



# **CITY OF MOUNTAIN VIEW**

## **DENSITY BONUS PROGRAM GUIDELINES**

Last Updated: May 2021

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## 1. INTRODUCTION

The purpose of the Density Bonus Program is to encourage the development of housing for specific groups through a package of incentives for applicants, which includes increases in density above the maximum allowed on a site, reduction in parking standards, and reducing or waiving other development standards. Density Bonus focuses on improving project feasibility for projects that provide housing for lower- and moderate-income households, seniors, students, foster youth, homeless individuals, or disabled veterans. The Density Bonus Program is governed by the State of California Government Code Section 65915, *et seq.* (the “State Density Bonus Law”). The City is responsible for implementing State Density Bonus Law.

The purpose of these Density Bonus Program Guidelines is to provide administrative guidance for implementation of State Density Bonus Law. This document serves as a centralized location for implementation updates consistent with State Density Bonus Law and the City of Mountain View Density Bonus Ordinance. Accordingly, this document provides a single reference for development applicants as well as City staff.

State Density Bonus Law has been modified a number of times by the State. Where conflicts between State law, City Code, and this document arise, State Density Bonus Law shall have precedence, then City Code, then this document.

The Density Bonus Program Guidelines are adopted by the Community Development Director pursuant to Section 36.48.70(k) of the City Code, can be updated by the Community Development Director in the Community Development Director’s discretion, and consistent with the Density Bonus Ordinance. Examples of when updates may occur include, without limitation, when new State laws are adopted, when specific circumstances arise that were not anticipated by this document, and when new interpretations of the City and State Density Bonus Law must be made. The City Council has authority to amend the provisions of the Density Bonus Ordinance, which supersedes anything to the contrary in this document.

**2. MINIMUM ELIGIBILITY**

*Government Code Sections: 65915(b) and 65915(c)(3)*

Housing developments with five or more base units are eligible for a density bonus if: (1) the project meets the replacement requirements for specified types of existing rental units on the site (see Section 7.B. of these Guidelines for more information); and (2) the project contains at least one of the eligibility types outlined below. Income limits are determined based on Section 8 of the United States Housing Act of 1937 and is updated periodically. The State of California publishes the current income limits on their website.

<b>Eligibility Type</b>	<b>Minimum Eligibility Requirement</b>	<b>More Information about Eligibility Type</b>
Very Low-Income Units	5% of the base units	Includes incomes up to 50% of area median income (may include Extremely Low-Income households).
Lower-Income Units	10% of the base units	Includes incomes up to 80% of area median income (may include Very Low-Income and Extremely Low-Income).
Moderate-Income Units (Ownership Units Only)	10% of the base units, provided that all units in the development are offered to the public for purchase	Includes incomes between 80% and 120% of area median income.
Senior Citizen Housing Development	At least 35 dwelling units in a housing development for senior citizens or mobile home park that limits residency based on age for older persons.	Residents must be 55 years or older for the project to qualify as a senior citizen housing development.
100% Affordable Projects	All units, including base units and density bonus units, exclusive of manager units, are for Moderate- or Lower-Income households. No more than 20% of the units may be for Moderate-Income households.	Lower and Moderate Income is defined as described above.

State Density Bonus Law makes other housing developments eligible for specific density bonuses, including housing developments with units intended to serve transitional foster youth, disabled veterans, or homeless persons; and student housing developments with units for lower-income students. Eligibility requirements for these types of developments can be found in State Density Bonus Law, located in Appendix II of this document.

### 3. INCENTIVES/CONCESSIONS AND WAIVERS

#### A. INCENTIVES/CONCESSIONS

*Government Code Section 65915(d)*

Development applicants may request the number of incentives/concessions identified in Tables 5.A. to 5.C. below.

Incentives/concessions are reductions or modifications to any regulatory or development standard or Zoning Code requirement, or approval of compatible commercial or industrial uses where otherwise not allowed, except they must comply with the following:

- The incentive/concession must reduce the cost of the development, and that cost reduction must be less than or equal to the cost (i.e., developer subsidy) to provide the affordable units.
- The incentive/concession cannot have a specific, adverse impact to public health and safety, or the environment, or a property listed in the California Register of Historic Resources, or be contrary to State or Federal law.
- The incentive/concession cannot include the City's waiver of fees, waiver of dedication requirements, provision of financial subsidy, or provision of public land.
- Additional density increases cannot be an incentive/concession. Density can be measured in units per acre or floor area, depending on the zoning and Precise Plan designation.

The City requires reasonable documentation from an applicant to demonstrate that the project is eligible for a proposed incentive/concession. The City may pursue outside experts at the applicant's cost to verify the accuracy of the reasonable documentation.

### Example

A project applicant requests an incentive/concession to reduce a setback standard, without which they would need to engineer a more complex structure. As part of their application, the applicant must provide an estimate of the cost reduction to construct the project with the incentive/concession (i.e., the cost of developing in compliance with the setback standard minus the cost of developing with the encroachment into the setback). The applicant must also provide an estimate of the developer's cost to provide the Density Bonus affordable units (i.e., the cost to develop the units minus the sales price or value of the units). The cost reduction must provide for the affordable housing costs or affordable rents (i.e., be less than or equal to the subsidy).

### B. WAIVERS

*Government Code Section 65915(e)*

Development applicants may request any number of waivers necessary to meet the standards set forth below.

Waivers are reductions or modifications of any development standards that physically preclude the construction of units or incentives/concessions allowed by the Density Bonus Law, except the waivers must comply with the following:

- The waiver cannot have a specific, adverse impact to public health and safety, or the environment, or a property listed in the California Register of Historic Resources, or be contrary to State or Federal law.
- Density limitations cannot be waived. Waivers are provided to accommodate the permitted density, not increase the density beyond what is required by the State Density Bonus Law. Density can be measured in units per acre or floor area, depending on the zoning and Precise Plan designation.

The City requires reasonable documentation to support the proposed waiver. Any reduction in development standards shall be no greater than what is reasonably necessary to physically construct the units or incentive/concession. Therefore, reasonable documentation shall include a fact-based explanation of proportionality to the density bonus and/or incentives/concessions that are requested or specific site constraints that justifies the waiver.

### Example

A project applicant requesting a 35% density bonus also requests waivers for height and building coverage. The maximum height is four stories and 55', and the maximum building coverage is 40%. Reasonable documentation of the waiver should show that the height and coverage, when considered together, are proportional to the density requested. One additional story, additional height in feet equal to one typical story, and 43% coverage (equal to a 25% height increase and 7.5% coverage increase) would be commensurate with the 35% density bonus ( $1.25 \times 1.075 < 1.35$ ). If the applicant requires more than a proportional reduction in development standards, the reasonable documentation shall include a description of the unique constraints of the project or lot that necessitates the additional reduction.

#### 4. **PARKING**

*Government Code Section 65915(p)*

Housing developments that are eligible for a density bonus are also eligible for parking ratios as described in State Density Bonus Law. Parking ratios are determined based on the unit types provided in the project. Parking ratios are reduced for projects that are located within one-half mile of a major transit stop and that meet additional criteria as described in the table below. Parking ratios under those listed below may be proposed as an incentive/concession or waiver if the request is consistent with the standards summarized in Section 3 of these Guidelines.

##### A. REDUCED PARKING RATIOS

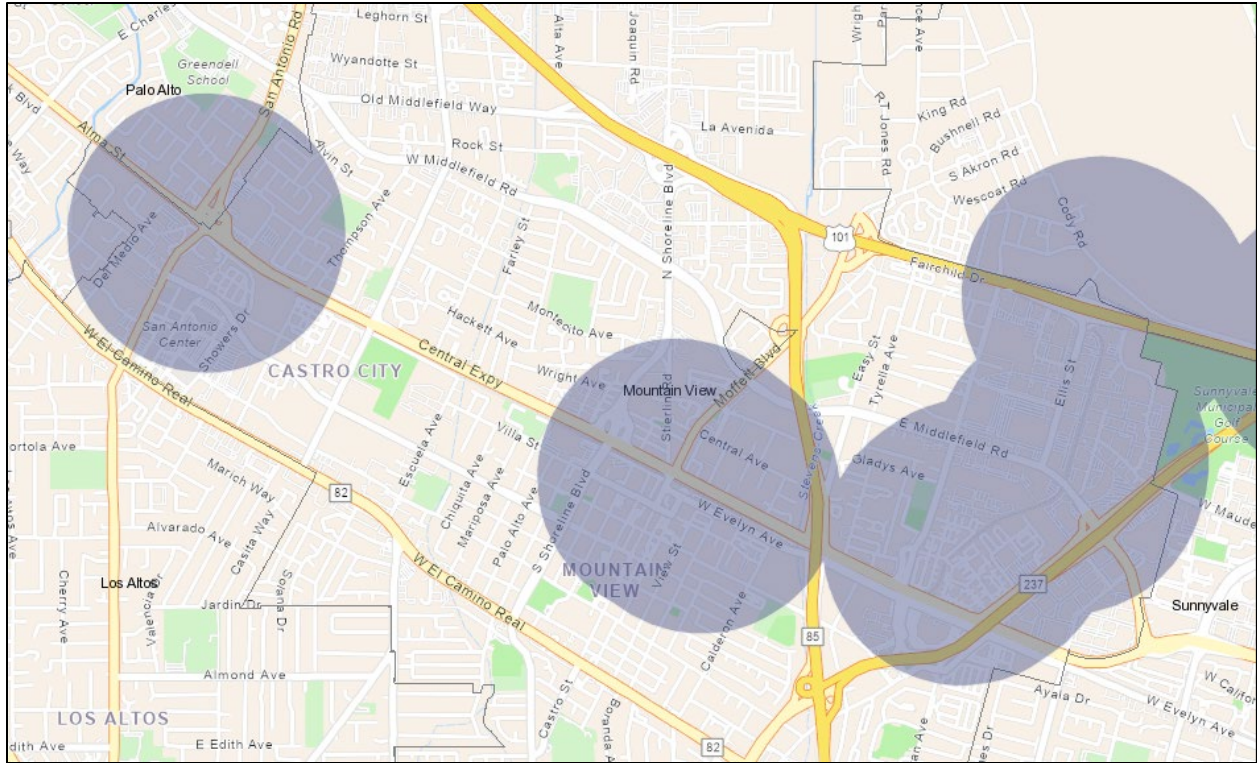
Inclusive of guest and unassigned parking, but not including nonresidential parking. All parking calculations will be rounded up to the next whole number. A development may provide on-site parking through tandem parking for stalls shared by a single unit or uncovered parking but not through on-street parking.

Qualifications	Parking Ratio
Any project that qualifies for a density bonus.	0-1 bedroom units = 1 space
	2-3 bedroom units = 1.5 spaces
	4+ bedroom units = 2.5 spaces
Projects located within one-half mile to a major transit stop (unobstructed access) <i>and</i> meet one of the following criteria:	0.5 space per unit
At least 11% of base units restricted to very low-income; or	
At least 20% of base units restricted to low-income; or	
At least 40% of base units restricted to moderate-income.	
100% affordable rental projects and affordable rental senior housing project (age 62+) with paratransit service or within one-half mile of fixed route bus service operating at least eight times per day.	No off-street parking is required
Special needs or supportive housing for persons with disabilities. Special-needs development must have paratransit service or within one-half mile of fixed-route bus service operating at least eight times per day.	No off-street parking is required

B. MAJOR TRANSIT AREAS IN THE CITY

The map included below is for general reference only and should not be used for determining parcel-specific compliance. Gray circles show areas within one-half mile of a major transit stop, as defined in State Density Bonus Law (light rail and Caltrain stations only). Obstructions may still exist within the blue circle areas that would prevent direct access within one-half mile. As part of the application, applicants must demonstrate an unobstructed path to the nearest major transit stop for consideration of reduced parking requirements.





**Figure 1: One-Half Mile from Major Transit**

## 5. DENSITY BONUSES

Housing developments that are eligible for a density bonus may receive a higher density bonus if the percentage of Very Low-, Low-, or Moderate-Income housing units exceed the base percentages established through the minimum eligibility. The City, at the City’s sole discretion, may grant a proportionately lower density bonus than what is required in State Density Bonus Law for developments that do not meet the requirements as described in the City Code and State Density Bonus Law.

Pursuant to Government Code Section 65915(b)(1), only one bonus is allowed. Applicants may use only one row from one table below for the applicant’s project and are not allowed any additional density bonuses from waivers, incentives/concessions, or other provisions of State Density Bonus Law.

Density bonuses above 35% and up to 50%, shown in italics in the tables below, were added to State Density Bonus Law with AB 2345. These rows do not apply to residential areas of the North Bayshore Precise Plan or the Mixed-Use Character Area of the East Whisman Precise Plan (where local provisions previously allowed more than 35% density bonus).

A. VERY LOW-INCOME UNITS  
*Government Code Section 65915 (f)(2)*

<b>Percentage of Base Units for Very Low-Income Units</b>	<b>Percentage Density Bonus</b>	<b>Incentives/Concessions</b>
5	20	1
6	22.5	1
7	25	1
8	27.5	1
9	30	1
10	32.5	2
11	35	2
12	38.75	2
13	42.5	2
14	46.25	2
15	50	3
100	80% or no maximum if within one-half mile of major transit stop	4

B. LOWER-INCOME UNITS  
*Government Code Section 65915 (f)(1)*

<b>Percentage of Base Units for Lower-Income Units</b>	<b>Percentage Density Bonus</b>	<b>Incentives/Concessions</b>
10	20	1
11	21.5	1
12	23	1
13	24.5	1
14	26	1
15	27.5	1
16	29	1
17	30.5	2
18	32	2
19	33.5	2
20	35	2
21	38.75	2
22	42.5	2
23	46.25	2
24	50	3
100	80% or no maximum if within one-half mile of major transit stop	4

C. MODERATE-INCOME UNITS (OWNERSHIP UNITS ONLY)  
*Government Code Section 65915 (f)(4)*

<b>Percentage of Base Units for Moderate-Income Units</b>	<b>Percentage Density Bonus</b>	<b>Incentives/ Concessions</b>
10	5	1
11	6	1
12	7	1
13	8	1
14	9	1
15	10	1
16	11	1
17	12	1
18	13	1
19	14	1
20	15	2
21	16	2
22	17	2
23	18	2
24	19	2
25	20	2
26	21	2
27	22	2
28	23	2
29	24	2
30	25	3
31	26	3
32	27	3
33	28	3
34	29	3
35	30	3
36	31	3
37	32	3
38	33	3
39	34	3
40	35	3
41	38.75	3
42	42.5	3
43	46.25	3
44	50	3

D. 100% AFFORDABLE NOFA PROJECTS

Pursuant to Section 65915(n) of the State Density Bonus Law, one hundred percent (100%) affordable developments that receive authorization (and reservation of funding allocation) through the Notice of Funding Availability (NOFA) process are eligible for density increases greater than those prescribed by State Density Bonus Law, if they meet the requirements thereof.

6. **DENSITY METRICS AND CALCULATIONS**

A. DWELLING UNITS OR FLOOR AREA

*Density Bonus Ordinance Section 36.48.75(h)*

Pursuant to the General Plan, Zoning Code, and adopted Precise Plans, the City defines density in terms of dwelling units in some areas and floor area in other areas. In general, if a dwelling unit per acre standard exists, that standard should be used for density; whereas, if no such standard exists, floor area should be used. The table below illustrates some of the parts of the City where density is defined by dwelling units or floor area. In addition, floor area defines density for residential uses that do not have clearly defined dwelling units (such as dormitories and senior care facilities).

Planning Area (Examples)	Dwelling Units or Floor Area	
	Dwelling Units	Floor Area
R Districts (e.g., R1, R2, R3) and Residential General Plan Designations	X	
CRA and General Mixed-Use Designation	X	
Downtown Precise Plan	X	
San Antonio Precise Plan		X
El Camino Real Precise Plan		X
North Bayshore Precise Plan		X
East Whisman Precise Plan		X
Residential uses that are not dwelling units		X

B. “BASE UNITS” AND “PROJECT UNITS”

*Density Bonus Ordinance Section 36.48.75(h)*

In the City Code, “base units” is used to define the number of hypothetical units in a project before any bonus density is applied. This language is equivalent to “total units” in the State law. This number is the basis for determining the amount of affordable units that must be provided.

In the City Code, “project units” is used to define the number of actual units proposed by the applicant.

### **Rounding**

For Density Bonus projects, all calculations resulting in fractional units are rounded up, including base units, bonus units, and number of affordable units to determine bonus eligibility. This may result in actual project dwelling units or floor area being slightly higher than the stated bonus allowed.

For non-Density Bonus projects, all density calculations resulting in fractional units are rounded down. For Below-Market-Rate (BMR) calculations resulting in fractional units, see the City’s BMR Guidelines.

### **C. DENSITY CALCULATIONS WHERE DENSITY IS IN DWELLING UNITS**

*Density Bonus Ordinance Section 36.48.75(h)*

In districts where a dwelling unit per acre density standard is defined, the number of “base units” is equal to the maximum number of units allowed pursuant to the General Plan or Zoning Code.

If the number of “project units” is less than or equal to that maximum, then the project units equals the base units. Fractional units are rounded up.

#### **Example 1**

A 60-unit development is proposed on a 1.4-acre site in the CRA Zoning District, where the maximum density is 43 dwelling units per acre. Therefore, the number of project and base units equals 60. This project needs only to provide the minimum affordable units to be eligible for density bonus provisions (e.g., 5% or three very low-income units), including bonus units, parking reductions, incentives/concessions, and waivers. NOTE: It may be more difficult to determine reasonable need for some waivers if the project does not propose bonus density or incentives/concessions.

#### **Example 2**

A 40-unit development is proposed on a 1.13-acre site in the Medium-Density Residential Land Use Designation, where the maximum density is 25 dwelling units per acre.

Base Units =  $25 * 1.13 = 28.25$ , which is rounded up to 29

If the project provides 11% or four very low-income units (3.19, which rounds up to 4), they would be able to reach their proposed number of project units.

- 11% very low-income allows a 35% density bonus.
- A 35% bonus over 29 units equals 39.15, which rounds up to 40.
- NOTE: The project units is slightly more than 35% higher than the base units due to rounding. This is consistent with the State Density Bonus Law, which requires each step in the calculation to be rounded up in order to provide the most housing development potential.

D. DENSITY CALCULATIONS WHERE DENSITY IS IN FLOOR AREA  
*Density Bonus Ordinance Section 36.48.75(h)*

In districts where no dwelling unit per acre standard is defined, the density standard is defined based on floor area, determined by maximum floor area ratio. The number of base units is calculated based on the maximum floor area ratio, with the same average unit sizes. The equation is below.

$$\text{Base Units} = \text{Project Units} * \frac{\text{Maximum Allowable Gross Floor Area} - \text{Project Nonresidential Gross Floor Area}}{\text{Project Gross Floor Area} - \text{Project Nonresidential Gross Floor Area}}$$

If the project residential gross floor area is less than the maximum allowable residential gross floor area, the base units equal the project units. Fractional units are rounded up.

Nonresidential gross floor area is floor area that is solely used by nonresidential tenants or uses. It does not include building area used by or shared with the residential uses, which may include shared parking, lobby, trash or utility rooms, or amenity areas (such as fitness rooms). Nonresidential gross floor area also does not include floor area ratio (FAR)-exempt areas, such as nonprofit or neighborhood commercial spaces in some Precise Plans.

**El Camino Real and San Antonio Precise Plans**

In the El Camino Real and San Antonio Precise Plans, the General Plan maximum floor area ratio includes Bonus FAR or discretionary development tiers in the Precise Plans. The base units are calculated as above, where the maximum allowable gross floor area may include the Bonus FAR based on the satisfaction of such standards.

## North Bayshore and East Whisman Precise Plans

In the North Bayshore and East Whisman Precise Plans, the General Plan maximum floor area ratio does not include Bonus FAR or discretionary development tiers in the Precise Plans. The base units are calculated as above, where the maximum allowable gross floor area does not include the Bonus FAR. If an applicant wishes to pursue Bonus FAR, the applicant cannot request a State density bonus.

### Example 1

An applicant proposes a 64-unit project in a 105,000 square foot building on a 45,000 square foot lot (2.33 FAR). The maximum FAR is 1.85, allowing 83,250 square feet.

$$\text{Base Units} = 64 * (83,250/105,000) = 50.74, \text{ which is rounded up to } 51$$

If the applicant proposes four very low-income units, the applicant would qualify for the bonus.

- Four very low-income units is greater than 7% but less than 8% of 51 base units, so a 25% bonus is allowed.
- A 25% bonus over 51 base units equals  $63.75 = > 64$ , which is greater than or equal to the project units.
- NOTE: The project floor area is more than 25% over the maximum allowed gross floor area, but only to the extent that the base and allowed units were rounded up. This is consistent with the State Density Bonus Law, which requires each step in the calculation to be rounded up in order to provide the most housing development potential.

If the applicant only proposes three very low-income units, the applicant would not qualify for the requested bonus.

- Three very low-income units is greater than 5% but less than 6% of 51 base units, so only a 20% bonus would be allowed.
- A 20% bonus over 51 base units equals  $61.2 \Rightarrow$  a maximum of 62, which is less than the project units.

## Example 2

An applicant proposes a 100-unit project in a 125,000 square foot building on a 50,000 square foot lot (2.5 FAR). The project includes 5,000 square feet of retail. The maximum FAR is 1.0, allowing 50,000 square feet.

$$\text{Base Units} = 100 * (50,000-5,000)/(125,000-5,000) = 37.5 \Rightarrow 38$$

The applicant's requested bonus is calculated as follows:

$$\text{Requested Bonus} = (99.001 - 38) / 38 = 1.6053 = 160.53\%$$

Since the project needs a minimum 160.53% bonus, there is no density bonus available through the State Density Bonus Law for this project, and it cannot be approved.

## 7. AFFORDABLE HOUSING REQUIREMENTS

### A. BMR REQUIREMENTS AND DENSITY BONUS

All residential development is subject to the City of Mountain View BMR Housing Program. Affordable units required by Density Bonus Law may count towards the project's on-site BMR requirement, provided that the units meet both the BMR program requirements and the requirements of Density Bonus Law. For more information regarding the BMR Housing Program, see the BMR Program Guidelines.

### B. REPLACEMENT REQUIREMENTS

*Government Code Section 65915(c)(3)*

Residential development projects that will be demolishing existing rental units in order to develop their proposed project are required to replace those units under certain circumstances. Rental units are any units rented, advertised for rent, or offered for rent within the last five years.

NOTE: If the project is subject to SB 330, which has more expansive replacement requirements, then satisfaction of SB 330's requirements will satisfy those replacement requirements found in Density Bonus Law. These provisions of SB 330 are scheduled to expire in January 2025.

Replacement units that are subject to affordability restrictions can be used to qualify for a Density Bonus and also be used to meet the project's BMR obligations if those units meet the requirements of all three programs.



To determine if your project is subject to replacement requirements, answer the following questions:

- Have any of the existing rental units been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of low or very low income within the last five years preceding the application submittal date? If yes, all units that meet this description need to be replaced.
- Have any of the existing rental units been subject to the Community Stabilization and Fair Rent Act (CSFRA) in the last five years preceding the application submittal date? If yes, all units that meet this description need to be replaced.
- Have any of the existing rental units been occupied by low- or very low-income households in the last five years preceding the application? If yes, all units that meet this description need to be replaced. NOTE: If the incomes of the current tenants are unknown, it is presumed that at least 35.7% of rental units in Mountain View are rented to lower-income households.<sup>i</sup> This percentage will be applied to the units in the project to determine the number of units that need to be replaced if the incomes of the tenants are unknown.

For those units that meet any of the scenarios above, the project is required to replace the same total number of units as well as the same total number of bedrooms of the existing units. For example, a project replacing 10 two-bedroom units must include at least 10 units and at least 20 bedrooms, though not all replacement units must have two bedrooms.

### **Determining Tenure for Replacement Units**

For residential projects that are providing rental units, replacement units will be subject to an affordability restriction of 55 years, unless those units are also being used to satisfy the BMR program, and then the affordability restriction is in perpetuity. Income limits will be determined based on the income of the prior tenant, or, if the income is unknown, based on the presumption of lower income. For units that were subject to the CSFRA that are known or presumed to be above low-income, those units will be rented at lower income levels or subject to recontrol under the CSFRA's provisions.

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<sup>i</sup> Based on the U.S. Department of Housing and Urban Development Comprehensive Housing Affordability Strategy Database.

For residential projects that are providing ownership units, replacement units will be subject to affordability restrictions in perpetuity. Income limits will be determined based on the income of the prior tenant, or, if the income is unknown, lower income. For units that were subject to the CSFRA that are known or presumed to be above low-income, those units will be deed-restricted and sold at lower income levels or subject to recontrol under the CSFRA's provisions.

For more information and assistance determining project specific replacement requirements, use the replacement requirements worksheet.

C. PROJECTS WITH RENTAL UNITS

*Density Bonus Ordinance Section 36.48.85(a)*

Affordable rental units provided to qualify for a Density Bonus must remain affordable for at least 55 years. If those units are also counting towards the project's BMR obligation, then the units will be affordable in perpetuity.

D. PROJECTS WITH OWNERSHIP UNITS

*Density Bonus Ordinance Section 36.48.85(b)*

Affordable ownership units provided to qualify for a Density Bonus must be sold at an affordable housing cost in perpetuity. For very low- and low-income ownership units, developers are required to provide funds for a reserve account to cover future special assessments and increases in homeowners association dues for those households, such that the total annual housing cost will not exceed 30% of the household's annual income level for the unit over the life of the unit.

E. AFFORDABLE HOUSING AGREEMENTS

*Density Bonus Ordinance Section 36.48.85(c)*

An Affordable Housing Agreement is required to be recorded against the property for each development prior to issuance of any building permit for the housing development. The applicant will coordinate with the Housing and Neighborhoods Division to execute the Agreement after the project has been approved.

F. EQUAL DISTRIBUTION

*Density Bonus Ordinance Section 36.48.75(f)*

On-site affordable units qualifying for a density bonus need to be dispersed throughout the housing development and compatible with the design of market-rate units in terms of appearance, materials, and finished quality. For developments with multiple market-rate units containing different numbers of bedrooms, affordable units qualifying for a density bonus need to be representative of the market-rate mix. The final unit mix for the affordable units will be determined within the Affordable Housing Agreement for the project.

8. **APPLICATION REQUIREMENTS**

*Density Bonus Ordinance See Section 36.48.90*

Any applicant requesting a density bonus and any incentive/concession(s), waiver(s), or parking reductions shall submit reasonable documentation as described below.

- a. Project Summary Table. A summary table showing the maximum allowable density permitted by the Zoning and General Plan designations, excluding any density bonus; base units; proposed affordable units by income level; proposed bonus percentage; project units; residential gross floor area and total gross floor area proposed on the site; resulting density in units per acre or floor area ratio, depending on the density definition for the land use designation and zoning applicable to the housing development site; proposed parking stalls; and unit bedroom counts and unit types for the purpose of calculating parking requirements.
- b. Site Plan. A tentative map and/or preliminary site plan, drawn to scale, showing the number and location of all proposed units, designating the location of proposed affordable units.
- c. Site Description. The Zoning and General Plan designations, Assessor's Parcel Number(s) of the housing development site and, if reduced parking is requested on the basis of location, the distance to the nearest major transit stop, as defined in Section 21155 of the Public Resources Code.

- d. Replacement Determination. To determine whether the project is subject to replacement requirements as described in Government Code Section 65915(c)(3), provided the following:
1. The total number of dwelling units existing on the site in the five (5) year period preceding the date of submittal of the application;
  2. The total number of bedrooms in each dwelling unit existing on the site in the five (5) year period preceding the date of submittal of the application;
  3. The total number of dwelling units that are or were subject to a recorded covenant, ordinance, or law applicable to the site that restricted rents to levels affordable to very low- or low-income households, including, but not limited to, the CSFRA in the five (5) year period preceding the date of submittal of the application;
  4. The total number of occupied dwelling units and the income and household size of all residents of currently occupied units or a statement from the applicant that such information is unknown; and
  5. The total number of vacant dwelling units on the site and the income and household size of the prior residents occupying those dwelling units when the site contained the maximum number of dwelling units or a statement from the applicant that such information is unknown.
- e. Land Donation. If a density bonus is requested for a land donation, the location of the land to be dedicated, proof of site control, and reasonable documentation that each of the requirements included in Government Code Section 65915(g) can be met.
- f. Child Care. If the density bonus or incentive/concession is based all or in part on the inclusion of a child-care facility, a written summary addressing the eligibility requirements as described in Government Code Section 65915(h) have been met.
- g. Condominium Conversion. If the density bonus or incentive/concession is based all or in part on the inclusion of affordable units as part of a condominium conversion, a written summary addressing the eligibility requirements as described in Government Code Section 65915.5 have been met.

- h. Waivers. If waivers or reductions of development standards are requested, the following minimum information for each waiver requested on each lot, shown on a site plan if appropriate:
  - 1. The City’s usual development standard and the requested development standard waiver; and
  - 2. Reasonable documentation that the development standards for which a waiver is requested will have the effect of physically precluding the construction of a development at the density or with the incentive/concession permitted by Government Code Section 65915 and the waiver is no greater than necessary to reasonably accommodate the construction of such a development.
- i. Incentives/Concessions. If incentives/concessions are requested, the following information for each incentive/concession:
  - 1. The number of incentives/concessions the applicant is eligible for pursuant to State Density Bonus Law;
  - 2. The City’s usual development standard or other regulatory standard and the requested incentive/concession;
  - 3. Reasonable documentation that the incentive/concession will result in identifiable and actual cost reductions; and
  - 4. Reasonable documentation that the amount of cost reduction is used to provide the affordable units at affordable house costs or affordable rents.

**9. REQUIRED FINDINGS**

*Density Bonus Ordinance Section 36.48.95 and Government Code Section 65915 (d)*

- a. An application for a density bonus shall be approved pursuant to the State Density Bonus Law if the following findings are met, in addition to the required findings of other permits as part of the project. Finding 1 is required for all density bonus applications, while Findings 2, 3, 4, and 5 are only required if the density bonus request includes bonus density, reduced parking, incentives/concessions, or waivers, respectively.
  - 1. The project is a housing development that contains at least one (1) of the features described in Section 65915(b) of the State Density Bonus Law to qualify for a density bonus and all other eligibility requirements as

described in Government Code Section 65915(c), such as replacement of existing units, have been met;

2. If bonus density is requested, the project has provided sufficient affordable units or otherwise meets the eligibility requirements for the bonus as described in Section 65915(f) of the State Density Bonus Law;
  3. If reduced parking ratios are requested, the project meets the eligibility requirements thereof as described in Section 65915(p) of the State Density Bonus Law;
  4. If incentives/concessions are requested, the project meets the eligibility requirements as described in Section 65915(d) of the State Density Bonus Law, and the incentive/concession results in reduced costs to provide the affordable units; and
  5. If waivers are requested, the development standards requested to be waived would physically preclude the units or incentives/concessions provided in the project as described in Section 65915(e) of the State Density Bonus Law.
- b. Notwithstanding subsection a. above, a State Density Bonus, or any waivers or incentives/concessions thereof, may be denied if the City makes written findings in of denial that comply with the standards defined in the State Density Bonus Law in Section 65915 (d).

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF MOUNTAIN VIEW  
TO REPEAL, IN ITS ENTIRETY, DIVISION 11 OF ARTICLE IV OF CHAPTER 36 OF  
THE MOUNTAIN VIEW CITY CODE AND ADD DIVISION 8 TO ARTICLE XVI OF  
CHAPTER 36 OF THE MOUNTAIN VIEW CITY CODE RELATED TO  
DENSITY BONUS

WHEREAS, the City Council of the City of Mountain View has reviewed and considered the January 20, 2021 recommendation of the Environmental Planning Commission relating to Zoning Text Amendments to Chapter 36 of the Mountain View City Code; and

WHEREAS, the City Council of the City of Mountain View finds and declares that Chapter 36, entitled "Zoning," of the Mountain View City Code (City Code or Code) should be amended to be consistent with recent amendments to State law (Government Code Section 65915, *et seq.*) related to Density Bonus;

THE CITY COUNCIL OF THE CITY OF MOUNTAIN VIEW DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Council Findings. On January 20, 2021, the Environmental Planning Commission held a duly noticed public hearing and reviewed all project materials, staff reports, public testimony, and environmental review on said Zoning Text Amendments and adopted a resolution recommending City Council approval of the Zoning Text Amendments with modification to provide clarifying language in Section 36.48.75 (g) (inadvertently identified as Section 36.45.75(g) in the Environmental Planning Commission's action).

The City Council finds and determines, at a duly noticed public hearing on February 9, 2021, that the following Zoning Text Amendments are consistent with the General Plan of the City of Mountain View based upon the following findings made pursuant to Section 36.52.70 of the City Code:

a. The proposed text amendments are consistent with the General Plan because they update the Zoning Ordinance to conform with State law that allow for residential densities to exceed the maximum, otherwise specified in the General Plan, and provide guidance for how to apply State law to each of the areas in the City, regardless of what metric the General Plan uses to define density (such as units per acre and/or floor area ratio); and

b. The proposed text amendments will not be detrimental to the public interest, health, safety, convenience, or welfare of the City because they are consistent with State law, will increase clarity of the City’s local density bonus program, and projects will still be subject to the California Environmental Quality Act (CEQA); and

c. The proposed text amendments are internally consistent with Chapter 36 of the Mountain View City Code because the proposed text amendments update internal references to the ordinance; and

d. The proposed text amendments do not constitute a “project” within the meaning of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(2), Section 15378(a), and Section 15378(b)(5). There is no potential the ordinance will result in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment because the ordinance deals with administrative activities consistent with State law. Even if the text amendments were a project within the meaning of CEQA, the proposed amendments comply with CEQA pursuant to CEQA Guidelines Section 15061(b)(3), the common-sense exception, because the ordinance simply defines procedures for implementing required density bonuses and other project benefits that are mandated under State law, and the ordinance does not authorize any specific development or otherwise affect the physical characteristics of development in the City, nor is any new development proposed or approved by adoption of this ordinance. Therefore, it can be seen with certainty that adoption the action would not cause significant environmental effects.

Section 2. Chapter 36, Article IV, Division 11, of the Mountain View City Code is hereby repealed in its entirety.

Section 3. Chapter 36, Article XVI, Division 8, Sections 36.48.65 through 36.48.95, of the Mountain View City Code is hereby added to read as follows:

**“DIVISION 8 - DENSITY BONUS**

**SEC. 36.48.65. - Density bonus.**

**SEC. 36.48.66. - Purpose.**

This section provides incentives for the development of housing that is affordable to the types of households and qualifying residents identified below. The incentives include the ability to construct more residential dwelling units than the maximum residential density permitted by the applicable zoning and general plan designations and other incentives provided by this section. State Density Bonus Law will be implemented, as required by Government Code Section 65915(a).



**SEC. 36.48.70. - Definitions.**

The definitions found in the State Density Bonus Law shall apply to the terms contained in this division, with the clarifications and additions shown below.

a. **Affordable units.** The proposed housing units available for rent or sale to households with income levels of extremely low, very low, low or moderate income, the percentage of which establishes allowable density bonus.

b. **Base units.** The total number of units in a project, not including units added by a density bonus awarded pursuant to this division.

c. **Bonus FAR.** Gross floor area allowed through a discretionary process prescribed through zoning or precise plans, also called “density or intensity tiers” in some precise plans.

d. **Development standard.** A site or construction condition other than a maximum control on density, including, but not limited to, a height limitation, a setback requirement, a floor area ratio (except in zones where floor area ratio defines the maximum allowable residential density pursuant to paragraph e. of this section), an on-site open-space requirement or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter or other local condition, law, policy, resolution or regulation.

e. **Housing development.** A development project of five (5) or more residential units, including mixed-use developments. Also includes a subdivision or common-interest development, as defined in Civil Code Sec. 1351, approved by the city and that consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multi-family dwelling, as defined in Government Code Section 65863.4(d), where the result of the rehabilitation would be a net increase in available residential units.

f. **Incentives/concessions.** A reduction in local regulatory or development standards that results in identifiable and actual cost reductions to provide for affordable housing costs or affordable rents as defined in State Density Bonus Law.

g. **Maximum allowable residential density.** The maximum allowable residential density applicable to the project under the zoning ordinance and land use element of the general plan, or, if a range of density is permitted, the maximum allowable density of that range. Where the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail. For general plan land use and zoning designations with a defined

dwelling units per acre standard, such standard shall define the maximum allowable residential density. For general plan land use and zoning designations without a defined dwelling units per acre standard, or for residential uses that are not “dwelling units” as defined in Sec. 36.60.11, the maximum floor area ratio shall define the maximum allowable residential density.

h. **Maximum floor area ratio.** The density defined by reference to floor area ratio authorized through the city’s general plan, zoning or precise plan designations.

i. **Project units.** All of the units in the project, including base units, affordable units and units in addition to base density granted through density bonus.

j. **Specific adverse impact.** A significant, quantifiable, direct and unavoidable impact, based on objective, and identified, written public health or safety standards, policies or conditions as they existed on the date that the application for the housing development was deemed complete or the date that a preliminary application that satisfies the requirements of Government Code Section 65941.1 was submitted.

k. **State Density Bonus Law.** State of California Government Code Section 65915, *et seq.*

l. **Waivers.** A waiver or reduction in development standards that would physically preclude the construction of a development at the density or with the incentives/concessions permitted by this division.

**SEC. 36.48.75. - General provisions for density bonus.**

a. **Lesser density bonus.** The applicant may elect to accept a lesser percentage of density bonus or none at all.

b. **Rounding.** All density calculations resulting in fractional units shall be rounded up to the next whole number.

c. **No legislative act, discretionary approval or study.** In and of itself, the granting of a density bonus or incentive/concession shall not require a general plan amendment, zoning change, study or other discretionary approval; however, as used in this section, “study” does not include reasonable documentation necessary to establish a housing development’s eligibility for a density bonus, incentives/concessions, waivers or parking reductions required pursuant to Sec. 36.48.90.

d. **Contiguous project sites.** For the purpose of calculating a density bonus, the dwelling units shall be on contiguous sites that are the subject of one (1) development application but do not have to be based upon individual subdivision maps or parcels.

The density bonus shall be permitted in any geographic area of the housing development, including areas other than where the affordable units are located.

e. **Equal distribution and design of affordable units.** Affordable units qualifying for a density bonus shall be dispersed throughout the housing development and compatible with the design of market-rate units in terms of appearance, materials and finished quality. For developments with multiple market-rate units containing different numbers of bedrooms, affordable units qualifying for a density bonus shall be representative of the market-rate mix. This paragraph does not apply to projects donating land to qualify for a density bonus.

f. **Limitations to waivers and incentives/concessions.** Nothing in this division shall be interpreted to require the city to waive or reduce development standards that would have an adverse impact on any real property listed in the California Register of Historical Resources; to grant any waiver or reduction that would be contrary to state or federal law; or to waive or reduce development standards that would have a specific, adverse impact upon public health or safety or the physical environment, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the housing development unaffordable to lower- and moderate-income households.

g. **Other density bonuses.** The city, at its sole discretion, may grant a proportionately lower density bonus than what is required in the State Density Bonus Law for developments that do not provide a sufficient number of affordable units to be eligible for a density bonus pursuant to Sec. 36.48.80.

h. **Direct financial incentives.** Nothing in this division requires the provision of direct financial incentives for the housing development, including, but not limited to, the provision of financial subsidies, publicly owned land, fee waivers or waiver of dedication requirements. The city, at its sole discretion, may choose to provide such direct financial incentives.

i. **Number of incentives/concessions.** The number of incentives/concessions that may be requested shall be based upon the number the applicant is entitled to pursuant to Government Code Section 65915(d)(2).

j. **Calculation of base units.** Base density will be calculated as follows:

1. Where dwelling units per acre is the density standard, the base units equal the maximum allowable residential density or the project units, whichever is smaller.

2. Where floor area ratio is the density standard, the base units are proportional to the number of project units and maximum allowable residential floor area, with the same ratio of project units to residential floor area, calculated as follows:

$$\text{Base Units} = \text{Project Units} * \frac{\text{Maximum Allowable Gross Floor Area} - \text{Project Nonresidential Gross Floor Area}}{\text{Project Gross Floor Area} - \text{Project Nonresidential Gross Floor Area}}$$

If the project residential gross floor area is less than the maximum allowable residential gross floor area, the base units equal the project units.

3. Where bonus FAR is less than or equal to the maximum allowable residential density in the general plan, the bonus FAR may be combined with a State Density Bonus. The Base Units are calculated as set forth in Paragraph 2 of this subsection, provided that the maximum floor area ratio may include the bonus FAR if the project otherwise qualifies for bonus FAR.

4. Where bonus FAR is greater than the maximum allowable residential density in the general plan, the bonus FAR cannot be combined with a State Density Bonus. The Base Units are calculated as set forth in Paragraph 2 of this subsection, provided that the maximum floor area ratio shall not include any bonus FAR. See Sec. 36.48.80(c).

k. **Administrative guidelines.** The community development director shall have the authority to prepare, adopt and periodically update administrative guidelines consistent with this division and State Density Bonus Law.

l. **Replacement of existing units.** For housing developments that are required under other laws or ordinances to replace existing residential units, those replacement units can qualify a project for a density bonus as long as minimum eligibility requirements are met as defined in Sec. 36.48.80.

#### SEC. 36.48.80. - Density bonus.

a. **Eligibility.** The city shall grant one (1) density bonus, the amount of which shall be as specified below, provide incentives/concessions, waive development standards and apply no more than the parking maximums as described in State Density Bonus Law when an applicant proposes to construct a housing development with five (5) or more base units, containing at least one (1) of the following:

1. **Very low-income units.** Five (5) percent of the base units of a housing development for very low-income households, as defined in Health and Safety Code Section 50105.

2. **Lower-income units.** Ten (10) percent of the base units of a housing development for lower-income households, as defined in Health and Safety Code Section 50079.5.

3. **Moderate-income.** Ten (10) percent of the base units in a common-interest development as defined in Sec. 1351 of the city code for persons and families of moderate income, as defined in Health and Safety Code Section 50093, provided that all units in the development are offered to the public for purchase.

4. **Senior housing units.** A housing development for senior citizens that has at least thirty-five (35) dwelling units, as defined in Sec. 51.3 and Sec. 51.12 of the city code, or mobile home park that limits residency based on age requirements for housing for older persons pursuant to Sec. 798.76 or Sec. 799.5 of the city code.

5. **Other housing developments.** Section 65915(b) of the State Density Bonus Law makes other housing developments eligible for specific density bonuses, including housing developments with units intended to serve transitional foster youth, disabled veterans or homeless persons; student housing developments with units for lower-income students; or housing developments with one hundred (100) percent of the project units for lower-income households, except the manager's unit or units and except that up to twenty (20) percent of the project units may be affordable for moderate-income households.

b. **State density bonus.** The amount of density increase above the otherwise maximum allowable residential density to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in paragraph a., pursuant to formulas and tables in Section 65915(f) of the State Density Bonus Law.

c. **Bonus FAR.** Where bonus FAR allows densities that are greater than the maximum allowable residential density in the general plan, a project may qualify for either a density bonus under the State Density Bonus Law or under the bonus FAR program established in the applicable zoning or precise plan, and an applicant may elect to apply for either bonus program for which its project qualifies, but not both. The city's approval of additional density under the bonus FAR program as an alternative to the State Density Bonus Law shall not be interpreted to require the city to allow a State Density Bonus or incentives/concessions, waivers or parking reductions required by the State Density Bonus Law.

d. **NOFA projects.** Pursuant to Section 65915(n) of the State Density Bonus Law, one hundred (100) percent affordable developments that receive authorization (and reservation of funding allocation) through the notice of funding availability (NOFA)

process are eligible for density increases greater than those prescribed by State Density Bonus Law, if they meet the requirements thereof.

**SEC. 36.48.85. - Affordability requirements.**

Any applicant requesting a density bonus and any incentive/concession(s), waiver(s) or parking reductions is required to maintain affordability in compliance with the following:

a. **Rental units.** An applicant shall agree to continued affordability of all units that qualified the applicant for the award of the density bonus for at least fifty-five (55) years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, rental subsidy program or compliance with the Below-Market-Rate Housing Program. Rents for the affordable density bonus units shall be set at an affordable rent as defined in Health and Safety Code Section 50053.

b. **For-sale units.** An applicant shall agree that the initial occupants of all for-sale units are persons and families of very low, low, or moderate income, and that the units are offered at an affordable housing cost, as defined in Health and Safety Code Section 50052.5. For-sale units shall be subject to recorded restrictions that ensure that the affordable units are resold at an affordable price to very low-, low-, or moderate-income households, as applicable, and such restrictions shall be maintained in perpetuity.

1. **Lower-income for-sale units.** For very low- and low-income ownership units, developers shall set aside a reserve and the reserve shall be described in the CC&Rs to cover future special assessments and increases in HOA dues for those households, such that the total annual housing cost will not exceed thirty (30) percent of the household's annual income for the unit for the life of the unit. The community development director or designee may establish standards for calculating the amount of the reserve.

c. **Agreements.** An agreement pursuant to this section shall be approved as to form by the city attorney and shall be recorded against the housing development project prior to final map or parcel map approval, or, where a map is not being processed, prior to issuance of any building permit for the housing development. The agreement shall include, but not be limited to, the following:

1. The total number of units approved for the housing development; the number, location and level of affordability of target units and the number of density bonus units.

2. Standards for determining affordable rent or ownership cost for target units.

3. The location, unit size in square feet and number of bedrooms of target units.

4. Provisions as required by this section to ensure continued affordability.

5. A schedule for completion and occupancy of target units in relation to construction of market-rate units.

6. A description of any incentive/concession, waiver or reduction of development standard or modification of parking standard being provided by the city.

7. A description of remedies for breach by either party and the identification of any third-party beneficiary or beneficiaries eligible to enforce a breach by the applicant.

8. In the case of rental housing, procedures for filling vacancies, provisions requiring maintenance of records to demonstrate compliance with this division and the developer's agreement that restrictions on rents are consistent with the Costa-Hawkins Act (Civil Code Section 1954.51, *et seq.*).

9. Procedures for verifying household incomes.

10. Financing of ongoing administrative and monitoring costs.

11. Other provisions as necessary or convenient to ensure implementation and compliance with this division.

**SEC. 36.48.90. Application requirements.**

Any applicant requesting a density bonus and any incentive/concession(s), waiver(s) or parking reductions shall submit reasonable documentation as described below.

a. **Project summary table.** A summary table showing the maximum allowable density permitted by the zoning and general plan designations excluding any density bonus; base units; proposed affordable units by income level; proposed bonus percentage; project units; residential gross floor area and total gross floor area proposed on the site; resulting density in units per acre or floor area ratio, depending on the density definition for the land use designation and zoning applicable to the housing development site; proposed parking stalls; and unit bedroom counts and unit types for the purpose of calculating parking requirements.

b. **Site plan.** A tentative map and/or preliminary site plan, drawn to scale, showing the number and location of all proposed units, designating the location of proposed affordable units.

c. **Site description.** The zoning and general plan designations, assessor's parcel number(s) of the housing development site and, if reduced parking is requested on the basis of location, the distance to the nearest major transit stop, as defined in Section 21155 of the Public Resources Code.

d. **Replacement determination.** To determine whether the project is subject to replacement requirements as described in Government Code Section 65915(c)(3), provided the following.

1. The total number of dwelling units existing on the site in the five (5) year period preceding the date of submittal of the application.

2. The total number of bedrooms in each dwelling unit existing on the site in the five (5) year period preceding the date of submittal of the application.

3. The total number of dwelling units that are or were subject to a recorded covenant, ordinance or law applicable to the site that restricted rents to levels affordable to very-low- or lower-income households, including, but not limited to the Community Stabilization and Fair Rent Act in the five (5) year period preceding the date of submittal of the application.

4. The total number of occupied dwelling units and the income and household size of all residents of currently occupied units or a statement from the applicant that such information is unknown.

5. The total number of vacant dwelling units on the site and the income and household size of the prior residents occupying those dwelling units when the site contained the maximum number of dwelling units or a statement from the applicant that such information is unknown.

e. **Land donation.** If a density bonus is requested for a land donation, the location of the land to be dedicated, proof of site control and reasonable documentation that each of the requirements included in Government Code Section 65915(g) can be met.

f. **Child care.** If the density bonus or incentive/concession is based all or in part on the inclusion of a child-care facility, a written summary addressing the eligibility requirements as described in Government Code Section 65915(h) have been met.



g. **Condominium conversion.** If the density bonus or incentive/concession is based all or in part on the inclusion of affordable units as part of a condominium conversion, written summary addressing the eligibility requirements as described in Government Code Section 65915.5 have been met.

h. **Waivers.** If waivers or reductions of development standards are requested, the following minimum information for each waiver requested on each lot, shown on a site plan if appropriate:

1. The city's usual development standard and the requested development standard waiver.

2. Reasonable documentation that the development standards for which a waiver is requested will have the effect of physically precluding the construction of a development at the densities or with the incentive/concession permitted by Government Code Section 65915 and the waiver is no greater than necessary to reasonably accommodate the construction of such a development.

i. **Incentives/concessions.** If incentives/concessions are requested, the following information for each incentive/concession:

1. The number of incentives/concessions the applicant is eligible for pursuant to State Density Bonus Law.

2. The city's usual development standard or other regulatory standard and the requested incentive/concession.

3. Reasonable documentation that the incentive/concession will result in identifiable and actual cost reductions.

4. Reasonable documentation that the amount of cost reduction is used to provide the affordable units at affordable house costs or affordable rents.

**SEC. 36.48.95. - Findings.**

a. An application for a density bonus shall be approved pursuant to the State Density Bonus Law if the following findings are met, in addition to the required findings of other permits as part of the project. Finding 1 is required for all density bonus applications, while Findings 2, 3, 4 and 5 are only required if the density bonus request

includes bonus density, reduced parking, incentives/concessions or waivers, respectively.

1. The project is a housing development that contains at least one (1) of the features described in Section 65915(b) of the State Density Bonus Law to qualify for a density bonus and all other eligibility requirements as described in Government Code Section 65915(c), such as replacement of existing units, have been met;

2. If bonus density is requested, the project has provided sufficient affordable units or otherwise meets the eligibility requirements for the bonus as described in Section 65915(f) of the State Density Bonus Law;

3. If reduced parking ratios are requested, the project meets the eligibility requirements thereof as described in Section 65915(p) of the State Density Bonus Law;

4. If incentives/concessions are requested, the project meets the eligibility requirements as described in Section 65915(d) of the State Density Bonus Law and the incentive/concession results in reduced costs to provide the affordable units; and

5. If waivers are requested, the development standards requested to be waived would physically preclude the units or incentives/concessions provided in the project as described in Section 65915(e) of the State Density Bonus Law.

b. A State Density Bonus, or any waivers or incentives/concessions thereof, may be denied only pursuant to the findings of denial in Paragraphs (d)(1), (e)(1) or (p)(8) of Section 65915 of the State Density Bonus Law."

Section 4. Chapter 36, Article XIV, Division 1, Section 36.40.05, of the Mountain View City Code is hereby amended to read as follows:

**"SEC. 36.40.05. - Definitions.**

For purposes of this article only, the following definitions shall be used in the interpretation and construction of this article.

a. "Addition" shall mean an extension or increase in floor area of an existing nonresidential development project subject to this section.

b. "Affordable housing" means housing which costs a very low-, low-, or moderate-income household no more than approximately thirty (30) percent of its gross monthly income. Costs included in the calculation of income for ownership housing are monthly mortgage principal and interest payments, homeowners' insurance, property

taxes and homeowners association fees, where applicable. Costs included in the calculation of income allocated to rental housing are monthly rent and utilities.

c. "Below-market-rate (BMR) unit" means an ownership or rental unit under the BMR program which is affordable to households with low or moderate incomes as defined in this chapter.

d. "Density bonus" means an approval of additional dwelling units, reduced parking, incentives and concession or waivers of development standards under ~~City Code SECS Sec. 36.14 to 36.14.65~~ 36.48.65 to 36.48.95 and Government Code Sections 65915, *et seq.*

e. "Existing floor area" means legally existing gross floor area at the time of application for a zoning permit or legally existing floor area that was demolished not more than one (1) year prior to the filing of the application for a zoning permit.

f. "Gross floor area" means the floor area enclosed within the walls of a building and measured from the outside perimeter of said walls, expressed in square feet and fractions thereof.

g. "Gross household income" means the earned and unearned household income of all adult members of the household:

1. "Above-moderate-income household" means the level of gross income for Santa Clara County between one hundred twenty (120) percent and one hundred fifty (150) percent of the AMI, adjusted for household size, as based on the one hundred twenty (120) percent AMI level published periodically by the state department of housing and community development.

2. "Moderate-income household" means a household whose gross income as published periodically by the state department of housing and community development is between eighty (80) percent and one hundred twenty (120) percent of the median household income, adjusted for household size.

3. "Low-income household" means a household whose gross income as published periodically by the state department of housing and community development is between fifty (50) percent and eighty (80) percent of the median household income, adjusted for household size, for Santa Clara County.

4. "Very low-income household" means a household whose gross income as published periodically by the state department of housing and community development is fifty (50) percent or less of the median household income, adjusted for household size, for Santa Clara County.

5. If the income limit index referenced in this section, or successor indexes, are no longer published by the state department of housing and community development, then a successor index shall be selected by the city manager. In selecting the successor index, the city manager shall choose an index published by a federal, state or county agency that most closely corresponds with the previous index.

h. "Housing fund" means the City of Mountain View housing funds established pursuant to Sec. 36.40.40 and Sec. 36.40.60.

i. "Housing impact fee" means the fee established pursuant to Sec. 36.40.55 for nonresidential development projects.

j. "In-lieu fee" means a fee paid by a developer into the city's housing fund in place of providing the required below-market-rate units.

k. "Market-rate unit" means a housing unit or the legal lot for such unit offered on the open market at the prevailing market rate for purchase or rental.

l. "Mixed projects" shall mean projects containing both rental units and for-sale units.

m. "Nonresidential development project" means the construction, addition or placement of a structure used for any commercial or industrial purpose as defined in Chapter 36 of the ~~C~~city ~~C~~code and shall include the nonresidential portion of the gross floor area in a combined or mixed-use project.

n. "Off-site" means that the affordable housing units as required by the BMR program are not part of the same residential development and not integrated with the project's market-rate units.

o. "On-site" means that the affordable housing units as required by the BMR program are integrated with the project's market-rate units and dispersed throughout the development according to the BMR program requirements. Except when required to develop senior housing in compliance with applicable laws, development of the affordable units in a separate, stand-alone structure, even if that stand-alone structure were on the same parcel or assessor's parcel number (APN) as a separate market-rate building, does not meet the definition of on-site.

p. "Resale controls" mean legal restrictions by which the price of below-market-rate units and the eligibility of purchasers or renters shall be restricted to ensure that the unit remains affordable to moderate-income households.

q. “Residential development” means any development that includes an application to the city for planning or building permits to create one (1) or more dwelling units, to convert nonresidential uses to residential uses or to convert residential units from rental to for-sale. As used herein, and in the BMR guidelines, “residential development” includes, without limitation, rental housing; for-sale housing; mixed-tenure housing; mixed-use residential; detached single-family dwellings; duplexes; triplexes; multiple-family dwelling structures; condominium or townhouse developments; condominium conversions; and land subdivisions intended to be sold or rented to the general public. However, accessory dwelling units and licensed care facilities are excluded from the definition of residential development.

r. “Zoning permit” means any of the several discretionary permits described in Chapter 36 of the City Code authorizing land uses, development, construction or alteration of uses or buildings within a zoning district.”

Section 5. Chapter 36, Article XVI, Division 1, Section 36.44.10, of the Mountain View City Code is hereby amended to read as follows:

**“SEC. 36.44.10. - Review authority.**

The following sections describe the duties and powers of city officials and administrative bodies responsible for acting on the land use permits and entitlements contained in this chapter.

Amendments to the zoning ordinance text, rezonings or zoning map amendments, adoption or amendment of precise plans, and amendments to the general plan are legislative acts reviewed by the environmental planning commission with final determination by the city council. In addition to the authority specifically described below, the zoning administrator may, in accordance with Section 36.44.45, designate other community development staff to review projects and issue zoning permits for projects not requiring public hearings. Each of the city officials and administrative bodies with final decision authority as listed below shall have the power to approve, conditionally approve or disapprove projects, permits and amendments. A summary of the review authority described in this article is given in Table 36.44-1.

**Table 36.44-1  
REVIEW AUTHORITY**

Type of Permit or Decision	Subdivision Committee	Development Review Committee	Zoning Administrator	Environmental Planning Commission	City Council
CEQA			F/R	R	F
Conditional Use Permits		R	F		A
<del>Density Bonus (Residential)</del>		<del>R</del>	<del>F</del>		<del>A</del>
Development Agreements			R		F
Development Review		R	F		F/A
Extensions			F		A
General Plan Amendments				R	F
Interpretations			F		A
Lot Line Adjustments <sup>1</sup>	F				A
Mobile Home Park Permit		R	F		A
Planned Unit Development Permits		R	F		A
Planned Community Permits		R	R/F		F

Type of Permit or Decision	Subdivision Committee	Development Review Committee	Zoning Administrator	Environmental Planning Commission	City Council
Precise Plans				R	F
Special Design Permit		R	F		A
Subdivisions <sup>1</sup> Parcel Maps Tentative Tract Maps	F R				A F
Temporary Use Permits			F		A
Variances		R	F		A
Zoning Map and/or Text Amendments				R	F"

Section 6. Chapter 43, Section 43.8, of the Mountain View City Code is hereby amended to read as follows:

**“SEC. 43.8. - Exemptions and reductions.**

a. The following are exempt from the fee:

1. **Government and nonprofit facilities.** Public park facilities<sup>7</sup> and buildings which are owned and at least seventy-five (75) percent occupied by governmental or nonprofit agencies and organizations.

2. **Affordable housing.** Because affordable housing is an important community need, the affordable housing units included in new development projects shall not be included in the total number of dwelling units used to calculate the transportation impact fee. This exemption shall not include affordable housing units in otherwise market-rate developments, provided pursuant to density bonus law (under state law and as set forth in ~~Chapter 36, Article IV, Division 11~~ Chapter 36, Article IV, Division 8, Section ~~36.48.65~~ 36.48.65 of the ~~City Code~~ City Code).

3. Accessory dwelling units, as defined in [Chapter 36](#).
4. Temporary uses, as defined in [Chapter 36](#).
5. Because they are not the final origin or destination of trips, parking structures are exempt from the fee.
6. Residential additions where no new units are created.
7. Interior remodels and tenant improvements where no new dwelling units, lodging rooms or gross square footage are created, and where no change of use is occurring.
8. Repair or replacement of a structure, where no new dwelling units, lodging rooms or gross square footage are created, and where no change of use is occurring.
9. **Grandfathered projects.** Development projects for which a zoning permit application was submitted on or before July 1, 2018. This exemption shall expire for all projects that are not issued a building permit by January 1, 2021.

b. **Reductions pursuant to Government Code Section 66005.1.** To receive fee reductions pursuant to Government Code Section 66005.1, the zoning permit application shall show consistency with all required project characteristics. The fee reductions shall be based on a transportation impact analysis or alternative analysis as determined by the zoning administrator. The city may deny the reduction request if it adopts findings after a public hearing establishing that the housing development, even with the required characteristics, would not generate fewer automobile trips than a housing development without those characteristics."

Section 7. The provisions of this ordinance shall be effective thirty (30) days from and after the date of its adoption.

Section 8. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the other remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Section 9. Pursuant to Section 522 of the Mountain View City Charter, it is ordered that copies of the foregoing proposed ordinance be posted at least two (2) days prior to its adoption in three (3) prominent places in the City and that a single publication be



made to the official newspaper of the City of a notice setting forth the title of the ordinance, the date of its introduction, and a list of the places where copies of the proposed ordinance are posted.

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AS/6/ORD  
802-02-09-21o-so

**State of California**

**GOVERNMENT CODE**

**Section 65915**

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65915. (a) (1) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall comply with this section. A city, county, or city and county shall adopt an ordinance that specifies how compliance with this section will be implemented. Except as otherwise provided in subdivision (s), failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.

(2) A local government shall not condition the submission, review, or approval of an application pursuant to this chapter on the preparation of an additional report or study that is not otherwise required by state law, including this section. This subdivision does not prohibit a local government from requiring an applicant to provide reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p).

(3) In order to provide for the expeditious processing of a density bonus application, the local government shall do all of the following:

(A) Adopt procedures and timelines for processing a density bonus application.

(B) Provide a list of all documents and information required to be submitted with the density bonus application in order for the density bonus application to be deemed complete. This list shall be consistent with this chapter.

(C) Notify the applicant for a density bonus whether the application is complete in a manner consistent with the timelines specified in Section 65943.

(D) (i) If the local government notifies the applicant that the application is deemed complete pursuant to subparagraph (C), provide the applicant with a determination as to the following matters:

(I) The amount of density bonus, calculated pursuant to subdivision (f), for which the applicant is eligible.

(II) If the applicant requests a parking ratio pursuant to subdivision (p), the parking ratio for which the applicant is eligible.

(III) If the applicant requests incentives or concessions pursuant to subdivision (d) or waivers or reductions of development standards pursuant to subdivision (e), whether the applicant has provided adequate information for the local government to make a determination as to those incentives, concessions, or waivers or reductions of development standards.

(ii) Any determination required by this subparagraph shall be based on the development project at the time the application is deemed complete. The local government shall adjust the amount of density bonus and parking ratios awarded pursuant to this section based on any changes to the project during the course of development.

(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f), and, if requested by the applicant and consistent with the applicable requirements of this section, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

(D) Ten percent of the total dwelling units in a common interest development, as defined in Section 4100 of the Civil Code, for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(E) Ten percent of the total units of a housing development for transitional foster youth, as defined in Section 66025.9 of the Education Code, disabled veterans, as defined in Section 18541, or homeless persons, as defined in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.). The units described in this subparagraph shall be subject to a recorded affordability restriction of 55 years and shall be provided at the same affordability level as very low income units.

(F) (i) Twenty percent of the total units for lower income students in a student housing development that meets the following requirements:

(I) All units in the student housing development will be used exclusively for undergraduate, graduate, or professional students enrolled full time at an institution of higher education accredited by the Western Association of Schools and Colleges or the Accrediting Commission for Community and Junior Colleges. In order to be eligible under this subclause, the developer shall, as a condition of receiving a certificate of occupancy, provide evidence to the city, county, or city and county that the developer has entered into an operating agreement or master lease with one or more institutions of higher education for the institution or institutions to occupy all units of the student housing development with students from that institution or institutions. An operating agreement or master lease entered into pursuant to this

subclause is not violated or breached if, in any subsequent year, there are not sufficient students enrolled in an institution of higher education to fill all units in the student housing development.

(II) The applicable 20-percent units will be used for lower income students. For purposes of this clause, “lower income students” means students who have a household income and asset level that does not exceed the level for Cal Grant A or Cal Grant B award recipients as set forth in paragraph (1) of subdivision (k) of Section 69432.7 of the Education Code. The eligibility of a student under this clause shall be verified by an affidavit, award letter, or letter of eligibility provided by the institution of higher education that the student is enrolled in, as described in subclause (I), or by the California Student Aid Commission that the student receives or is eligible for financial aid, including an institutional grant or fee waiver, from the college or university, the California Student Aid Commission, or the federal government shall be sufficient to satisfy this subclause.

(III) The rent provided in the applicable units of the development for lower income students shall be calculated at 30 percent of 65 percent of the area median income for a single-room occupancy unit type.

(IV) The development will provide priority for the applicable affordable units for lower income students experiencing homelessness. A homeless service provider, as defined in paragraph (3) of subdivision (e) of Section 103577 of the Health and Safety Code, or institution of higher education that has knowledge of a person’s homeless status may verify a person’s status as homeless for purposes of this subclause.

(ii) For purposes of calculating a density bonus granted pursuant to this subparagraph, the term “unit” as used in this section means one rental bed and its pro rata share of associated common area facilities. The units described in this subparagraph shall be subject to a recorded affordability restriction of 55 years.

(G) One hundred percent of all units in the development, including total units and density bonus units, but exclusive of a manager’s unit or units, are for lower income households, as defined by Section 50079.5 of the Health and Safety Code, except that up to 20 percent of the units in the development, including total units and density bonus units, may be for moderate-income households, as defined in Section 50053 of the Health and Safety Code.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), an applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), (D), (E), (F), or (G) of paragraph (1).

(3) For the purposes of this section, “total units,” “total dwelling units,” or “total rental beds” does not include units added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

(c) (1) (A) An applicant shall agree to, and the city, county, or city and county shall ensure, the continued affordability of all very low and low-income rental units that qualified the applicant for the award of the density bonus for 55 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

(B) (i) Except as otherwise provided in clause (ii), rents for the lower income density bonus units shall be set at an affordable rent, as defined in Section 50053 of the Health and Safety Code.

(ii) For housing developments meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b), rents for all units in the development, including both base density and density bonus units, shall be as follows:

(I) The rent for at least 20 percent of the units in the development shall be set at an affordable rent, as defined in Section 50053 of the Health and Safety Code.

(II) The rent for the remaining units in the development shall be set at an amount consistent with the maximum rent levels for a housing development that receives an allocation of state or federal low-income housing tax credits from the California Tax Credit Allocation Committee.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of all for-sale units that qualified the applicant for the award of the density bonus are persons and families of very low, low, or moderate income, as required, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code. The local government shall enforce an equity sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following apply to the equity sharing agreement:

(A) Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The local government shall recapture any initial subsidy, as defined in subparagraph (B), and its proportionate share of appreciation, as defined in subparagraph (C), which amount shall be used within five years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote home ownership.

(B) For purposes of this subdivision, the local government's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

(C) For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the ratio of the local government's initial subsidy to the fair market value of the home at the time of initial sale.

(3) (A) An applicant shall be ineligible for a density bonus or any other incentives or concessions under this section if the housing development is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low income households, unless the proposed housing development replaces those units, and either of the following applies:

(i) The proposed housing development, inclusive of the units replaced pursuant to this paragraph, contains affordable units at the percentages set forth in subdivision (b).

(ii) Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.

(B) For the purposes of this paragraph, "replace" shall mean either of the following:

(i) If any dwelling units described in subparagraph (A) are occupied on the date of application, the proposed housing development shall provide at least the same number of units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy. If the income category of the household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. For unoccupied dwelling units described in subparagraph (A) in a development with occupied units, the proposed housing development shall provide units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as the last household in occupancy. If the income category of the last household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) If all dwelling units described in subparagraph (A) have been vacated or demolished within the five-year period preceding the application, the proposed housing development shall provide at least the same number of units of equivalent size as existed at the highpoint of those units in the five-year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known. If the incomes of the persons and families in occupancy at the highpoint is not known, it shall be rebuttably presumed that low-income and very low income renter households occupied these units in the same proportion of low-income and very low income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the

replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(C) Notwithstanding subparagraph (B), for any dwelling unit described in subparagraph (A) that is or was, within the five-year period preceding the application, subject to a form of rent or price control through a local government's valid exercise of its police power and that is or was occupied by persons or families above lower income, the city, county, or city and county may do either of the following:

(i) Require that the replacement units be made available at affordable rent or affordable housing cost to, and occupied by, low-income persons or families. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) Require that the units be replaced in compliance with the jurisdiction's rent or price control ordinance, provided that each unit described in subparagraph (A) is replaced. Unless otherwise required by the jurisdiction's rent or price control ordinance, these units shall not be subject to a recorded affordability restriction.

(D) For purposes of this paragraph, "equivalent size" means that the replacement units contain at least the same total number of bedrooms as the units being replaced.

(E) Subparagraph (A) does not apply to an applicant seeking a density bonus for a proposed housing development if the applicant's application was submitted to, or processed by, a city, county, or city and county before January 1, 2015.

(d) (1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:

(A) The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), 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 in subdivision (c).

(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-income and moderate-income households.

(C) The concession or incentive would be contrary to state or federal law.

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income

households, or at least 10 percent for persons and families of moderate income in a common interest development.

(B) Two incentives or concessions for projects that include at least 17 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.

(C) Three incentives or concessions for projects that include at least 24 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.

(D) Four incentives or concessions for projects meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b). If the project is located within one-half mile of a major transit stop, the applicant shall also receive a height increase of up to three additional stories, or 33 feet.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession 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 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. Nothing in this subdivision shall be interpreted to require a local government to 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. The city, county, or city and county shall establish procedures for carrying out this section that shall include legislative body approval of the means of compliance with this section.

(4) The city, county, or city and county shall bear the burden of proof for the denial of a requested concession or incentive.

(e) (1) In no case may a city, county, or city and county 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. Subject to paragraph (3), an applicant may submit to a city, county, or city and county 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, county, or city and county. 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 (d).

(3) A housing development that receives a waiver from any maximum controls on density pursuant to clause (ii) of subparagraph (D) of paragraph (3) of subdivision (f) shall only be eligible for a waiver or reduction of development standards as provided in subparagraph (D) of paragraph (2) of subdivision (d) and clause (ii) of subparagraph (D) of paragraph (3) of subdivision (f), unless the city, county, or city and county agrees to additional waivers or reductions of development standards.

(f) For the purposes of this chapter, “density bonus” means a density increase over the otherwise maximum allowable gross residential density as of the date of application by the applicant to the city, county, or city and county, or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density. The amount of density increase to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), 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
21	38.75
22	42.5
23	46.25
24	50

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Very Low Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35
12	38.75
13	42.5
14	46.25
15	50

(3) (A) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of senior housing units.

(B) For housing developments meeting the criteria of subparagraph (E) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of the type of units giving rise to a density bonus under that subparagraph.

(C) For housing developments meeting the criteria of subparagraph (F) of paragraph (1) of subdivision (b), the density bonus shall be 35 percent of the student housing units.

(D) For housing developments meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b), the following shall apply:

(i) Except as otherwise provided in clause (ii), the density bonus shall be 80 percent of the number of units for lower income households.

(ii) If the housing development is located within one-half mile of a major transit stop, the city, county, or city and county shall not impose any maximum controls on density.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), 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
41	38.75
42	42.5
43	46.25
44	50

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not require, or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

(g) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county in accordance with this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density for the entire development, as follows:

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

(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks an increase pursuant to both this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or

diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

(A) 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.

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned with appropriate development standards for development at the density described in paragraph (3) of subdivision (c) of Section 65583.2, and is or will be served by adequate public facilities and infrastructure.

(D) The transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, not later than the date of approval of the final subdivision map, parcel map, or residential development application, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government before the time of transfer.

(E) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of the transfer.

(F) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(G) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(H) A proposed source of funding for the very low income units shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.

(h) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a childcare facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(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 childcare facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the childcare facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The childcare 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 pursuant to subdivision (c).

(B) Of the children who attend the childcare 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).

(3) Notwithstanding any requirement of this subdivision, a city, county, or city and county shall not be required to provide a density bonus or concession for a childcare facility if it finds, based upon substantial evidence, that the community has adequate childcare facilities.

(4) "Childcare facility," as used in this section, means a child daycare facility other than a family daycare home, including, but not limited to, infant centers, preschools, extended daycare facilities, and schoolage childcare centers.

(i) "Housing development," as used in this section, means a development project for five or more residential units, including mixed-use developments. For the purposes of this section, "housing development" also includes a subdivision or common interest development, as defined in Section 4100 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(j) (1) The granting of a concession or incentive shall not require or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, study, or other discretionary approval. For purposes of this subdivision, "study" does not include reasonable documentation to establish eligibility for the concession or incentive or to demonstrate that the incentive or concession meets the definition set forth in subdivision (k). This provision is declaratory of existing law.

(2) Except as provided in subdivisions (d) and (e), the granting of a density bonus shall not require or be interpreted to require the waiver of a local ordinance or provisions of a local ordinance unrelated to development standards.

(k) For the purposes of this chapter, concession or incentive means any of the following:

(1) 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 and actual cost reductions, 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 in subdivision (c).

(2) 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.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable and actual cost reductions 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 in subdivision (c).

(l) Subdivision (k) does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) This section does not supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which the applicant is entitled under this section shall be permitted in a manner that is consistent with this section and Division 20 (commencing with Section 30000) of the Public Resources Code.

(n) If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) "Development standard" includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.

(2) "Located within one-half mile of a major transit stop" means that any point on a proposed development, for which an applicant seeks a density bonus, other incentives or concessions, waivers or reductions of development standards, or a vehicular parking ratio pursuant to this section, is within one-half mile of any point on the property on which a major transit stop is located, including any parking lot owned by the transit authority or other local agency operating the major transit stop.

(3) “Major transit stop” has the same meaning as defined in subdivision (b) of Section 21155 of the Public Resources Code.

(4) “Maximum allowable residential density” means the density allowed under the zoning ordinance and land use element of the general plan, or, if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. If the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

(p) (1) Except as provided in paragraphs (2), (3), and (4), upon the request of the developer, a city, county, or city and county shall not require a vehicular parking ratio, inclusive of parking for persons with a disability and guests, of a development meeting the criteria of subdivisions (b) and (c), that exceeds the following ratios:

(A) Zero to one bedroom: one onsite parking space.

(B) Two to three bedrooms: one and one-half onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) (A) Notwithstanding paragraph (1), if a development includes at least 20 percent low-income units for housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b) or at least 11 percent very low income units for housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), is located within one-half mile of a major transit stop, and there is unobstructed access to the major transit stop from the development, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of parking for persons with a disability and guests, that exceeds 0.5 spaces per unit.

(B) For purposes of this subdivision, a development shall have unobstructed access to a major transit stop if a resident is able to access the major transit stop without encountering natural or constructed impediments. For purposes of this subparagraph, “natural or constructed impediments” includes, but is not limited to, freeways, rivers, mountains, and bodies of water, but does not include residential structures, shopping centers, parking lots, or rails used for transit.

(3) Notwithstanding paragraph (1), if a development consists solely of rental units, exclusive of a manager’s unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health and Safety Code, then, upon the request of the developer, a city, county, or city and county shall not impose vehicular parking standards if the development meets either of the following criteria:

(A) The development is located within one-half mile of a major transit stop and there is unobstructed access to the major transit stop from the development.

(B) The development is a for-rent housing development for individuals who are 62 years of age or older that complies with Sections 51.2 and 51.3 of the Civil Code and the development has either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(4) Notwithstanding paragraphs (1) and (8), if a development consists solely of rental units, exclusive of a manager’s unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health and Safety



Code, and the development is either a special needs housing development, as defined in Section 51312 of the Health and Safety Code, or a supportive housing development, as defined in Section 50675.14 of the Health and Safety Code, then, upon the request of the developer, a city, county, or city and county shall not impose any minimum vehicular parking requirement. A development that is a special needs housing development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(5) 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. For purposes of this subdivision, a development may provide onsite parking through tandem parking or uncovered parking, but not through onstreet parking.

(6) This subdivision shall apply to a development that meets the requirements of subdivisions (b) and (c), but only at the request of the applicant. An applicant may request parking incentives or concessions beyond those provided in this subdivision pursuant to subdivision (d).

(7) This subdivision does not preclude a city, county, or city and county from reducing or eliminating a parking requirement for development projects of any type in any location.

(8) Notwithstanding paragraphs (2) and (3), if a city, county, city and county, or an independent consultant has conducted an areawide or jurisdictionwide parking study in the last seven years, then the city, county, or city and county may impose a higher vehicular parking ratio not to exceed the ratio described in paragraph (1), based upon substantial evidence found in the parking study, that includes, but is not limited to, an analysis of parking availability, differing levels of transit access, walkability access to transit services, the potential for shared parking, the effect of parking requirements on the cost of market-rate and subsidized developments, and the lower rates of car ownership for low-income and very low income individuals, including seniors and special needs individuals. The city, county, or city and county shall pay the costs of any new study. The city, county, or city and county shall make findings, based on a parking study completed in conformity with this paragraph, supporting the need for the higher parking ratio.

(9) A request pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(q) Each component of any density calculation, including base density and bonus density, resulting in fractional units shall be separately rounded up to the next whole number. The Legislature finds and declares that this provision is declaratory of existing law.

(r) This chapter shall be interpreted liberally in favor of producing the maximum number of total housing units.

(s) Notwithstanding any other law, if a city, including a charter city, county, or city and county has adopted an ordinance or a housing program, or both an ordinance and a housing program, that incentivizes the development of affordable housing that allows for density bonuses that exceed the density bonuses required by the version

of this section effective through December 31, 2020, that city, county, or city and county is not required to amend or otherwise update its ordinance or corresponding affordable housing incentive program to comply with the amendments made to this section by the act adding this subdivision, and is exempt from complying with the incentive and concession calculation amendments made to this section by the act adding this subdivision as set forth in subdivision (d), particularly subparagraphs (C) and (D) of paragraph (2) of that subdivision, and the amendments made to the density tables under subdivision (f).

(Amended by Stats. 2020, Ch. 197, Sec. 2. (AB 2345) Effective January 1, 2021.)