

EXHIBIT A

EXHIBIT “A”

17.70.270. Affordable Housing Density Bonus.

A. Purpose.

In accordance with California Government Code Sections 65915, *et seq.*, this Section 17.70.270 specifies how compliance with state density bonus law will be implemented. Specifically, the purpose of this chapter is to provide density bonuses, incentives, concessions, and waivers of development standards for the production of housing for very low-, low-, and moderate-income households, senior households, provision of daycare facilities, student housing, and donations of land, and for other housing types as provided by state law. In enacting this chapter, it is also the intent of the city to implement the goals, objectives, and policies of the city’s of the general plan.

B. Definitions.

The definitions found in “state density bonus law”, Government Code Sections 65915 – 65918 or successor provisions, shall apply to the terms contained in this chapter. “Incentives” include “concessions” as defined in state density bonus law.

C. Application requirements.

1. An applicant for a “housing development” as defined in state density bonus law shall be eligible for a density bonus and other regulatory benefits that are provided by state density bonus law when the applicant seeks and agrees to provide housing as specified in Government Code Section 65915(b), (c), (f), (g), (h) and (v), or in Section 65195.5, or successor provisions. The density bonus calculations shall be made in accordance with state density bonus law.

2. The granting of a density bonus, incentive, or concession, pursuant to this chapter, shall not be interpreted, in and of itself, to require a general plan amendment, development code amendment, zone change, other discretionary approval, or the waiver of a city ordinance or provisions of a city ordinance unrelated to development standards.

3. All requests for density bonuses, incentives, parking reductions, and waivers for a housing development shall be filed with and on a form provided by the community development director, or their designee, concurrently with the filing of the planning application for the first discretionary or ministerial permit required for the housing development, whichever permit is earliest. The applicant shall be informed whether the application is complete consistent with Government Code Section 65943.

4. The application shall include the required fee and the following minimum information:

a. For a requested density bonus.

i. Summary table showing the maximum number of dwelling units permitted by the zoning and general plan excluding any density bonus units,

Attachment 1 - Draft Resolution with Exhibit A
EXHIBIT A

proposed affordable units by income level, proposed bonus percentage, number of density bonus units proposed, total number of dwelling units proposed on the site, and resulting density in units per acre.

ii. Subparagraph of Government Code Section 65915(b)(1) under which the housing development qualifies for a density bonus and reasonable documentation demonstrating that the housing development is eligible for a bonus under that subparagraph.

iii. Where the housing development is seeking an additional bonus, the subparagraph of Government Code Section 65915(v)(1) under which the housing development qualifies for an additional density bonus and reasonable documentation demonstrating that the housing development is eligible for the additional bonus under that subparagraph.

iv. A tentative map or preliminary site plan, drawn to scale, showing the number and location of all proposed units, designating the location of proposed affordable units and density bonus units.

v. The zoning and general plan designations and assessor's parcel number(s) of the housing development site.

vi. A description of all dwelling units existing on the site in the five-year period preceding the date of submittal of the application and identification of any units rented in the five-year period; subject to any form of rent control through a public entity's valid exercise of its police power; or subject to a recorded covenant ordinance, or law restricting rents to levels affordable to households of lower or very low income.

vii. If dwelling units on the site are currently rented, income and household size of all residents of currently occupied units, if known. If any dwelling units on the site were rented in the five-year period but are not currently rented, the income and household size of residents occupying the dwelling units when the site contained the maximum number of dwelling units, if known.

viii. The phasing of the construction of the affordable housing units in relation to the nonrestricted units in the housing development.

ix. 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.

b. Requested incentives. Incentives are those defined by state density bonus law. The number of incentives that may be requested shall be based upon the number the applicant is entitled to pursuant to state density bonus law. The

Attachment 1 - Draft Resolution with Exhibit A
EXHIBIT A

application shall include the following minimum information for each incentive requested, shown on a site plan (if appropriate):

i. The city's usual regulation and the requested regulatory incentive or concession.

ii. Except where mixed-use zoning is proposed as a concession or incentive, reasonable documentation to show that any requested incentive will result in identifiable and actual cost reductions to provide for affordable housing costs or rents.

iii. If approval of mixed-use zoning is proposed, reasonable documentation that nonresidential land uses will reduce the costs of the housing development, that the nonresidential land uses are compatible with the housing development and the existing or planned development in the area where the proposed housing development will be located, and that mixed-use zoning will provide for affordable housing costs and rents.

c. Requested waivers. For each waiver requested, the applicant shall include, shown on a site plan, and shown for each existing or proposed parcel the City's required development standard and the requested development standard.

d. Parking reductions. If a housing development is eligible for a density bonus pursuant to state density bonus law, the applicant may request an on-site vehicular parking ratio specified in Government Code Section 65915(p). An applicant may request this parking reduction in addition to the incentives and waivers permitted by paragraphs (2) and (3) of this subsection. The application shall include a table showing parking required by the zoning regulations, parking proposed under state density bonus law, paragraph under Government Code Section 65915(p) (or other statute) under which the project qualifies for the parking reduction, and reasonable documentation that the project is eligible for the requested parking reduction.

e. Density bonus or incentive for a child care facility in a housing development. The application shall include reasonable documentation that all of the requirements included in Government Code Section 65915(h) can be met.

f. Density bonus or incentive for a condominium conversion. The application shall include reasonable documentation that all of the requirements included in Government Code Section 65915.5 can be met.

D. Application review process.

1. All requests under state density bonus law shall be part of the planning application and shall be applied for, reviewed, and acted upon concurrently with the planning application by the approval body with authority to approve the development ("review authority"), within the timelines prescribed by Government Code Section 65950 *et seq.* or other statute. Appeals of the planning application in accordance with the requirements of

Attachment 1 - Draft Resolution with Exhibit A
EXHIBIT A

City Code Section 1.44 (Appeals) shall include all requests under state density bonus law if appeals are authorized for the discretionary or ministerial permit applied for.

2. The review authority shall grant an incentive requested by the applicant unless it makes a written finding, based upon substantial evidence, of any of the following:

a. The proposed incentive does not result in identifiable and actual cost reductions to provide for affordable housing costs, as defined in Health and Safety Code Section 50052.5; or for affordable rents, as defined in Health and Safety Code Section 50053; or

b. The proposed incentive would be contrary to state or federal law; or

c. The proposed incentive would have a specific, adverse impact upon the public health or safety or on any real property that is listed in the California Register of Historic Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the housing development unaffordable to low- and moderate-income households. For the purpose of this subsection, “specific, adverse impact” means a significant, quantifiable, direct and unavoidable impact, based on objective, 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 as defined in Government Code Section 65589.5.

3. The review authority shall grant the waiver of development standards requested by the applicant unless it makes a written finding, based upon substantial evidence, of any of the following:

a. The proposed waiver would be contrary to state or federal law; or

b. The proposed waiver would have an adverse impact on any real property listed in the California Register of Historic Resources; or

c. The proposed waiver would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the housing development unaffordable to low- and moderate-income households. For the purpose of this subsection, “specific, adverse impact” means a significant, quantifiable, direct and unavoidable impact, based on objective, 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 as defined in Government Code Section 65589.5.

4. If a child care center complies with the requirements of Government Code Section 65915(h), the review authority may deny a density bonus or incentive that is based on the provision of child care facilities only if it makes a written finding, based on substantial evidence, that the city already has adequate child care facilities.

Attachment 1 - Draft Resolution with Exhibit A
EXHIBIT A

E. Density bonus housing agreement.

1. If a density bonus, incentive, parking reduction, or waiver is approved pursuant to this chapter, the applicant shall enter into a binding affordable housing agreement or restrictive covenant, as described below, with the city, which sets forth the conditions and guidelines to be met in the implementation of state density bonus law and that ensures compliance with all of the provisions of this chapter. The agreement will also establish specific compliance standards and remedies available to the city upon failure by the applicant to comply with state density bonus law, this chapter, or the affordable housing agreement.

2. For rental projects, the applicant shall enter into an affordable housing agreement with the city, running with the land, in a form approved by the city attorney, to be executed by the city manager, or their designee. The agreement shall require the continued affordability of all rental units that qualified the applicant for the receipt of the density bonus, incentive, waiver, or parking reduction for a minimum of fifty-five (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; shall identify the type, size and location of each affordable unit; shall specify the eligible occupants; shall specify phasing of the affordable units in relation to the market-rate units; and shall contain other relevant provisions approved by the city attorney. Rents for the lower income density bonus units shall be set at an affordable rent as defined in state density bonus law.

3. For for-sale projects, the applicant shall enter into an affordable housing agreement with the city, running with the land, in a form approved by the city attorney, to be executed by the city manager, or their designee. The affordable housing agreement shall require that, the initial purchasers of those for-sale units that qualified the applicant for the receipt of the density bonus, incentive, waiver, or parking reduction are persons and families of lower or moderate income, as applicable, or if any for-sale unit is not purchased by an income-qualified household within one-hundred eighty (180) days after the issuance of the certificate of occupancy, then the unit(s) must be sold pursuant to a contract that satisfies the requirements of Revenue and Taxation Code Section 402.1(a)(10) to a qualified non-profit housing corporation as defined in state density bonus law and that the units are offered at an affordable housing cost, as that cost is defined in Health and Safety Code section 50052.5; and shall contain other relevant provisions approved by the city attorney. The city shall enforce an equity sharing agreement consistent with state density bonus law unless it is in conflict with the requirements of another public funding source or law. The affordable housing agreement shall require the continued affordability of the for-sale units for a minimum of 55 years from the recordation of each affordable housing agreement, as the case may be.

4. Where a density bonus, waiver or parking reduction is provided for a market-rate senior housing development, the applicant shall enter into a restrictive covenant with the city, running with the land, in a form approved by the city attorney, to be executed by the city manager, or their designee, to require the housing development to be operated as "housing for older persons" consistent with state and federal fair housing laws.

Attachment 1 - Draft Resolution with Exhibit A
EXHIBIT A

5. The executed affordable housing agreement shall be recorded against the housing development prior to final or parcel map approval, or, where a map is not being processed, prior to issuance of building permits for the housing development, whichever is earliest. The affordable housing agreement shall be binding on all future owners and successors in interest.

F. Density bonus calculations.

1. In determining the total number of units to be granted, 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.

2. When calculating the number of affordable units needed to qualify for a given density bonus, any fractions of affordable dwelling units shall be rounded up to the next whole number.

3. Except where a housing development is eligible for an additional bonus pursuant to Government Code Section 65915(v), each housing development is entitled to only one density bonus. If a housing development qualifies for a density bonus under more than one category, the applicant shall identify the category under which the density bonus is requested to be granted.

4. In determining the number of affordable units required to qualify a housing development for a density bonus pursuant to state density bonus law, units added by a density bonus are not included in the calculations. Any on-site units that satisfy the city's inclusionary housing requirements in section 17.70.320 (Inclusionary housing) of the title and are required to be constructed concurrently with the housing development may qualify the housing development for a density bonus if those units meet the requirements of state density bonus law.

5. The applicant may elect to accept a lesser percentage of density bonus than the housing development is entitled to, or no density bonus, but no reduction will be permitted in the percentages of affordable units required by state density bonus law. Regardless of the number of affordable units, no housing development shall be entitled to a density bonus greater than what is authorized under state density bonus law.

6. Nothing in this chapter requires the provision of direct financial incentives from the city 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.

G. Development standards.

1. Building permits and final inspections or certificates of occupancy shall be issued concurrently for the market rate units and for any affordable units that qualified the project for a density bonus, incentive, waiver, or parking reduction, so that the affordable units comprise the required percentage of total units.

Attachment 1 - Draft Resolution with Exhibit A
EXHIBIT A

2. Affordable units shall be comparable in exterior appearance and overall quality of construction to market rate units in the same housing development and shall meet the design and amenity standards set forth in section 17.70.320.C.5 (Design and amenity standards) of this title.

3. To comply with fair housing laws, the affordable units shall contain the same proportional mix of bedroom sizes as the market-rate units. In mixed-income buildings, the occupants of the affordable units shall have the same access to the common entrances and to the common areas, parking, and amenities of the project as the occupants of the market-rate housing units, and the affordable units shall be located throughout the building and not isolated on one floor or to an area on a specific floor.

H. Density bonus for commercial development.

A commercial development may request and receive a development bonus pursuant to the provisions of Government Code Section 65915.7.

I. Interpretation.

If any portion of this chapter conflicts with state density bonus law or other applicable state law, state law shall supersede this chapter. Any ambiguities in this chapter shall be interpreted to be consistent with state density bonus law. Statutory references in this ordinance include successor provisions.