

Memorandum

February 7, 2014

TO: Sausalito Housing Element Subcommittee

FROM: Geoff I. Bradley, AICP Principal, Metropolitan Planning Group
Dave Javid, AICP, LEED AP, Principal Planner, Metropolitan Planning Group
Karen Warner, AICP, Principal, Karen Warner Associates

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

The following attachments address the comments we have received from the Housing Element Committee since our last meeting on January 30, 2014. The attached documents include a list of comments from the Committee (**Attachment 1**), a draft of the City's new Density Bonus Ordinance (**Attachment 2**), which will supersede the existing Density Bonus section of the Zoning Ordinance—although Sausalito currently has a Density Bonus Section (**Attachment 3**) in place, it does not reflect many of the updated standards established under SB 1818, thus requiring updating and reorganization. A matrix comparing existing and revised standards are enclosed as **Attachment 4**. Also enclosed are related definitions in **Attachment 5** and the State Density Bonus Law in **Attachment 6**.

RECOMMENDATION

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

Attachments

- 1 Committee's Comments received 02.03.14
- 2 Draft Density Bonus Ordinance – *replace Section 10.40.130*
- 3 Existing Density Bonus Ordinance
- 4 Comparison Matrix: Existing and Updated Density Bonus Ordinance
- 5 Definitions - *amend Section 10.88.040 to include*
- 6 State Density Bonus Law

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Sausalito Housing Element Subcommittee Review

Density Bonus Ordinance - Memo
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Density Bonus Ordinance – Comments received 02.03.14:

1. C. Applicability: Typo at the beginning of “d.” I think it should say “Stated commitment.” I would probably change this to say “Required commitment”.
2. E. 1 Density Bonus Requirement: Second sentence typo. I think it should read “if the applicant agrees to construct” (not complies to construct)
3. E.1 Density Bonus Requirement. Subsection (d) should cite to the State definition of senior citizen housing development (See 65915(b)(1)(C) for cite). The paraphrase in the ordinance makes it sound as if anyone who lives with someone age 55 or older can live in the development. I don’t believe this is the case; rather only a narrowly defined group of people are included and children are not permitted.
4. Table 1. In the Lower Income row, add “or above” next to 20% (unless there is a higher threshold).
5. G. Incentives or Concessions. I have always understood that the terms “concessions” and “incentives” are interchangeable for purposes of the State statute. I would recommend combining 2 and 3.
6. Section H seems that it could be part of G.
7. How were the number of spaces determined for the modified parking requirements?

Density Bonus Ordinance.
Amendments to Section 10.40.130 (track changes shown from 1/30/14 version)

Draft: 02.07.14

A. Sections:

- Purpose.
- Definitions.
- Applicability.
- Application Requirements.
- Density Bonus Allowance.
- Floor Area Bonus and Concessions for Child Care Facilities.
- Incentives or Concessions.
- Criteria for denying concessions or waivers.
- Alternative Parking Standards.
- Design and Quality.
- Land Donation Alternative.

B. Purpose. The purpose of this ordinance 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 housing units within new developments in the City. This ordinance aims to comply with Government Code Section 65915 ("State Density Bonus Law").

C. Applicability.

1. The density bonus rules shall apply to all zoning districts within the City.
2. The bonus 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 listed in Table 1 of this ordinance.
 - c. The resulting density is beyond that permitted by the applicable zoning district.
 - d. Statement-Required commitment to retain the affordable status of housing units for at least 30 years through the recordation of a deed restriction.

D. Application Requirements.

1. Any applicant requesting a density bonus, incentives, and/or concessions must provide the City with a written proposal.

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Draft Density Bonus Ordinance-Attachment 2

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- 1 2. The proposed project shall have all of the following characteristics in order to qualify for a
2 density bonus:
3 a. Requested Density Bonus.
4 i. Evidence that the project meets thresholds set by State Density Bonus Law, excluding
5 the units added by the granted density bonus;
6 ii. Calculations showing the maximum base density;
7 iii. Number or percentage of affordable units and the income level at which the units will
8 be restricted to;
9 iv. Number of market rate units to result from the granted density bonus;
10 v. Resulting density, described in units per acre; and,
11 vi. A written commitment to retain unit affordability for at least thirty (30) years, which is
12 to be included as a condition of approval and recorded as a deed restriction.
13
14 b. Documentation of Requested Incentives or Concessions.
15 i. An included pro forma or other report demonstrating that the requested incentives
16 and concessions result in identifiable, financially sufficient and actual cost reductions
17 necessary to ensure the financial feasibility of the purposed units shall be prepared.
18 ii. A detailed report to allow the City to verify the report's conclusions shall be prepared.
19 Should this require the hiring of specialized financial consultants for analysis, the
20 applicant will be responsible for all consulting costs for document preparation and
21 review.
22 iii. The proposal shall include a description of any proposed waivers of development
23 standards and why they are necessary for making the project physically possible.
24 iv. All requested incentives and concessions should not exceed the limits stated in Table
25 2 of this ordinance.
26
27 c. Fee.
28 i. Payment of the fee set by Resolution of the City Council with the objective to
29 reimburse the City for time spent reviewing and processing the Density Bonus
30 application.
31

32 **E. Density Bonus Allowance.**

- 33 1. Density Bonus Requirement. A request for a density bonus shall not require any discretionary
34 approval by the City. A request for a density bonus pursuant to this ordinance shall only be
35 granted if the applicant ~~complies~~ agrees to construct one of the following:
36 a. At least 5% of the units are dedicated to very low-income households;
37 b. At least 10% of the units are dedicated to low-income and/or very-low income households;
38 c. At least 10% of the units are dedicated to moderate-income households and are developed
39 as condominium or planned developments, and are available to the general public for sale;
40 or,
41 d. At least thirty-five (35) dwelling units are dedicated and available exclusively to persons aged
42 fifty-five (55) and older and to those residing with them per Government Code Section
43 (65915(b)(1)(c)).
44

Table 1. Density Bonus Standards

<i>Target Group</i>	<i>Percentage of Total Dwelling Units</i>	<i>Maximum Bonus Granted</i>	<i>Total units allowed after applied density bonus in development with 10 base units ⁽⁴⁾</i>
<i>Very Low Income ⁽¹⁾</i>	5%	20%	-
	10%	33%	14
	11% or above	35%	14
<i>Lower Income ⁽²⁾</i>	10%	20%	12
	20% <u>or above</u>	35%	14
<i>Moderate Income ⁽³⁾</i> (Condominium or planned development)	10%	5%	11
	20%	15%	12
	40% or above	35%	13
<i>Senior Citizen Housing Development</i>	35 units	20%	12

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

(4) Rounded up to next whole number

2. Bonuses not Combined. The bonuses that are available under this section shall not be combined.

F. 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 1 of this ordinance and includes a child care facility 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 of an amount equal to the total square footage of residential space, the sum of which shall be equal to or greater than the total square footage of the child care facility.
 - 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 City 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 low income, very 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 designated dwelling 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 low income, very low income or moderate income households shall be equal to or greater than the percentage of the dwelling units proposed to be affordable to low income, very 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 35%.

G. Incentives ~~or~~ and Concessions.

1. The number of incentives or concession granted to the applicant shall be pursuant to the State Density Bonus Law, presented in Table 2 of this ordinance.
2. Incentives and Concessions may include:
 - ~~a.~~ Regulatory incentives proposed by the City or the developer resulting in identifiable, financially sufficient, and actual cost reductions. The incentive may include a direct financial incentive, such as a reduced application fee.
 - ~~3-a.~~ ~~Concessions may include:~~
 - ~~a-b.~~ Site development standards that results in identifiable, financially sufficient and actual cost reductions, such as reducing parking or setback requirements for the development.
 - ~~b-c.~~ Waivers of development standards to enable development at an increased density.
- ~~4-3.~~ The denial of an incentive is separate from a decision to approve or deny the project as a whole.
- ~~5-4.~~ A request for a concession or waiver may only be denied for reasons provided in the State Density Bonus Law.
- ~~6-5.~~ The granting of a density bonus, incentives, concessions, or waivers shall not be interpreted to nor require a General Plan Amendment, Zoning change or other discretionary action for approval. If the base project requires discretionary approval, the City retains discretion whether to make the required findings to base the project's approval.
- ~~7-6.~~ In order to be entitled to a waiver, the applicant must demonstrate the project would be physically impossible to construct otherwise.

Table 2. Incentives and Concessions

<i>Unit Affordability Level</i>	<i>% Total Housing Units</i>	<i>Number of Incentive(s) or Concession(s)</i>
<i>Very Low</i>	<i>5%</i>	<i>1</i>
<i>Low</i>	<i>10%</i>	<i>1</i>
<i>Moderate</i>	<i>10%</i>	<i>1</i>
<i>Very Low</i>	<i>10%</i>	<i>2</i>
<i>Low</i>	<i>20%</i>	<i>2</i>
<i>Moderate</i>	<i>20%</i>	<i>2</i>
<i>Very Low</i>	<i>15%</i>	<i>3</i>
<i>Low</i>	<i>30%</i>	<i>3</i>
<i>Moderate</i>	<i>30%</i>	<i>3</i>

~~H.7. Criteria for denying concessions or waivers.~~ The City reserves the right to deny density bonus concessions or waivers requests if findings are made demonstrating any of the following:

- Violates State or Federal Laws;
- Has no economic benefit;
- Leads to adverse health and safety effects;
- Impact on a historical structure; and
- Development is physically possible without granting a waiver.

H. Alternative Parking Standards. In addition to the concessions allowed, developers may request modified parking requirements as follows:

- Zero to one bedroom units – one onsite parking space per unit
- Two to three bedroom units – two onsite parking spaces per unit
- Four and more bedrooms – two and one-half onsite parking spaces per unit

These spaces are inclusive of handicapped and guest parking. All fractions of numbers shall be rounded up. The developer may also use tandem or uncovered parking to meet these parking requirements.

H. Design and Quality.

A. 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.

1
2 | **K.I. Land Donation Alternative.** An applicant for a tentative subdivision map, parcel map, or other
3 residential development who donates land to the City shall be entitled to a bonus in residential
4 density for the entire development above the density allowable under the applicable zoning
5 ordinance and the Land Use Element of the General Plan.
6

- 7 1. Requirements for Bonus. A bonus for the donation of land shall meet the following
8 requirements:
- 9 a. The applicant shall donate and transfer the land no later than the date of approval of the
10 final tract or parcel map, or application for the construction of residential units.
 - 11 b. The development acreage and zoning classification of the land being transferred shall be
12 sufficient to permit construction of units affordable to very low income households in an
13 amount not less than ten (10) percent of the number of residential units of the proposed
14 development.
 - 15 c. The transferred land shall be at least one acre in size or of sufficient size to permit
16 development of at least forty (40) units, has the appropriate General Plan designation, is
17 appropriately zoned for development as affordable housing, would not result in an
18 overconcentration of affordable dwelling units for a particular area, and is or will be served
19 by adequate public facilities and infrastructure. The land shall have appropriate zoning and
20 development standards to make the development of the affordable units feasible. No later
21 than the date of approval of the final subdivision map, parcel map, or of the residential
22 development, the transferred land shall have all the permits and approval, other than
23 building permits, necessary for development of the very low income housing units on the
24 transferred land.
 - 25 d. The land shall be transferred to the City of Sausalito, or to a housing developer approved by
26 the City of Sausalito.
 - 27 e. The transferred land and the very low income units constructed on the land will be subject to
28 a deed restriction ensuring continued affordability of the units constructed consistent with
29 this chapter, which restriction will be recorded on the property at the time of dedication.
 - 30 f. A bonus shall not be granted unless a source of funding for the very low income units has
31 been committed not later than the date of approval of the final parcel or tract map, or
32 application for the construction of residential units.

be considered as providing required parking unless a Conditional Use Permit is secured per Chapter 10.60 (Conditional Use Permits) of this Title.

2. Off-Site Parking. The Planning Commission may, upon application by the owner or lessee of any property, authorize a Conditional Use Permit for off-site parking to serve a new use and/or structure subject to the following conditions:

- a. If the required parking space(s) are located on a separate lot of record from the lot of record of the building, structure, improvement, or use requiring the parking space(s), a covenant shall be recorded in the office of the County Recorder of Marin County, State of California. Such owner or owners shall record the Covenant for the benefit of the City in a form approved by the City. Covenant shall provide that such owner or owners will continue to maintain such parking space so long as said building, structure or improvement is maintained within said City. The covenant shall stipulate that the title to and right to use the parcel or parcels upon which the parking space is to be provided will be subservient to the title to the premises upon which the building is to be erected. The covenant shall guarantee that said parcel or parcels are not and will not be made subject to any other covenant or contract for use without prior written consent of the City; and
- b. The required parking space(s) must be located on an adjacent parcel or site that is readily accessible to the site containing the building, structure, improvement, or use requiring the parking space(s).

10.40.130 Residential Density Bonuses and Incentives

A. Purpose. As required by California Government Code Section 65915, the purpose of this section is to offer incentives to developers for providing housing that is affordable by families of very low or lower income and senior citizens. In offering such incentives, it is the intent of this section to carry out the requirements of California Government Code Sections 65913 and 65915 et seq. This zoning ordinance includes additional density bonus provisions in Section 10.44.120 (Senior Housing Projects).

B. Eligibility for bonus and incentives. In order to be eligible for a density bonus and other incentives as provided by this section, a proposed residential development project shall:

1. Consist of five or more rental units; and
2. Be designed and constructed so that at least one of following requirements are met:
 - a. 20 percent of the total number of proposed units are for lower income households, as defined in §50079.5 of the California Health and Safety Code; or

- b. 10 percent of the total number of proposed units are for very low income households, as defined in §50105 of the California Health and Safety Code; or
 - c. 50 percent of the total number of proposed units are for qualifying residents as determined by §51.3 of the California Civil Code (senior citizens of any income level); and
- 3. Satisfy all other applicable provisions of this Title.
- C. Density bonus.** A housing development that satisfies all applicable provisions of this section shall be entitled to up to a 25 percent increase in the number of dwelling units normally allowed by the applicable zoning district as of the acceptance date of the project land use permit application. No single project shall be granted more than one density bonus pursuant to this section.
- D. Other incentives.** A qualifying housing development shall be entitled to at least one of the concessions or incentives identified by California Government Code §65915(b) and 65915(h), and the granting authority is hereby authorized to approve such measures, notwithstanding other provisions of this Title. The granting authority may limit its approval to a density bonus only if it makes a written finding that the additional concession or incentive is not required in order for rents for the targeted units to be set as specified by California Government Code §65915(c).
- E. Continued availability.** The land use permit application for the residential project shall include the procedures proposed by the developer to maintain the continued affordability of all lower income density bonus units as follows:
 - 1. **Projects with City or County Funding.** Projects receiving a direct financial contribution or other financial incentives from the City or other governmental agencies shall maintain the availability of all lower income density bonus units for a minimum of 30 years, as required by California Government Code §65915(c) and §65916.
 - 2. **Private projects - Density bonus only.** Privately-financed projects that receive a density bonus as the only incentive from the City shall maintain the availability of lower income density bonus units for a minimum of 10 years, consistent with California Government Code § 65915(c).
 - 3. **Private projects – Additional incentives.** Projects receiving a density bonus and at least one other concession or incentive as provided by subsection D (Other incentives) of this section shall maintain the availability of all lower income density bonus units for a minimum of 30 years, as required by California Government Code § 65915(c).
- F. Location of bonus units.** As required by California Government Code §65915(g), the location of density bonus units within the qualifying housing development may be at the discretion of the developer, and need not be in the same area of the project where the units for the lower income households are located.

Comparison Matrix: Sausalito's Existing and Updated Density Bonus Ordinance

No.	Target Development Type	% of Affordable Units		Bonus Granted		Maximum allowed Density Bonus		Density Bonus Increase	% Affordable Units Required for Maximum Bonus
		State	Saus.	State	Saus.	State	Saus.		
A.	Very Low Income housing units	5%	10%	20%	up to 25%	35%	25%	2.5	11
B.	Lower Income housing units	10%	20%	20%	up to 25%	35%	25%	1.5	20
C.	Moderate Income housing units in a comment interest development	10%	N/A	5%	up to 25%	35%	25%	1	40
D.	Senior Housing	35 units	50%	20%	up to 25%	35%	25%	N/A	N/A
E.	Conversion of apartments to condominiums	33%	N/A	25%	N/A	N/A	N/A	N/A	N/A
F.	Housing Development with child care facility		N/A	equal to SF of facility	N/A	N/A	N/A	N/A	N/A

Density Bonus Definitions

Amendments to Section 10.44.040: Definitions

Density Bonus. A density bonus for a housing development is a density increase over the otherwise maximum allowable residential density corresponding to the Zoning and Land Use designation on the date the application is deemed complete.

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

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

(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.