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DATE: August 17, 2011

TO: Honorable Mayor and Members of the City Council

FROM: Development Services Department/Planning Division  
Neighborhood Services/Housing and Code Enforcement Division

SUBJECT: **REVISION OF EXISTING AFFORDABLE HOUSING DENSITY BONUS ORDINANCE (ARTICLE 3032 OF THE ZONING ORDINANCE)**

**SYNOPSIS**

Staff requests that the City Council support staff-recommended revisions to the City's Density Bonus Ordinance and direct staff to initiate associated General Plan, Local Coastal Plan, Municipal Code and Zoning Ordinance amendments

**BACKGROUND**

On February 23, 2011, the City Council directed staff to prepare an ordinance for the repeal of City's Inclusionary Housing Ordinance (Article 14C). The City Council further directed staff to convene an ad hoc committee of housing stakeholders (e.g., affordable housing advocates, members of the development community) to discuss possible alternatives to the City's Inclusionary Housing Program.

The ad hoc committee assembled at the City Council's direction held four meetings between March 7, 2011, and April 18, 2011. In the course of these meetings, it was suggested by several committee members that the City consider enhancement of its existing density bonus ordinance to further incent market-rate housing developers to include affordable units in their projects. City staff furnished committee members with the recently-prepared revision of the City's current Density Bonus Ordinance, which is designed only to achieve compliance with minimum state requirements.

Using this staff-generated document as a starting point, representatives of the Building Industry Association (BIA) prepared an alternative density bonus ordinance that includes the following additional provisions:

- Allowance for the affordable and market-rate components of a density bonus project to be constructed on different sites, rather than integrated into the same development;
- Allowance for the affordable component of a density bonus project to be implemented through the acquisition, rehabilitation and deed restriction of existing market-rate housing units, rather than exclusively through the construction of new affordable housing units;



- Density bonus percentages in excess of the maximum density bonus percentages prescribed by state law, up to 50 percent;
- Elimination of state-prescribed size and locational standards for land donated in exchange for density bonus;
- Streamlined entitlement processing for density bonus projects;
- Different milestones for determining when the market-rate component of a density bonus project can move forward, relative to progress toward the implementation of the affordable component.

The BIA-recommended revision of the City's Density Bonus Ordinance is included with this staff report as Attachment 3. Staff has provided an analysis of the BIA proposal in Attachment 6.

Another ad hoc committee member, Catherine Rodman of Affordable Housing Advocates (AHA), also provided an alternative revision of the Density Bonus Ordinance that includes the following additional provisions:

- Density bonus for housing for special needs populations and extremely low-income households (two categories of need not explicitly acknowledged in state density bonus law);
- Additional concessions/incentives (beyond the state-prescribed maximum of three) based on type and percentage of affordable units provided;
- A specified menu of concessions/incentives from which applicants can choose (as opposed to leaving it to applicants to propose concessions/incentives in negotiation with the City);
- Longer durations of affordability than those specified in state density bonus law, with some projects rendered affordable in perpetuity.

Unlike the revisions recommended by City staff and the BIA, the revision proposed by AHA does not allow for the off-site provision of affordable units, the deed restriction of existing market-rate units or the donation of land not consistent with size and locational requirements established in state density bonus law. It is AHA's position that the City's affordable housing policies should promote inclusionary housing and mixed-income neighborhoods to the fullest extent possible, and that allowances for off-site fulfillment of affordability requirements would instead promote greater segregation of affordable and market-rate housing. AHA has further opined that leaving concessions and incentives open to negotiation would delay the review and approval process and create additional costs for applicants.

The AHA-recommended revision of the City's Density Bonus Ordinance is included with this staff report as Attachment 4. Staff has provided an analysis of the AHA proposal in Attachment 7.

On May 25, 2011, in the course of its deliberations on the City's Inclusionary Housing Ordinance, the City Council directed staff to prepare recommendations for an enhanced density bonus ordinance that goes beyond minimum state requirements to offer additional voluntary incentives for the provision of affordable housing. Staff was to return with a draft revision of the City's existing Density Bonus Ordinance within 90 days, at which time the Council would provide staff with further direction regarding the details of the ordinance and what, precisely, to bring forward for subsequent formal adoption.

## **ANALYSIS**

### ***Impediments to Density Bonus Projects***

Given that residential density standards and other regulatory factors constitute only some of the many constraints facing affordable housing development, staff cannot predict if, or to what extent, mitigating these constraints through an enhanced density bonus ordinance would spur the production of affordable housing. In the nearly 20 years the current density bonus ordinance has been in place, the City has never received an application for density bonus. Elsewhere in San Diego County, some density bonus projects have been proposed and implemented, but they remain a relatively uncommon phenomenon. As acknowledged by the ad hoc committee and reiterated in conversations with planning staff in other jurisdictions, there are a variety of reasons why density bonus law has not facilitated a significant amount of affordable housing in California:

- Underlying residential density allowances that already meet or exceed the density thresholds for profitable development;
- Lack of experience among market-rate housing developers with the implementation and management of affordable housing projects;
- Concern that the presence of affordable units in market-rate housing projects render such projects less marketable;
- Concern that community opposition makes affordable housing projects excessively risky, expensive and drawn out;
- Construction costs and financing restrictions associated with high-density housing often render such projects economically infeasible;
- Concern that reduced parking makes housing units less profitable and more difficult to sell;
- Lack of flexibility in density bonus provisions, discouraging market-rate developers from working with affordable housing experts to leverage their respective capacities.

Ad hoc committee members noted that one of the key limitations of the density bonus incentive is the assumption that, under state law, affordable units must be constructed on the same site as market-rate units. Because market-rate housing developers typically do not maintain ownership or assume long-term management of their projects following construction, enforcement of affordability covenants and other administrative responsibilities associated with affordable units are problematic. On the other hand,

developers who specialize in affordable housing commonly maintain an ownership interest and management role in their implemented projects. Consequently, for market-rate developers seeking to meet affordable housing requirements, partnership with affordable housing developers and management entities becomes an attractive option when required affordable units can either be constructed off-site or produced through the acquisition, rehabilitation and deed restriction of existing market-rate units.

### ***State Density Bonus Law***

Government Code Section 65915 requires that all cities and counties in California adopt ordinances that grant additional density as well as relief from other development standards in exchange for specified percentages of affordable housing. The ratios established in state law between the amount of affordable housing proposed and the amount of density bonus granted are generally considered minimum requirements that localities can choose to exceed. Attachment 4 to this staff report compares the provisions of state density bonus law with the City's current Density Bonus Ordinance.

In conversation with City staff, HCD staff has confirmed that localities can provide additional density bonus incentives, and that nothing in state law precludes density bonus for rendering existing market rate units affordable through restrictive covenant or constructing new affordable units off-site.

### ***Staff Recommendations***

The complete text of the staff-recommended revision of the City's Density Bonus Ordinance is included with this staff report as Attachment 1. Along with adding provisions now required by state law (as detailed in Attachment 4) and incorporating several of the BIA's recommended enhancements, this draft revision also includes other concepts discussed by the ad hoc committee, as follows:

#### **Require Affordable Housing When Base Density Is Exceeded by Means of Concessions or Incentives**

Staff recommends that the City's Density Bonus Ordinance require the provision of affordable housing when applicants seek concessions or incentives deemed necessary to exceed base density allowances. While such projects would be precluded from exercising the in-lieu fee option under the City's Inclusionary Housing Ordinance, they would in return be exempted from any variance or conditional use permit that might otherwise be required.

The 1992 Zoning Ordinance, applicable outside of the Coastal Zone and the Downtown Redevelopment Area, assigns a density range to each residential zoning designation, from residential estate to high-density urban and residential tourist zones. These ranges extend from a base density allowance to a maximum density allowance, with proposals for density above the base allowance requiring issuance of a Conditional Use Permit (CUP). Notwithstanding density allowances, the number of units that can be feasibly integrated into a residential project is often limited by site constraints (e.g., lot dimensions, topography). When such constraints can be mitigated by flexibility in development standards, thereby assisting applicants in achieving densities closer to the

maximum but still within the allowable density range, staff recommends granting such flexibility in exchange for the provision of affordable units (on or off-site). The percentage of affordable units to be provided would be based on the number of concessions or incentives requested, in accordance with ratios established by state law.

As an example, proposals for residential development under the RH (Residential High Density) zoning designation, which has an allowable density range of 21 to 29 dwelling units per acre, would be required to provide an affordable component (on or off-site) in exchange for any concessions or incentives deemed necessary to achieve density above the base allowance of 21 dwelling units per acre.

Attachment 6 to this staff report is a table that illustrates the allowable density range for each residential zoning designation, as established in the 1992 Zoning Ordinance. Allowable residential density under the 1986 Zoning Ordinance is expressed not as a range but only as a maximum not to exceed. Thus, in order to apply this concept to properties within the City's Coastal Zone, the Local Coastal Plan and the 1986 Zoning Ordinance would have to be amended to specify density ranges for all residential zoning designations.

Recognizing that small infill residential projects (i.e., less than 10 units) typically do not achieve the economies of scale needed to absorb the cost of an affordable component, staff recommends that such projects be exempted from the requirement to provide affordable units in exchange for concessions or incentives. Instead, these smaller-scale projects would be subject to the standard conditional use permit process for density above the base density allowance and a variance application for any proposed flexibility in development standards. Staff further recommends that projects of less than 20 units be allowed to pay in-lieu fees for any fractional affordable housing obligation. Projects of 20 units or more would only be allowed to pay in-lieu fees for fractional obligations less than 50 percent of a whole unit.

#### Establish an Affordable Housing/Transit Overlay Zone

In conjunction with these proposed enhancements of the City's Density Bonus Ordinance, staff recommends the creation of an Affordable Housing/Transit Overlay Zone, the boundaries of which would be consistent with the Regional Smart Growth Concept Map and those areas within a quarter-mile of high-frequency bus service. A generalized map of these areas is included with this staff report as Attachment 3.

The principal purpose of the proposed overlay zone would be to ensure that future affordable housing is situated in proximity to public transit, recreational facilities and basic commercial services (e.g., grocery stores). An important ancillary purpose of the proposed overlay zone would be to encourage more efficient development patterns that maximize the use of existing infrastructure and create new synergies between residential, commercial and public land uses. Density bonus projects seeking to fulfill affordable housing obligations by some means other than on-site provision of affordable units could propose construction of affordable units, rehabilitation and deed restriction of existing market-rate units, and/or land donation for new affordable housing within the

Affordable Housing/Transit Overlay Zone.

The following table outlines staff-recommended enhancements to the City’s Density Bonus Ordinance, contrasted with the minimum standards of state density bonus law.

**Minimum State Requirements and Proposed Enhancements**

<b>Standard</b>	<b>Minimum State Requirement</b>	<b>Proposed Enhancement</b>
Density above Base Density Allowance	No Provision	Affordable Housing Obligation Triggered by any Regulatory Concession Deemed Necessary to Exceed Base Density
Location of New Affordable Units	Constructed on Same Site with Market-Rate Units	Option to Construct on Separate Site(s) within Affordable Housing Overlay
Alternative to Construction of New Affordable Units	No Provision	Acquisition, Rehabilitation and Deed Restriction of Existing Market-Rate Units
Land Donation: Income Category	Allowed Only to Provide for Very Low Income Units	Allowed for Both Very Low & Low Income Units
Land Donation: Locational Restrictions	Restricted to Sites Located within 1/4-Mile of Market-Rate Project	Restricted to Sites Located within Affordable Housing Overlay
Land Donation: Property Size Restrictions	Restricted to Sites At Least One Acre in Size	No Size Restrictions

There is little precedent from which to assess the extent to which these enhancements of minimum density bonus requirements would augment the appeal and viability of the City’s current Density Bonus Ordinance. With few density bonus projects in existence, and fewer examples of similarly enhanced density bonus ordinances, it is difficult to speculate as to how these additional incentives would factor into the City’s overall affordable housing strategy. Nevertheless, staff finds that these recommended enhancements accord with state density bonus law and support state and regional goals for the provision of affordable housing. Given the substantial affordable housing obligation the City is facing over the next state-defined Housing Element planning period (2013-2020), there is an increasingly urgent need to implement creative and attractive incentives for affordable housing development and preservation.

**FISCAL IMPACT**

Does not apply.

## **CITY ATTORNEY'S ANALYSIS**

State density bonus law is set forth in Government Code sections 65915 through 65918. In general, cities are obligated to provide a specified bonus above the maximum permitted residential density when an applicant agrees that a defined percentage of the total units in a housing project will be affordable for very low, low, or moderate income households. In addition, cities are generally required to grant certain incentives or concessions to enable the applicant to construct the bonus units. Requested incentives or concessions can be denied on a case by case basis if the City makes written findings that the incentive or concession is not required to provide for affordable housing costs, the concession or incentive will have a specific adverse impact upon public health and safety, the physical environment or on any historical resources, or the concession or incentive would violate state or federal law.

The staff proposal ensures the City's Density Bonus Ordinance conforms to the mandatory requirements in state law. The staff recommendation contains the required bonuses as well as the mandatory concessions and incentives. Government Code section 65915 (n) permits the City to provide a greater density bonus than otherwise mandated by state law, but this must be allowed by local ordinance. The staff proposal provides the minimum bonuses cities must grant. However, the staff proposal also enables a developer to construct the affordable units off-site of the market rate project. State density bonus law does not grant this flexibility to a developer. The staff proposal also allows a developer to satisfy its affordable housing obligation by placing affordability restrictions on existing market rate units. There are no statutes or judicial cases precluding the City from allowing a developer to restrict existing units or to construct the affordable bonus units at a site separate from the market rate project. Since the City's current ordinance does not provide this flexibility, an amendment to the density bonus ordinance must be approved by council to create this flexibility.

After receiving the Council's direction on August 17, 2011, the City Attorney will craft the necessary amendments and, following any necessary environmental review, will return to council for introduction of the ordinance.

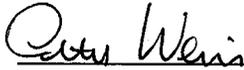
**RECOMMENDATION**

Staff requests that the City Council support staff-recommended revisions to the City's Density Bonus Ordinance and direct staff to initiate associated General Plan, Local Coastal Plan, Municipal Code and Zoning Ordinance amendments.

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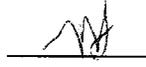
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**ATTACHMENTS:**

1. Comparison Matrix: Staff, AHA and BIA-Recommended Revisions of the City's Affordable Housing Density Bonus Ordinance (DBO)
2. Staff-Recommended DBO Revision
3. BIA-Recommended DBO Revision
4. AHA-Recommended DBO Revision
5. Map of Proposed Affordable Housing Overlay Zone (3 pages)
6. State Density Bonus Requirements
7. BIA Recommendations, with staff analysis
8. AHA Recommendations, with staff analysis
9. Allowable Density Range by Residential Zoning Designation (1992 Zoning Ordinance)
10. Proposed Project Schedule

**ATTACHMENT 1**

**Comparison of Density Bonus Ordinance Revisions as Proposed by  
City Staff, Affordable Housing Advocates and the Building Industry Association**

Issue	Proposed DBO Revisions		
	City Staff	Affordable Housing Advocates	Building Industry Association
Off-Site Provision of Affordable Units	Restricted to the Affordable Housing/Transit Overlay	Not permitted	No locational restrictions
Deed-Restriction of Existing Market Rate Units	Restricted to the Affordable Housing/Transit Overlay	Not permitted	No locational restrictions
Land Donation Outside of State-Prescribed Locational Restrictions	Restricted to the Affordable Housing/Transit Overlay	Not permitted	No locational restrictions
Percentage of Density Bonus	Consistent with state law	Additional density bonus based on type, percentage and duration of affordable units	Additional density bonus based on percentage of affordable units
Number of Concessions/Incentives	Consistent with state law	Additional concessions/incentives for certain types, percentages and durations of affordable units	Consistent with state law
Specificity of Concessions/Incentives	As proposed by applicant	Menu of options or as proposed by applicant	As proposed by applicant
Duration of Affordability	Consistent with State Law	Extended periods of affordability based on type and percentage of affordable units	Consistent with State Law
Review Process	As prescribed in the Zoning Ordinance for associated entitlements	Ministerial review and approval for menu options	Ministerial review and approval
Affordable Housing Requirement When Concessions Are Necessary to Exceed Base Density	Established as an alternative to the standard variance process	Not prescribed	Not prescribed
Applicability of Density Bonus to Other Categories of Need	No additional categories of need identified	Special Needs and Extremely Low Income Households	No additional categories of need identified
Triggers for Permitting and Occupancy of Market-Rate Units	Consistent with state law	Consistent with state law	Accelerated permitting and occupancy



## ATTACHMENT 2

### Staff Recommended Revision of the City's Density Bonus Ordinance

#### 3032 Affordable Housing Density Bonus

- A. Purpose. This section establishes policies which facilitate the development of affordable housing to serve a variety of needs within the City. To encourage provision of moderate, low and very low income housing, senior housing, and ancillary child care facilities, the City shall provide developers/property owners meeting the requirements of this section a density bonus and additional incentives or concessions. The regulations set forth in this section shall apply citywide.
- B. Definitions. As used in this section, the following terms shall have the following meanings:
- (1) "Density Bonus" means either: (a) a density increase over the maximum allowable residential density allowance under applicable zoning and Land Use Element of the General Plan as of the date of application. The provisions of this Ordinance shall apply only to residential development of five or more units. The number of housing units to be reserved for very low, low or moderate income households or senior housing does not include the density bonus units.
  - (2) "Concession" or "incentive" shall have the meaning set forth in Government Code section 655915(k).
  - (3) "Equivalent Financial Value" concerns a condominium conversion project seeking a density bonus and refers to the cost to the developer/property owner based on the land cost per dwelling unit. The land cost per dwelling unit is determined by the difference in the value of the land with and without the density bonus.
  - (4) "Low Income Households" as currently defined in section 50079.5 of the Health and Safety Code and any subsequent amendments or revisions.
  - (5) "Very Low Income Households" as currently defined in section 50105 of the Health and Safety Code and any subsequent amendments or revisions.
  - (6) "Moderate Income Households" as currently defined in section 50093 of the Health and Safety Code and any subsequent amendments or revisions.
  - (7) "Senior Citizen Housing Development" as currently defined by Sections 51.3 and 51.12 of the Civil Code and any subsequent amendments or revisions.
  - (8) "Common Interest Development" as currently defined in Section 1351 of the Civil Code and any subsequent amendments or revisions.
  - (9) "Child Care Facility" means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care

facilities, and school-age child care center, as defined by Government Code Section 65915.

- (10) "Affordable Housing/Transit Overlay" means those areas of the City identified in Article \_\_ of the 1986 Zoning Ordinance and Article \_\_ of the 1992 Zoning Ordinance where affordable housing units provided in accordance with subsections H and I can be located.

C. Implementation. The City shall grant a density bonus, in the amount specified in subsection D below, to an applicant who proposes a housing development consisting of five or more dwelling units and meeting at least one of the following criteria:

- (1) At least ten percent (10%) of the total units of the housing development are designated for low income households; or
- (2) At least five percent (5%) of the total units of the housing development are designated for very low income households; or
- (3) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or 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.
- (4) Ten percent (10%) of the total dwelling units in a common interest development as provided 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.

D. Amount of Density Bonus. The amount of density bonus granted to a qualifying project shall be based on the category and percentage of affordable units proposed, as reflected in the following matrices.

- (1) For housing developments meeting the criteria of Section C(1) above, the density bonus shall be calculated as follows:

**TABLE 1**  
**Density Bonus for Low Income Units**

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

- (2) For housing developments meeting the criteria of Section C(2) above, the density bonus shall be calculated as follows:

**TABLE 2**  
**Density Bonus for Very Low Income Units**

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

- (3) For housing development meeting the criteria of Section C(3) above, the density bonus shall be 20 percent (20%).
- (4) For housing development meeting the criteria of Section C(4) above, the density bonus shall be calculated as follows:

**TABLE 3**  
**Density Bonus for Moderate Income Units**

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

Percentage Moderate Income Units	Percentage Density Bonus
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

- (5) All density calculations resulting in fractional units shall be rounded up to the next whole number, unless otherwise indicated.
- (6) The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.
- (7) An applicant may elect to accept a lesser percentage of density bonus.
- (8) The calculations are in accordance with Government Code Section 65915 and are subject to any subsequent amendments or revisions thereto.

E. Land Donation. When an applicant donates land to the City to satisfy the affordable housing obligation established under this Ordinance, the applicant shall be entitled to a density bonus as follows:

**TABLE 4  
Density Bonus for Land Donation**

Percentage Very Low Income	Percentage Density Bonus	Percentage Low Income	Percentage Density Bonus
10	15	10	7.5
11	16	11	8
12	17	12	8.5
13	18	13	9
14	19	14	9.5
15	20	15	10
16	21	16	10.5

Percentage Very Low Income	Percentage Density Bonus
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

Percentage Low Income	Percentage Density Bonus
17	11
18	11.5
19	12
20	12.5
21	13
22	13.5
23	14
24	14.5
25	15
26	15.5
27	16
28	16.5
29	17
30	17.5

Density bonus calculations are in accordance with Section 65915 of the Government Code and are subject to any amendments or revisions thereto. Applicants seeking density bonus for both the provision of affordable units and the donation of land shall be limited to a maximum combined density bonus of thirty-five percent (35%). In order to qualify for the above density bonus, the land donation must meet the following conditions:

- (1) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application if no subdivision map is proposed.
- (2) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low or low income households in an amount not less than 10 percent (10%) of the total units of the housing development.
- (3) The transferred land is of sufficient size to permit development of the minimum number of units required by the prior paragraph (2), has the appropriate general plan and zoning designations, is appropriately zoned with appropriate development standards for development at the appropriate density, and is or will be served by adequate public facilities and infrastructure.
- (4) No later than the date of approval of the final subdivision map, parcel map, or residential development application for the first density bonus market-rate unit, the transferred land shall have all City required discretionary permits and approvals, other than building permits, necessary for the development of the very low or low income units on the transferred land, except the City may subject the proposed development to subsequent design review if the design is not otherwise reviewed by the City prior to the time of transfer.

- (5) 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 the transfer.
- (6) The land is transferred to the City or to a housing developer approved by the City. The City may require the applicant to identify and transfer the land to the developer.
- (7) In the event the transferred land does not conform to the size and locational standards established in Government Code Section 65915(g)(2)(C), the transferred land must be located within the City's Affordable Housing Overlay District.
- (8) A financing plan for funding the affordable units shall be identified no later than the date of the approval of the final subdivision map, parcel map or residential development application for the market-rate component of the density bonus project.

F. Child Care Facility.

- (1) When an applicant proposes to construct a housing development that conforms to the requirements of this section and includes a child care facility that will be located on the premises of, as a part of, or adjacent to, the project, the City shall grant either:
  - (a) 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
  - (b) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.
- (2) In order to qualify for the additional density bonus or incentive, the child care facility must meet the following criteria:
  - (a) 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 density bonus units are required to remain affordable.
  - (b) Of the children who attend the child care facility, the children of very low income households, low income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, low income households, or families of moderate income.

G. Condominium Conversions. When an applicant for approval to convert apartments to a condominium project agrees to provide at least thirty-three percent (33%) of the total units of the proposed condominium to persons and families of low or moderate income, or fifteen percent (15%) of the total units of the proposed condominium project to very low income households, and agrees to pay for the reasonably necessary administrative costs incurred by the City pursuant to this subsection, the City shall grant either:

- (1) A density bonus of twenty-five percent (25%) over the number of existing rental apartments, to be provided within the existing structure or structures proposed for conversion; or
- (2) An incentive of equivalent financial value.

The City may place such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value as it finds appropriate, including, but not limited to, conditions which assure continued affordability of units to subsequent purchasers who are persons and families of very low, low or moderate income households. The City shall enforce an equity sharing agreement, as set forth by Section 65915 of the Government Code, for these units.

H. Affordability Restrictions on Existing Units. An applicant may choose to satisfy all or a portion of the obligation to provide the required affordable housing through the placement of affordability restrictions on existing housing units located within the City's Affordable Housing Overlay District. That applicant shall be entitled to a density bonus according to the percentages identified in Subsections D(1) - D(4) hereof. In order to qualify for density bonus, the acquisition of existing units must meet the following conditions:

- (1) At the time of application for density bonus, the applicant shall specify the existing residential units proposed to be placed under affordability covenants and, when said units are not already owned by the applicant, evidence of the applicant's intent to acquire said units shall be provided.
- (2) To ensure continued affordability of the units consistent with Government Code Section 65915, the applicant shall cause the recordation of the affordability restrictions against the applicable affordable units no later than the date of approval of the final subdivision map, parcel map, or residential development application if no subdivision map is proposed.
- (3) Prior to issuance of a certificate of occupancy for the first market-rate density bonus unit, the applicant shall submit a building condition report prepared by an appropriately licensed, California architect, engineer or contractor. The building condition report shall demonstrate that the units comply with the applicable building code requirements and that any integral building component beyond the midpoint of its projected lifespan has been replaced.
- (4) While the existing housing units proposed to be placed under affordability covenants need not be located on contiguous sites, all units must be located within the City's Affordable Housing Overlay District.

I. Off-site Construction of Affordable Units. An applicant may choose to satisfy all or a portion of the obligation to provide required affordable housing through the construction of affordable units at a site other than that where the proposed market-rate units would be developed. The applicant shall be entitled to a density bonus according to the percentages identified in subsections D(1) - D(4) hereof. In order to qualify for the above density bonus, the construction of off-site units must meet the following conditions:

- (1) At the time of application for density bonus, the applicant shall demonstrate legal ownership of the property where the affordable units are proposed to be developed. Said property shall be vacant, served by all necessary public utilities, and zoned appropriately for the required number of affordable units.
- (2) Any discretionary permits and approvals required for the affordable units shall be secured either prior to or concurrent with discretionary permits and approvals required for the market-rate units.
- (3) A financing plan for funding the affordable units must be approved by the City prior to or concurrent with the issuance of initial building permits for the market-rate units.
- (4) To ensure continued affordability of the units consistent with Government Code Section 65915, the applicant shall cause the recordation of the affordability restrictions against the applicable affordable units no later than the date of recordation of the final subdivision map, parcel map, or the first building permit for a residential development application if no subdivision map is proposed.
- (5) The City may require that the site(s) proposed to accommodate the affordable component of the density bonus project be transferred to the City or another development entity, at the City's discretion.
- (6) All proposed off-site units must be located within the City's Affordable Housing Overlay District.
- (7) An applicant may satisfy the affordable housing obligations of this subsection at a single off-site location or multiple off-site locations.
- (8) Density bonus shall be applied only to the market-rate component of the project; affordable units constructed off-site shall be subject to the maximum allowable residential density for the off-site location(s).

J. Affordable Units Required in Exchange for Concessions Necessary to Exceed Base Density Allowance. When an applicant seeks concessions or incentives deemed necessary to exceed the base density allowance, the applicant shall provide affordable units on or off-site in a percentage determined by the number of concessions or incentives sought, consistent with subsection M of this Ordinance. Such concessions or incentives shall be granted without the benefit of a variance, conditional use permit or any other entitlement otherwise required of a proposal seeking relief from applicable regulatory constraints and/or financial obligations.

- (1) The provisions of subsection J of this Ordinance shall apply only to projects of 10 or more units.
- (2) Projects of between 10 and 19 units seeking concessions or incentives to exceed the base density allowance shall be allowed to pay in-lieu fees for any fractional affordable housing obligation, in accordance in Article 14C of the Municipal Code.

- (3) Projects of 20 units or more seeking concessions or incentives to exceed the base density allowance shall be allowed to pay in-lieu fees for any fractional affordable housing obligation amounting to less than 50 percent of a whole housing unit, in accordance in Article 14C of the Municipal Code.

K. Density Bonus Agreement. To be eligible for a density bonus, the applicant must submit an Affordable Housing Plan and, prior to securing any discretionary permits or approvals for the market-rate units, sign a binding agreement with the City which sets forth the conditions and guidelines to be met in the implementation of this Ordinance. The agreement will also establish specific compliance standards and remedies upon failure by the applicant to make the affordable units available to intended residents. As the means of ensuring compliance, the agreement shall require the recordation of a deed restriction against both the market-rate and affordable components of the density bonus project. The deed restriction shall remain in place and preclude issuance of the certificate of occupancy for the market-rate units until such time as the affordable units have been constructed or other security acceptable to the City is provided in lieu of the deed restriction. If the applicant proposes to phase development of the market-rate units, deed restrictions shall be recorded and implemented on a phase by phase basis.

L. Density Bonus Application.

- (1) Application for density bonus shall be made concurrent with submittals required for the processing of associated discretionary permits (e.g. development plans). The request for density bonus shall be articulated as part of the description and justification for the development project, in accordance with the City's Development Processing Guide. The request for density bonus shall specify the percentage of density bonus sought, per Subsections D(1) - D(4) of this Ordinance, and indicate how the affordable housing obligations of this Ordinance will be met.
- (2) The review process for a density bonus project shall be the same as that required for associated discretionary permits. Discretionary actions on density bonus projects shall be subject to the same appeal process applied to associated discretionary permits.
- (3) The application and approval of a density bonus and any associated incentives or concessions shall not require a separate permit or approval process from that otherwise required for the same project without a density bonus request.
- (4) The granting of a density bonus shall not, in and of itself, require a general plan amendment, local coastal plan amendment, zone change, or other discretionary action.

M. Concessions and Incentives.

- (1) In addition to the applicable density bonus, qualifying projects shall receive the following number of incentives or concessions:

- (a) One incentive or concession for projects that propose at least ten percent (10%) of the total units for lower income households, at least five percent (5%) for very low income households, or at least ten percent (10%) for persons and families of moderate income in a common interest development.
  - (b) Two incentives or concessions for projects that propose at least twenty percent (20%) of the total units for lower income households, at least ten percent (10%) for very low income households, or at least twenty percent (20%) for persons and families of moderate income in a common interest development.
  - (c) Three incentives or concessions for projects that propose 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.
  - (d) Proposals seeking concessions or incentives deemed necessary to exceed the base density allowance would not be subject to the otherwise required conditional use permit in accordance with subsection J of this Ordinance.
- (2) For purposes of this Ordinance, concessions or incentives shall include, without limitation:
- (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 as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.
  - (b) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.
  - (c) Other regulatory incentives or concessions proposed by the developer or the City that result in identifiable, financially sufficient, and actual cost reductions.
- (3) This section does not limit or require the City to provide direct financial incentives, including the provision of publicly owned land, or the waiver of fees or dedication requirements. However, the City will consider deferral of application processing fees on a case-by-case basis.

- (4) The City shall grant the concession or incentive requested by the applicant unless the City makes a written finding, based upon substantial evidence, of any of the following:
  - (a) The concession or incentive is not required in order to provide for affordable housing costs as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified.
  - (b) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, without rendering the development unaffordable to low or moderate income households.
  - (c) The concession or incentive would be contrary to state or federal law.

N. Waiver or Reduction of Development Standards.

- (1) An applicant may submit to the City a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the City. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.
- (2) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (L) of this Ordinance.

O. Vehicular Parking Ratio. Upon request of the developer, the following maximum parking ratio, inclusive of handicapped and guest parking, shall apply, pursuant to Section 65915 of the Government Code:

- (1) Zero to one bedroom: one on-site parking space.
- (2) Two to three bedrooms: two on-site parking spaces.
- (3) Four or more bedrooms: two and one-half parking spaces.

If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. A development may provide on-site parking through tandem parking or uncovered parking, but not through onstreet parking. The applicant may also request a concession or an incentive pursuant to subsection L hereof to further lower the vehicle parking ratios from those described herein.

P. Requirements for Participation. In order for a developer/property owner to be eligible for density bonus or other incentives, the following requirements must be met:

- (1) A unit will be counted toward meeting the affordable housing requirement if it is either vacant or occupied by a very low, low or moderate income tenant, as applicable, or a Senior Citizen (if density bonus was based on a Senior Citizen Housing Development).
- (2) The affordable units must be proportional to the overall project in terms of unit mix, floor plan, square footage, and exterior design. Further, the range of affordable units must be reasonably dispersed throughout the development.
- (3) The time period of availability to the intended population shall be for at least 30 years. A longer period of availability may be required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.
- (4) The maximum allowable rents to comply with the law are determined by a formula designated by the State Department of Housing and Community Development based on the area median income. This formula is indicated in Section 65915(c) of the Government Code.
- (5) Owner-occupied units shall be available at affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code.
- (6) For-sale affordable units may be subject to an equity sharing agreement, in the event that public subsidies are involved in the construction and/or purchase of said units.
- (7) The owner of the affordable units for which a density bonus was granted must provide to the Neighborhood Services Department a yearly accounting of the total units occupied, the total units vacant, the total units occupied by lower or very low-income households, the total number of units occupied by Senior Citizens and the total units required to be set aside under all applicable affordability covenants.

## ATTACHMENT 3

### BIA Recommended Revision of the City's Density Bonus Ordinance

#### **3032 Affordable Housing Density Bonus**

- A. Purpose. This section establishes policies which facilitate the development of affordable housing to serve a variety of needs within the City. To encourage provision of moderate, low and very low-income housing, Senior housing, and ancillary child care facilities. The City shall provide to developers/property owners who meet the requirements established by this section a density bonus and additional incentives or concessions. The regulations set forth in this section shall apply citywide.
- B. Definitions. As used in this section, the following terms shall have the following meanings:
- (1) "Density Bonus" means a density increase 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. The density bonus shall apply to residential development of five or more units.
  - (2) "Equivalent Financial Value" concerns a condominium conversion project seeking a density bonus and it refers to the cost to the developer/property owner based on the land cost per dwelling unit. The land cost per dwelling unit is determined by the difference in the value of the land with and without the density bonus.
  - (3) "Lower Income Households" as currently defined in section 50079.5 of the Health and Safety Code and any subsequent amendments or revisions.
  - (4) "Very Low Income Households" as currently defined in section 50105 of the Health and Safety Code and any subsequent amendments or revisions.
  - (5) "Moderate Income Households" as currently defined in section 50093 of the Health and Safety Code and any subsequent amendments or revisions.
  - (6) "Senior Citizen Housing Development" as currently defined by Sections 51.3 and 51.12 of the Civil Code and any subsequent amendments or revisions.
  - (7) "Common Interest Development" as currently defined in Section 1351 of the Civil Code and any subsequent amendments or revisions.
  - (8) "Child Care Facility" means a child day care facility other than a family day care home, including, but not limited to, infant canters, preschools, extended day care facilities, and school-age child care center, as defined by Government Code Section 65915.
- C. Implementation. The City shall grant a density bonus to an applicant that proposes a housing development of five or more dwelling units, in the amount specified in subsection D below, that meets at least one of the following criteria:

- (1) At least ten percent (10%) of the total units of a housing development are designated for lower-income households as defined in the Health and Safety Code; or
- (2) At least five percent (5%) of the total units of a housing development are designated for very low-income households as defined in the Health and Safety Code; or
- (3) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or 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.
- (4) Ten percent (10%) of the total dwelling units in a common interest development 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 is awarded on the basis of subparagraphs 1, 2, 3 or 4 of this section. The terms “total units” or “total dwelling unit” does not include units added by a density bonus award pursuant to this Ordinance or otherwise.

D. Amount of Density Bonus. The Density Bonus the City shall grant to the applicant shall be calculated according to the following:

- (1) For housing developments meeting the criteria of Section C(1) above, the density bonus shall be calculated as follows. For an applicant proposing a percentage of low income units greater than the 20% depicted below, the City shall grant a percentage density bonus increase of an additional 1.5% for every 1% increase in the total units dedicated to low income households, up to a maximum percentage density bonus increase of 50%. By way of example only, the density bonus for an applicant proposing a percentage of low income units of 28% would be entitled to a density bonus of 47%.

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

- (2) For housing developments meeting the criteria of Section C(2) above, the density bonus shall be calculated as follows. For an applicant proposing a percentage of very low income units greater than the 11% depicted below, the City shall grant a

percentage density bonus increase of an additional 2.5% for every 1% increase in the total units dedicated to very low income households, up to a maximum percentage density bonus increase of 50%. By way of example only, the density bonus for an applicant proposing a percentage of very low income units of 15% would be entitled to a density bonus of 45%.

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

- (3) For housing development meeting the criteria of Section C(3) above, the density bonus shall be 35 percent (35%).
- (4) For housing development meeting the criteria of Section C(4) above, the density bonus shall be calculated as follows: For an applicant proposing a percentage of moderate income units greater than the 40% depicted below, the City shall grant a percentage density bonus increase of an additional 1% for every 1% increase in the total units dedicated to moderate income households, up to a maximum percentage density bonus increase of 50%. By way of example only, the density bonus for an applicant proposing a percentage of moderate income units of 47% would be entitled to a density bonus of 42%.

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

Percentage Moderate Income Units	Percentage Density Bonus
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

- (5) All density calculations resulting in fractional units shall be rounded up to the next whole number.
- (6) The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.
- (7) An applicant may elect to accept a lesser percentage of density bonus.
- (8) The calculations are in accordance with Government Code Section 65915 and are subject to any subsequent amendments or revisions thereto consistent with this Ordinance.

E. Land Donation. When an applicant donates land to the City to satisfy the affordable housing obligation for a housing development granted a density bonus, the applicant shall be entitled to an increase above the otherwise maximum allowable residential density for the housing development as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20

Percentage Very Low Income	Percentage Density Bonus
10	7.5
11	8
12	8.5
13	9
14	9.5
15	10

Percentage Very Low Income	Percentage Density Bonus
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

Percentage Very Low Income	Percentage Density Bonus
16	10.5
17	11
18	11.5
19	12
20	12.5
21	13
22	13.5
23	14
24	14.5
25	15
26	15.5
27	16
28	16.5
29	17
30	17.5

The increase granted pursuant to this Subsection shall be in addition to any increase in density mandated by this Ordinance. For an applicant proposing a percentage of very low income units greater than the 30% depicted above, the City shall grant a percentage density bonus increase of an additional 1% for every 1% increase in the percentage of very low income units and/or an additional 0.5% for every 1% increase in the percentage of low income units, up to a maximum percentage density bonus increase of 50%. The calculations are in accordance with Section 65915 of the Government Code and are subject to any amendments or revisions consistent with this Ordinance. In order to qualify for the above density bonus, the land donation must meet the following conditions:

- (1) The applicant donates and transfers the land no later than the date of recordation of the final subdivision map, parcel map, or issuance of the first building permit for a residential development application if no subdivision map is proposed.
- (2) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to low or very low income households in an amount not less than 10 percent (10%) of the total units of the housing development .
- (3) The transferred land is of sufficient size to permit development of the minimum number of units required by the prior paragraph (2), has the appropriate general plan designation, is appropriately zoned with appropriate development standards for development at the appropriate density, and is or will be served by adequate public facilities and infrastructure.
- (4) No later than the date of the issuance of a certificate of occupancy for the first density bonus market rate unit, the transferred land shall have all City required discretionary permits and approvals, other than building permits, necessary for the

development of the affordable units on the transferred land, except the City may subject the proposed development to subsequent design review, if the design is not otherwise reviewed by the City prior to the time of transfer.

- (5) 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 the transfer.
- (6) The land is transferred to the City or to a housing developer approved by the City. The City may require the applicant to identify and transfer the land to the developer.
- (7) The transferred land shall be within the boundaries of the City.
- (8) A proposed financing plan for funding for the affordable units shall be identified not later than the date of the issuance of a certificate of occupancy for the first market rate density bonus unit.

F. Child Care Facility.

- (1) When an applicant proposes to construct a housing development that conforms to the requirements of this section and includes a child care facility that will be located on the premises of, as a part of, or adjacent to, the project, the City shall grant either:
  - (a) 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
  - (b) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.
- (2) In order to qualify for the additional density bonus or incentive, the child care facility must meet the following criteria:
  - (a) 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 density bonus units are required to remain affordable.
  - (b) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income.

G. Condominium Conversions. When an applicant for approval to convert apartments to a condominium project agrees to provide at least thirty-three percent (33%) of the total units of the proposed condominium to persons and families of low or moderate income, or fifteen percent (15%) of the total units of the proposed condominium project to very low income

households, and agrees to pay for the reasonably necessary administrative costs incurred by the City pursuant to this subsection, the City shall grant either:

- (1) A density bonus of twenty-five percent (25%) over the number of existing rental apartments, to be provided within the existing structure or structures proposed for conversion; or
- (2) An incentive of equivalent financial value.

The City may place such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value as it finds appropriate, including, but not limited to, conditions which assure continued affordability of units to subsequent purchasers who are persons and families of very low, low or moderate income households. The City shall enforce an equity sharing agreement, as set forth by Section 65915 of the Government Code, for these units.

H. Affordability Restrictions on Existing Units. An applicant may choose to satisfy all or a portion of the obligation to provide the required affordable housing through the placement of affordability restrictions on existing residential units located at the same site as the market rate units or off-site. That applicant shall be entitled to a density bonus increase above the otherwise maximum allowable residential density according to the percentages identified in Subsections D(1) - D(4) hereof. The increase granted pursuant to this Subsection shall be in addition to any other increase in density mandated by this Ordinance. In order to qualify for the above density bonus, the acquisition of existing units must meet the following conditions:

- (1) To ensure continued affordability of the units consistent with Government Code Section 65915, the applicant shall cause the recordation of the affordability restrictions against the applicable affordable units no later than the date of recordation of the final subdivision map, parcel map, or first building permit for a residential development application if no subdivision map is proposed.
- (2) Prior to issuance of a certificate of occupancy for the first market rate density bonus unit, the applicant shall submit a building condition report prepared by an appropriately licensed, California architect, engineer or contractor. The building condition report shall demonstrate that the units comply with the applicable building code requirements and that any integral building components that had a useful life of 5 years or less has been replaced.
- (3) The existing off-site units may be located anywhere within the boundaries of the City.
- (4) An applicant may satisfy the affordable housing obligations at a single off-site location or multiple off-site locations. A single off-site affordable housing location may be used to satisfy the obligations of multiple density bonus projects.
- (5) For the purpose of calculating a density bonus for this Section (H) and the increase over the otherwise maximum allowable residential density, as well as the total units in a housing development, only the property where residential market rate units on

contiguous sites that are the subject of one development application shall be considered.

I. Off-site Construction of Units. An applicant may choose to satisfy all or a portion of the obligation to provide the required affordable housing through the construction of the affordable units at an off-site location from the market rate units. That applicant shall be entitled to a density bonus increase above the otherwise maximum allowable residential density according to the percentages identified in Subsections D(1) - D(4) hereof. The increase granted pursuant to this Subsection shall be in addition to any other increase in density mandated by this Ordinance. In order to qualify for the above density bonus, the construction of off-site units must meet the following conditions:

- (1) To ensure continued affordability of the units consistent with Government Code Section 65915, the applicant shall cause the recordation of the affordability restrictions against the applicable affordable units no later than the date of recordation of the final subdivision map, parcel map, or the first building permit for a residential development application if no subdivision map is proposed.
- (2) Prior to the issuance of a certificate of occupancy for the first market rate density bonus unit, the applicant or others shall have secured all City required discretionary permits and approvals, other than building permits, necessary for the development of the affordable housing units on the transferred land.
- (3) The land and/or units are transferred to the City or to a housing developer approved by the City. The City may require the applicant to identify and transfer the land to a developer.
- (4) The proposed off-site units may be located anywhere within the boundaries of the City.
- (5) An applicant may satisfy the affordable housing obligations at a single off-site location or multiple off-site locations. A single off-site affordable housing location may be used to satisfy the obligations of multiple density bonus projects.
- (6) For the purpose of calculating a density bonus for this Section (I) and the increase over the otherwise maximum allowable residential density, as well as the total units in a housing development, only the property where residential market rate units on contiguous sites that are the subject of one development application shall be considered.

J. Density Bonus Agreement. To be eligible for a density bonus, the applicant must develop an Affordable Housing Plan and, prior to the issuance of the first building permit for the market rate units, sign a binding agreement with the City which sets forth the conditions and guidelines to be met in the implementation of this Ordinance. The agreement will also establish specific compliance standards and remedies upon failure by the applicant to make the affordable units available to intended residents. As the means of ensuring compliance, the agreement shall require the recordation of a deed restriction against the density bonus units and all affordable units. That deed restriction shall remain in place and preclude

issuance of the certificate of occupancy for the density bonus units until such time as the affordable units have been constructed or other security acceptable to the City is provided in lieu of the deed restriction. If the applicant is proposing to phase the development of the market rate units, the deed restrictions shall be recorded and implemented on a phase by phase basis.

K. Density Bonus Application.

- (1) To apply for a density bonus, the applicant shall submit a written statement describing its request.
- (2) The granting of a density bonus shall not, in and of itself, require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.
- (3) The density proposal shall specify the number, type, location (including whether the affordable units will be located on the same site as the market rate units or at an off-site property), size of housing units, and construction phasing.
- (4) The application and approval of a density bonus, or any of the related waivers, incentives or concessions, shall not require a separate or different permit or approval process from that otherwise required for the underlying project without a density bonus request.
  - (a) If the approval of the housing development would not otherwise require a general plan or municipal code amendment, and notwithstanding any other City ordinance, policy or program to the contrary, the use of the following administrative approval process for the development proposed by the applicant. Notwithstanding Section 4 below, the findings of Section 4 do not apply to this incentive and the City shall grant this incentive if the applicant requests.
    - (i) The designated staff persons will expeditiously review the application.
    - (ii) The designated staff person shall mail a notice of future decision to the persons residing within 300 feet of any of the properties identified in the application. Persons who wish to receive notice of the approval or denial of the application may request this information from the staff person. The request must be received no later than 10 business days after the date on which the notice of future decision is mailed.
    - (iii) The designated staff person may approve, conditionally approve, or deny the application without a public hearing. The decision shall be made no less than 11 business days after the date on which the notice of future decision is mailed to allow for sufficient time for public comment. Notification of the decision shall be given to the applicant

and to those persons who request notification in accordance with this Section, no later than 2 business days after the decision date.

- (iv) The Planning Commission shall hear appeals of the above staff level decision. Only the applicant or another person who files an application for appeal with the Planning Director no later than 12 business days after the above decision date, may file an appeal.
  - (v) The Planning Director shall assign a date for an appeal hearing before the Planning Commission no later than 10 calendar days after the date on which an application for the appeal hearing is filed with the City Manager. The appeal hearing shall generally be held within 60 calendar days following the filing of the appeal, unless the applicant requests additional time.
  - (vi) At the conclusion of the appeal hearing, the Planning Commission may affirm, reverse, or modify the staff decision.
- (5) Existing on-site affordable housing obligations under this Ordinance, or any predecessor of the same, may be transferred to an off-site location, at any time, subject to the approval of the City Manager. Such affordable housing transferred shall be comparable to the units previously required to be on-site.

L. Concessions and Incentives.

- (1) The applicant shall receive the following number of incentives or concessions that, at the applicant's election, can be applied to all or any portion of the housing development contemplated by the application:
  - (a) One incentive or concession for projects that propose at least ten percent (10%) of the total units for lower income households, at least five percent (5%) for very low income households, or at least ten percent (10%) for persons and families of moderate income in a common interest development.
  - (b) Two incentives or concessions for projects that propose at least twenty percent (20%) of the total units for lower income households, at least ten percent (10%) for very low income households, or at least twenty percent (20%) for persons and families of moderate income in a common interest development.
  - (c) Three incentives or concessions for projects that propose 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.
- (2) For purposes of this Ordinance, concessions or incentives include, without limitation:

- (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 as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions. All related requests for modifications of the above, for example floor area ratio, lot size, setbacks, on-site open space and lot coverage, shall be treated as a single concession for purposes of calculating the number of concessions granted.
  - (b) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.
  - (c) Other regulatory incentives or concessions proposed by the developer or the City that result in identifiable, financially sufficient, and actual cost reductions.
- (3) This section does not limit or require the City to provide direct financial incentives, including the provision of publicly owned land, or the waiver of fees or dedication requirements.
- (4) The City shall grant the concession or incentive requested by the applicant unless the City makes a written finding, based upon substantial evidence, of any of the following:
- (a) The concession or incentive is not required in order to provide for affordable housing costs as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified.
  - (b) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, without rendering the development unaffordable to low or moderate income households.
  - (c) The concession or incentive would violate state or federal law.
- (5) The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

M. Waiver or Reduction of Development Standards.

- (1) In no case may the City apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to the City a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the City. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.
- (2) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (L) of this Ordinance.

N. Vehicular Parking Ratio. Upon request of the developer, the following maximum parking ratio, inclusive of handicapped and guest parking, shall apply, pursuant to Section 65915 of the Government Code:

- (1) Zero to one bedroom: one on-site parking space.
- (2) Two to three bedrooms: two on-site parking spaces.
- (3) Four or more bedrooms: two and one-half parking spaces.

If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. A development may provide on-site parking through tandem parking or uncovered parking, but not through onstreet parking. The applicant may also use a concession or an incentive pursuant to Section (L) hereof to further lower the vehicle parking ratios from those described herein.

O. Requirements for Participation. In order for a developer/property owner to participate in the program and be eligible for the density bonus or other incentives, the following requirements must be met:

- (1) A unit will be counted toward meeting the affordable housing requirement if it is either vacant or occupied by a moderate, lower or very low-income tenant, as

applicable, or a Senior Citizen (if density bonus was based on a Senior Citizen Housing Development).

- (2) If the applicant's market rate units include a mix of unit sizes and features, the affordable units must also include a mix of unit sizes and features. For the affordable units, the offered unit size and features shall be similar in character to other affordable housing units located within the City.
- (3) The time period of affordability of the affordable units shall be for 30 years.
- (4) The maximum allowable rents to comply with the law are determined by a formula designated by the State Department of Housing and Community Development based on the area median income. This formula is indicated in Section 65915(c) of the Government Code.
- (5) Owner-occupied units shall be available at affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code.
- (6) The owner of the affordable units for which a density bonus was granted must provide to the Neighborhood Services Department a yearly accounting of the total units occupied, the total units vacant, the total units occupied by lower or very low-income households, the total number of units occupied by Senior Citizens and the total units required to be set aside under all applicable affordability covenants.

P. Savings Clause. Should any conflict exist between this Ordinance and any other land use ordinance, regulation, resolution, policy or prior decision of the City, this Ordinance shall control all land use applications which do not have final approval on the effective date of the Ordinance. Should any section, paragraph, sentence, phrase or word of this title be declared unconstitutional, then the remainder of the title shall remain in full force and effect, to the extent it shall be unaffected by the declaration.



## ATTACHMENT 4

### AHA-Recommended Revision of the City's Density Bonus Ordinance

#### **3032 Affordable Housing Density Bonus**

- A. Purpose. This section establishes policies which facilitate the development of affordable and other housing and facilities to serve a variety of needs within the City. To encourage the provision of extremely low very low, low and moderate income housing, including housing for populations with special needs, child care facilities, and senior housing the City shall provide to applicants who meet the requirements established by this section a density bonus and one or more additional incentives or concessions of equivalent financial value. The regulations set forth in this section shall apply citywide.
- B. Definitions. As used in this section, the following terms shall have the following meanings:
- 1) "Affordable Housing Cost" is defined by Section 50025.5 of the Health and Safety Code and Title 25 of the California Code of Regulations, Sections 6918 and 6920, as amended.
  - 2) "Child Care Facility" means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and school age child care center, as defined by subparagraph (4) of subdivision (h) of Section 65915 of the Government Code, or its successor, as amended.
  - 3) "Common Interest Development" is defined by Section 1351 of the Civil Code or its successor, as amended.
  - 4) "Density Bonus" means a designated density increase in accordance with subdivisions (f) and (g) of Section 65915 of the Government Code, or its successor, as amended, and/or this Ordinance 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. Unless waived or reduced at the applicant's request, the density bonus shall apply to residential developments of five or more units. The number of housing units to be reserved for extremely low, very low, low and/or moderate-income, including those with special needs, and/or senior households, are not included for purposes of calculating the density bonus units.
  - 5) "Development Standards" include site or construction conditions, including but not limited to requirements or limitations regarding height, setbacks, floor area ratio, open space, or parking, that apply to a residential or mixed use development pursuant to an ordinance, regulation, general or specific plan, charter, or other law, policy or resolution.
  - 6) "Extremely Low Income Households" are defined by Section 50106 of the Health and safety Code, or its successor as amended.

- 7) "Housing Development" means a residential or mixed use project including five (5) or more residential units, and includes a subdivision or common interest development, and as otherwise defined in subdivision (i) of section 65915, or its successor, as amended.
  - 8) "Incentives or Concessions" are defined pursuant to subdivision (k) of Section 65915 of the Government Code or its successor, as amended, and/or Appendix 2 to this Ordinance.
  - 9) "Lower Income Households" are defined in Section 50079.5 of the Health and Safety Code or its successor as amended.
  - 10) "Maximum allowable residential density" means the density allowed under the Zoning Ordinance and Land Use Element of the City's General Plan. If a range of density is permitted, then it means the density at the top of the range for the specific zoning applicable to the development. If there is a conflict between the density authorized under the Zoning Ordinance and the Land Use Element of the General plan, the general plan shall govern.
  - 11) "Moderate Income Households" are defined in Section 50093 of the Health and Safety Code or its successor as amended.
  - 12) "Senior Citizen Housing Development" is defined by Sections 51.3 and 51.12, 798.76 or 799.5 of the Civil Code, or their successors as amended.
  - 13) "Special Needs Housing" includes but is not limited to populations identified in subparagraph (7) of subdivision (a) of Section 65583 of the Government Code, or its successor, as amended.
  - 14) "Very Low Income Households" are defined in Section 50105 of the Health and Safety Code or its successor as amended.
- C. Criteria. In accordance subdivision (b) of Section 65915 of the Government Code or its successor, as amended, and/or this Ordinance, unless waived or reduced at the applicant's request, the City shall grant the designated density bonus in D., below, and the designated number of incentives and concessions in E., below, to each housing or mixed-use development that includes five (5) or more dwelling units and meets one of the following criteria. Unless waived or reduced at the applicant's request, an additional density bonus, at the designated rate, and the designated number of incentives and concessions in D., below, shall be granted for each additional criteria met:
- 1) Twenty (20) percent of the total housing units are restricted for persons or families with special needs housing, at affordable housing cost, for the requisite duration.
  - 2) Fifteen percent (15)% of the total housing units are deed restricted to be occupied by extremely low income households, at affordable housing cost, for the requisite duration.
  - 3) Ten percent (10%) of the total housing units are deed restricted to be occupied by lower-income households, at affordable housing cost, for the requisite duration.

- 4) Five percent (5%) of the total housing units are deed restricted to be occupied by very low-income households, at affordable housing cost, for the requisite duration.
- 5) A senior citizen housing development.
- 6) Ten percent (10%) of the total dwelling units in a common interest development are occupied by persons and families of moderate income, at affordable housing cost, for the requisite duration, provided that all units in the development are offered to the public for purchase.
- 7) The requisite durations are defined by subdivision (c) of section 65915 of the Government Code or its successor, as amended and/or Appendix 1 to this Ordinance.
- 8) Provided that the current Housing Element and most recent annual report identify sufficient remaining unmet need, the applicant may select one or more of the above criteria to meet, in full or part, and is entitled to the corresponding density bonus and number of incentives and concessions for each criteria that is met in full, or a proportionally lower density bonus and number of incentives and concessions for each criteria that is met in part.

D. Density Bonus Calculation. The Density Bonus shall be determined pursuant to subdivisions (f) and/or (g) of section 65915 of the Government Code, or its successor, as amended, or this Ordinance using the following calculations:

- 1) For developments meeting the criteria of 3032, C., 1., the density bonus shall be calculated as follows:

Percentage Special Needs Housing Units	Percentage Density Bonus
20	40
21	41.5
22	43
23	44.5
24	46
25	47.5
26	49
27	50.5
28	52
29	53.5
30	55

- 2) For developments meeting the criteria of 3032, C., 2., the density bonus shall be calculated as follows:

Percentage Extremely Low Income Units	Percentage Density Bonus
15	30
16	31.5
17	33
18	34.5
19	36
20	37.5
21	39
22	40.5
23	42
24	43.5
25	45

- 3) For developments meeting the criteria of 3032, C., 3., 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

- 4) For Developments meeting the criteria of 3032, C., 4, 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
12	37.5
13	40
14	42.5
15	45
16	47.5
17	50
18	52.5
19	55
20	57.5

- 5) For senior citizen housing developments, the density bonus shall be 20 percent (20%).

- 6) For developments meeting the criteria of 3032, C., 6, 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

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, local coastal plan amendment, zoning change, or other discretionary approval.

E. Incentives and Concessions

- 1) In accordance with paragraph (2) of subdivision (d) of section 65915 of the Government Code, unless waived or reduced at the request of the applicant, upon meeting a criteria, in C, above, the applicant shall receive the corresponding number of incentives and concessions identified in Appendix 1.
- 2) The applicant may select from among the incentives and concessions identified in Appendix 2, including the identified waivers and reductions of development standards, unless the City makes written findings, based upon substantial evidence, pursuant to (3), below.
- 3) In accordance with paragraph (3) of subdivision (d) of section 65915 of the Government Code, nothing shall be interpreted to require a local government to:
- 4) Grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.
- 5) Grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.
- 6) The City shall not apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) of section 65915, or its successor, as amended, and/or Section C of this Ordinance, at the densities or with the concessions or incentives permitted by this section.
- 7) An applicant may submit to the City a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted under Section 65915 and/or this Ordinance, and may request a meeting with the City. Upon request, the City shall meet with the applicant at the earliest possible opportunity to discuss the applicant's proposal
- 8) If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of Section 65915 or this Ordinance, the court shall award the plaintiff reasonable attorney's fees and costs of suit.

F. Land Donation: When a development meets the criteria, below, and the applicant donates land to the City, the applicant shall be entitled to a fifteen percent (15%) increase above the otherwise maximum allowable residential density for the development:

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 increase, up to a maximum of thirty-five percent (35%), shall be in addition to any increase in density mandated by Section 65915 or its successor, as amended, and/or this Ordinance.

In order to qualify for the increase, the land donation must meet the conditions imposed by subparagraphs (A) through (H) of paragraph (2) of subdivision (g) of section 65915 of the Government Code or its successor, as amended.

G. Child Care Facility:

- 1) When an applicant proposes to construct a development that conforms to the requirements of subdivision (b) of Section 65915 of the Government Code, or its successor, as amended, and/or one or more of the criteria in Section C of this Ordinance, and includes a child care facility development, the City shall grant either:
  - a) An additional density bonus equal to or greater than the amount of square feet in the child care facility; or
  - b) An additional incentive or concession that contributes significantly to the economic feasibility of the construction of the child care facility.
- 2) In order to qualify for the additional density bonus or incentive or concession, the child care facility must meet the following criteria:
  - a) It must be located on or directly adjacent to the development.
  - b) It shall remain in operation for the requisite durations referenced in subdivision (c) of Section 65915 or its successor, as amended, and/or Appendix 1 to this Ordinance.
  - c) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income, pursuant to subdivision (b) of section 65915 of the Government Code or its successor, as amended, and/or Section C of this Ordinance.

H. Density Bonus Application and Procedure.

- 1) To apply for a density bonus pursuant to Section 65915 of the Government Code or its successor, as amended, and/or this Ordinance, , the developer/property owner shall complete and submit to the City a Density Bonus Application on a form provided by the City. The Density Bonus Application shall be submitted in conjunction with any other required application for the discretionary approval of the development and/or subdivision of land.
- 2) The City shall, within 15 working days of receipt of a Density Bonus Application, notify the applicant in writing, of any changes to the procedures required to comply with Section 65915 and this Ordinance and contained in Appendix 3.

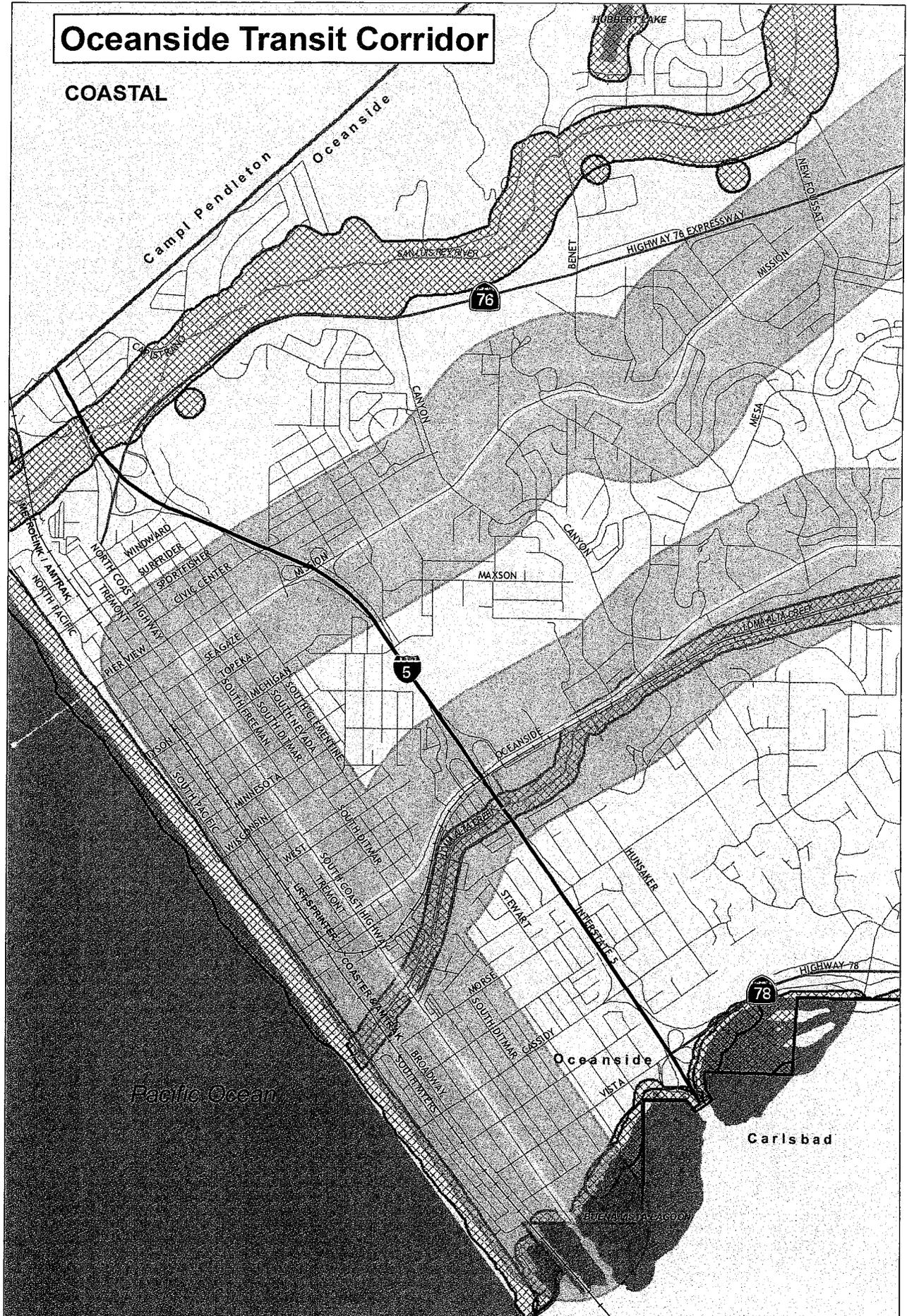
I. Requirements for Participation. To receive the density bonus, incentives and concessions, the following requirements must be met:

- 1) The property owner shall enter into an agreement with the City, in a form approved by the City, to meet the selected criteria for the requisite duration(s). . To ensure compliance, the City shall require security in the amount of \$50,000 per unit in a form acceptable to the Housing Director and City Attorney, no later than [specify].

- 2) If the development is a mixed-income development, then, other than for senior citizen housing developments, the restricted units must be proportional to the overall project in unit mix, floor plan, square footage, and exterior design. Further, the restricted units must be reasonably dispersed throughout the development.
- 3) Deed restrictions, reflecting the applicable criteria and requisite duration(s) shall be recorded no later than the date of issuance of the certificate of occupancy. The deed restrictions shall be enforceable by the City, a qualified occupant of or applicant for a restricted unit, or any interested person as defined by Section 1085 of the Code of Civil Procedure.
- 4) The property owner shall agree, and the City shall ensure, that:
  - a) Initial occupants of the moderate-income units in the common interest development are persons and families of moderate income.
  - b) The units are offered at affordable housing cost.
  - c) Initial occupants execute deed restrictions, approved by the City, which reflect the equity sharing agreement required by subparagraph (A) of paragraph (2) of subdivision (c) of Section 65915 or its successor, as amended.
- 5) The City shall enforce an equity sharing agreement in accordance with paragraph (2) of subdivision (c) of Section 65915 of the Government Code.
- 6) The property owner must agree to prepare and submit and must prepare and submit to the City's Neighborhood Services Department, or its successor, an annual compliance report on all restricted units, on a form approved by the City.

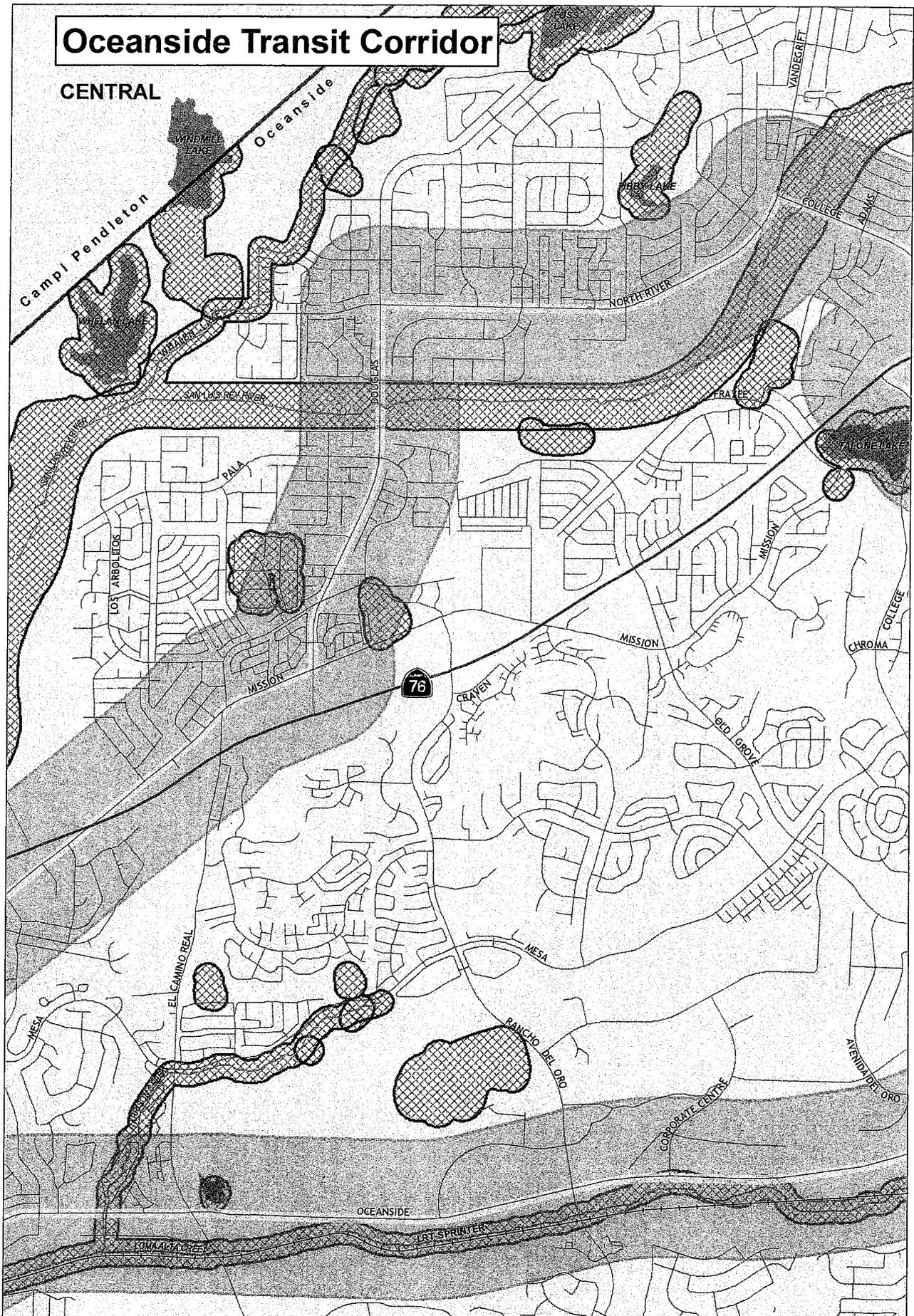
# Oceanside Transit Corridor

COASTAL



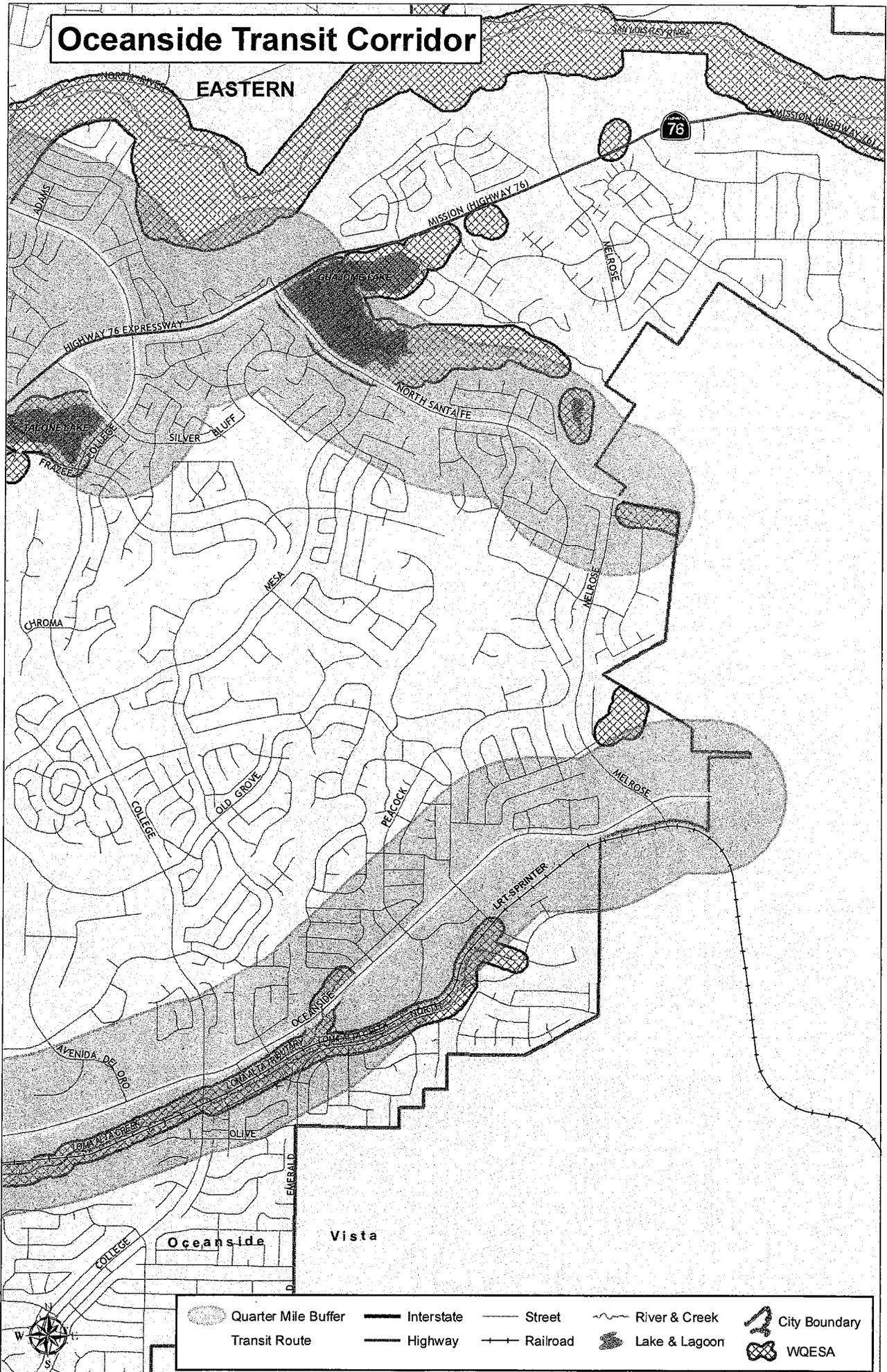

# Oceanside Transit Corridor

CENTRAL



	Quarter Mile Buffer		Interstate		Street		River & Creek		City Boundary
	Transit Route		Highway		Railroad		Lake & Lagoon		WQESA

# Oceanside Transit Corridor



	Quarter Mile Buffer		Interstate		Street		River & Creek		City Boundary
	Transit Route		Highway		Railroad		Lake & Lagoon		WQESA



## ATTACHMENT 6

### State Density Bonus Requirements

Since 1989, state housing law has preempted local authority regarding the minimum percentage of density bonus that cities and counties must afford to housing developers in exchange for the provision of affordable units. Whether or not cities and counties have codified density bonus provisions, they are obliged to allow density bonus and additional incentives as prescribed in state law. The City's existing Density Bonus Ordinance reflects minimum state requirements in place prior to substantial revision of state density bonus law in 2005. The following table denotes the differences between the City's existing Density Bonus Ordinance and what state law currently requires as minimum density bonus percentages and other incentives for affordable housing.

**State Density Bonus Law vs. the City's Density Bonus Ordinance**

<b>Provision</b>	<b>City's Existing DBO</b>	<b>State Law</b>
Minimum Unit Count	5	5
Minimum Affordability Period	30 Years	30 Years
Eligible Affordability Categories	Very Low and Low Income	Very Low, Low and Moderate Income
Density Bonus Allowance	25 Percent	20 to 35 Percent
Land Donation	No Provision	Land Donation for Very Low Income Units
Required Additional Incentives	One	Up to Three
Waivers of Prohibitive Standards	No Provision	Required When Not Contrary to Health/Safety, Environmental Standards
Child Care Facilities	No Provision	Bonus Based on Square Footage of Facility
Maximum Parking Requirements	No Provision	Based on Bedroom Count
Condominium Conversion	No Provision	Bonus Allowed within Existing Building Envelope

State density bonus law prescribes density bonuses of up to 35 percent depending upon the percentage of affordable housing proposed in conjunction with a market-rate residential project, with the categorical level of affordability (i.e., very low, low and moderate income) also being a factor in the calculation of the state-mandated density bonus percentage.

Relative to the City's existing provisions, state law reduces the percentage of affordable units that a developer must provide in order to receive a density bonus. Whereas under the City's existing Density Bonus Ordinance projects are only eligible for density bonus when they propose at least 10 percent of total units as affordable to very low income households or 20 percent of total units as affordable to low income households, state law makes density bonus available to projects that propose five percent of total units as affordable to very low income households or ten percent of total units as affordable to low income households. Additionally, state law now

requires that cities and counties provide as many as three incentives or concessions in conjunction with a density bonus, depending upon the percentage of affordable units proposed. These incentives or concessions could include less restrictive development standards (e.g. height limits, minimum setbacks), less exacting design criteria (e.g. exterior wall treatments, roofing materials) and reduction or waiver of processing or impact fees. State law also allows density bonus for land donation, child care facilities and the provision of affordable units as part of a condominium conversion, none of which is specified in the City's current Density Bonus Ordinance.

## ATTACHMENT 7

### **Revisions to the City's Density Bonus Ordinance Recommended by the Building Industry Association (BIA)**

#### Density bonus for the off-site construction of affordable units

State density bonus law does not preclude fulfillment of affordable housing obligations through off-site construction of required affordable units. It is staff's position that allowing off-site construction of required affordable units is consistent with the intent of state law, as the additional flexibility it provides could encourage otherwise indisposed developers to pursue density bonus. While allowing off-site construction of required affordable units would not move the City toward a more inclusionary approach to affordable housing, it could facilitate an increase in the City's overall affordable housing stock, which would assist the City in meeting its affordable housing obligation as determined by the 2011 Regional Housing Needs Assessment (RHNA).

Limiting the off-site construction of required affordable units to the Affordable Housing/Transit Overlay Zone would place such housing in proximity to public transit and other essential services often relied upon by very low and low income households.

#### Density bonus for the acquisition, rehabilitation and deed restriction of existing market-rate housing units

Staff finds nothing in state density bonus law that discourages cities and counties from allowing affordable housing obligations to be met through the acquisition, rehabilitation and deed restriction of existing market-rate housing units. Such an allowance would provide yet another option for market-rate housing developers to contribute to the City's affordable housing stock. While placing market-rate housing units under affordability covenants would effectively remove these units from the City's inventory of moderate or above-moderate income housing, it is anticipated that the housing needs of moderate and above-moderate income households would continue to be met as they have in the past – i.e., through the dynamic of supply and demand in the traditional housing market.

As with the off-site construction of required affordable units, staff proposes that the City require that rehabilitated and deed restricted units be sited within the Affordable Housing/Transit Overlay Zone.

#### Density bonus in excess of the maximum density bonus percentage prescribed by state law, up to 50 percent

Staff does not support this recommendation, for three principal reasons. First, precedent suggests that the state-prescribed density bonus maximum (35 percent) is not currently a disincentive for market-rate housing developers contemplating an affordable component. Most density bonus projects do not propose maximum allowable density, and some propose no density bonus at all, asking only for concessions on development standards. Secondly, staff is concerned that additional density bonus would be difficult to achieve within building envelopes compatible with the surrounding built environment. Projects seeking density bonus of more than 35 percent would likely require drastic concessions on height limits, lot coverage, landscaping and other

development standards designed to mitigate massing impacts and ensure that new structures fit within the context of existing development. Under state law, it would be difficult for the City to deny such concessions if they were necessary to achieve densities allowed under the City's Density Bonus Ordinance. Thirdly, additional density bonus can be granted in the form of a concession in cases where it is appropriate to do so.

Elimination of state-prescribed size and locational standards for land donated in exchange for density bonus

The size and locational standards for land donation prescribed in state law substantially limit the viability of land donation as a means of facilitating new affordable housing. Staff supports lifting these state-prescribed restrictions and instead requiring that land donated in exchange for density bonus be located within the Affordable Housing/Transit Overlay Zone. In the event that applicants propose land donation in conformance with state

Expedited entitlement processing for density bonus projects

BIA representatives have proposed that density bonus projects be exempted from the discretionary review process now in place for most multifamily residential development applications, recommending that Planning Division staff be authorized to approve density bonus projects without the benefit of a public hearing. Staff does not support this recommendation. Given that density bonus projects invariably involve proposed concessions to development standards and other City requirements, staff finds such projects merit as much public scrutiny and input as any other development proposal. In staff's view, a thorough, transparent and inclusive review process reduces the likelihood of appeals, lawsuits and other complications that could be occasioned by efforts to expedite the approval of such projects.

## ATTACHMENT 8

### **Revisions to the City's Density Bonus Ordinance Recommended by Affordable Housing Advocates (AHA)**

#### **No Allowance for the Off-Site Provision of New Affordable Units, Deed Restriction of Existing Market-Rate Units or Flexibility in the Size and Locational Standards for Land Donation**

State density bonus law does not appear to preclude either the off-site construction of new affordable units or the acquisition, rehabilitation and deed restriction of existing market-rate housing units in exchange for density bonus. It is staff's position that allowing these two options is consistent with the intent of state law, as the additional flexibility it provides could encourage otherwise indisposed developers to pursue density bonus projects. While providing these options might not move the City toward a more inclusionary approach to affordable housing, doing so could facilitate an increase in the City's overall affordable housing stock, which would assist the City in meeting its affordable housing obligation as determined by the 2011 Regional Housing Needs Assessment (RHNA).

Limiting the off-site construction of required affordable units to the Affordable Housing/Transit Overlay Zone would place such housing in proximity to public transit and other essential services often relied upon by very low and low income households.

With respect to the size and locational standards for land donation prescribed in state density bonus law, staff finds that these standards substantially limit the viability of land donation as a means of facilitating new affordable housing. Staff thus supports lifting these state-prescribed restrictions and instead requiring that land donated in exchange for density bonus be located within the Affordable Housing/Transit Overlay Zone.

#### **Density Bonus for Housing for Special Needs Populations and Extremely Low Income Households**

While state density bonus law does not explicitly identify the provision of housing for special needs populations and extremely low income households as being eligible for density bonus, staff believes that inclusion of these two housing categories in the revised Density Bonus Ordinance merits further consideration. With City Council direction, staff can initiate dialogue with HCD staff on this subject, to understand why housing for special needs populations and extremely low income households has not been included in density bonus law and what other state and/or local measures exist to encourage its production.

#### **Density Bonus in Excess of the Maximum Percentage Prescribed by State Law**

Staff does not support this recommendation, for three principal reasons. First, precedent suggests that the state-prescribed density bonus maximum (35 percent) is not currently a disincentive for market-rate housing developers contemplating an affordable component. Most density bonus projects do not propose maximum allowable density, and some propose no density bonus at all, asking only for concessions on development standards. Secondly, staff is concerned that additional density bonus would be difficult to achieve within building envelopes compatible with the surrounding built environment. Projects seeking density bonus of more than 35 percent would likely require drastic concessions on height limits, lot coverage, landscaping and other

development standards designed to mitigate massing impacts and ensure that new structures fit within the context of existing development. Under state law, it would be difficult for the City to deny such concessions if they were necessary to achieve densities allowed under the City's Density Bonus Ordinance. Thirdly, additional density bonus can be granted in the form of a concession in cases where it is appropriate to do so.

#### Longer Duration of Affordability

State law establishes 30 years as the minimum duration of affordability for affordable units developed through density bonus incentives. Along with the challenge of adding new units to its affordable housing stock, the City of Oceanside is also expected to make every effort to preserve the affordability of existing units whose affordability covenants are nearing expiration. Longer durations of affordability would give the City more time to plan and implement the extension of affordability covenants, potentially allowing the City to focus more attention on the provision of new affordable units. Staff thus believes that longer durations of affordability deserve further consideration.

#### Menu of Concessions/Incentives

Rather than prescribe the types of concessions/incentives that localities must offer to developers seeking density bonus, state law simply defines a concession/incentive as "a reduction in site development standards or a modification of zoning...or architectural design requirements...that results in identifiable, financially sufficient, and actual cost reductions." This broad definition grants flexibility to both localities and the development community in their efforts to identify, negotiate and implement concessions/incentives that best fit the unique circumstances of each project. Staff is concerned that a prescriptive menu of concessions/incentives would limit the flexibility of all parties involved in the review and approval of density bonus projects and make it difficult for the City to deny concessions/incentives that are not context-sensitive. Staff therefore recommends that the City continue to follow the more open-ended approach to concessions/incentives that has been established by state law.

**ATTACHMENT 9**

**Residential Density Ranges under the 1992 Zoning Ordinance**

<b>Zoning Designation</b>	<b>Allowable Density Range</b>
Estate A (RE)	0.5 – 0.9 DU's/Acre
Estate B (RE-B)	1.0 – 3.5 DU's/Acre
Single Family (RS)	3.6 – 5.9 DU's/Acre
Medium Density A (RM-A)	6.0 – 9.9 DU's/Acre
Medium Density B (RM-B)	10.0 – 15.0 DU's/Acre
Medium Density C (RM-C)	15.1 – 20.9 DU's/Acre
High Density (RH)	21.0 – 28.9 DU's/Acre
High Density Urban (RH-U)	29.0 – 43.0 DU's/Acre

**ATTACHMENT 10**

**Proposed Project Schedule:  
Density Bonus Ordinance Update w/Affordable Housing/Transit Overlay**

<b>Task</b>	<b>Estimated Date of Completion*</b>
Discussion with HCD staff regarding compliance with state housing law	September 15, 2011
Meetings of the Ad Hoc Committee (2)	September 30, 2011
Planning/Housing Commission Workshop	October 31, 2011
Refinement of Affordable Housing Overlay Map	November 30, 2011
Text Amendments to the General Plan, Local Coastal Plan and 1986/1992 Zoning Ordinances	December 15, 2011
Planning Commission Review	January 15, 2012
City Council Review	March 1, 2012
Coastal Commission Certification	June 1, 2012

\*Discrete project tasks will be addressed concurrently, as appropriate, to expedite project completion.