
Chapter 18.36 – Affordable Housing - Density Bonus

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18.36.010 – Purpose and Intent

The purpose of this chapter is to provide a means for granting density bonuses, incentives, or concessions for the production of housing for very low income, lower income, moderate income households, or senior households, including condominium conversions, projects to substantially rehabilitate and convert commercial buildings to residential use, rehabilitate an existing multiple family dwelling to increase available residential units, and for child day care facilities in compliance with Government Code Sections 65915 et. seq. In enacting this chapter, it is the intent of the City to facilitate the development of affordable housing and child day care facilities and to implement the goals, objectives, and policies of the Housing Element of the General Plan. The regulations and procedures established in this chapter shall apply to all housing developments of five units or more. If there is a conflict between any provision of this chapter and state law, state law shall control.

18.36.020 – Definitions

In addition to the definitions in Article 1 of the Development Code, and the definitions in Chapter 18.35, the following definitions are applicable to this chapter.

Additional Incentives or Concessions. Incentives and concessions as specified in Government Code Section 65915 to include, but not be limited to, the reduction of site development standards or zoning code requirements, direct financial assistance or incentives, approval of mixed use zoning in conjunction with the housing development, or any other incentive that would result in identifiable cost avoidance or reductions that are offered in addition to a density bonus for development incentives and concessions.

Child Day Care Facility. A facility certified and licensed in compliance with all applicable state licensing requirements for the provision of, and providing, non-medical daytime care to children under 18 years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24 hour basis, including, but not limited to, nursery schools, preschools, extended day care facilities, and employer-sponsored child care centers, but excluding family day care homes.

Density Bonus. An increase in the number of primary dwelling units on a property for qualifying projects in compliance with this chapter and with Government Code Sections 65915 et seq.

Density Bonus Housing Agreement. A legally binding agreement between a developer and the City to ensure the requirements of this chapter are satisfied .

Density Bonus Units. Residential units granted in compliance with the provisions of this chapter which exceed the maximum residential density for the development site.

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

- A density bonus and additional incentive(s); or
- A density bonus, where an additional incentive(s) is not requested or is determined to be unnecessary.

Maximum Residential Density. The maximum number of residential units permitted by the General Plan, excluding the provisions of this chapter, based upon compliance with the site area standards for the applicable residential zones. If the housing development is within a planned unit development, the maximum residential density shall be determined on the basis of the General Plan.

Senior Citizen Housing. A housing development consistent with the California Fair Employment And Housing Act (Government Code Section 12900 et seq.), designed to meet the physical and social needs of senior citizens, and which 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 in Civil Code Sections 51.2 and 51.3.

18.35.030 – Implementation

- A.** The City shall grant a density bonus and at least one additional incentive or concession to an applicant/developer of a housing development who agrees to provide, at a minimum, one of the following:
1. At least five percent of the total units of the housing development as target units affordable to very low income households; or
 2. At least 10 percent of the total units of the housing development as target units affordable to lower income households; or
 3. A senior citizen housing development as defined in Civil Code Sections 51.2 and 51.3, or mobile home park that limits residency based on age requirements for housing for older persons in compliance with Civil Code Sections 798.76 or 799.5; or
 4. At least 10 percent of the total units of a newly constructed common interest development project as target units affordable to moderate income households; or
 5. At least 10 percent of the total units of the housing development for transitional foster youth as defined in Education Code Section 66025.9, disabled veterans as defined in Section 18541 or homeless persons as defined in the federal McKenny-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.) with a recorded affordability restriction of at least 55 years, provided at the same affordability level as very low income units; or
 6. A child day care facility containing at least the minimum square footage required by applicable state child care licensing requirements, provided affordable housing also is developed as required by Government Code Section 65915.
- B.** Consistent with and subject to the provisions of Government Code Section 65915.5, the City shall grant either a density bonus of 25 percent over the number of apartments/units to be provided within the existing structure(s) proposed for conversion, or other equivalent financial incentives if the applicant/developer agrees to provide 33 percent of the total units in a condominium

conversion project as target units affordable to low or moderate income households as defined in Health and Safety Code Section 50093, or 15 percent of the total units in a condominium conversion project as target units to lower income households as defined in Health and Safety Code Section 50079.5. The conversion of apartments to condominiums shall be in compliance with Municipal Code Chapter 14.24.

- C. Consistent with to the provisions of Government Code Section 65915(c)(3), an applicant/developer shall not be eligible for a density bonus or any other incentive or concession if the housing development is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant or the City's Just Cause for Eviction and Rent Stabilization Ordinance, subject to any other form of rent or price control or occupied by lower or very low income households, unless the proposed housing development replaces those units, and either of the following applies: (i) The proposed housing development, inclusive of the units replaced, contains affordable units; and (ii) Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.
- D. In determining the density bonus to be granted, the maximum residential density for the site shall be multiplied by the percentages set forth in the Government Code and replicated below. When calculating the number of allowed density bonus units, any fractions of whole units shall be rounded to the next larger whole number.

**Table 3-5 –
Very Low-Income**

Percentage of Base Units Proposed	Density Bonus Percentage
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

**Table 3-6 –
Low-Income**

Percentage of Base Units Proposed	Density Bonus Percentage
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
17	30.5
18	32

19	33.5
20	35

**Table 3-7 –
Moderate-Income**

Percentage of Base Units Proposed	Density Bonus Percentage
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

Percentage of Base Units Proposed	Density Bonus Percentage
39	34
40	35

1. A project qualifying for a density bonus for senior housing shall receive a density bonus of 20 percent.
 2. A project qualifying for a density bonus for child care facilities shall receive either 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 an additional concession or incentive that contributes to the economic feasibility of construction of the facility, so long as the requirements set forth in Government Code Section 65915(h)(2) are met.
 3. A project qualifying for a density bonus for condominium conversions shall receive a density bonus of 25 percent or other incentives or equivalent financial value.
- E.** 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 whole number.
 - F.** In cases where a density increase of less than that allowed is requested, no reduction shall be allowed in the number of target units required. In cases where a density increase of more than that permitted is requested, the requested density increase, if granted, shall be considered an additional incentive
 - G.** An applicant/developer who agrees to construct both 10 percent of the total units for lower income households and five percent of the total units for very low income households is entitled to only one density bonus; however, the applicant/developer is entitled to an additional incentive or concession.
 - H.** Consistent with and subject to the provisions of Government Code Section 65917.5(b), the City may grant a density bonus and at least one additional incentive or concession to an applicant/developer of a commercial or industrial project containing at least 50,000 square feet of floor area, when that developer has set aside at least 2,000 square feet of floor area and 3,000 outdoor square feet to be used for a child care facility.
 - I.** In compliance with state law, the granting of a concession or incentive shall not be interpreted, in and of itself, to require of the applicant/developer a General Plan amendment, Zoning Map change, or other discretionary approval.
 - J.** If the housing development has already received an incentive under the terms of the R-MD multiple-family zone density/intensity provisions, no similar incentive or concession will be granted; however, the applicant/developer may propose a different incentive or concession under the terms of this chapter.
 - K.** When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to the City, the applicant shall be entitled to a 15 percent increase above the maximum allowable residential density under the applicable residential zone and land use element of the General Plan for the entire development, as follows:

**Table 3-8 –
Very Low-Income**

Percentage of Base Units Proposed	Density Bonus Percentage
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

1. This increase shall be in addition to any increase in density mandated by this section, up to a maximum combined density increase of 35 percent if an applicant seeks both the increase required in compliance with this section and Section 18.36.050. All density calculations resulting in fractional whole units shall be rounded up to the next whole number.
2. Nothing in this section shall be construed to enlarge or diminish the authority of the City to require a developer to donate land as a condition of development. An applicant/developer donating land to the city shall be eligible for the increased density bonus as described in this section and consistent with Government Code Section 65915(g) if all of the following conditions are met:

- a. The applicant identifies the proposed source of funding, donates, and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.
- 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 10 percent of the number of residential units of the proposed development, zoned at a density required to meet the City's regional housing need share.
- c. The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate General Plan designation, is appropriately zoned for development as affordable housing, and is or will be served by adequate public facilities and infrastructure. The land shall have appropriate zoning and development standards to make the development of the affordable units feasible. No later than the date of approval of the final subdivision map, parcel map, or of the residential development, 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 development may be subject to design review to the extent authorized Government Code Section 65583.2.
- d. The transferred land has all the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land not later than the date of the approval of the final subdivision map, parcel map, or residential development application, although the proposed development may be subject to design review if the design was not reviewed prior to the transfer.
- e. The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with Government Code Section 65915, which shall be recorded on the property at the time of transfer.
- f. The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.
- g. The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.
- h. A proposed source of funding for the very low income units is identified no later than the date of approval of the final subdivision map, parcel map, or residential development application.

18.36.040 – Development Standards

- A. **Development schedule.** Target units shall be constructed concurrently with market rate units, unless both the City and the applicant/developer agree within the density bonus housing agreement to an alternative schedule for development.
- B. **Affordability restrictions.**
 1. An applicant/developer shall agree to the continued affordability of all very low and low-income rental units that qualified for the award of the density bonus for 55 years or a

longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

2. An applicant/developer shall agree that the initial occupant of all for sale units that qualify for the award of a density bonus are persons and families of very low, low, or moderate income and that the units are offered at an affordable housing cost. The equity sharing agreement shall comply with the provisions set forth in Government Code Section 65915(c)(2).

- C. Household and unit size.** In determining the maximum affordable rent or affordable sales price of target units the following household and unit size assumptions shall be used:

**Table 3-9 –
Very Low-Income**

UNIT SIZE	HOUSEHOLD
SRO unit (residential hotel)	75% of 1 person
0 bedroom (studio)	1 person
1 bedroom	2 persons.
2 bedroom	3 persons
3 bedroom	4 persons
4 bedroom	5 persons

- D. Location and mix of units.** Except where an agreement is reached between an applicant/developer and the City, target units shall be built on-site and shall be dispersed within the housing development. The number of bedrooms of the target units shall be equivalent to the bedroom mix of the non-target units; except that the developer may include a higher proportion of target units with a greater number of 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 and design standards, except those that may be modified as provided by this chapter.
- E. Alternative site.** 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 applicant/developer and the City reach an agreement, the resulting linked developments shall be considered a single housing development for purposes of this chapter. Under these circumstances, the applicant/developer shall be subject to the same requirements for the target units to be provided on the alternative site.
- F. Decreased parking ratio.** At the request of the applicant/developer, the parking ratios required in Chapter 18.30 shall be reduced in compliance with Government Code Section 65915(p).
- G. Condition of other approvals.** A density bonus housing agreement shall be made a condition of a discretionary permit (e.g., tract maps, parcel maps, site plans, planned unit development) for all housing developments in compliance with this chapter. The agreement shall be recorded as a restriction on the parcel(s) on which the target units will be constructed.

18.36.050 – Development Incentives or Concessions

- A. Written request.** An applicant/developer shall submit a written proposal for the specific incentives or concessions the applicant/developer requests, and shall provide supporting documentation.
1. The City shall grant the concession or incentive requested by the applicant/developer, unless the City makes a written finding, based upon substantial evidence, of any of the factors set forth in Government Code Section 65915(d), such as the concession or incentive does not result in identifiable and actual cost reductions to provide affordable housing or targeted rents, the concession or incentive would have a specific adverse impact upon health and safety, the environment or a historic resource, or the concession or incentive would be contrary to state or federal law.
 2. The applicant/developer shall receive the following number of incentives or concessions:
 - a. One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least five percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.
 - b. Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.
 - c. Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.
- B. Modification of standards.** An applicant/developer may seek a waiver or modification of development or zoning standards. The City shall not apply any development standard that will have the effect of physically precluding construction of a project that is eligible for the incentive or concession, unless the waiver would result in any specific adverse impact as specified in Government Code Section 65915. The seeking of the waiver or modification of development standards shall not count against the number of incentives or concessions that the developer is entitled to. The applicant/developer shall comply with all standard application requirements.
- C. Additional incentives.** The approval 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:
1. A reduction of site development standards or a modification of Development Code or architectural design requirements that exceed the minimum building standards provided in Health and Safety Code Part 2.5, Division 13. These may include, but are not limited to, one or more of the following:
 - a. **Tier One:**
 - a. Reduced minimum parcel sizes and/or dimensions.
 - b. Reduced minimum parcel setbacks.
 - c. Reduced minimum outdoor and/or private outdoor open space.
 - d. Reduced minimum building separation requirements.

- b. **Tier Two:**
 - a. Increased maximum parcel coverage.
 - b. Reduced on-site parking standards, including the number or size of spaces, requirements for spaces to be covered, and restrictions on tandem parking formats.
 - c. **Tier Three:**
 - a. Increased maximum building height and/or stories.
 - b. Mixed use development as may be allowed.
 - c. Other regulatory incentives or concessions proposed by the applicant/developer that demonstrate actual cost reductions.
 - d. Deferred development impact fees (e.g. capital facilities, park land in-lieu, park facilities, fire, or traffic impact fees).
 - e. The City may offer an equivalent financial incentive in lieu of granting a density bonus and additional incentive(s). The value of the equivalent financial incentive shall at least equal the land cost per dwelling unit savings that would result from a density bonus and shall contribute significantly to the economic feasibility of providing the target units in compliance with this chapter. The City may recapture subsidies awarded and may recommit them to qualifying project(s) within five years of the initial award.
2. Concessions granted under Tier One and Tier Two may be handled administratively by the Director. At the Director's discretion, the Director may refer Tier Two concessions to the Commission. Tier Three concessions shall be considered by the Commission.

18.36.060 – Application Requirements and Review

- A. **Concurrent processing.** An application in compliance with this chapter shall be processed concurrently with any other application(s) required for the proposed housing development. Approval or denial of an application shall be made by the Commission. An aggrieved party may file an appeal of this action.
- B. **Preliminary application.** An applicant/developer proposing a housing development in compliance with this chapter may submit a preliminary application before the submittal of a formal request for approval of a housing development, including a preliminary application for prospective additional incentives. A preliminary application shall include all of 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 assessor's 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; and

4. If an additional incentive(s) is requested, the application shall describe why the additional incentive(s) is necessary to provide the target units. The applicant/developer may provide financial information, including a pro-forma that demonstrates a detailed breakdown of project costs as well as unit sale prices based on current market conditions, for the City's review in determining qualification for development incentives or concessions). The applicant/developer shall bear all costs of preparation and any outside analysis of documents carried out for the purposes of incentives or concessions.
- C. Alternative incentives.** The Director shall inform the applicant/developer the requested additional incentive(s) will be recommended for consideration with the proposed housing development, or that alternative or modified additional incentive(s) will be recommended for consideration in lieu of the requested incentive(s). If alternative or modified incentive(s) are recommended by the Director, the recommendation shall establish how the alternative or modified incentive(s) affect affordability that is equivalent to the requested incentive(s).

18.36.070 – Density Bonus Housing Agreement

- A.** An applicant/developer requesting a density bonus shall agree to enter into a density bonus housing agreement with the City.
- B.** Following execution of the agreement by all parties, the completed agreement, or memorandum, shall be recorded and the conditions filed and recorded on the parcel(s) designated for the construction of target units. The approval and recordation shall take place before final map approval, or, where a map is not being processed, before issuance of building permits for the parcels or units. The density bonus housing agreement shall be binding on all future owners and successors in interest.
- C.** The density bonus housing agreement shall include at least all of 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 and the standards for determining the corresponding affordable rent or affordable sales price and housing cost;
 3. The location, unit sizes in square feet, and number of bedrooms of all target units;
 4. Tenure of use restrictions for all target units ;
 5. A schedule for completion and occupancy of all target units;
 6. A description of the additional incentive(s) or equivalent financial incentive(s) being provided by the City;
 7. A description of remedies for breach of the agreement by either party (the City may identify tenants or qualified purchasers as third party beneficiaries under the agreement); and
 8. Any other provisions to ensure implementation and compliance with this chapter.
- D.** In the case of for-sale housing developments, the density bonus housing agreement shall provide for the following conditions governing the sale and use of all target units during the applicable use restriction period:

1. Target units shall be sold to eligible very low, lower, or moderate income households at an affordable sales price and housing cost, or to qualified residents .
 2. Target units shall be owner-occupied by eligible very low or lower income households, or by qualified residents in the case of senior citizen housing, or by eligible moderate income households within condominium projects.
 3. The purchaser of each target unit shall execute an instrument or agreement approved by the City restricting the sale of the target unit during the applicable use restriction period. The instrument or agreement shall be recorded against the parcel containing the target unit and shall contain the provisions as the City may require to ensure continued compliance with the law.
- E.** In the case of rental housing developments, the density bonus housing agreement shall provide for the following conditions governing the use of all target units during the use restriction period:
1. The rules and procedures for qualifying households, establishing affordable rent, filling vacancies, and maintaining all target units for qualified tenants;
 2. Provisions requiring owners to verify household incomes and maintain books and records to demonstrate compliance; and
 3. Provisions requiring owners to submit an annual report to the City, that includes the name(s), address, and income of each household occupying target units and that identifies the bedroom size and monthly rent or cost of each target unit.
- F.** An agreement for partnered housing, consistent with and subject to Government Code Section 65915.7, between a commercial developer and a housing developer shall identify how the commercial developer will contribute to affordable housing and shall be subject to approval by the City.