Memorandum

April 9, 2014

TO: Sausalito Housing Element Subcommittee

FROM: Lilly Schinsing, Administrative Analyst

SUBJECT: **Draft Density Bonus Ordinance**
Sausalito 2009-2014 Housing Element Program #19

The attached revised Density Bonus Ordinance shows a redlined version of the Ordinance the Subcommittee reviewed in February to incorporate the following changes regarding the incentives/concessions:

- Introduction of a tiered system for incentives/concessions. Applicants are encouraged to select incentives identified in Tier 1 before selecting concessions in Tier 2 as incentives with an anticipated greater level of impact are identified as Tier 2 and are less preferred, and thus require a higher level of review and approval by the City.
    - Tier 1 would require review/decision by the Planning Commission:
        - reduced minimum lot setbacks
        - reduced minimum lot sizes and/or dimensions
        - increased maximum building coverage
        - increased maximum floor area ratio (FAR)
        - reduced common or private open space
        - approval of mixed use zoning in conjunction with the residential development if non-residential land uses will reduce the cost of residential development
    - Tier 2 would include review/recommendation by the Planning Commission and review/ decision by the City Council:
        - reduced parking (beyond the State Alternative Parking Standards in the State Density Bonus)
        - building heights that do not comply with Sausalito Municipal Code Section 10.40.060
        - other regulatory incentives or concessions (such as impacts to primary views that do not comply with Sausalito Municipal Code Section 10.54.050.D.4) proposed by the applicant or City which result in identifiable, financially sufficient, and actual cost reductions

RECOMMENDATION

Provide staff and the consultants with comments on the attached draft Density Bonus Ordinance (Attachment 1) for consideration by the Planning Commission in their review of the Ordinance.

Attachments

1- Revised Draft Density Bonus Ordinance (track changes from 2/25 version shown)
2- State Density Bonus Law

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Zoning Text Amendments for Density Bonus *(revised 04.09.14)*

AMEND CHAPTER 10.44.130 – Residential Density Bonus

10.40.130 Residential Density Bonus.

A. Purpose. The purpose of this section is to demonstrate the standards and procedures in granting affordable housing density bonuses for housing developments, in an effort to incentivize the construction of Affordable Units within new developments in the City. This section implements the requirements of Government Code Section 65915 ("State Density Bonus Law").

B. Applicability.

1. This section shall apply to all zoning districts within the City that allow residential use.
2. The bonus granted pursuant to this section shall apply only to residential projects or residential components of mixed-use projects, not including units granted as a density bonus.
3. The proposed project shall have all of the following characteristics in order to qualify for a density bonus:
   a. The residential development must include a minimum of five (5) dwelling units.
   b. The applicant seeks and agrees to provide housing units to very-low, low or moderate income households or senior citizens at rates consistent with those specified in Table 10.40-2 (Density Bonus Standards).
   c. The resulting density is beyond that permitted by the applicable zoning district.
   d. The applicant agrees to retain the affordable status of housing units for at least thirty (30) years through the recordation of a deed restriction.

C. Application Requirements.

1. Any applicant requesting a density bonus, incentives, and/or concessions must provide the City with a written proposal.
2. The proposed project shall have all of the following characteristics in order to qualify for a density bonus:
   a. Requested Density Bonus.
      i. Evidence that the project meets thresholds set by State Density Bonus Law, excluding the units added by the granted density bonus;
      ii. Calculations showing the maximum base density;
      iii. Number or percentage of affordable units and the income level at which the units will be restricted to;
      iv. Number of market rate units to result from the granted density bonus;
      v. Resulting density, described in units per square foot; and,
      vi. A written acknowledgement that the project will be subject to a condition of approval and deed restriction to retain affordability of the affordable unit(s) for at least thirty (30) years.

ATTACHMENT 1

b. Documentation of Requested Incentives or Concessions.

i. A pro forma or other report demonstrating that the requested incentives and concessions result in identifiable, financially sufficient and actual cost reductions necessary to ensure the financial feasibility of the proposed units shall be prepared.

ii. A detailed report to allow the City to verify the conclusions of the report submitted in Section 10.40.130.D.2.b.i above shall be prepared. The City may require that an independent financial review be conducted and the applicant shall be responsible for all consulting costs for document preparation and review.

iii. The proposal shall include a description of any proposed waivers of development standards and why they are necessary for making the project physically possible.

iv. All requested incentives and concessions should not exceed the limits stated in Table 10.40-3 (Incentives and Concessions).

3. Payment of fees set by resolution of the City Council.

D. Density Bonus Allowance.

1. ~~A request for a density bonus shall not require any discretionary approval by the City.~~ A request for a density bonus pursuant to this section shall only be granted if the applicant agrees to construct one of the following:

a. At least five percent (5%) of the units are dedicated to very-low income households;

b. At least ten percent (10%) of the units are dedicated to very-low income and/or low income households;

c. At least ten percent (10%) of the units are dedicated to moderate-income households and are developed as common interest developments (including condominium projects, planned developments, community apartment projects or stock cooperatives) and are available to the general public for sale; or,

d. At least thirty-five (35) dwelling units are dedicated and available exclusively to persons aged fifty-five (55) and older and to those residing with them in accordance with State Density Bonus Law Section (65915(b)(1)(c)).

Table 10.40-2. Density Bonus Standards

Target Group	Proportion of Total Affordable Dwelling Units	Maximum Density Bonus	Example Project with 10 Base Units (Except Senior Citizen Housing Development)			
			Base Units		Bonus Units [4]	Maximum Number of Units
			Market Units	Minimum Affordable Units		
Very-Low Income [1]	5%	20%	9	1	1	11
	10%	33%	9	1	4	14
	11% or above	35%	8	2	4	14

Target Group	Proportion of Total Affordable Dwelling Units	Maximum Density Bonus	Example Project with 10 Base Units (Except Senior Citizen Housing Development)			
			Base Units		Bonus Units [4]	Maximum Number of Units
			Market Units	Minimum Affordable Units		
Low Income [2]	10%	20%	9	1	2	12
	20% or above	35%	8	2	4	14
Moderate Income [3] (Common interest developments)	10%	5%	9	1	1	11
	20%	15%	8	2	2	12
	40% or above	35%	4	6	4	14
Senior Citizen	35 units (minimum)	20%	35		7	42

(1) For each 1% increase over 5% of the Target Units, the Density Bonus shall be increased by 2.5% up to a maximum of 35%

(2) For each 1% increase over 10% of the Target Units, the Density Bonus shall be increased by 1.5% up to a maximum of 35%

(3) For each 1% increase over 10% of the Target Units, the Density Bonus shall be increased by 1% up to a maximum of 35%

(4) Rounded up to the next whole number

2. The density bonuses available under this section shall not be combined.
3. All calculations resulting in fractional units shall be rounded up to the next whole number.

E. Floor Area Bonus and Concessions for Child Care Facilities.

1. When the applicant proposes to construct a housing development that includes affordable housing units as stated in Table 10.40-2 (Density Bonus Standards)and includes a "child care facility," as defined in State Density Bonus Law Section 65915(h)(4), to be located on the premises of, constructed as part of, or located adjacent to the housing development, the City shall grant either of the following to the applicant:
   a. An additional density bonus in an amount that is equal to or greater than the total square footage of the child care facility; or
   b. An additional incentive or concession that contributes significantly to the economic feasibility of the construction of the child care facility.

2. A housing development shall be eligible for either the density bonus or concession described in this section once the granting authority makes all of the following findings:
   a. The granted density bonus or concession would contribute to the economic feasibility of the construction of the child care facility.
   b. The density bonus or concession would not have a significant adverse impact on public health, public safety or the physical environment to an extent which cannot be feasibly mitigated or avoided without compromising the affordability of very-low income, low income

and moderate income housing units. A specific adverse impact is a significant, quantifiable, direct, and unavoidable impacts, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that application was deemed complete.

c. The child care facility shall remain in operation for the same period of time in which Affordable Units of the development are proposed and required to remain affordable.

d. Of the children attending the child care facility, the percentage of children of very-low income, low income or moderate income households shall be equal to or greater than the percentage of the dwelling units proposed to be affordable to very-low income, low income and moderate income households.

e. The City shall not be required to grant a density bonus or concession if it determines, based on substantial evidence, that the community has adequate child care facilities.

f. A floor area density bonus for the provision of a child care facility may be combined with a density bonus granted for the provision of affordable housing units. The combined density bonus for any residential development shall not exceed thirty-five percent (35%).

F. Incentives and Concessions.

1. In addition to the density bonus, an applicant who utilizes the density bonus provisions of this chapter may request one or more concessions or incentives. The number of incentives or concessions granted to the applicant shall be pursuant to the State Density Bonus Law, as set forth in Table 10.40-3 (Incentives and Concessions), unless the City makes the findings and rejects a request under the procedures described in subsection 6 pusuant to the State Density Bonus Law.~~, except as provided in subsection (6) of this section.~~

2. Incentives and Concessions may include:

~~a. Regulatory incentives proposed by the City or the applicant resulting in identifiable, financially sufficient, and actual cost reductions. The incentive may include a direct financial incentive, such as a reduced application fee.~~

~~b. Site development standards that results in identifiable, financially sufficient and actual cost reductions, such as reducing parking or setback requirements for the development.~~

A reduction in site development standards or a modification of zoning code requirements or architectural design requirements which exceed the minimum building standards provided in Part 2.5 (commencing with Section 18901) of Division 13 of the California Health and Safety Code, and which result in identifiable, financially sufficient, and actual cost reductions. These incentives (or concessions) are broken down into two tiers, with applicants encouraged to select incentives identified in Tier 1 before selecting concessions in Tier 2. Incentives with an anticipated greater level of impact are identified as Tier 2 and are less preferred, and thus require a higher level of review and approval by the City. The overall goal of this hierarchy is choose concessions that reduce neighborhood impacts, further the project's consistency with the General Plan, and promote affordability.

Tier 1 Incentives/Concessions *(review/decision by the* Planning *Commission)*

i. reduced minimum lot setbacks

ii. reduced minimum lot sizes and/or dimensions

iii. increased maximum building coverage

iv. increased maximum floor area ratio (FAR)

v. reduced common or private open space

vi. approval of mixed use zoning in conjunction with the residential development if non-residential land uses will reduce the cost of residential development and the City finds that the proposed non-residential uses are compatible with the residential development and with existing or planned development in the area where the proposed residential development will be located.

Tier 2 Incentives/Concessions *(review/recommendation by the Planning Commission and review/ decision by the City Council)*

i. reduced parking (beyond the State Alternative Parking Standards identified in Section G of this Chapter)

ii. building heights that do not comply with Sausalito Municipal Code Section 10.40.060

iii. other regulatory incentives or concessions (such as impacts to primary views that do not comply with Sausalito Municipal Code Section 10.54.050.D.4) proposed by the applicant or City which result in identifiable, financially sufficient, and actual cost reductions.

~~c. Waivers of development standards to enable development at an increased density provided that the applicant must demonstrate that the project would be physically impossible to construct otherwise.~~

~~3~~26. Applicants may seek a waiver or modification of development standards that will have the effect of precluding the construction of a residential development meeting the criteria of Section D of this chapter at the densities or with the concessions or incentives permitted by this Division. The applicant must demonstrate that the waiver or modification is necessary to make the residential project, with the affordable units, economically feasible.

4. The denial of an incentive is separate from a decision to approve or deny the project as a whole.

~~4.~~5. The granting of a density bonus, incentives or concessions shall not be interpreted to require a General Plan amendment, Zoning Map amendment, or other discretionary action for approval. If the base project requires discretionary approval, the City retains discretion whether to make the required findings for the project's approval.

Table 10.40-3. Incentives and Concessions

Unit Affordability Level	Percentage of Total Housing Units	Number of Incentive(s) or Concession(s)
Very-Low **Income**	5%	1
Low **Income**	10%	1
Moderate **Income**	10%	1
Very-Low **Income**	10%	2
Low **Income**	20%	2
Moderate **Income**	20%	2
Very-Low **Income**	15%	3
Low **Income**	30%	3
Moderate **Income**	30%	3

6. The City reserves the right to deny density bonus incentives and concessions requests if written findings are made based upon substantial evidence demonstrating any of the following :
   a. The concession or incentive would be contrary to State or Federal law;
   b. The concession or incentive is not required to provide for affordable housing costs as defined in Health and Safety Code Section 50052.5, or for rents for the targeted units to be set at affordable levels as specified in Section 20.32.080;
   c. The concession or incentive would have a specific adverse impact, as defined in Government Code Section 65589.5(d)(2) upon:
      i. Public health or safety for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low and moderate income households;
      ii. The physical environment for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low and moderate income households; or
      iii. Any real property listed in the California Register of Historical Resources.
   d. Development is physically possible without granting a waiver of development standards.

G. Alternative Parking Standards. For density bonus projects meeting the criteria set forth under Table 10.40-2 (Density Bonus Standards), upon a request by the applicant, the City shall allow the following modified parking requirements: :

1. Zero to one bedroom units – one off-street parking space per unit
2. Two to three bedroom units – two off-street parking spaces per unit
3. Four and more bedrooms – two and one-half off-street parking spaces per unit

These spaces are inclusive of accessible and guest parking spaces. All fractions of numbers shall be rounded up. An applicant may use tandem or uncovered parking spaces to meet these parking requirements.

H. Design and Quality.

Affordable units must be constructed concurrently with market rate units and shall be dispersed within the development. The number of bedrooms of the affordable units shall be equivalent to the bedroom mix of the market rate units in the development. Affordable units shall be of equal design and quality as market rate units unless approved by the City. Exterior architectural appearance shall not differentiate between affordable and market rate units. Interior design, finishes and amenities of affordable units may differ from market rate units, but may not be of substandard or inferior quality as determined by the Community Development Director.

I. Donation of Land.

1. An applicant for a tentative subdivision map, parcel map, or other residential development who donates land to the City, as provided for in this Section 10.40.130, shall be entitled to a fifteen percent (15%) increase above the otherwise maximum allowable residential density under the applicable zoning district and the Land Use Element of the General Plan for the entire development. For each one percent increase above the minimum ten percent land donation for very-low income units described in paragraph (3)(a) of this section, the Density Bonus shall be increased by one percent, up to a maximum of thirty-five percent (35%) as shown in Table 10.40-4 (Density Bonus for Land Donations).

2. This increase shall be in addition to any increase in density allowed by Section E, up to a maximum combined Density Bonus of thirty-five percent (35%) if an applicant seeks both the increase required pursuant to this Section and Section E. When calculating the number of permitted Density Bonus Units, any calculations resulting in fractional units shall be rounded to the next larger integer.

3. An applicant shall be eligible for the increased density bonus described in this subsection I when all of the following requirements are met:
   a. The applicant shall donate and transfer the land no later than the date of approval of the final tract or parcel map, or application for the construction of residential units.
   b. The development acreage and zoning classification of the land being transferred shall be sufficient to permit construction of units affordable to very-low income households in an amount not less than ten percent of the number of residential units of the proposed development.
   c. The transferred land shall be at least one acre in size or of sufficient size to permit development of at least forty (40) units, has the appropriate General Plan designation, is appropriately zoned for development as affordable housing, and is or will be served by adequate public facilities and infrastructure. The land shall have appropriate zoning and development standards to make the development of the affordable units feasible.

d. No later than the date of approval of the final subdivision map, parcel map, or of the residential development, the transferred land shall have all the permits and approval, other than building permits, necessary for development of the very-low income housing units on the transferred land except that the City may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Health and Safety Code Section 65583.2, as amended from time to time, if the design is not reviewed by the City prior to the time of transfer.

e. The land shall be transferred to the City of Sausalito, or to a housing developer approved by the City of Sausalito.

f. The transferred land and the very-low income units constructed on the land will be subject to a deed restriction ensuring continued affordability of the units constructed consistent with this chapter, which restriction will be recorded on the property at the time of transfer.

g. The transferred land shall be within the boundary of the proposed development or, with the approval of the City, within one-quarter mile of the boundary of the proposed development

h. A bonus shall not be granted unless a source of funding for the very-low income units has been identified not later than the date of approval of the final parcel or tract map, or application for the construction of residential units.

1

Table 10.40-4. Density Bonus for Land Donation

Percentage Very-Low Income Units	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

State Density Bonus Law

GOVERNMENT CODE
SECTION 65915-65918

65915.
(a) 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 provide the applicant with incentives or concessions for the production of housing units and child care facilities as prescribed in this section. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented. Failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.

(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 incentives or concessions, as described in subdivision (d), 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 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.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), the 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), or (D) of paragraph (1).

(3) For the purposes of this section, "total units" or "total dwelling units" 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) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all low- and very low income units that qualified the applicant for the award of the density bonus for 30 years or a longer period of time if required

ATTACHMENT 2

by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. 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. Owner-occupied units shall be available at an affordable housing cost as defined in Section 50052.5 of the Health and Safety Code.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of the moderate-income units that are directly related to the receipt of the density bonus in the common interest development, as defined in Section 4100 of the Civil Code, are persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, 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.

(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 is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified 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- 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 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.

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

(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.

(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. 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).
(f) For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable residential density as of the date of application by the applicant to the city, county, or city and county. The applicant may elect to accept a lesser percentage of density bonus. The amount of density bonus 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
17	30.5
18	32
19	33.5
20	35

(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

(3) 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.

(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

(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 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 prior to 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 child care 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 child care facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care 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 child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income 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 child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

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

(i) "Housing development," as used in this section, means a development project for five or more residential units. 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) The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. This provision is declaratory of existing law.

(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, financially sufficient, and actual cost reductions.

(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, financially sufficient, and actual cost reductions.

(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 shall not be construed to 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).

(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) "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. 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.

(p) (1) Upon the request of the developer, no city, county, or

city and county shall require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivision (b), that exceeds the following ratios:

(A) Zero to one bedroom: one onsite parking space.
(B) Two to three bedrooms: two onsite parking spaces.
(C) Four and more bedrooms: two and one-half parking spaces.

(2) 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.

(3) This subdivision shall apply to a development that meets the requirements of subdivision (b) 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).

65915.5. (a) When an applicant for approval to convert apartments to a condominium project agrees to provide at least 33 percent of the total units of the proposed condominium project to persons and families of low or moderate income as defined in Section 50093 of the Health and Safety Code, or 15 percent of the total units of the proposed condominium project to lower income households as defined in Section 50079.5 of the Health and Safety Code, and agrees to pay for the reasonably necessary administrative costs incurred by a city, county, or city and county pursuant to this section, the city, county, or city and county shall either
(1) grant a density bonus or
(2) provide other incentives of equivalent financial value. A city, county, or city and county may place such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value as it finds appropriate, including, but not limited to, conditions which assure continued affordability of units to subsequent purchasers who are persons and families of low and moderate income or lower income households.

(b) For purposes of this section, "density bonus" means an increase in units of 25 percent over the number of apartments, to be provided within the existing structure or structures proposed for conversion.

(c) For purposes of this section, "other incentives of equivalent financial value" shall not be construed to require a city, county, or city and county to provide cash transfer payments or other monetary compensation but may include the reduction or waiver of requirements which the city, county, or city and county might otherwise apply as conditions of conversion approval.

(d) An applicant for approval to convert apartments to a condominium project may submit to a city, county, or city and county

a preliminary proposal pursuant to this section prior to the submittal of any formal requests for subdivision map approvals. The city, county, or city and county shall, within 90 days of receipt of a written proposal, notify the applicant in writing of the manner in which it will comply with this section. The city, county, or city and county shall establish procedures for carrying out this section, which shall include legislative body approval of the means of compliance with this section.

(e) Nothing in this section shall be construed to require a city, county, or city and county to approve a proposal to convert apartments to condominiums.

(f) An applicant shall be ineligible for a density bonus or other incentives under this section if the apartments proposed for conversion constitute a housing development for which a density bonus or other incentives were provided under Section 65915.

65916. Where there is a direct financial contribution to a housing development pursuant to Section 65915 through participation in cost of infrastructure, write-down of land costs, or subsidizing the cost of construction, the city, county, or city and county shall assure continued availability for low- and moderate-income units for 30 years. When appropriate, the agreement provided for in Section 65915 shall specify the mechanisms and procedures necessary to carry out this section.

65917. In enacting this chapter it is the intent of the Legislature that the density bonus or other incentives offered by the city, county, or city and county pursuant to this chapter shall contribute significantly to the economic feasibility of lower income housing in proposed housing developments. In the absence of an agreement by a developer in accordance with Section 65915, a locality shall not offer a density bonus or any other incentive that would undermine the intent of this chapter.

65917.5. (a) As used in this section, the following terms shall have the following meanings:

(1) "Child care facility" means a facility installed, operated, and maintained under this section for the nonresidential care of children as defined under applicable state licensing requirements for the facility.

(2) "Density bonus" means a floor area ratio bonus over the otherwise maximum allowable density permitted under the applicable zoning ordinance and land use elements of the general plan of a city, including a charter city, city and county, or county of:

(A) A maximum of five square feet of floor area for each one square foot of floor area contained in the child care facility for existing structures.

(B) A maximum of 10 square feet of floor area for each one square foot of floor area contained in the child care facility for new

structures.
For purposes of calculating the density bonus under this section, both indoor and outdoor square footage requirements for the child care facility as set forth in applicable state child care licensing requirements shall be included in the floor area of the child care facility.

(3) "Developer" means the owner or other person, including a lessee, having the right under the applicable zoning ordinance of a city council, including a charter city council, city and county board of supervisors, or county board of supervisors to make an application for development approvals for the development or redevelopment of a commercial or industrial project.

(4) "Floor area" means as to a commercial or industrial project, the floor area as calculated under the applicable zoning ordinance of a city council, including a charter city council, city and county board of supervisors, or county board of supervisors and as to a child care facility, the total area contained within the exterior walls of the facility and all outdoor areas devoted to the use of the facility in accordance with applicable state child care licensing requirements.

(b) A city council, including a charter city council, city and county board of supervisors, or county board of supervisors may establish a procedure by ordinance to grant a developer of a commercial or industrial project, containing at least 50,000 square feet of floor area, a density bonus when that developer has set aside at least 2,000 square feet of floor area and 3,000 outdoor square feet to be used for a child care facility. The granting of a bonus shall not preclude a city council, including a charter city council, city and county board of supervisors, or county board of supervisors from imposing necessary conditions on the project or on the additional square footage. Projects constructed under this section shall conform to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other health, safety, and zoning requirements generally applicable to construction in the zone in which the property is located. A consortium with more than one developer may be permitted to achieve the threshold amount for the available density bonus with each developer's density bonus equal to the percentage participation of the developer. This facility may be located on the project site or may be located offsite as agreed upon by the developer and local agency. If the child care facility is not located on the site of the project, the local agency shall determine whether the location of the child care facility is appropriate and whether it conforms with the intent of this section. The child care facility shall be of a size to comply with all state licensing requirements in order to accommodate at least 40 children.
(c) The developer may operate the child care facility itself or may contract with a licensed child care provider to operate the facility. In all cases, the developer shall show ongoing coordination with a local child care resource and referral network or local governmental child care coordinator in order to qualify for the density bonus.

(d) If the developer uses space allocated for child care facility purposes, in accordance with subdivision (b), for purposes other than for a child care facility, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. If the developer fails to have the space allocated for the child care facility within three years, from the date upon which the first temporary certificate of occupancy is granted, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors in accordance with procedures to be developed by the legislative body of the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. A penalty levied against a consortium of developers shall be charged to each developer in an amount equal to the developer's percentage square feet participation. Funds collected pursuant to this subdivision shall be deposited by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors into a special account to be used for child care services or child care facilities.

(e) Once the child care facility has been established, prior to the closure, change in use, or reduction in the physical size of, the facility, the city, city council, including a charter city council, city and county board of supervisors, or county board of supervisors shall be required to make a finding that the need for child care is no longer present, or is not present to the same degree as it was at the time the facility was established.

(f) The requirements of Chapter 5 (commencing with Section 66000) and of the amendments made to Sections 53077, 54997, and 54998 by Chapter 1002 of the Statutes of 1987 shall not apply to actions taken in accordance with this section.

(g) This section shall not apply to a voter-approved ordinance adopted by referendum or initiative.

65918. The provisions of this chapter shall apply to charter cities.