions on the basis of an initial study if the applicant was unwilling to agree to the mitigation measures due to cost. The EIR or the initial study would provide the "substantial evidence" necessary to support denial under Section 65915(d).

It is important to note that the clear intent of the legislation is to facilitate the construction of affordable housing through density bonuses and reductions in local development standards. Therefore, the CEQA analysis conducted by the city or county should focus on reasonable CEQA impacts, and not as a potential loophole to make the process of building affordable housing more difficult.

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ATTACHMENT 2
(11 PAGES)

August 6, 1996

**MEMORANDUM TO:** Planning Directors and Other Interested Parties

**FROM:** Cathy Creswell, Program Manager
Housing Policy Development Division

**SUBJECT:** **Model Density Bonus Ordinance**

State density bonus law (Government Code Section 65915) was created to offer a land use-based option to facilitate the economic feasibility of affordable housing development. Section 65915, as amended by Chapter 842, Statutes of 1989, required all cities and counties to adopt density bonus ordinances. The law provides that local governments shall grant density bonuses of at least 25 percent, plus an additional incentive(s) or equivalent financial incentives, to housing developers who agree to construct at least: 20% of the units affordable to lower-income households, 10% of the units affordable to very low-income households, or senior citizen housing.

The Department of Housing and Community Development (the Department) released a technical assistance paper in March of 1990 to assist local governments in complying with State density bonus requirements. The Department has prepared the enclosed model density bonus ordinance to further facilitate local government efforts to adopt and implement density bonus ordinances.

The model ordinance was designed by the Department to serve as a basic outline for local ordinances, and can be tailored to the particular needs of each community. The technical appendix to the model ordinance notes some variable points for local considerations, and is for use in drafting the ordinance only. We recommend that the specific provisions of the local ordinance be developed in consultation with other relevant staff, officials, housing developers, and other interested entities, including local legal counsel. Your jurisdiction may, of course, choose other approaches to implementing density bonus law.

Although the Statute requires the implementation of certain uniform development standards and incentives, considerable discretion is afforded for local administration of density bonus ordinances. Reflecting this flexibility, the model ordinance outlines the basic types of development incentives that can be provided in accordance with the Statute (Sections 3, 4, and 5), recommends provisions for the review of density bonus applications (Section 6), and for the terms of development agreements (Section 7). The model ordinance also includes provisions that the Department believes will best promote the purposes of the law and facilitate the development of housing for lower-income households.

Local agencies which wish to receive a copy of the model ordinance on computer disk may send a written request to the Department along with an IBM compatible 3.5" or 5" floppy disk.

If you have any questions concerning the model ordinance or the requirements of State density bonus law, please contact Linda Wheaton or Gary Collord, of our staff, at (916) 323-3176

**Chapter _______**

**RESIDENTIAL DENSITY BONUS ORDINANCE**

**Sections:**



**Section 1. Purpose and Intent.**

This Density Bonus Ordinance is intended to provide incentives for the production of housing for very low, lower income, or senior households in accordance with Sections 65915 and 65917 of the California Government Code. In enacting this Chapter, it is the intent of the City/County of _________ to facilitate the development of affordable housing and to implement the goals, objectives, and policies of the City/County's Housing Element.

The regulations and procedures set forth in this Chapter shall be publicized by the City/County and shall apply throughout the City/County. Sections of the California Government Code referenced in this Chapter and application forms for complying with this Chapter, shall be available to the public.

**Section 2. Definitions.**

Whenever the following terms are used in this Chapter, they shall have the meaning established by this section:

**"Additional Incentives"** means such regulatory concessions as specified in California Government Code Subsections 65915 (d) and (h) to include, but not be limited to, the reduction of site development standards or zoning code requirements, direct financial assistance, approval of mixed-use zoning in conjunction with the Housing Development, or any other regulatory incentive which would result in identifiable cost avoidance or reductions that are offered in addition to a Density Bonus. See Section 5 of this Chapter.

**"Affordable Rent"** means monthly housing expenses, including a reasonable allowance for utilities, for rental Target Units reserved for Very Low or Lower Income Households, not exceeding the following calculations:

(1) Very Low Income: 50 percent of the area median income for ________ County, adjusted for household size, multiplied by 30 percent and divided by 12.

(2) Lower Income: 60 percent of the area median income for _________ County, adjusted for household size, multiplied by 30 percent and divided by 12.

**"Affordable Sales Price"** means a sales price at which Lower or Very Low Income Households can qualify for the purchase of Target Units, calculated on the basis of underwriting standards of mortgage financing available for the development.

**"Density Bonus"** means a minimum density increase of at least 25 percent over the otherwise Maximum Residential Density.

**"Density Bonus Housing Agreement"** means a legally binding agreement between a developer and the City/County to ensure that the requirements of this Chapter are satisfied. The agreement, among other things, shall establish: the number of Target Units, their size, location, terms and conditions of affordability, and production schedule. See Section 7 of this Chapter.

**"Density Bonus Units"** means those residential units granted pursuant to the provisions of this Chapter which exceed the otherwise Maximum Residential Density for the development site.

**"Equivalent Financial Incentive"** means a monetary contribution, based upon a land cost per dwelling unit value, equal to one of the following:

(1) A Density Bonus and an Additional Incentive(s); or

(2) A Density Bonus, where an Additional Incentive(s) is not requested or is determined to be unnecessary. See Section 4 of this Chapter.

**"Housing Cost"** means the sum of actual or projected monthly payments for all of the following associated with for-sale Target Units: principal and interest on a mortgage loan, including any loan insurance fees, property taxes and assessments, fire and casualty insurance, property maintenance and repairs, homeowner association fees, and a reasonable allowance for utilities.

**"Housing Development"** means construction projects consisting of five or more residential units, including single family, multifamily, and mobilehomes for sale or rent, pursuant to this Chapter.

**"Lower Income Household"** means households whose income does not exceed the lower income limits applicable to _________ County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Section 50079.5 of the California Health and Safety Code.

**"Maximum Residential Density"** means the maximum number of residential units permitted by the City/County's General Plan Land Use Element and Zoning Ordinance at the time of application, excluding the provisions of this Chapter. If the housing development is within a planned development overlay zone, the maximum residential density shall be determined on the basis of the general plan and the maximum density of the underlying zone.

**"Non-Restricted Unit"** means all units within a Housing Development excluding the Target Units.

**"Qualifying Resident"** means senior citizens or other persons eligible to reside in Senior Citizen Housing.

**"Senior Citizen Housing"** means a housing development consistent with the California Fair Employment and Housing Act (Government Code Section 12900 et. seq., including 12955.9 in particular), which has been "designed to meet the physical and social needs of senior citizens," and which otherwise qualifies as "housing for older persons" as that phrase is used in the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and implementing regulations (24 CFR, part 100, subpart E), and as that phrase is used in California Civil Code Section 51.2 and 51.3.[1]

**"Target Unit"** means a dwelling unit within a Housing Development which will be reserved for sale or rent to, and affordable to, Very Low or Lower Income Households, or Qualifying Residents.

**"Very Low Income Household"** means households whose income does not exceed the very low income limits applicable to ________ County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Section 50105 of the California Health and Safety Code.

**<u>Section 3. Implementation</u>.**

The City/County shall grant either: a Density Bonus, or a Density Bonus with an Additional Incentive(s), or Equivalent Financial Incentives,[2] as set forth in Section 5 of this Chapter, to an applicant or developer of a Housing Development, who agrees to provide the following:

(1) At least 20 percent of the total units of the Housing Development as Target Units affordable to Lower Income Households; or

(2) At least 10 percent of the total units of the Housing Development as Target Units affordable to Very Low Income Households; or

(3) Senior citizen housing.

In determining the minimum number of Density Bonus Units to be granted pursuant to this Section, the Maximum Residential Density for the site shall be multiplied by .25. When calculating the number of permitted Density Bonus Units, any fractions of units shall be rounded to the next larger integer.

In determining the number of Target Units to be provided pursuant to this Section, the Maximum Residential Density shall be multiplied by .10 where Very Low Income Households are targeted, or by .20 where Lower Income Households are targeted. The Density Bonus Units shall not be included when determining the total number of Target Units in the Housing Development. When calculating the required number of Target Units, any resulting decimal fraction shall be rounded to the next larger integer.

In cases where a density increase of less than 25 percent is requested, no reduction will be allowed in the number of Target Units required. In cases where a density increase of more than 25 percent is requested, the requested density increase, if granted, shall be considered an Additional Incentive, as outlined in Section 5 of this Chapter.

In cases where the developer agrees to construct more than 20 percent of the total units for Lower Income Households, or more than 10 percent of the total units for Very Low Income Households, the developer is entitled to only one Density Bonus and an Additional Incentive(s) (or an Equivalent Financial Incentive) pursuant to Section 5 of this Chapter. Similarly, a developer who agrees to construct Senior Citizen Housing with 20 or 10 percent of the units reserved for Lower- or Very Low-Income Households, respectively, is only entitled to one Density Bonus and an Additional Incentive(s). The City/County may, however, grant multiple Additional Incentives to facilitate the inclusion of more Target Units than are required by this Chapter.

**Section 4. Development Standards.**

Target Units should be constructed concurrently with Non-Restricted Units unless both the City/County and the developer/applicant agree within the Density Bonus Housing Agreement to an alternative schedule for development.

Target Units shall remain restricted and affordable to the designated group for a period of 30 years (or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program), under the following circumstances:

(1) Both a Density Bonus and an Additional Incentive(s) is granted; or

(2) An Equivalent Financial Incentive equivalent to a Density Bonus and an Additional Incentive(s) is granted.

Target Units shall remain restricted and affordable to the designated group for a period of 10 years under the following circumstances:

(1) Only a Density Bonus is granted and no Additional Incentives are granted; or

(2) An Equivalent Financial Incentive equivalent to only a Density Bonus is granted.

In determining the maximum Affordable Rent or Affordable Sales Price of Target Units the following household and unit size assumptions shall be used,[3] unless the Housing Development is subject to different assumptions imposed by other governmental regulations:

| | |
|---|---|
| SRO (residential hotel) unit | 75% of 1 person |
| 0 bedroom (studio) | 1 person |
| 1 bedroom | 2 person |
| 2 bedroom | 3 person |
| 3 bedroom | 4 person |
| 4 bedroom | 6 person |

Target Units should be built on-site wherever possible and, when practical, be dispersed within the

Housing Development. Where feasible, the number of bedrooms of the Target Units should be equivalent to the bedroom mix of the non-Target units of the Housing Development; except that the Developer may include a higher proportion of Target Units with more bedrooms. The design and appearance of the Target Units shall be compatible with the design of the total Housing Development. Housing Developments shall comply with all applicable development standards, except those which may be modified as provided by this Chapter.

Circumstances may arise in which the public interest would be served by allowing some or all of the Target Units associated with one Housing Development to be produced and operated at an alternative development site. Where the developer and the City/County form such an agreement, the resulting linked developments shall be considered a single Housing Development for purposes of this Chapter. Under these circumstances, the developer shall be subject to the same requirements of this Chapter for the Target Units to be provided on the alternative site.

A Density Bonus Housing Agreement shall be made a condition of the discretionary planning permits (e.g., tract maps, parcel maps, site plans, planned development or conditional use permits, etc.) for all Housing Developments pursuant to this Chapter. The Agreement shall be recorded as a restriction on the parcel or parcels on which the Target Units will be constructed. The Agreement shall be consistent with Section 7 of this Chapter.

**<u>Section 5. Development Incentives</u>.**

The City/County shall provide a Density Bonus and an Additional Incentive(s), for qualified Housing Developments, upon the written request of a developer, unless the City/County makes a written finding that the Additional Incentive(s) is not necessary to make the Housing Development economically feasible and to accommodate a Density Bonus.

The development incentives granted shall contribute significantly to the economic feasibility of providing the Target Units. Applicants seeking a waiver or modification of development or zoning standards shall show that such waivers or modifications are necessary to make the Housing Development economically feasible in accordance with Government Code Section 65915(e). This requirement may be satisfied by reference to applicable sections of the City/County's general plan housing element.[4]

The need for incentives will vary for different Housing Developments. Therefore, the allocation of Additional Incentives shall be determined on a case-by-case basis. The Additional Incentives may include, but are not limited to, any of the following:[5]

(1) A reduction of site development standards or a modification of zoning code or architectural design requirements which exceed the minimum building standards provided in Part 2.5 (commencing with Section 18901) of Division 13 of the California Health and Safety Code. These may include, but are not limited to, one or more of the following:[6]

  (a) Reduced minimum lot sizes and/or dimensions.
  (b) Reduced minimum lot setbacks.
  (c) Reduced minimum outdoor and/or private outdoor living area.
  (d) Increased maximum lot coverage.
  (e) Increased maximum building height and/or stories.

(f) Reduced on site parking standards, including the number or size of spaces and garage requirements.
(g) Reduced minimum building separation requirements.
(h) Reduced street standards, e.g., reduced minimum street widths.
(i) Other: ______________________________

(2) Allow the Housing Development to include non-residential uses and/or allow the Housing Development within a non-residential zone.

(3) Other regulatory incentives or concessions proposed by the developer or the City/County which result in identifiable cost reductions or avoidance.

(4) A Density Bonus of more than 25 percent.

(5) Waived, reduced, or deferred planning, plan check, construction permit, and/or development impact fees (e.g., capital facilities, park, or traffic fees). [7]

(6) Direct financial aid (e.g., redevelopment set-aside, Community Development Block Grant funding) in the form of a loan or a grant to subsidize or provide low interest financing for on or off site improvements, land or construction costs.

The City/County may offer an Equivalent Financial Incentive in lieu of granting a Density Bonus and an Additional Incentive(s). The value of the Equivalent Financial Incentive shall equal at least the land cost per dwelling unit savings that would result from a Density Bonus and must contribute significantly to the economic feasibility of providing the Target Units pursuant to this Chapter.

## Section 6. Application Requirements and Review.

An application pursuant to this Chapter shall be processed concurrently with any other application(s) required for the Housing Development. Final approval or disapproval of an application (with right of appeal to the City Council/Board of Supervisors) shall be made by the planning commission unless direct financial assistance is requested. If direct financial assistance is requested, the planning commission shall make a recommendation to the City Council/Board of Supervisors who will have the authority to make the final decision on the application.[8]

An applicant/developer proposing a Housing Development pursuant to this Chapter, may submit a preliminary application prior to the submittal of any formal request for approval of a Housing Development. Applicants are encouraged to schedule a pre-application conference with the Planning Director or designated staff to discuss and identify potential application issues, including prospective Additional Incentives pursuant to Section 5 of this Chapter. No charge will be required for the pre-application conference. A preliminary application shall include the following information:

(1) A brief description of the proposed Housing Development, including the total number of units, Target Units, and Density Bonus Units proposed.

(2) The zoning and general plan designations and assessors parcel number(s) of the project site.

(3) A vicinity map and preliminary site plan, drawn to scale, including building footprints, driveway and parking layout.

(4) If an Additional Incentive(s) is requested, the application should describe why the Additional Incentive(s) is necessary to provide the Target Units, in accordance with Section 5 of this Chapter.

Within ____ days (maximum of 90 days)[9] of receipt of the preliminary application the City/County shall provide to an applicant/developer, a letter which identifies project issues of concern, (the maximum financial assistance that the Planning Director can support when making a recommendation to the City Council/Board of Supervisors), and the procedures for compliance with this Chapter.

The Planning Director shall inform the applicant/developer that the requested Additional Incentives shall be recommended for consideration with the proposed Housing Development, or that alternative or modified Additional Incentives pursuant to Section 5 shall be recommended for consideration in lieu of the requested Incentives. If alternative or modified Incentives are recommended by the Planning Director, the recommendation shall establish how the alternative or modified Incentives can be expected to have an equivalent affordability effect as the requested Incentives.

**Section 7. Density Bonus Housing Agreement.**

Applicants/Developers requesting a Density Bonus, shall (draft and) agree to enter into a Density Bonus Housing Agreement with the City/County.[10] The terms of the draft agreement shall be reviewed and revised as appropriate by the Planning Director, who shall formulate a recommendation to the planning commission for final approval.

Following execution of the agreement by all parties, the completed Density Bonus Housing Agreement, or memorandum thereof, shall be recorded and the conditions therefrom filed and recorded on the parcel or parcels designated for the construction of Target Units. The approval and recordation shall take place prior to final map approval, or, where a map is not being processed, prior to issuance of building permits for such parcels or units. The Density Bonus Housing Agreement shall be binding to all future owners and successors in interest.

The Density Bonus Housing Agreement shall include at least the following:

(1) The total number of units approved for the Housing Development, including the number of Target Units.

(2) A description of the household income group to be accommodated by the Housing Development, as outlined in Section 3 of this Chapter, and the standards for determining the corresponding Affordable Rent or Affordable Sales Price and Housing Cost.

(3) The location, unit sizes (square feet), and number of bedrooms of Target Units.

(4) Tenure of use restrictions for Target Units of at least 10 or 30 years, in accordance with Section 4 of this Chapter.

(5) A schedule for completion and occupancy of Target Units.

(6) A description of the Additional Incentive(s) or Equivalent Financial Incentives being provided by the City/County.

(7) A description of remedies for breach of the agreement by either party (the City/County may identify tenants or qualified purchasers as third party beneficiaries under the agreement).

(8) Other provisions to ensure implementation and compliance with this Chapter.

A. In the case of for-sale Housing Developments, the Density Bonus Housing Agreement shall provide for the following conditions governing the initial sale and use of Target Units during the applicable use restriction period:

(1) Target Units shall, upon initial sale, be sold to eligible Very Low or Lower Income Households at an Affordable Sales Price and Housing Cost, or to Qualified Residents (i.e., maintained as Senior citizen housing) as defined by this Chapter.

(2) Target Units shall be initially owner-occupied by eligible Very Low or Lower Income Households, or by Qualified Residents in the case of Senior citizen housing.

(3) The initial purchaser of each Target Unit shall execute an instrument or agreement approved by the City/County restricting the sale of the Target Unit in accordance with this ordinance during the applicable use restriction period. Such instrument or agreement shall be recorded against the parcel containing the Target Unit and shall contain such provisions as the City/County may require to ensure continued compliance with this ordinance and the state Density Bonus Law.[11]

B. In the case of rental Housing Developments, the Density Bonus Housing Agreement shall provide for the following conditions governing the use of Target Units during the use restriction period:

(1) The rules and procedures for qualifying tenants, establishing Affordable Rent, filling vacancies, and maintaining Target Units for qualified tenants;

(2) Provisions requiring owners to verify tenant incomes and maintain books and records to demonstrate compliance with this Chapter.

(3) Provisions requiring owners to submit an annual report to the City/County, which includes the name, address, and income of each person occupying Target Units, and which identifies the bedroom size and monthly rent or cost of each Target Unit.

## TECHNICAL APPENDIX
## [TO REMOVE ENDNOTES, DELETE NUMBERS FROM TEXT]

1. The definition of senior citizen housing in California law has been affected by recent amendments to state fair housing laws, including the Fair Employment and Housing Act, the Unruh Civil Rights Act, and the Mobile Home Residency Act. The definition of Senior Citizen Housing in a local ordinance should consider more restrictive provisions of either state or federal law relating to familial status and qualifying as "housing for older persons."

   Notwithstanding Government Code Section 65915, pursuant to federal and state law, including Sections 12955, 12955.9, and 65008(b) of the Government Code, local governments are prohibited from administering ordinances which discriminate against residential development on the basis of age or familial status, unless subject to a statutory exemption. The only authorized exemption from discrimination on the basis of familial status is for housing which meets the federal and state statutory definition as "housing for older persons." Thus, housing for senior citizens pursuant to Section 65915 must comply with this criteria as defined by a combination of federal and state statutes and regulations.

   The Housing for Older Persons Act of 1995 (Public Law 104-76), signed 12/28/95) amended Section 807(b) regarding qualifying criteria for housing intended and operated for occupancy by persons 55 years of age and older. Implementing regulations for the revised provision (for 24 CFR part 100, subpart E) were amended by 61 FR 18249, Apr. 25, 1996.

   California Government Code Section 12955.9(c) places the burden of proof upon an applicant to show that a development qualifies as housing for older persons. The California Department of Fair Employment and Housing (Government Code Section 12955.9 et. seq.) has been delegated additional enforcement authority on this issue since California's fair housing act was found by HUD to be substantially equivalent with the Federal Fair Housing Amendments Act of 1988 (P.L. 100-430).

2. The local government has discretion to decide whether to offer equivalent financial incentives in lieu of a density bonus and an additional incentive(s). If equivalent financial incentives will not be offered or considered, then references to this option should not be included in the ordinance.

3. The proposed standards are an example; alternative standards may be used in the ordinance, or standards need not actually be included in the ordinance.

4. If the local government's housing element (or other planning documents) indicates that the development of housing affordable to lower-income households is generally not feasible within the community without financial or development incentives, such information and source may be referenced to satisfy the requirements of Government Code Section 65915 (e).

5. The incentives offered should be those that will provide the most meaningful development incentives for housing developers in the local housing market. The relevance of particular incentives may vary by community.

6. Incentives should be provided which, individually or in combination, will accommodate a density increase of at least 25 percent.

7. Deferrals for the payment of development impact fees otherwise required by Government Code Section 66007 do not qualify as an incentive for purposes of this ordinance.

8. Note that the decisions of the city/county approving or disapproving the proposed development may be subject to the provisions of Government Code section 65589.5 which requires certain findings where the city/county proposes to: 1) disapprove, or approve on conditions rendering the development infeasible, a proposed affordable housing development, or 2) disapprove, or approve at a lesser density, a housing development proposal which complies with the applicable general plan, zoning, and development policies in effect at the time the project's application is deemed complete.

9. While the statute allows a maximum of 90 days for the review of a preliminary application, shorter review periods are encouraged where possible.

10. The local government may prepare and provide developers with a standard housing development agreement format for purposes of this ordinance. If a state or federal government subsidy is used to finance the housing development, certain documentation procedures or monitoring provisions may be specified by the government program, provided they are consistent with the provisions of Section 65915. Where there is no state or federal government subsidy program involved, but whereby the local government proposes conditions other than those proposed here, use of standard conditions, e.g., those of prevailing federal housing subsidy programs, are encouraged to accommodate standardization objectives of development financing and refinancing.

11. Localities have the responsibility, and the flexibility, to create and implement a workable mechanism to "ensure the continued affordability" of the for-sale target units as required by the statute. Deed restrictions, conditions governing resale and forgivable second mortgages are methods that have been utilized in similar situations. The recorded instrument or document should be drafted to be compatible with the proposed sources of financing for the purchase of the target unit by the owner/occupant.

ATTACHMENT 3
(14 PAGES)

# ARTICLE 19

## DENSITY BONUS ORDINANCE

ARTICLE 19

DENSITY BONUS ORDINANCE

SEC. 10-19.100 TITLE. This Article shall be known and may be cited as the Density Bonus Ordinance of the City of Hayward.

SEC. 10-19.110 DEFINITIONS. Certain words and phrases are defined within this Article. Where it appears from the context of such words, phrases, or provisions that a different meaning is intended, the definition shall be as determined by the Director of Community and Economic Development/Planning Director.

a. `Affordable Housing Cost,' `Affordable Ownership Housing Cost' and `Affordable Rental Housing Cost' are defined as the allowable percentage of gross household income a household spends on housing costs for a given income group, as defined below:

   (1) For Very Low Income households, the Affordable Housing Cost shall not exceed the product of thirty percent (30%) times fifty percent (50%) of the Area Median Income adjusted for family size appropriate for the unit;

   (2) For Lower Income households, the Affordable Housing Cost shall not exceed the product of thirty percent (30%) times seventy percent (70%) of the Area Median Income adjusted for family size appropriate for the unit;

   (3) For Moderate Income households, the Affordable Housing Cost shall not be less than twenty-eight percent (28%) of the gross income of the household, nor exceed the product of thirty-five percent (35%) times one hundred ten percent (110%) of the Area Median Income adjusted for family size appropriate for the unit;

   (4) For owner-occupied units, the Affordable Housing Cost includes the monthly mortgage principal and interest, property taxes, homeowner=s insurance, and homeowner/condominium association fees (where applicable); and,

   (5) For renter-occupied units, the Affordable Housing Cost includes the monthly rent plus utility allowance, as defined by the Alameda County Housing Authority.

b. `Affordable Housing Unit' is defined as a Dwelling Unit within a Residential Development Project which will be made available to and reserved for Very Low Income households, Lower Income households or Moderate Income households at an Affordable Housing Cost for the respective group(s).

c. `Applicant' is defined as any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities who seek residential property development permits or approvals from the City of Hayward.

d. `Area Median Income (AMI)' is defined as the median income for the Oakland Primary Metropolitan Statistical Area (PMSA) as defined annually by the U.S. Department of Housing and Urban Development (HUD) and adopted by the California Department of Housing and Community Development (HCD). Income groupings that are subdivisions of AMI, such as Very Low, Low, Lower and Moderate-Income households, are also defined and published by HUD and adopted by HCD.

e. `Child Care Facility' is defined as a facility installed, operated, and maintained for the nonresidential care of children as defined under applicable state licensing requirements for the facility.

f. `Child Care Facility Density Bonus' means a floor area ratio bonus over the otherwise maximum allowable density permitted under the applicable zoning ordinance and land use elements of the general plan of the City of Hayward of the following amounts: A maximum of five (5) square feet of floor area for each one square foot of floor area contained in the Child Care Facility for existing structures; or a maximum of ten (10) square feet of floor area for each one square foot of floor area contained in the Child Care Facility for new structures.

g. `Condominium Conversion Density Bonus' means an increase in units of twenty-five percent (25%) over the number of apartments, to be provided within the existing structure or structures proposed for conversion.

h. `Density Bonus' is defined as a density increase of at least five percent (5%), unless a lesser percentage is elected by the Applicant, and no more than thirty-five percent (35%) over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the Applicant to the City of Hayward.

i. `Development Standard' is defined as site or construction conditions that apply to a Residential Development Project pursuant to any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation.

j. `Dwelling Unit' is defined as a dwelling designed and intended for residential occupancy by one household.

k. `Floor Area' is defined as to a commercial or industrial project, as the floor area as calculated under the applicable zoning ordinance of the City of Hayward and as to a Child Care Facility, as the total area contained within the exterior walls of the facility and all outdoor areas devoted to the use of the facility in accordance with applicable state child care licensing requirements.

l. `Household Income' is defined as the gross annual household income for all adult wage earners, Senior Citizen or disabled family members and any other sources of household income.

m. `Lower Income Households' is defined as households with a total combined income not exceeding eighty percent (80%) of the Area Median Income, adjusted for household size, as established by the U.S. Department of Housing and Urban Development.

n. `Marketing Plan` is defined as a plan that describes how the Applicant will inform the public, and those within the appropriate income groups, of the availability of Affordable Housing Units.

o. `Maximum Allowable Residential Density' is defined as the density allowed under the zoning ordinance, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project.

p. `Mixed-Use Development Project' is defined as a Residential Development Project that may include a mix of commercial, office, industrial or residential uses.

q. 'Mobilehome Park' is defined as a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

r. `Moderate Income Households' is defined as households with a total combined income not exceeding one hundred and twenty percent (120%) of the Area Median Income, adjusted for household size, as established by the U.S. Department of Housing and Urban Development.

s. `Presumed Occupancy Levels' are defined as: One person for a studio unit; two people for a one bedroom unit; three people for a two bedroom unit; and one additional person for each additional bedroom thereafter.

t. `Resale Controls and/or Rent Restrictions' are defined as the restrictions, set forth by the City of Hayward or by state and/or federal law, by which the rents paid on rental Affordable Housing Units and the sales price for ownership Affordable Housing Units are limited to ensure that the unit remains affordable to Very Low or Low Income households for a term of no less than thirty (30) years. With respect to rental units, such rent restrictions shall generally be in the form of a regulatory agreement recorded against the applicable property. With respect to owner occupied units, such resale controls shall generally be in the form of resale restrictions, deeds of trust and/or other similar documents recorded against the applicable property.

u. `Residential Development Project' is defined as detached single-family dwellings, multiple dwelling structures, groups of dwellings, condominium or townhouse developments, condominium conversions, cooperative developments, and mixed use developments that include housing units. This definition also includes contiguous or non-contiguous parcels that have one or more applications filed within a twenty-four (24) month period and which are under the same ownership.

v. `Senior Citizen Household' is defined as a household headed by a person sixty-two (62) years of age or older.

w. `Senior Citizen Housing Development' is defined as a development of at least thirty-five (35) dwelling units reserved for Senior Citizen Households and as further described in Sections 51.3 and 51.12 of the Civil Code.

x. 'Very Low Income Households' is defined as households with a total combined income not exceeding fifty percent (50%) of the Area Median Income, adjusted for household size, as established by the U.S. Department of Housing and Urban Development.

SEC. 10-19.120 APPLICATION. The provisions of this Article apply to Residential Development Projects and mixed-use Residential Development Projects, consisting of either five (5) or more general Dwelling Units, Senior Citizen Housing Developments or Mobilehome Parks. For those projects that are subject to the provisions of Hayward Municipal Code Chapter 10, Article 17, Inclusionary Housing Ordinance, Affordable Housing Units provided under the Inclusionary Housing Ordinance may be counted toward the requirements of this Article. To the extent that the provisions of this Article and the Inclusionary Housing Ordinance are in conflict, the provisions of the Inclusionary Housing Ordinance prevail.

SEC. 10-19.130 SPECIFIED HOUSING UNITS The City shall grant a Density Bonus, and incentives or concessions described in Section 10-19.200, when an Applicant for a Residential Development Project seeks and agrees to construct at least any one of the following:

a. Ten percent (10%) of the total Dwelling Units of a Residential Development Project for Lower Income Households; or

b. Five percent (5%) of the total Dwelling Units of a Residential Development Project for Very Low Income Households; or

c. A Residential Development Project meeting the requirements of a Senior Citizen Housing Development or a Mobilehome Park; or

d. Ten percent of the total Dwelling Units in a common interest development as defined in Section 1351 of the Civil Code, for persons and families of Moderate Income, provided that all units in the development are offered to the public for purchase.

The Applicant shall elect whether the Density Bonus shall be awarded on the basis of Section 10-19.130 a., b., c. or d. All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a Density Bonus shall not be interpreted, in and of itself, to require a general plan amendment, zoning change, or other discretionary approval. The Density Bonus shall not be included when determining the number of Dwelling Units that is equal to five (5%) or ten (10%) percent of the total Dwelling Units.

For Residential Development Projects that meet the criteria of Section 10-19.130 a., the Density Bonus shall be calculated as follows:

| Percentage Low-Income Units | Percentage Density Bonus |
|---|---|
| 10 | 20 |
| 11 | 21.5 |
| 12 | 23 |
| 13 | 24.5 |
| 14 | 26 |
| 15 | 27.5 |
| 16 | 29 |
| 17 | 30.5 |

| | |
|---|---|
| 18 | 32 |
| 19 | 33.5 |
| 20 | 35 |

For Residential Development Projects that meet the criteria of Section 10-19.130 b., the Density Bonus shall be calculated as follows:

| Percentage Very Low Income Units | Percentage Density Bonus |
|---|---|
| 5 | 20 |
| 6 | 22.5 |
| 7 | 25 |
| 8 | 27.5 |
| 9 | 30 |
| 10 | 32.5 |
| 11 | 35 |

For Residential Development Projects that meet the criteria of Section 10-19.130 c., the Density Bonus shall be twenty (20%) percent.

For Residential Development Projects that meet the criteria of Section 10-19.130 d., the Density Bonus shall be calculated as follows:

| Percentage Moderate Income Units | Percentage Density Bonus |
|---|---|
| 10 | 5 |
| 11 | 6 |
| 12 | 7 |
| 13 | 8 |
| 14 | 9 |
| 15 | 10 |
| 16 | 11 |
| 17 | 12 |
| 18 | 13 |
| 19 | 14 |
| 20 | 15 |
| 21 | 16 |
| 22 | 17 |
| 23 | 18 |
| 24 | 19 |
| 25 | 20 |
| 26 | 21 |
| 27 | 22 |
| 28 | 23 |
| 29 | 24 |
| 30 | 25 |
| 31 | 26 |
| 32 | 27 |
| 33 | 28 |
| 34 | 29 |
| 35 | 30 |

| | |
|---|---|
| 36 | 31 |
| 37 | 32 |
| 38 | 33 |
| 39 | 34 |
| 40 | 35 |

Residential Development Projects incorporating a Density Bonus require review and approval by the Planning Commission; provided, however, that if the Residential Development Project involves another permit or entitlement requiring City Council approval, then the Planning Commission may recommend approval or deny the project. Decisions of the Planning Commission may be appealed to the City Council as provided in Section 10-1.2845 of the City's Zoning Ordinance.

SEC. 10-19.140 LAND DONATION. When an Applicant donates land to the City, the Applicant shall be entitled to a fifteen percent (15%) increase above the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for the entire Residential Development Project as follows:

| Percentage Very Low Income | Percentage Density Bonus |
|---|---|
| 10 | 15 |
| 11 | 16 |
| 12 | 17 |
| 13 | 18 |
| 14 | 19 |
| 15 | 20 |
| 16 | 21 |
| 17 | 22 |
| 18 | 23 |
| 19 | 24 |
| 20 | 25 |
| 21 | 26 |
| 22 | 27 |
| 23 | 28 |
| 24 | 29 |
| 25 | 30 |
| 26 | 31 |
| 27 | 32 |
| 28 | 33 |
| 29 | 34 |
| 30 | 35 |

This Density Bonus shall be in addition to any Density Bonus mandated by Section 10-19.130, up to a maximum combined increase of thirty-five (35%) percent if the Applicant seeks both the increase required under this section and the increase under Section 10-19.130. All Density Bonuses resulting in fractional numbers shall be rounded up to the next whole number.

An Applicant shall be eligible for the increased Density Bonus described in this section if all of the following conditions are met:

a. The Applicant donates and transfers the land to the City no later than the date of approval by the City of the final subdivision map, parcel map, or residential development application of the Residential Development Project seeking the Density Bonus.

b. The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to Very Low Income households in an amount not less than ten percent (10%) of the number of residential units of the proposed Residential Development Project seeking the Density Bonus.

c. The transferred land is characterized by the following:

   (1) It is at least one acre in size or of sufficient size to permit development of at least forty (40) units; and

   (2) It has the appropriate general plan designation and is appropriately zoned for affordable housing; and

   (3) It is or will be served by adequate public facilities and infrastructure; and

   (4) It shall have appropriate zoning and development standards to make the development of the Affordable Housing Units feasible; and

   (5) No later than the date of approval of the final subdivision map, parcel map, or of the Residential Development Project seeking the Density Bonus, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the Very Low Income housing units on the transferred land, except that the City may subject the proposed Residential Development Project to subsequent design review, if the design is not reviewed by the City prior to the time of transfer.

d. The transferred land and the Affordable Housing Units shall be subject to a deed restriction, which shall be recorded on the property at the time of dedication, ensuring continued affordability of the units for a term of at least thirty (30) years.

e. The land is transferred to the City or to another housing developer approved by the City.

f. The transferred land shall be within the boundary of the proposed Residential Development Project or, if the City agrees, within one-quarter mile of the boundary of the proposed Residential Development Project.

SEC. 10-19.150 CHILD CARE FACILITIES. When an Applicant proposes to construct a Residential Development Project that conforms to the requirements of Section 10-19.130 and includes a Child Care Facility that will be located on the premises of, as part of, or adjacent to, the Residential Development Project, the City shall grant either of the following: (i) An additional 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 (ii) an additional concession or incentive designated by the City to contributes significantly to the economic feasibility of the construction of the Child Care Facility.

The City shall require, as a condition of approving the Residential Development Project that the following occur: (i) The Child Care Facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the Affordable Housing Units are required to remain affordable pursuant to this Article; and (ii) of the children who attend the Child Care Facility, the children of Very Low Income Households, Lower Income Households, Moderate Income Households shall equal a percentage that is equal to or greater than the percentage of Dwelling Units that are made affordable to Very Low Income Households, Lower Income Households, or families of Moderate Income Households pursuant to Section 10-19.130.

Notwithstanding any requirement of this Article, the City shall not be required to provide a Density Bonus or concession for a Child Care Facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

SEC. 10-19.160 CONDOMINIUM CONVERSIONS. When an Applicant's Residential Development Project is the conversion of an existing apartment complex to a condominium complex and the Applicant agrees to make at least thirty-three percent (33%) of the total units of the proposed condominium Residential Development Project affordable to moderate-income households for thirty years (30), or fifteen percent (15%) of the total units of the proposed condominium Residential Development Project to Lower Income households for thirty years (30), and agrees to pay for the administrative costs incurred by the City related to process the application and monitor the future status of the Affordable Housing Units, the City shall either (i) grant a Condominium Conversion Density Bonus or (ii) provide other incentives of equivalent financial value to be determined by the City.

An Applicant shall be ineligible for a Condominium Conversion Density Bonus or other incentives under this Section if the apartments proposed for conversion constitute a Residential Development Project for which a Density Bonus or other incentives were previously provided under this Article or the City's Inclusionary Housing Ordinance.

SEC. 10-19.170 DESIGN, DISTRIBUTION AND TIMING OF AFFORDABLE HOUSING UNITS. Affordable Housing Units must be constructed concurrently with market-rate units. The Affordable Housing Units shall be integrated into the Residential Development Project and be comparable in infrastructure (including sewer, water and other utilities), construction quality and exterior design to the market-rate units. The Affordable Housing Units must also comply with the following criteria:

a. Rental Residential Development Projects: When Affordable Housing Units are required in rental Residential Development Projects, the units should be integrated with the project as a whole. All Affordable Housing Units shall reflect the range and numbers of bedrooms provided in the project as a whole, and shall not be distinguished by design, construction, or materials. All Affordable Housing Units shall be reasonably dispersed throughout the project.

b. Owner-occupied Residential Development Projects: When Affordable Housing Units are required in owner-occupied Residential Development Projects, the units should be integrated with the project as a whole. Affordable Housing Units may be smaller in aggregate size and have different interior finishes and features than market-rate units so long as the interior features are durable, of good quality and consistent with contemporary standards for new housing. All Affordable Housing Units shall reflect the range and numbers of bedrooms provided in the project as a whole, except that if the market-rate units provide more than four bedrooms, the Affordable Housing Units need not provide more than four bedrooms.

No building permits will be issued for market-rate units until permits for all Affordable Housing Units have been obtained, unless Affordable Housing Units are to be constructed in phases pursuant to a plan approved by the City.

Market-rate units will not be inspected for occupancy until all Affordable Housing Units have been constructed, unless Affordable Housing Units are to be constructed in phases pursuant to a plan approved by the City.

SEC. 10-19.180 REQUESTS FOR INCENTIVES OR CONCESSIONS. Applicant must submit a Density Bonus Application, as described in Section 10-19.220 below, for the specific incentives or concessions that the Applicant requests. The City shall grant the concession or incentive requested by the Applicant unless the City makes a written finding, based upon substantial evidence, of either of the following:

a. The concession or incentive is not required in order to provide for Affordable Housing Costs;

b. The concession or incentive would have a specific adverse impact upon public health and safety or the physical environment or on any real property that is listed in the Federal Register of Historic Resources, the California Register of Historical Resources or the City's List of Officially Designated Architecturally and Historically Significant Buildings and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to Low and Moderate Income households.

SEC. 10-19.190 GRANTING OF INCENTIVES OR CONCESSIONS. If the conditions of 10-19.130 are met by Applicant, the following incentives or concessions may be granted:

a. One incentive or concession for a Residential Development Project that makes: At least ten percent (10%) of the total units affordable to Lower Income households; or at least five percent (5%) of the total units affordable to Very Low income households; or at least ten percent (10%) of the total units affordable to persons and families of Moderate Income in a common interest development.

b. Two incentives or concessions for a Residential Development Project that makes: At least twenty percent (20%) of the total units affordable to Lower Income households; or at least ten percent (10%) of the total units affordable to Very Low income households; or at least twenty percent (20%) of the total units affordable to persons and families of Moderate Income in a common interest development.

c. Three incentives or concessions for a Residential Development Project that makes: At least thirty percent (30%) of the total units for Lower Income households; at least fifteen percent (15%) for Very Low Income households, or at least thirty percent (30%) for persons and families of Moderate Income in a common interest development.

SEC. 10-19.200 TYPES OF INCENTIVES OR CONCESSIONS. For the purposes of this Article, concession or incentive may mean:

a. A reduction in site Development Standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission, resulting in identifiable, financially sufficient, and actual cost reductions, or

b. A reduction in setback and square footage requirements; or

c. A reduction in the ratio of vehicular parking spaces and/or configurations as set forth in Government Code Section 65915(p); or

d. Approval of mixed use zoning in conjunction with the Residential Development Project if commercial, office, industrial, or other land uses will reduce the development cost of the Residential Development Project and if the commercial, office, industrial, or other land uses are compatible with the Residential Development Project and the existing or planned development in the area where the proposed housing project will be located.

Nothing in this Section shall be construed to require the provision of direct financial incentives for the Residential Housing Development, including the provision of publicly owned land by the City or the waiver of fees or dedication requirements.

SEC. 10-19.210 COMPLIANCE. The provisions of this Article shall apply to all agents, successors and assignees of an Applicant, developer, builder or property owner proposing a Residential Development Project governed by this Article. No tentative map, use permit, special development permit or occupancy permit shall be issued for any Residential Development Project unless exempt from or in compliance with the terms of this Article.

The City may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including but not limited to actions to revoke, deny or suspend any permit or development approval.

SEC. 10-19.220 DENSITY BONUS APPLICATION. In order to receive the concessions and/or incentives described in Section 10-19.200, the Applicant must submit to the City a Density Bonus Application (DBA) which will be treated as part of the development application. At any time during the review process, the Planning Director may require from the Applicant additional information reasonably necessary to clarify and supplement the application or determining the consistency of the proposed DBA with the requirements of this Article.

The DBA should include, but not be limited to, the following:

a. A description of the Residential Development Project including the proposed total number of Affordable Housing Units, Senior Housing Units or Mobilehome Park Units;

b. The zoning and general plan designations and assessors parcel number(s) of the project site;

c. A vicinity map and preliminary site plan, drawn to scale, including building footprints, driveway and parking layout.

d. A description of the concessions or incentives requested.

e. If an additional incentive(s) is requested, the application should describe why the additional incentive(s) is necessary to provide the Affordable Housing Units.

SEC. 10-19.230 AFFORDABLE HOUSING UNIT PLAN. The Applicant must submit an Affordable Housing Unit Plan (AHUP) which will be treated as part of the development application. At any time during the review process, the Planning Director may require from the Applicant additional information reasonably necessary to clarify and supplement the application or determining the consistency of the proposed AHUP with the requirements of this Article.

The AHUP should include, but not be limited to, the following:

a. The location, structure (attached, semi-attached, or detached), proposed tenure (for-sale or rental), and size of the proposed market-rate, commercial space and/or Affordable Housing Units;

b. A floor or site plan depicting the location of the Affordable Housing Units and a floor plan describing the size, in square footage, of the Affordable Housing Units;

c. The income levels to which each Affordable Housing Unit will be made affordable;

d. The documents that will be used to assure that the units remain affordable for the desired term, such as resale and rental restrictions, deeds of trust, and rights of first refusal and other documents;

e. For phased Residential Development Projects, a phasing plan that provides for the timely development of the number of Affordable Housing Units proportionate to each proposed phase of development as required by this Article;

f. A marketing plan that describes how the Applicant will inform the public, and those within the appropriate income groups, of the availability of Affordable Housing Units; and

g. Any other information reasonably requested by the Planning Director to assist with evaluation of the AHUP under the standards of this Article.

SEC. 10-19.240 AFFORDABLE HOUSING UNIT AGREEMENT. The form of the Affordable Housing Unit Agreement (AUA) will vary, depending on the manner in which the provisions of this Article are satisfied for a particular development. The AUA shall be recorded as a restriction on the parcel or parcels on which the Affordable Housing units will be constructed. The approval and recordation of the AUA shall take place prior to final map approval, or, where a map is not being processed, prior to issuance of building permits for such parcels or units. The AUA shall be binding on all future owners and successors in interest. An AUA must include, at minimum, the following:

a. A description of the development, including the total number of units, the number of Affordable Housing Units, and the tenure of the Affordable Housing Units;

b. The size, in square footage, and location of Affordable Housing Units;

c. A description of the household income group to be accommodated by the Affordable Housing Units, and the formula for determining the affordable rent or affordable sales price and housing cost for each Affordable Housing Unit;

d. The term of affordability for the Affordable Housing Units;

e. A schedule for completion and occupancy of the Affordable Housing Units;

f. Provisions and/or documents for resale restrictions, deeds of trust, rights of first refusal or rental restrictions;

g. The Marketing Plan for sale or rental of the Affordable Housing Units;

h. Provisions for monitoring the ongoing affordability of the Affordable Housing Units, and the process for qualifying prospective resident households for income eligibility; and

i. A description of the concession(s) or incentive(s) provided by the City.

SEC. 10-19.250 AFFORDABLE HOUSING UNIT AGREEMENTS FOR OWNERSHIP UNITS. In the case Residential Development Projects consisting of ownership units, the AUA must provide the following additional conditions governing the sale and use of Affordable Housing Units during the applicable use restriction period:

a. Affordable Housing Units shall be sold to Very Low Income households, Lower Income households or Moderate Income households in a common interest development, at an affordable sales price and housing cost as defined by this Article.

b. Affordable Housing Units shall be owner-occupied by Very Low or Lower Income households or by Moderate Income households within common interest developments.

c. The purchaser of each Affordable Housing Unit shall execute an instrument or agreement approved by the City restricting the sale of the Affordable Housing Unit in accordance with this Article during the applicable use restriction period. Such instrument or agreement shall be recorded against the parcel containing the Affordable Housing unit and shall contain such provisions as the City may require to ensure continued compliance with this Article and with Government Code Section 65915. With respect to Moderate Income Affordable Housing Units, the instrument or agreement shall provide for equity-sharing as set forth in Government Code Section 65915.

d. Any additional obligations relevant to the compliance with this Article.

SEC. 10-19.260 AFFORDABLE HOUSING UNIT AGREEMENTS FOR RENTAL UNITS. In the case of Residential Development Projects consisting of rental units, the AUA must provide the following additional conditions governing the use of Affordable Housing units during the use restriction period:

a. Specific property management procedures for qualifying and documenting tenant income eligibility, establishing affordable rent and maintaining Affordable Housing units for qualified tenants;

b. Provisions requiring property owners to verify household incomes and maintain books and records to demonstrate compliance with this Article.

c. Provisions requiring the Property Owner to submit an annual report to the city, which includes the name(s), address, and income of each household occupying target units, and which identifies the bedroom size and monthly rent or cost of each Affordable Housing unit.

d. Provisions describing the amount of, and timing for payment of, Administrative Fees to be paid to the City for the on-going compliance monitoring of the provisions of this Article.

e. Any additional obligations relevant to the compliance with this Article.

SEC. 10-19.270 ADMINISTRATIVE FEE. An administrative fee shall be charged to the Applicant for City review of all materials submitted in accordance with this Article and for on-going enforcement of the provisions of this Article. The fee amount shall be established by City Council resolution and will be described in the City of Hayward Master Fee schedule. Fees will be charged for staff time and materials associated with the following activities: Development review process; project marketing and lease-up; long-term compliance of the Affordable Housing Units.

SEC. 10-19.280 VIOLATION OF AFFORDABLE HOUSING COST REQUIREMENTS. In the event it is determined that rents in excess of those allowed by operation of this Article have been charged to a tenant residing in a rental Affordable Housing Unit, the City may take the appropriate legal action to recover, and the rental unit owner shall be obligated to pay to the tenant (or to the City in the event the tenant cannot be located), any excess rent charges.

In the event it is determined that a sales price in excess of that allowed by operation of this Article has been charged to an income-eligible household purchasing an ownership Affordable Residential Unit, the City may take the appropriate legal action to recover, and the Affordable Residential Unit seller shall be obligated to pay to the purchaser (or to the City in the event the purchaser cannot be located), any excess sales costs.