

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE AMENDING ARTICLE 30, SECTION 3032, OF THE 1992 OCEANSIDE ZONING ORDINANCE AND ADDING ARTICLE 40 OF THE 1986 OCEANSIDE ZONING ORDINANCE, MODIFYING THE CITY'S DENSITY BONUS PROVISIONS TO COMPLY WITH GOVERNMENT CODE SECTION 65915

WHEREAS, Article 30, Section 3032 of the Zoning Ordinance entitled "Affordable Housing Density Bonus" sets forth policies which are intended to facilitate the development of affordable housing to serve a variety of economic needs within the City of Oceanside; and

WHEREAS, Section 3032 currently provides a density bonus of twenty-five percent in the number of dwelling units over the otherwise maximum allowable residential density provided at least twenty percent of the total units are designated for lower income households, ten percent of the total units are designated for very low income households, or fifty percent of the total units are designated for Qualifying Residents (senior citizen housing) as defined in the Civil Code; and

WHEREAS, Section 3032 currently provides for approval of an additional concession or incentive beyond the density bonus unless the additional incentive is determined unnecessary for the affordability of the units; and

WHEREAS, pursuant to Senate Bill ("SB") 1818, California Government Code Section 65915 was amended in 2005 making several changes to state density bonus law, including among other additions: 1. A bonus of twenty percent is available if ten percent of the units in a project are affordable to low income residents, five percent of the units are affordable for very low income households, or the project is a senior citizen development as defined in the Civil Code; and 2. A bonus of five percent is available if ten percent of the units are affordable to moderate income households; and

WHEREAS, Government Code Section 65915(f) provides a density bonus of up to thirty-five percent for projects setting aside a required number of units for very low, low or moderate units households; and

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1 WHEREAS, Government Code Section 65915(d) requires a city to provide at least one
2 incentive or concession for projects that include at least ten percent of total units for lower
3 income households, five percent for very low income households or at least ten percent for
4 persons and families of moderate income; two concessions or incentives must be provided for
5 projects that include at least twenty percent of the total units for lower income households, at
6 least ten percent for very low income households, or at least twenty percent for persons and
7 families of moderate income in a condominium or planned development; three concessions or
8 incentives must be provided to projects that include at least thirty percent of the total units for
9 lower income households, at least fifteen percent for very low income households, or at least
10 thirty percent for persons and families of moderate income in a common interest development;
11 and

12 WHEREAS, state density bonus law currently allows a density bonus of at least fifteen
13 percent when an applicant for a land development project donates land to a city in accordance
14 with the provisions of Government Code Section 65915(g); and

15 WHEREAS, Government Code Section 65915(h) provides for a density bonus when an
16 applicant proposes to construct a housing development that includes a child care facility; and

17 WHEREAS, the California Department of Housing and Community Development has
18 published a model density bonus law which includes the potential for off-site provision for
19 affordable units pursuant to an agreement between the City and a developer where the linked
20 developments are to be considered a single housing development; and

21 WHEREAS, City staff has conducted six meetings with affordable housing advocates
22 and building industry representatives between March 21, 2011, and October 11, 2011, to
23 discuss proposed amendments to the City's density bonus Ordinance; and

24 WHEREAS, the City of Oceanside Planning Commission did, on January 9, 2012,
25 conduct a duly-noticed public hearing on proposed amendments to the City's density bonus
26 provisions and voted 6-0 to recommend City Council approval of said amendments; and

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1 WHEREAS, the City Council conducted a duly-noticed public hearing on May 2, 2012,
2 to consider the proposed amendments to the City's density bonus provisions; and

3 WHEREAS, a Notice of Exemption was prepared by the Resource Officer of the City of
4 Oceanside for this project pursuant to the California Environmental Quality Act of the 1970
5 and State Guidelines;

6 NOW, THEREFORE, the City Council of the City of Oceanside does ordain as follows:

7 **SECTION 1.** Zone Amendment (ZA11-00003) establishing the text of the 1986
8 Zoning Ordinance for properties in the Coastal Zone, except for those properties within the
9 Downtown "D" District, as specified in Exhibit A, and the 1992 Zoning Ordinance for
10 properties outside of the Coastal Zone and within the Downtown "D" District, as specified in
11 Exhibit B, is hereby adopted.

12 **SECTION 2.** The City Clerk of the City of Oceanside is hereby directed to publish
13 this Ordinance, or the title hereof as a summary, pursuant to state statute, once within fifteen
14 (15) days after its passage in the North County Times, a newspaper of general circulation
15 published in the City of Oceanside.

16 **SECTION 3.** Severability.

17 If any section, sentence, clause or phrase of this Ordinance is for any reason held to be
18 invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision
19 shall not affect the validity of the remaining portions of this Ordinance. The City Council
20 hereby declares that it would have passed this Ordinance and adopted this Ordinance and each
21 section, sentence, clause or phrase thereof, irrespective of the fact that any one or more
22 sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

23 **SECTION 4.** Notice is hereby given that the time within which judicial review must
24 be sought on this decision is governed by Government Code Section 65009(c).

25 **SECTION 5.** For properties within the Coastal Zone, this ordinance shall be effective
26 upon certification of Local Coastal Plan Amendment (LCPA11-00001) by the California
27 Coastal Commission. For properties outside of the Coastal Zone, this ordinance shall be
28 effective 30 days after its adoption.

1 INTRODUCTION at a regular meeting of the City Council of the City of Oceanside,
2 California, held on the ____ day of _____, 2012, and, thereafter,

3 PASSED AND ADOPTED at a regular meeting of the City Council of the City of
4 Oceanside, California, held on the ____ day of _____, 2012, by the following vote:

- 5
- 6 AYES:
- 7 NAYS:
- 8 ABSENT:
- 9 ABSTAIN:

10 MAYOR OF THE CITY OF OCEANSIDE

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12 ATTEST:

APPROVED AS TO FORM:

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14 _____

15 CITY CLERK

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CITY ATTORNEY

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE AMENDING ARTICLE 30, SECTION 3032, OF THE 1992 OCEANSIDE ZONING ORDINANCE AND ADDING ARTICLE 40 OF THE 1986 OCEANSIDE ZONING ORDINANCE, MODIFYING THE CITY'S DENSITY BONUS PROVISIONS TO COMPLY WITH GOVERNMENT CODE SECTION 65915

EXHIBIT A
Affordable Housing Density Bonus Provisions of the 1986 Zoning Ordinance

ARTICLE 40

AFFORDABLE HOUSING DENSITY BONUS

Section 4000: Purpose. This section establishes policies which facilitate the development of affordable housing to serve a variety of economic needs within the City. To encourage provision of moderate, low and very low income housing, senior housing, the City shall provide developers/property owners meeting the requirements of this section a density bonus and additional incentives as specified in this section. The regulations set forth in this section shall apply Citywide.

Section 4001: 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 developments of five or more units. The number of housing units to be reserved for very low, low and 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 65915(k).
- (3) “Equivalent Financial Value” concerns a condominium conversion project 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) "Lower Income Households" shall have the meaning set forth in Section 50079.5 of the Health and Safety Code and any subsequent amendments or revisions.
- (5) "Very Low Income Households" shall have the meaning set forth in Section 50105 of the Health and Safety Code and any subsequent amendments or revisions.
- (6) "Moderate Income Households" shall have the meaning set forth 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.

Section 4002: 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 mobile home 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.
- (5) Circumstances may arise in which the public interest would be served by allowing some or all of the designated affordable units associated with a density bonus project to be produced and operated at an alternative development site. Where the City and applicant form such an agreement, the both the market-rate and affordable components of the project shall be considered a single housing development for the purposes of this chapter, and the applicant shall be subject to the same requirements of this chapter pertinent to the designated affordable units to be provided on the alternative site.

Section 4003: 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

Percentage Low Income Units	Percentage Density Bonus
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 VL 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 Mod. 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

Percentage Mod. Income Units	Percentage Density Bonus
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.

Section 4004: 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 VL Income Units	Percentage Density Bonus	Percentage Low Income Units	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
17	22	17	11
18	23	18	11.5
19	24	19	12
20	25	20	12.5
21	26	21	13
22	27	22	13.5
23	28	23	14
24	29	24	14.5
25	30	25	15
26	31	26	15.5
27	32	27	16
28	33	28	16.5
29	34	29	17
30	35	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) The transferred land shall be within the boundary of the proposed development or, if the City agrees, within one-quarter mile of the boundary of the proposed development.
- (8) In the event the transferred land is not within the boundary of the proposed development or within one-quarter mile of the boundary thereof, the transferred land must be situated within a transit-oriented area of the City, as identified on the regional Smart Growth Concept Map, prepared by the San Diego Association of Governments, or within one-quarter mile of high-frequency bus service (i.e., providing 15-minute headways).
- (9) 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.

Section 4005: 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.

Section 4006: 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.

Section 4007: 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.

Section 40008: 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) through 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.

Section 4009: 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.
- (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.

Section 4010: 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 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 (J) of this Ordinance.

Section 4011: 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 on-street parking. The applicant may also request a concession or an incentive pursuant to Section 4009 to further lower the vehicle parking ratios from those described herein.

Section 4012: 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 thirty 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.

EXHIBIT B

Affordable Housing Density Bonus Provisions of the 1992 Zoning Ordinance

3032 Affordable Housing Density Bonus

- A. Purpose. This section establishes policies which facilitate the development of affordable housing to serve a variety of economic needs within the City. To encourage provision of moderate, low and very low income housing, senior housing, the City shall provide developers/property owners meeting the requirements of this section a density bonus and additional incentives as specified in this section. 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 developments of five or more units. The number of housing units to be reserved for very low, low and 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 65915(k).
 - (3) "Equivalent Financial Value" concerns a condominium conversion project 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) "Lower Income Households" shall have the meaning set forth in Section 50079.5 of the Health and Safety Code and any subsequent amendments or revisions.
- (5) "Very Low Income Households" shall have the meaning set forth in Section 50105 of the Health and Safety Code and any subsequent amendments or revisions.
- (6) "Moderate Income Households" shall have the meaning set forth 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.

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 mobile home 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.
- (5) Circumstances may arise in which the public interest would be served by allowing some or all of the designated affordable units associated with a density bonus project to be produced and operated at an alternative development site. Where the City and applicant form such an agreement, the both the market-rate and affordable components of the project shall be considered a single housing development for the purposes of this chapter, and the applicant shall be subject to the same requirements of this chapter pertinent to the designated affordable units to be provided on the alternative site.

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

Percentage Low Income Units	Percentage Density Bonus
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 VL 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 Mod. 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

Percentage Mod. Income Units	Percentage Density Bonus
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 VL Income Units	Percentage Density Bonus	Percentage Low Income Units	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
17	22	17	11
18	23	18	11.5
19	24	19	12
20	25	20	12.5
21	26	21	13
22	27	22	13.5
23	28	23	14
24	29	24	14.5
25	30	25	15
26	31	26	15.5
27	32	27	16
28	33	28	16.5
29	34	29	17
30	35	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) The transferred land shall be within the boundary of the proposed development or, if the City agrees, within one-quarter mile of the boundary of the proposed development.
- (8) In the event the transferred land is not within the boundary of the proposed development or within one-quarter mile of the boundary thereof, the transferred land must be situated within a transit-oriented area of the City, as identified on the regional Smart Growth Concept Map, prepared by the San Diego Association of Governments, or within one-quarter mile of high-frequency bus service (i.e., providing 15-minute headways).
- (9) 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. 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.

I. 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) through

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.

J. 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.
- (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.

K. 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 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 (J) of this Ordinance.

L. 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 on-street parking. The applicant may also request a concession or an incentive pursuant to

subsection (J), thereof to further lower the vehicle parking ratios from those described herein.

M. 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 thirty 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.