



# City of Palo Alto

## City Council Staff Report

(ID # 3962)

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**Report Type: Action Items**

**Meeting Date: 8/19/2013**

**Summary Title: Density Bonus Ordinance**

**Title: Adoption of Ordinance for a New Chapter 18.15 (Residential Density Bonus) to Include in Title 18 of the Palo Alto Municipal Code to Implement Government Code Section 65915**

**From: City Manager**

**Lead Department: Planning and Community Environment**

### **Recommendation**

Staff recommends that the City Council review and adopt New Chapter 18.15 (Residential Density Bonus) to Title 18 (Zoning) of the Palo Alto Municipal Code to Implement Government Code Section 65915

### **Executive Summary**

In 2004, SB 1818 significantly amended State Density Bonus Law (Government Code Section 65915) including requiring local jurisdictions to adopt the law into their municipal codes. As jurisdictions adopted the State law, many wrestled with implementing the State law while respecting local codes, particularly in granting concessions and incentives. The 2007-2014 Housing Element, recently approved by the Council, provides that the City will adopt a Density Bonus ordinance to comply with its requirements under State law to provide affordable housing opportunities. A local Density Bonus ordinance allows the City to take local concerns into account when granting approvals for density bonus projects. Staff has prepared a draft Density Bonus Ordinance, including a menu of automatic concessions. Any concessions requested not listed on the menu of concessions would require additional review by the Approving Authority reviewing the land use application. Staff believes that the ordinance meets the purpose and intent of the State law while respecting local preferences. The draft ordinance has been included as Attachment A.

### **Background**

The State Density Bonus Law (Section 65915 of the Government Code) was first adopted in 1979. The law allows developers who offer affordable units in their developments a density bonus above what the zoning ordinance would typically allow. Originally, developers received a density bonus of 25% if they met the density bonus requirements.

In 2004, the State Legislature passed SB 1818, which significantly amended Section 65915 of the Government Code (Attachment C). The significant changes to the law, effective on January 1, 2005, included:

- A higher maximum market-rate unit density bonus of 35% for a lower percentage of affordable units provided;
- A sliding scale of market-rate density bonus percentages from 20%-35% depending on the percentage of affordable units provided;
- Provision for up to three (3) development concessions or incentives, depending on the percentage of affordable units provided;
- Granting the developer a density bonus if they donate land for very low income housing; and
- Required jurisdictions to implement Density Bonus law through local codes.

In the past, the City has applied the Density Bonus law on an ad hoc basis to both market rate and affordable developments. Palo Alto Family Apartments, located at 801 Alma Street and developed by Eden Housing, is a 50 unit affordable rental development. Eden requested concessions to encroach into the required setbacks, exceed the maximum floor area ratio (FAR) and not provide private useable open space. The development at 195 Page Mill Road also requested concessions to allow residential uses in the General Manufacturing (GM) zoning district and to exceed the maximum FAR in return for providing 17 affordable housing units (20% of the total units). No developer has requested an increase in density though the Density Bonus law. All requests have been for concessions.

The 2007-2014 Housing Element Update includes a draft program (Program 3.1.10) requiring that a density bonus ordinance be adopted that is consistent with Government Code 65915. Staff anticipates that density bonus will be an important tool in the production of affordable housing in addition to helping the City meet its Housing Element and Regional Housing Needs Allocation (RHNA) requirements.

## **Discussion**

### Significant Revisions

As mentioned, SB 1818 provided significant revisions to Density Bonus law. Developers are now able to receive a higher percentage bonus for a lower percentage of affordable units provided. The percentage of density bonus received is dependent on the affordability level of the affordable housing provided.

Below are the eligibility requirements for a density bonus award.

**Density Bonus Summary Table**

<b>Restricted Affordable Units or Category</b>	<b>Minimum Percentage of Restricted Affordable Units</b>	<b>Percentage of Density Bonus Granted</b>	<b>Additional Bonus for Each 1% Increase in Restricted Affordable Units</b>	<b>Percentage of Restricted Units Required for Maximum 35% Density Bonus</b>
Very Low Income	5%	20%	2.50%	11%
Lower Income	10%	20%	1.50%	20%
Moderate Income	10%	5%	1%	40%
Senior Citizen Housing	100%	20%	-----	-----
Qualifying Mobile Park	100%	20%	-----	-----

In addition, SB 1818 increased the number of concessions that a developer could request for a lower percentage of affordable housing provided. As with the density bonus, the number of concessions is dependent on the affordability level of the units and the percentage of affordable units provided.

### Concessions and Incentives Summary Table

Target Group	Restricted Affordable Units		
Very Low Income	5%	10%	15%
Lower Income	10%	20%	30%
Moderate Income (Common Interest Development)	10%	20%	30%
<b>Maximum Incentive(s)/Concession(s)</b>	<b>1</b>	<b>2</b>	<b>3</b>

#### Planning and Transportation Commission Review

There has been extensive discussion of the draft ordinance by the PTC. On October 19, 2011, the PTC conducted a study session regarding Government Code Section 65915 and the SB 1818 amendments. Since no developer has requested an increase in density, the discussion was focused primarily on allowable concessions and an evaluation of the reasonableness of the requested concession(s). Staff provided the density bonus ordinances from the City of San Mateo and City of Santa Monica as reference for PTC review. The ordinances from those jurisdictions were chosen based on their differing approaches to granting concessions for proposed developments. The City of Santa Monica’s ordinance was more detailed in its requirements in granting concessions. The Santa Monica code also placed quantified limits on the types of concessions offered. In addition, if the developer did not choose one of the concessions on the menu, a noticed public hearing was required to review the concession(s) proposed by the developer. The City of San Mateo’s ordinance contained broader concessions with no quantified thresholds or limitations on the City’s acceptance.

From the discussion, three main issues were raised:

1. A concern was raised that a developer, with the use of the concession(s), could circumvent height limits and/or other zoning requirements without the City’s ability to review the impacts;
2. Eligibility for a concession by simply meeting City’s minimum BMR requirements, and
3. The City’s ability to request for financial documentation in support of the requested concession(s).

The PTC directed staff to prepare a City draft ordinance similar to the style of the Santa Monica ordinance and their menu of concessions.

January 9, 2013, the PTC considered the formal draft ordinance. The Commission was supportive of the menu of concessions. However, there was substantial discussion about the requirement of a developer to submit project pro-formas in support of a requested concession not on the menu. In addition, the PTC wanted to see quantified concessions instead of more general, open ended concessions. The meeting was continued to March 5, 2013 for staff to return with responses to PTC comments. Staff returned with revisions that quantified the concessions and reduced the pro forma requirement from mandatory submittal of the project pro forma to requesting financial information when necessary. The PTC approved the draft ordinance by a vote of 7-0. The minutes from the March 5 meeting have been included as Attachment B.

## **Summary of Key Issues**

The draft density bonus ordinance has been prepared with much of the language from the State law incorporated verbatim into the ordinance. However, the draft ordinance differs from the State law by providing greater detail and clarity for the granting of incentives and concessions.

### Concession Evaluation Process

Staff used the Santa Monica ordinance as the draft ordinance model. The ordinance provides a menu of concessions which the developer can choose. These concessions are the more commonly requested concessions, including relief from setbacks, floor area ratio (FAR) and maximum height requirements. If the developer chooses from the menu of concessions, the concession would be granted. These concessions are generally considered to have minimal adverse impacts. If a developer requests a concession that does not fall within the parameters of the menu concessions, the requested concession is reviewed as part of the underlying land use application review with the appropriate Approval Authority (the City Council or the Director of Planning and Community Environment) granting or denying the concession request.

Per State law, concessions must be granted to the developer unless the Approval Authority can make one of the following findings:

1. The Concession, Incentive, waiver or modification is not required to provide for Affordable Rents or Affordable Sales Prices; or
2. The Concession, Incentive, waiver or modification would have a specific, adverse impact upon public health or safety or the physical environment or on real property 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 Development

unaffordable to Low and Moderate Income households.

3. The Concession, Incentive, waiver or modification is contrary to state or federal law.

### Menu of Concessions

The Zoning ordinance (Title 18) was considered during the development of the proposed menu of concessions. Concessions were crafted in consideration of the City's 50 foot height limit, in that any concession request that would exceed the 50 foot height limit would require Approval Authority review. Floor Area Ratio maximums were also considered, in that while the floor area limits could be exceeded as a concession, the amount of additional floor area granted could not exceed the total square footage of the affordable housing. This concession was crafted to avoid the situation of providing only minimal affordable housing to be eligible for concessions, then using the concessions to maximize commercial floor area or other non-affordable residential area.

### Request for Financial Information

If the developer requests a concession not on the menu, additional review of the concession is required. As part of the review, the Approving Authority may request the developer submit financial information as documentation to support the concession request. The documentation would be used to demonstrate the concession is necessary to provide for affordable rents or sales prices.

### Recent Court Decision

The Planning and Transportation Commission discussed whether to allow Inclusionary Units to take advantage of the Density Bonus. The Commission elected to recommend to the Council that Inclusionary units should not qualify for a Density Bonus as such units were required under the City's separate BMR ordinance. While there was no legal precedent at the time prohibiting the exclusion of Inclusionary Units, the Commission was told this was an unsettled area of law. Subsequent to the Commission hearing, on July 11, 2013, the Court of Appeal in *Latinos Unidos Del Valle De Napa Y Solano v. County of Napa* held that Inclusionary Units should be counted as qualifying affordable units for purposes of qualifying for a Density Bonus. Note that the *County of Napa* is a very recent Court of Appeal decision and some early commentary has questioned its legal reasoning. That being said, for now the City is recommending that the Density Bonus ordinance be amended to comport with the County of Napa holding that Inclusionary BMR units qualify for a density bonus and concessions. The amendments are shown in track changes format in the Draft Ordinance (Attachment A.) The City Attorney's office will continue to monitor this issue and, if warranted, may recommend additional amendments to the Density Bonus or BMR Ordinance..

## Density Bonus Ordinance

Staff worked with the City Attorney in preparing the draft density bonus ordinance. Some of the more relevant sections of the ordinance include:

### 1. Implementation (Sec. 18.15.030) –

- The ordinance applies when the development includes five or more residential units, and
- Developers can request up to a maximum density bonus of 35% depending on the number of affordable units and the level of affordability.

### 2. Development Standards (Sec. 18.15.040) –

- The required units are to be built on-site and shall be generally equivalent in size, fixtures and finishes to the market rate units;
- The affordability term will be 30 years for low income rental and for ownership units and 59 years for moderate income units, and
- Includes the option for offsite development of the affordable units.

### 3. Development Concessions and Incentives (Sec. 18.15.050) –

- A menu of the concessions was created, listing the more commonly requested concessions of setbacks, floor area ratio (FAR) and height limit. These concessions would be granted without additional review;
- Any concession not on the menu of concessions would require additional review and approval by the Approval Authority. The Approval Authority is determined by the underlying discretionary permit application type;
- Financial information may be requested to document the financial necessity of the concession if the requested concession is not on the menu of concessions;
- It is not necessary to request a density bonus in order to request concessions, and
- The City Council has the discretion to allow more generous concessions for 100% affordable housing projects.

### 4. Waiver/Modification of Development Standards (Sec. 18.15.060)

- State law also allows the applicant to request a waiver or modification of development standards if such standards would physically preclude the construction of the proposed development at the increased density with the incorporated concessions and incentives. The ordinance requires the applicant to demonstrate

that without the waiver or modification, the development standards would physically preclude the construction of the development at the site.

5. Child Care Facilities (Sec. 18.15.070) –

- Housing developments providing child care facilities may also take advantage of density bonus and concessions.

6. Application Requirements (Sec. 18.15.080) –

- Outlines the procedure for developers to request density bonus and concessions, and
- Those concessions requested not listed in Section 18.15.050 would require additional review, including possible submittal of financial information if requested.

7. Review Procedures (Sec. 18.15.090) –

- Outlines the process if the developer chooses a concession not on the menu, and
- As part of the public hearing, the Approval Authority will need to make separate findings for the granting of the concessions.

8. Regulatory Agreement (Section 18.15.100) – All density bonus development will be required to enter into a regulatory agreement.

- The Agreement will designate the units, affordability term and level of affordability.

## **Policy Implications**

The proposed density bonus ordinance is consistent with the policies and programs in the current and proposed Housing Element. Program H-38 of the current 1999-2006 Housing Element calls for the adoption of a revised density bonus program ordinance. Since this was not completed, it remains a program in the Housing Element update.

In the draft 2007-2014 Housing Element update, a program stipulating the adoption of a density bonus ordinance (Program 3.1.10) has been transferred from the current Housing Element. The draft ordinance meets the requirements of the program.

## **Environmental Review**



The proposed Ordinance revises the requirements for granting a residential density bonus to comply with revisions to State law enacted by the Legislature through the adoption of Senate Bill 1818. Adoption of the draft density bonus will only codify allowances that developers have been able to use in housing developments since 2005. The revisions modify the criteria and incentives offered to qualifying developments but do not authorize construction not already permitted under the City's existing codes. It is uncertain how many project applicants will seek to utilize the provisions of State law and this Ordinance and where such projects might be located in the City. Further, each individual project will be subject to its own environmental review. Consequently, the attached proposed ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations since it can be seen with certainty that there is no possibility the adoption and implementation of this Ordinance may have a significant effect on the environment.

**Attachments:**

- Attachment A: Ordinance for Draft Residential Density Bonus with Menu (PDF)
- Attachment B: March 5, 2013 PTC Meeting Excerpt Minutes (PDF)
- Attachment C: Amended Government Code Section 65915 (SB 1818) (PDF)

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Ordinance No. \_\_\_\_\_

Ordinance of the Council of the City of Palo Alto Adopting New Chapter 18.15 (Residential Density Bonus) of Title 18 (Zoning) of the Palo Alto Municipal Code to Implement Government Code Section 65915

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. Findings and Recitals. The Council of the City of Palo Alto finds and declares as follows:

A. The State Density Bonus Law (Section 65915 of the Government Code) was first adopted in 1979. The law allows developers who offer affordable units in their developments a density bonus above what the zoning ordinance would typically allow. Originally, developers received a density bonus of 25% if they met the density bonus requirements.

B. In 2004, the State Legislature passed SB 1818, which significantly amended Section 65915 of the Government Code. The significant changes to the law, effective on January 1, 2005, included:

- A higher maximum market-rate unit density bonus of 35% for a lower percentage of affordable units provided;
- A sliding scale of market-rate density bonus percentages from 20%-35% depending on the percentage of affordable units provided;
- Provision for up to three (3) development concessions or incentives, depending on the percentage of affordable units provided;
- Granting the developer a density bonus if they donate land for very low income housing; and
- Required jurisdictions to implement Density Bonus law through local codes.

C. In the past, the City has applied the Density Bonus law on an ad hoc basis to both market rate and affordable developments. Palo Alto Family Apartments, located at 801 Alma Street and developed by Eden Housing, is a 50 unit affordable rental development. Eden requested concessions to encroach into the required setbacks, exceed the maximum floor area ratio (FAR) and to not provide private useable open space. The development at 195 Page Mill Road also requested concessions to allow residential uses in the General Manufacturing (GM) zoning district and to exceed the maximum FAR in return for providing 17 affordable housing units (20% of the total units).

D. The 2007-2014 Housing Element Update includes a program (Program 3.1.10) requiring that a density bonus ordinance be adopted that is consistent with

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Government Code 65915. Staff anticipates that density bonus will be an important tool to help the City accommodate its Regional Housing Needs Allocation (RHNA) numbers.

SECTION 2. Chapter 18.15 (Residential Density Bonus) of Title 18 (Zoning) of the Palo Alto Municipal Code is hereby added to read as follows:

**Chapter 18.15  
Residential Density Bonus**

Sections:

18.15.010	Purpose
18.15.020	Definitions
18.15.030	Density Bonuses
18.15.040	Development Standards for Affordable Units
18.15.050	Development Concessions and Incentives
18.15.060	Waiver/Modification of Development Standards
18.15.070	Child Care Facilities
18.15.080	Application Requirements
18.15.090	Review Procedures
18.15.100	Regulatory Agreement

**18.15.010 Purpose**

The purpose of this chapter is to:

- (a) Comply with the state density bonus law under California Government Code section 65919.
- (b) Establish procedures for implementing state density bonus requirements as set forth in California Government Code Section 65915, as amended.
- (c) Facilitate the development of affordable housing consistent with the goals, objectives, and policies of the City's Comprehensive Plan Housing Element.

**18.15.020 Definitions**

Whenever the following terms are used in this Chapter, they shall have the meaning established by this section:

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(a) **"Affordable Rent"** means monthly rent, including a reasonable allowance for utilities and all fees for housing services, for rental Restricted Affordable Units reserved for Very Low or Lower Income Households, that does not exceed the following:

- (i) Very Low Income: 50 percent of the area median income for Santa Clara County, adjusted for presumed household size, multiplied by 30 percent and divided by 12.
- (ii) Lower Income: 60 percent of the area median income for Santa Clara County, adjusted for presumed household size, multiplied by 30 percent and divided by 12.

(b) **"Affordable Sales Price"** means the maximum sales price at which Very Low, Lower and Moderate Income Households can qualify for the purchase of Restricted Affordable Units as set forth in the City of Palo Alto's Below Market Rate Housing Program. The sales price shall be considered affordable only if it is based on a reasonable down payment, and monthly housing payments (including interest, principal, mortgage insurance, property taxes and assessments, fire and casualty insurance, homeowners association fees, property maintenance and repairs, and a reasonable allowance for utilities), all as determined by the City, that are equal to or less than:

- (i) Very Low Income: 50 percent of the area median income for Santa Clara County, adjusted for presumed household size, multiplied by 30 percent and divided by 12.
- (ii) Lower Income: 70 percent of the area median income for Santa Clara County, adjusted for presumed household size, multiplied by 30 percent and divided by 12.
- (iii) Moderate Income: 110 percent of the area median income for Santa Clara County, adjusted for presumed household size, multiplied by 30 percent and divided by 12.

(c) **"Applicant"** means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities who seeks Development permits or approvals from the City of Palo Alto.

(d) **"Approval Authority"** means the person or body that is authorized to approve a Development as specified in the City of Palo Alto Municipal Code.

(e) **"Below Market Rate Housing Program"** means Chapter 18.14 of the Palo Alto Municipal Code and the Administrative Guidelines for the Below Market Rate Program.

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(f) **"Child Care Facility"** means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and school age child care centers.

(g) **"Concession or Incentive"** as used interchangeably means such regulatory concessions as specified in Government Code Section 65915(k) to include:

- (i) A reduction of site Development Standards or architectural design requirements which exceed the minimum applicable building standards approved by the State Building Standards Commission pursuant to 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, coverage, and/or parking requirements which result in identifiable, financially sufficient and actual cost reductions;
- (ii) Allowing mixed use development in conjunction with the proposed residential development, if nonresidential land uses will reduce the cost of the residential project and the nonresidential land uses are compatible with the residential project and existing or planned development in the area where the Development will be located; and
- (iii) Other regulatory Concessions proposed by the applicant or the City which result in identifiable financially sufficient, and actual cost reductions.

(h) **"Density Bonus"** means a density increase over the Maximum Residential Density granted pursuant to Government Code Section 65915 and this Ordinance.

(i) **"Density Bonus Units"** means those dwelling units granted pursuant to the provisions of this Chapter which exceed the otherwise Maximum Residential Density for the development site.

(j) **"Development"** means all developments pursuant to a proposal to construct or place five (5) or more additional dwelling units on a lot or contiguous lots including, without limitation, a planned unit development, site plan, subdivision, or conversion of a non-residential building to dwelling units.

(k) **"Development Standard"** means a site or construction condition such as a height limitation, a setback, or a floor-area ratio, that applies to a Development pursuant to any ordinance, general plan element, specific plan, charter, or other City condition, law, policy, resolution, or regulation. A "site and construction condition" is a development regulation or law that specifies the physical development of a site and buildings on the site in a Development.

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(l) **"Discretionary Permit"** means any permit issued for the Development which requires the exercise of judgment or deliberation from the Approval Authority, including but not limited to conditional use permits, variances, site plans, design review, planned development permits, general and specific plan approvals and amendments, zoning amendments, and tentative and parcel maps.

(m) **"Lower, Very Low, or Moderate Income"** means annual income of a household that does not exceed the maximum income limits for the income category, as adjusted for household size, applicable to Santa Clara County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Sections 50079.5, 50105, or 50093 of the California Health and Safety Code.

(n) **"Maximum Residential Density"** means the maximum number of dwelling units permitted in the Development by the City's Comprehensive Plan Land Use Element and Zoning Ordinance at the time of application, excluding the provisions of this Chapter. If the Development is a planned community zone, the Maximum Residential Density shall be determined on the basis of the Comprehensive Plan and the maximum density of the previous zone designation. If the maximum density allowed by the Zoning Ordinance is inconsistent with the density allowed by the Land Use Element of the City's Comprehensive Plan, the Land Use Element density shall prevail.

(o) **"Non-Restricted Unit"** means all dwelling units within a Development excluding the Restricted Affordable Units.

(p) **"Qualifying Mobilehome Park"** means a mobilehome park that limits residency based on age requirements for housing older persons pursuant to Section 798.76 and 799.5 of the Civil Code.

(q) **"Qualifying Resident"** means senior citizens or other persons eligible to reside in a Senior Citizen Housing Development or Qualifying Mobilehome Park.

(r) **"Regulatory Agreement"** means a recorded and legally binding agreement between an applicant and the City to ensure that the requirements of this Chapter are satisfied. The Regulatory Agreement, among other things, shall establish: the number of Restricted Affordable Units, their size, location, terms and conditions of affordability, and production schedule.

(s) **"Restricted Affordable Unit"** means a dwelling unit within a Development which will be available at an Affordable Rent or Affordable Sales Price for sale or rent to Very Low, Lower or Moderate Income households.

(t) **"Senior Citizen Housing Development"** means a Development consistent with the California Fair Employment and Housing Act (Government Code Section 12900 et. seq., including 12955.9 in particular), which has been "designed to meet the physical and social

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needs of senior citizens," and which otherwise qualifies as "housing for older persons" as that phrase is used in the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and implementing regulations (24 CFR, part 100, subpart E), and as that phrase is used in California Civil Code Section 51.2 and 51.3.1

### **18.15.030 Density Bonuses**

This Section describes the Density Bonuses that will be provided, at the request of an applicant, when that applicant provides Restricted Affordable Units as described below.

(a) The City shall grant a 20 percent (20%) Density Bonus when an applicant for a Development of five (5) or more dwelling units seeks and agrees to construct at least any one of the following in accordance with the requirements of this Section and Government Code Section 65915:

- (i) At least 10 percent (10%) of the total dwelling units of the Development as Restricted Affordable Units affordable to Lower Income Households. For each one percent (1%) increase in the percentage of restricted Lower Income units, a Development will receive an additional one and one-half percent (1.5%) density bonus up to thirty-five percent (35%) of the Maximum Residential Density; or
- (ii) At least five percent (5%) of the total dwelling units of the Development as Restricted Affordable Units affordable to Very Low Income Households. For each one percent (1%) increase in the percentage of restricted Very Low Income units, a Development will receive an additional two and one-half percent (2.5%) density bonus up to thirty-five percent (35%) of the Maximum Residential Density; or
- (iii) A Senior Citizen Housing Development; or
- (iv) A Qualifying Mobilehome Park.

(b) The City shall grant a five percent (5%) Density Bonus when an applicant for a Development of five (5) or more additional dwelling units seeks and agrees to construct, in accordance with the requirements of this Section and Government Code Section 65915, at least 10 percent (10%) of the total dwelling units in a common interest development as defined in California Civil Code Section 1351 for Moderate Income Households, provided that all dwelling units in the Development are offered to the public for purchase. For each one percent (1%) increase in the percentage of restricted Moderate Income units, a Development will receive an additional one percent (1%) density bonus up to thirty-five percent (35%) of the Maximum Residential Density.

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(c) No additional Density Bonus shall be authorized for a Senior Citizen Development or Qualifying Mobilehome Park beyond the Density Bonus authorized by subsection (a) of this Section.

(d) When calculating the number of permitted Density Bonus Units, any fractions of units shall be rounded to the next highest number. An applicant may elect to receive a Density Bonus that is less than the amount permitted by this Section; however, the City shall not be required to similarly reduce the number of Restricted Affordable Units required to be dedicated pursuant to this Section and Government Code Section 65915(b).

(e) Each Development is entitled to only one Density Bonus, which shall be selected by the applicant based on the percentage of Very Low Restricted Affordable Units, Lower Income Restricted Affordable Units, or Moderate Income Restricted Affordable Units, or the Development's status as a Senior Citizen Housing Development or Qualifying Mobilehome Park. Density bonuses from more than one category may not be combined. In no case shall a Development be entitled to a Density Bonus of more than thirty-five percent (35%).

(f) The Density Bonus Units shall not be included when determining the number of Restricted Affordable Units required to qualify for a Density Bonus. When calculating the required number of Restricted Affordable Units, any resulting decimal fraction shall be rounded to the next larger integer.

(g) Any Restricted Affordable Unit provided pursuant to the City's Below Market Rate Housing Program shall ~~not~~ be included when determining the number of Restricted Affordable Units required to qualify for a Density Bonus or other entitlement under this Chapter. ~~In addition~~ However, the payment of a housing impact or in lieu fee shall not qualify for a Density Bonus or other entitlement under this Chapter.

(h) Certain other types of development activities are specifically eligible for a Density Bonus pursuant to State law:

- (i) A Development may be eligible for a Density Bonus in return for land donation pursuant to the requirements set forth in Government Code Section 65915(g).
- (ii) A condominium conversion may be eligible for a Density Bonus or Concession pursuant to the requirements set forth in Government Code Section 65915.5.

(i) Notwithstanding any provision of this Chapter, all Developments must satisfy all applicable requirements of the City's Below Market Rate Housing Program, which may impose requirements for Restricted Affordable Units in addition to those required to receive a Density Bonus or Concessions.



Table 1 summarizes the density bonus provisions described in this Section.

**Table 1  
Density Bonus Summary Table**

<b>Restricted Affordable Units or Category</b>	<b>Minimum Percentage of Restricted Affordable Units</b>	<b>Percentage of Density Bonus Granted</b>	<b>Additional Bonus for Each 1% Increase in Restricted Affordable Units</b>	<b>Percentage of Restricted Units Required for Maximum 35% Density Bonus</b>
Very Low Income	5%	20%	2.50%	11%
Lower Income	10%	20%	1.50%	20%
Moderate Income	10%	5%	1%	40%
Senior Citizen Housing	100%	20%	-----	-----
Qualifying Mobile Park	100%	20%	-----	-----

**Note:** A density bonus may be selected from only one category up to a maximum of 35% of the Maximum Residential Density.

**18.15.040 Development Standards for Affordable Units**

(a) Restricted Affordable Units shall be constructed concurrently with Non-Restricted Units unless both the City and the applicant agree within the Regulatory Agreement to an alternative schedule for development.

(b) Moderate Income Restricted Affordable Units shall remain restricted and affordable to the designated income group for a minimum period of 59 years (or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program). Very Low and Lower Restricted Affordable Units shall remain restricted and affordable to the designated income group for a period of 30 years for both rental and for-sale units (or a longer period of time if required by a construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program).

(c) In determining the maximum Affordable Rent or Affordable Sales Price of Restricted Affordable Units, the presumed household size as set forth in the City’s Below Market Rate Housing Program shall be used, unless the Development is subject to different assumptions imposed by other governmental regulations.

(d) Restricted Affordable Units shall be built on-site and be dispersed within the Development, except as permitted in subsection (e) of this Section. The number of bedrooms of the Restricted Affordable Units shall be equivalent to the bedroom mix of the Non-Restricted Units in the Development; except that the applicant may include a higher proportion of Restricted Affordable Units with more bedrooms. The design, appearance and general quality

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of the Restricted Affordable Units shall be compatible with the design of the Non-Restricted Units in the Development. The Development shall comply with all applicable Development Standards, except those which may be modified as provided by this Chapter.

(e) Circumstances may arise in which the City Council finds that the public interest would be served by allowing some or all of the Restricted Affordable Units associated with one Development to be produced and operated at an alternative development site. Where the applicant and the City form such an agreement, the resulting linked developments shall be considered a single Development for purposes of this Chapter. Under these circumstances, the applicant shall be subject to the same requirements established by this Chapter for the Restricted Affordable Units to be provided on the alternative site.

(f) A Regulatory Agreement, as described in Section 18.15.090, shall be made a condition of the Discretionary Permits for all Developments pursuant to this Chapter. The Regulatory Agreement shall be recorded as a restriction on the Development. The Regulatory Agreement shall be consistent with the City's Below Market Rate Housing program guidelines.

### **18.15.050 Development Concessions and Incentives**

This Section includes provisions for providing Concessions or Incentives pursuant to Government Code Section 65915.

(a) **By Right Parking Incentives.** Upon request by the applicant, a Development that is eligible for a Density Bonus may provide parking as provided in this subsection (a), consistent with Government Code Section 65915(p), inclusive of handicapped and guest parking:

- (i) Zero to one bedroom unit: one on-site parking space;
- (ii) Two to three bedroom unit: two on-site parking spaces;
- (iii) Four or more bedroom unit: two and one-half parking spaces.

If the total number of spaces required results in a fractional number, it shall be rounded up to the next whole number. For purposes of this subsection, this parking may be provided through tandem parking or uncovered parking, but not through on-street parking.

(b) **Other Incentives and Concessions.** A Development is eligible for other Concessions or Incentives as follows:

- (i) One Concession or Incentive for a Development that makes at least ten percent (10%) of the total dwelling units affordable to Lower Income households; or at least five percent (5%) of the total dwelling units affordable to Very Low Income households; or at least ten percent (10%) of

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the total dwelling units affordable to Moderate Income households in a common interest development.

- (ii) Two Concessions or Incentives for a Development that makes at least twenty percent (20%) of the total dwelling units affordable to Lower Income households; or at least ten percent (10%) of the total dwelling units affordable to Very Low Income households; or at least twenty percent (20%) of the total dwelling units affordable to Moderate Income households in a common interest development.
- (iii) Three Concessions or Incentives for a Development that makes at least thirty percent (30%) of the total dwelling units affordable to Lower Income households; or at least fifteen percent (15%) of the total dwelling units affordable to Very Low Income households, or at least thirty percent (30%) of the total dwelling units affordable to Moderate Income households in a common interest development.

Table 2 summarizes the provisions of Concessions or Incentives described in subsection (a).

**Table 2  
Concessions and Incentives Summary Table**

<b>Target Group</b>	<b>Restricted Affordable Units</b>		
Very Low Income	5%	10%	15%
Lower Income	10%	20%	30%
Moderate Income (Common Interest Development)	10%	20%	30%
<b>Maximum Incentive(s)/Concession(s)</b>	<b>1</b>	<b>2</b>	<b>3</b>

**Notes: 1. Concessions or Concessions may be selected from only one category (very low, lower, or moderate)**

**2. No concessions or Concessions are available for land donation, or for Senior Citizen Housing Developments and Qualifying Mobilehome Parks that do not contain Restricted Affordable Units.**

(c) In submitting a request for Concessions or Incentives, an applicant may request the specific Concessions set forth below. The following Concessions and Incentives are deemed not to have a specific adverse impact as defined in Section 18.15.090 (b)(ii).

- (i) Up to a 50% average reduction of the side yard setback requirement if the design is consistent with the design guidelines, unless adjacent to R-1, R-2, RMD and other low density residential zones;
- (ii) Up to a 50% average reduction of the front yard setback requirements so long as setback is consistent with the design guidelines, unless adjacent to R-1, R-2, RMD and other low density residential zones;

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- (iii) Up to a 50% average reduction of the rear yard setback requirements so long as the setback is consistent with the design guidelines, unless adjacent to R-1, R-2, RMD and other low density residential zones;
  - (iv) A percentage increase in the height limit equal to the Density Bonus percentage for which the Development is eligible if necessary to accommodate the Restricted Affordable Units, with a maximum increase of one foot per Affordable Unit, and no event to exceed fifty (50) feet;
  - (v) Up to fifty percent (50%) increase in the Floor Area Ratio (FAR) or up to the square footage of the Restricted Affordable Units, whichever is less. For a mixed use project, the applicant can elect to receive this FAR bonus for the entire project or for just the residential portion of the project. Any FAR bonus under this section shall be consistent with the applicable height requirements;
  - (vi) Reduction in daylight plane requirements not to exceed 50% of the length of the adjacent lot line;
  - (vii) Reduction in site coverage requirement;
  - (viii) Reduction in private; or
  - (ix) Reduction in public open space; or
- (d) The setbacks referenced in this Section shall not include Special Setbacks as defined in Section 20.08.020.
- (e) For Developments that propose to construct one hundred percent (100%) of the dwelling units (except a manager's unit) as Restricted Affordable Units that are affordable to Very Low and/or Lower Income households, the Council may grant additional Concessions or Incentives or exceed the limits set forth in (i) to (ix) above if the Council finds that such Concessions or Incentives are required to provide for affordable housing costs, as defined in Section 50052.3 of the Health and Safety Code and are in the interest of the public health, safety, or welfare.
- (f) Nothing in this Chapter shall be construed to require the provision of direct financial Concessions for the Development, including the provision of publicly owned land by the City or the waiver of fees or dedication requirements.

### **18.15.060 Waiver/Modification of Development Standards**

An applicant may apply for a waiver or modification of Development Standards that will have the effect of physically precluding the construction of a Development at the densities or

with the Concessions or Incentives permitted by this Chapter. The developer must demonstrate that Development Standards that are requested to be waived or modified will have the effect of physically precluding the construction of a Development meeting the criteria of subsection (a) of Section 18.15.030 at the densities or with the Concessions or Incentives permitted by this Chapter.

**18.15.070 Child Care Facilities**

(a) When an applicant proposes to construct a Development that is eligible for a Density Bonus under Section 18.15.030 and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the Development, the City shall grant either:

- (i) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the square footage of the child care facility; or
- (ii) An additional Concession or Incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(b) The City shall require, as a condition of approving the Development, that the following occur:

- (i) 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 Restricted Affordable Units are required to remain affordable pursuant to Section 18.15.040. In the event the childcare operations cease to exist, the Director of Planning and Community Environment may approve an alternative community service use for the child care facility.
- (ii) Of the children who attend the child care facility, the children of Very Low, Lower and Moderate Income households shall equal a percentage that is equal to or greater than the percentage of Restricted Affordable Units in the Development that are required for Very Low, Lower and Moderate Income households pursuant to Section 18.15.030.

(c) Notwithstanding subsections (a) and (b) above, the City shall not be required to provide a density bonus or a Concession or Incentive for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

**18.15.080 Application Requirements**

An application for a Density Bonus, Incentive, Concession, waiver, modification or revised parking standard shall be made as follows:

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(a) An application for a Density Bonus, Incentive, Concession, waiver, modification or revised parking standard shall be submitted with the first application for a Discretionary Permit for a Development and shall be processed concurrently with those Discretionary Permits. The application shall be on a form prescribed by the City and shall include the following information:

- (i) A brief description of the proposed Development, including the total number of dwelling units, Restricted Affordable Units, and Density Bonus Units proposed.
- (ii) The zoning and comprehensive plan designations and assessor's parcel number(s) of the project site, and a description of any Density Bonus, Concession or Incentive, waiver or modification, or revised parking standard requested
- (iii) A vicinity map and preliminary site plan, drawn to scale, including building footprints, driveway and parking layout.
- (iv) If a Concession or Incentive is requested, a brief explanation as to the actual cost reduction achieved through the Concession or Incentive and how the cost reduction allows the applicant to provide the Restricted Affordable Units.
- (v) If a waiver or modification is requested, a brief explanation of why the Development Standard would physically preclude the construction of the Development with the Density Bonus, Incentives, and Concessions requested.
- (vi) Site plan showing location of market-rate units, Restricted Affordable Units, and Density Bonus units within the proposed Development;
- (vii) Level of affordability of the Restricted Affordable Units and proposed method to ensure affordability;
- (viii) For Concessions and Incentives that are not included within the menu of Incentives/Concessions set forth in subsection (c) of Section 18.15.050, the application may include financial information if requested by the Director, providing evidence that the requested Concessions and Incentives result in identifiable, financially sufficient, and actual cost reductions. The cost of reviewing any required financial information, including, but not limited to, the cost to the City of hiring a consultant to review the financial data, shall be borne by the applicant. The financial information shall include all of the following items:

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- (A) The actual cost reduction achieved through the Concession;
- (B) Evidence that the cost reduction allows the applicant to provide affordable rents or affordable sales prices; and
- (C) Other information requested by the Planning Director. The Planning Director may require any financial information include information regarding capital costs, equity investment, debt service, projected revenues, operating expenses, and such other information as is required to evaluate the financial information;

- (ix) If a waiver or modification of a Development Standard is requested, the applicant shall provide evidence that the Development Standard for which the waiver is requested will have the effect of physically precluding the construction of the Development with the Density Bonus and Concessions requested;
- (x) If a Density Bonus or Concession is requested for a land donation, the application shall show the location of the land to be dedicated, provide proof of site control, and provide evidence that all of the requirements and each of the findings included in Government Code Section 65915(g) can be made;
- (xi) If a density bonus or Concession is requested for a child care facility, the application shall show the location and square footage of the child care facilities and provide evidence that all of the requirements and each of the findings included in Government Code Section 65915(h) can be made.
- (xii) If a Density Bonus or Concession is requested for a condominium conversion, the applicant shall provide evidence that all of the requirements found in Government Code Section 65915.5 can be met.

(d) In accordance with state law, neither the granting of a Concession, Incentive, waiver, modification, or revised parking standard, nor the granting of a Density Bonus, shall be interpreted, in and of itself, to require a general plan amendment, zoning change, variance, or other discretionary approval.

(e) This Chapter implements State Density Bonus law. Any Density Bonus, Incentive, Concession, revised parking standard, waiver, or modification sought by an Applicant shall be made pursuant to this Chapter and may not be combined with similar requests under State Density Bonus law.

**18.15.090 Review Procedures**

An application for a Density Bonus, Incentive, Concession, waiver, modification or revised parking standard shall be acted upon by the Approval Authority concurrently with the application for the first Discretionary Permit. The granting of a Density Bonus shall not be deemed approval of the entire Project or approval of any subsequent discretionary permit.

(a) Before approving an application for a Density Bonus, Incentive, Concession, waiver, modification or revised parking standard, the Approval Authority shall make the following findings, as applicable:

- (i) The Development is eligible for the Density Bonus and any Concessions, waivers, modifications, or revised parking standards requested.
- (ii) Any requested Concession or Incentive will result in identifiable, financially sufficient, and actual cost reductions based upon the financial analysis and documentation provided. The City finds that the Concessions and Incentives included in Section 18.50.050(c) will result in identifiable, financially sufficient, and actual cost reductions.
- (iii) If the Density Bonus is based all or in part on donation of land, a finding that all the requirements included in Government Code Section 65915(g) have been met.
- (iv) If the Density Bonus, Concession or Incentive is based all or in part on the inclusion of a child care facility, a finding that all the requirements included in Government Code Section 65915(h) have been met.
- (v) If the Concession or Incentive includes mixed-use development, a finding that all the requirements included in Government Code Section 65915(k)(2) have been met.
- (vi) If a waiver or modification is requested, a finding that the Development Standards for which the waiver is requested would have the effect of physically precluding the construction of the Development with the Density Bonus and Concessions permitted.

(b) If the findings required by subsection (a) of this Section cannot be made, the Approval Authority may deny an application for a Concession, Incentive, waiver or modification only if it makes one of the following written findings, supported by substantial evidence:

- (i) The Concession, Incentive, waiver or modification is not required to provide for Affordable Rents or Affordable Sales Prices; or



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- (ii) The Concession, Incentive, waiver or modification would have a specific, adverse impact upon public health or safety or the physical environment or on real property 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 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 Development was deemed complete; or
- (iii) The Concession, Incentive, waiver or modification is contrary to state or federal law.

(c) If the Approval Authority is not the City Council, any decision denying a Density Bonus, Incentive, Concession, waiver, modification or revised parking standard may be appealed to the City Council within fourteen days of the date of the decision.

### **18.15.100 Regulatory Agreement**

(a) Applicants for a Density Bonus, Incentive, Concession, waiver, modification or revised parking standard shall enter into a Regulatory Agreement with the City. The terms of the draft agreement shall be approved as to form by the City Attorney and reviewed and revised as appropriate by the Director of Planning and Community Environment, who shall formulate a recommendation to the Approval Authority for final approval.

(b) Following execution of the agreement by all parties, the completed Density Bonus Regulatory Agreement, or memorandum thereof, shall be recorded and the conditions filed and recorded on the Development.

(c) The approval of the Regulatory Agreement shall take place prior to tentative map approval, and recordation shall take place prior to final map approval, or, where a map is not being processed, prior to Architectural Review approval. The Regulatory Agreement shall be binding to all future owners and successors in interest.

(d) The Regulatory Agreement shall be consistent with the guidelines of the City's Below Market Rate Program and shall include at a minimum the following:

- (i) The total number of dwelling units approved for the Development, including the number of Restricted Affordable Units;
- (ii) A description of the household income group to be accommodated by the Restricted Affordable Units, and the standards for determining the corresponding Affordable Rent or Affordable Sales Price;

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- (iii) The location, dwelling unit sizes (square feet), and number of bedrooms of the Restricted Affordable Units;
- (iv) Term of use restrictions for Restricted Affordable Units of at least 59 years for Moderate Income units and at least 30 years for Low and Very Low units;
- (v) A schedule for completion and occupancy of Restricted Affordable Units;
- (vi) A description of any Concession, Incentive, waiver, modification, or revised parking standard, if any, being provided by the City;
- (vii) A description of remedies for breach of the agreement (the City may identify tenants or qualified purchasers as third party beneficiaries under the agreement); and
- (viii) Other provisions to ensure implementation and compliance with this Section.

SECTION 3. CEQA The proposed Ordinance revises the requirements for granting a residential density bonus to comply with revisions to State law enacted by the Legislature through the adoption of Senate Bill 1818. Adoption of the draft density bonus codifies allowances that developers have been able to use in housing developments since 2005. Further, the revisions modify the criteria and incentives offered to qualifying developments but do not authorize construction not already permitted under the City’s existing codes. Also, it is uncertain how many project applicants will seek to utilize the provisions of State law and this Ordinance and where such projects might be located in the City. Further, each individual project will be subject to its own environmental review. Consequently, this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations since it can be seen with certainty that there is no possibility the adoption and implementation of this Ordinance may have a significant effect on the environment.

SECTION 4. Severability. If any provision, clause, sentence or paragraph of this ordinance, or the application to any person or circumstances, shall be held invalid, such invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application and, to this end, the provisions of this Ordinance are hereby declared to be severable.

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SECTION 5. This ordinance shall be effective on the thirty-first date after the date of its adoption.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

NOT PARTICIPATING:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

APPROVED:

\_\_\_\_\_  
Senior Assistant City Attorney

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Director of Planning &  
Community Environment

1 **Planning and Transportation Commission**  
2 **Verbatim Minutes**  
3 **March 5, 2013**

4  
5 **EXCERPT**

6  
7 **Review and Recommendation to City Council to Adopt New Chapter 18.15 (Residential**  
8 **Density Bonus) to Title 18 (Zoning) of the Palo Alto Municipal Code to Implement**  
9 **Government Code Section 65915 (Continued from January 9, 2013)**

10  
11 Chair Martinez: We're going to reconvene and start right up with Item Number 2, Review and  
12 recommendation to City Council on the proposed Density Bonus Ordinance. We'll start with a  
13 staff report.

14  
15 Tim Wong, Senior Planner, Housing: Good evening Commissioners, my name is Tim Wong and  
16 I'm a Senior Planner. On January 9<sup>th</sup> the Planning Commission, the Planning and Transportation  
17 Commission (PTC) first reviewed the initial draft Density Bonus Ordinance and there were a  
18 number of comments made, but coming out of that meeting there were three main discussion  
19 points. Number one main discussion point about the draft ordinance; the first point was about  
20 requiring a pro forma. A second discussion point was quantification of concessions on the menu.  
21 And lastly there was also some points made about jurisdiction oversight for these concessions.

22  
23 And so staff went back and revised the draft Density Ordinance based on PTC feedback and in  
24 regards to the requirement of pro forma, staff has revised that requirement to say that instead of  
25 requiring or will require the submittal of a pro forma, staff has revised that language to say "may  
26 require financial information." Staff feels that that requirement should be retained since per the  
27 Government code the only way to deny a concession is proof that it is not, that concession is not  
28 needed to provide affordable units or lower the affordability. So, but instead of making it  
29 mandatory staff has revised it to make it on the Director's discretion.

30  
31 Secondly the second item was quantification or quantifying the concessions. So staff has gone  
32 back and quantified the more popular concessions, the setback, daylight plane, and previously  
33 the height had already been quantified therefore it hadn't been touched. Some of the less popular  
34 concessions on the menu have not been quantified to hopefully make them more attractive for  
35 potential developers in the future.

36  
37 And lastly the last point was government or jurisdiction oversight to these concessions. In that  
38 staff responds to that comment is that through the menu of concessions and quantifying some of  
39 these concessions that is probably what the City can do in overseeing those concessions. The  
40 purpose and intent of the government code is to kind of eliminate, not eliminate, limit City  
41 oversight or jurisdiction oversight and staff feels that what is before you is probably what the  
42 City can do while meeting the purpose and intent of the code. So that concludes staff's  
43 presentation.

44  
45 Chair Martinez: Commissioners questions? Commissioner Alcheck? Oh, I don't know, I should  
46 ask that. Are there any members of the public who care to speak on this item? I see none. Ok.  
47 Questions, comments from Commissioners. Oh I guess we'll go with Commissioner Keller.

1 Commissioner Keller: Yeah, I suggested you formally open and close the public hearing just for  
2 formality and then I'll...  
3  
4 Chair Martinez: Someone might be rushing in at the last; I'm going to give them a shot at it.  
5  
6 Commissioner Keller: At least open it anyway.  
7  
8 Chair Martinez: Oh, ok. Let's open the public hearing.  
9  
10 Commissioner Keller: I, based on the fact that we had an extensive discussion on this several, not  
11 very, I guess several months ago, I have only one change to the recommendation that I would  
12 like to see. And that is that I brought up the issue of special setbacks. And the narrative  
13 basically said that special setbacks are setbacks and therefore they're covered by what's  
14 described. That was not the intent of my suggestion. My suggestion was that special setbacks  
15 may not be reduced by concession ever. And this allows setbacks to be reduced. So I was  
16 suggesting that special setbacks be excluded from allowing for concessions. And the reason for  
17 that is special setbacks are situations where this contextual thing going on in a neighborhood. So  
18 for example, along Alma Street there's a special 30 foot setback and that's true along a number  
19 of our major residential arterials. And I think that that should be respected regardless of the  
20 development with the possible exception of Alma Village, which I didn't agree with either. But  
21 essentially those special setbacks should be respected so I would like to exclude them.  
22  
23 Chair Martinez: I have a question about that. Are the special setbacks somewhere codified that  
24 we know what they are or is that just sort of a general term that we apply?  
25  
26 Amy French, Chief Planning Official: This is Amy French, Chief Planning Official. We have a  
27 map that identifies the special setbacks. They were identified on... they're larger in general than  
28 the 20 foot front yard setbacks. These are arterial streets such as Middlefield, Embarcadero and  
29 they're identified through Title 19 of the Palo Alto Municipal Code in reference to the map that  
30 was adopted.  
31  
32 Chair Martinez: Ok and to our City Attorney. Are we in compliance with the State mandate if  
33 we adopt such restrictions?  
34  
35 Cara Silver, Sr. Assistant City Attorney: Thank you Chair. Cara Silver, Senior Assistant City  
36 Attorney. What I would suggest if that's the Commission's intent, is to specify in the sort of  
37 what we call the ministerial menu of concessions that are granted as a almost a matter of right  
38 that the special, that those shall not include a waiver from the special setbacks. However, if we  
39 were to outright prohibit any granting of some special setbacks even upon a financial finding that  
40 the Density Bonus provision is designed to accommodate that could be legally problematic.  
41  
42 Chair Martinez: Commissioner Keller.  
43  
44 Commissioner Keller: I would certainly be supportive of the suggestion that Counsel has  
45 recommended to us and that would implement what I would want.  
46  
47 Chair Martinez: Are you done? Commissioner Panelli, comments? Really? The other side?  
48 Commissioner Alcheck.  
49

1 Commissioner Alcheck: I'm prepared to support this. My concern and I mentioned it last time  
2 was that we're sort of setting the bar even higher and in doing so creating a bigger hurdle for  
3 developers who may otherwise provide low income or affordable housing. And I guess my  
4 request would be that if staff could alert us when an applicant successfully applies for this. That  
5 would be of interest to me. Because it's my understanding that this happens very infrequently  
6 and so I'd just like to know if over the next year or so when those things happen because then we  
7 can kind of keep track of whether or not this is accomplishing I think the lofty goal of  
8 encouraging affordable housing units. But otherwise I support the Motion. I support the making  
9 of a Motion.

10  
11 Chair Martinez: Thank you. Commissioner Tanaka, comments? Commissioner King.

12  
13 Commissioner King: Let's see. I am walking into this sort of halfway through. I read the  
14 minutes from last time and one of the things that was of interest to me were Commissioner  
15 Keller's comments about the time limit on these. And so I guess one question; what is for a  
16 family of four what is the moderate income housing limit currently? Can somebody on staff  
17 advise?

18  
19 Mr. Wong: Commissioner King the median income for a family of four in Santa Clara County is  
20 \$101,300. So for a moderate income it's about ten percent higher or \$110,000-115,000 for a  
21 family of four.

22  
23 Commissioner King: Ok, thank you. And so my understanding is the State Density Bonus is a  
24 mechanism for the State without funding affordable housing themselves to basically allow us, or  
25 requires us to go above and beyond what we consider the reasonable entitlements for a property  
26 effectively burdening the community, the neighbors, whomever, that we for whose protection we  
27 set those entitlements and then that effective cost that is borne by the community and converted  
28 into money for the developer as an incentive then lasts as long as the building is there. And so I  
29 had asked staff and they were kind enough to respond today about that and it sounds like on the  
30 low and very-low income units that there's a 30 years and that as a minimum, but their response  
31 was that we can't go beyond that. But on the moderate income housing they're using 59 years,  
32 staff has proposed 59 years.

33  
34 To me if our goal over time is to foster affordable housing and in this case moderate affordable  
35 housing, moderate income affordable housing, as we run out of more projects over time or we  
36 will truly be built out then these won't get replaced. And so if the overarching goal for the  
37 community is to have this amenity then it doesn't seem logical to me to have a limit 59 years for  
38 those, for that requirement. And so I guess my question is am I missing something? Why  
39 wouldn't we just make that in perpetuity or as long as the building exists? And it sounds like  
40 from the response today that really we're doing the 59 years for consistency and because, and I  
41 quote, let's see... consistency and then there was one... I think it basically was to paraphrase  
42 because that's how we've done it. And so oftentimes that is how things are retained and so I'd  
43 like to bring up the question, why wouldn't we push on that for, to match the length of the  
44 building's life?

45  
46 Ms. Silver: Why don't I take a stab at that and then Tim may want to add on. The way the  
47 moderate income deed restriction works is that there is no requirement in terms of the term under  
48 the State law. And so actually under, there's no limitation. And so the City has some flexibility  
49 in determining what the appropriate term for the affordability restriction should be. The way our

1 Below Market Rate (BMR) program is administered is that typically a deed restriction will be  
2 placed on the first owner of the property and that deed restriction is typically 59 years. And then  
3 when that person, if that person does not stay there for 59 years, which typically is the case the  
4 new owner will come in and then a second deed restriction will be placed. And that deed  
5 restriction will be 59 years according to our program guidelines. So in essence you have that  
6 protection just in the way the program is administered. And I think for administrative ease at this  
7 point unless there's a need to vary from our existing procedures it's easier at a staff level to be  
8 able to administer the BMR program in a consistent fashion.  
9

10 Commissioner King: Thank you. And so that's for the ownership, the purchase BMR program.  
11 Now do we not have any structures that serve the rental? Or am I missing something that that's  
12 not for moderate that we don't offer that for moderate income rental?  
13

14 Ms. Silver: We don't typically in Palo Alto have a lot of moderate income rental properties. We  
15 may have some and in that case that's a good point that we could have a longer deed restriction  
16 under State law that would be permissive to require that the property developer continue to offer  
17 for rental longer than 59 years. Tim do you know if we have many moderate income units'  
18 rentals?  
19

20 Mr. Wong: I do not believe we have any BMR units for moderate income, BMR rental units for  
21 moderate income. Our BMR program for rentals is specifically for low income, very-low and  
22 low. So we don't have any moderate income rentals.  
23

24 Commissioner King: Thank you. So I guess it begs the question if they don't exist does it bother  
25 even, bother talking about it I guess. Do we have a dinosaur rental program at all? I guess not.  
26 Ok. Thank you.  
27

28 Chair Martinez: Vice-Chair Michael.  
29

30 Vice-Chair Michael: So thank you. So I appreciate all the work done by staff in putting this  
31 together and I think it's the right thing to do and the right way to do it; maybe unlike my feelings  
32 on the last item. I think that the question about whether and when the staff would find it  
33 appropriate to do some financial analysis in relationship to concessions probably doesn't apply  
34 here as much as it does maybe in the case of a Planned Community (PC) where there may be  
35 some quantifiable impact on the infrastructure or community in some way that would bear upon  
36 the approval process. So I think that having that be discretionary here is perfectly appropriate.  
37

38 Also I really appreciate the work that you've done to provide a menu of options regarding the  
39 concessions because I think that that encourages a open rational economic opportunity for  
40 anybody who is considering doing a project. They can pick and choose, price that out, see if it's  
41 feasible and I hope that although we've been told that this is not likely to get heavy use that it  
42 would be, that we would start to see some projects which would come under the Density Bonus  
43 Ordinance and that would help the City meet its commitments regarding affordable housing and  
44 the polices in the Housing Element that we're about to finally adopt and our commitment under  
45 the Regional Housing Needs Allocation (RHNA) which, all of which is very important. So I  
46 think this is a step forward in that regard and I think it's very close to being perfect and I think  
47 it's certainly good enough for our purposes and I support it.  
48

49 Chair Martinez: Wait your turn young man. No, go ahead. Commissioner Panelli.

1  
2 Commissioner Panelli: Ms. Silver you opened up a Pandora's Box for me here because now I  
3 really, I felt pretty good about where I was and now I need to understand something a bit better.  
4

5 Chair Martinez: I hate it when she does that.  
6

7 Commissioner Panelli: You said, if I were to understand correctly, that in the case of the, to  
8 Commissioner King's questions in the case of the moderate income housing those have deed  
9 restrictions which typically last 59 years and if there's a transfer of property, grantee,  
10 grantor/grantee within that 59 year process a new 59 year period begins. Is that accurate?  
11

12 Ms. Silver: Yes, that's correct, and that's only for ownership units, moderate income ownership  
13 units.  
14

15 Commissioner Panelli: And so what happens in the case of low and very-low income rental  
16 properties that are held by whether it's a profit or non-profit corporation? Those are the, that's  
17 the 30 year restriction. Correct?  
18

19 Ms. Silver: Actually for the City's affordable housing requirements we generally put a 59 year  
20 deed restriction or 55. But the State Density Bonus Law provides that if a developer is willing to  
21 put a 30 year deed restriction they are by law entitled to the protections of the Density Bonus  
22 Law.  
23

24 Commissioner Panelli: And at the end of that 30 years what happens?  
25

26 Ms. Silver: It reverts to market rate unless there is some other deed restriction that applies to the  
27 property. Typically developers use other funding which may have additional affordability  
28 covenants that would operate to extend the term.  
29

30 Commissioner Panelli: So this is a nuance I did not explicitly understand when I was reading the  
31 material. We are effectively at risk of losing the affordable housing that we entitle every 30  
32 years after it's been entitled as such. And so we're continuously losing; we give density bonuses  
33 and concessions and then we effectively should just assume that we're going to lose that  
34 inventory and have to replenish it somehow. This seems like a really bad recipe. It seems like a  
35 recipe for disaster.  
36

37 Ms. Silver: That is the case for the small number of affordable units that are created through the  
38 Density Bonus Program. State law provides that there is, that developers can just provide a  
39 simple 30 year deed restriction. Now, you know, that also lines up with the age of housing stock.  
40 Housing stock doesn't last forever. It does typically turnover over a certain period, whether it's  
41 30 years or 50 years depends. And but that, yes, that is the shortfall of the Density Bonus Law.  
42

43 Commissioner Panelli: Ok. Thank you.  
44

45 Chair Martinez: It seems to me one of the reasons we would find this attractive is that it would  
46 encourage developers to kind of take on more responsibility for lower income housing. I don't  
47 hear from Commissioner Alcheck that this is true. I heard that this would provide more  
48 constraint. So is it anticipated, have we done any projections about what the outcome of  
49 providing this Density Bonus Law would provide to Palo Alto? Tim?



1  
2 Mr. Wong: I do not, we have not done any projections since it is an owner, it's not a requirement  
3 such as BMR. We can maybe project how many units and we can take 15 percent of those, but  
4 for Density Bonus it really is an owner by owner type decision. So there's no way to really  
5 project how many potential density, affordable housing units we'd get through Density Bonus.  
6

7 Chair Martinez: So in looking at our Regional Housing Mandate of 2,180 we couldn't say that  
8 two percent would come from something like this? We have no idea of; it's a question, but no  
9 idea of sort of the positive effects of having this Density Bonus Law?  
10

11 Aaron Aknin, Assistant Director: I don't think we could quantify an exact number of units. The  
12 thing I would say, I mean I understand what Commissioner Alcheck is saying, but to the point  
13 that I would disagree is that it does create some certainty both for the City in terms of developing  
14 a menu of concessions and on the developer end to what the City's expectations are, what we  
15 will consider for these concessions. So I think it does help when they're taking a look at land  
16 and what they want to develop.  
17

18 Chair Martinez: Correct me if I'm wrong, but hasn't the only time this has been used is when  
19 low income developers wanted to increase the number of housing units like the Eden project on  
20 Alma or the one we heard last time from Palo Alto Housing Corp.? Are there others that  
21 (interrupted)  
22

23 Mr. Wong: Commissioner Martinez, Density Bonus, 195 Page Mill provided 17 units of  
24 affordable housing for two concessions and also 2650. Same developer used Density Bonus for  
25 concessions also.  
26

27 Commissioner King: Sorry. What level was that?  
28

29 Mr. Wong: They were rental, so they were at 60 percent of area median income. So they have  
30 the 30 year restrictions on them.  
31

32 Chair Martinez: So over the last year how many units do we count for that?  
33

34 Mr. Wong: It would be 18 between those two developments in the past.  
35

36 Chair Martinez: Well did we get a Density Bonus from the Maybell project?  
37

38 Mr. Wong: Not really a Density Bonus. They're asking for concessions, but they're not asking  
39 for additional density.  
40

41 Chair Martinez: And what about the Eden housing project on Alma? They got concessions. Did  
42 they get increased density?  
43

44 Mr. Wong: I don't think they got additional density. I know they got concessions. I'll have to  
45 double check, but I don't believe they asked for density.  
46

47 Chair Martinez: Ok so we can get, we can give concessions but not get additional housing units.  
48 Is that how it's going to work?  
49

1 Mr. Wong: That is correct. The ordinance states that you don't have to request Density Bonuses  
2 to get concessions. You can just request for the concessions.

3  
4 Chair Martinez: I see. And the, I like the menu of the specific concessions that are being  
5 available, but the 50 foot height limit, how did we hit upon that? It sounds like an obvious  
6 question, but I'd like to, I'm trying to trap you so you can respond.

7  
8 Mr. Wong: Well in no way can it exceed the 50 foot, but residential I believe the maximum  
9 height is 35, so it gives them a little additional height if they are to provide affordable units.

10  
11 Chair Martinez: So if somebody's proposing to do this on a mixed use development along El  
12 Camino Real they would be limited to 50 foot?

13  
14 Mr. Akin: Correct. As it's written out they'd be limited to 50 feet.

15  
16 Chair Martinez: So as you're aware the Architectural Review Board (ARB) has suggested that  
17 there be some flexibility to the 50 foot height limit. So do we take that into account in this or is  
18 that something that we consider separately?

19  
20 Mr. Akin: At this point I think that's something that you would consider separately, once  
21 there's direction from Council related to the 50 foot height limit and we have a larger community  
22 discussion related to that I think that's the time that it would be appropriate to put it within this  
23 discussion.

24  
25 Chair Martinez: Ok so there's a chance that we might come back and revise this?

26  
27 Mr. Akin: I think so. I mean not immediately, but when we have a community wide discussion  
28 I think there could be multiple areas within our code that we'd have to take a look at.

29  
30 Chair Martinez: Ok, great thank you. Commissioners anything else? Commissioner Keller?

31  
32 Commissioner Keller: So a couple of things. First with respect to the affordability of moderate  
33 income units does, if they were moderate income rental units does 18.15.040(b) indicate that  
34 those units would be deed restricted for 59 years? Is my reading of that correct? That's on Page  
35 8 of the ordinance.

36  
37 Ms. Silver: Yes. That's correct.

38  
39 Commissioner Keller: So even if people were to build a moderate income rental property it  
40 would still have that deed restriction. Thank you.

41  
42 The second issue is that the Density Bonus Law is unlikely to be used in Palo Alto for increasing  
43 density and very likely to be used for concessions. 195 Page Mill and another as an example of  
44 concessions. 101 Lytton, which is the project at Lytton and Alma originally had concessions as  
45 the reason it was, because of the housing that was there that was later deleted, but somehow the  
46 concessions stayed anyway. That project had concessions as well. And it's likely that there will  
47 be other projects that come along for which there are concessions. And right now those  
48 concessions are by right and therefore essentially any developer can ask any concession at all  
49 and there, the City has no, essentially has no way of restricting that. This would basically

1 indicate the menu of restrictions that we're allowing without such a restriction the developer can  
2 build things that are not as compatible with the community and the neighboring properties. And  
3 so the concession law it basically is, the Density Bonus Law says that the City is supposed to  
4 implement it, is supposed to enact and implement the ordinance. Is that correct?

5  
6 Ms. Silver: Yes, that's correct.

7  
8 Commissioner Keller: Even though this law has been in existence for eight years or more we  
9 have not yet done our duty and implemented such an ordinance so we're now going ahead and  
10 doing that. Is that understanding correct?

11  
12 Ms. Silver: Yes, that is.

13  
14 Commissioner Keller: Correct. Is there a minimum number of units that are required so if  
15 somebody builds a four story building with 2 affordable units on the top floor is, what does that  
16 trigger in terms of that? That's 100 percent affordable, but what do they get for that?

17  
18 Mr. Wong: Commissioner Keller, well first Density Bonus Ordinance kicks in when it's five or  
19 more units. So if they only build two units they would not be eligible for concessions or Density  
20 Bonus.

21  
22 Commissioner Keller: And State law does not require the issuance of bonuses if there are fewer  
23 than four units, four units or fewer?

24  
25 Mr. Wong: Yes. That was taken verbatim from the code. The five unit criteria threshold.

26  
27 Commissioner Keller: Thank you. So I'm going to make hopefully a Friendly Amendment to  
28 add in that special setback as (interrupted)

29  
30 Chair Martinez: We don't have a Motion yet.

31  
32 Commissioner Keller: We do have a Motion. I thought there was a Motion by Commissioner  
33 Alcheck with a Second by Commissioner Tanaka to move staff recommendation. That was not a  
34 Motion?

35  
36 Chair Martinez: Maybe I wasn't here.

37  
38 MOTION

39  
40 Commissioner Keller: Ok, there's no Motion. Then I'll make a Motion. So I'll move the staff  
41 recommendation with, as stated with the addition that the special setback language be put in as I  
42 discussed with the City Attorney.

43  
44 SECOND

45  
46 Chair Martinez: Ok. We have a Motion. Any second to the Motion? Yes, Commissioner  
47 Alcheck. Care to speak to your Motion?

1 Commissioner Keller: I'll just briefly say that this implements the requirement in State law that  
2 the City have an implementing ordinance for the Density Bonus Law. And I think this gives a  
3 reasonable set of concessions and also has a reasonable way of getting additional data from a  
4 developer of low income housing who wishes to have a concession that's not on the menu.  
5 Thank you.

6  
7 Chair Martinez: Commissioner Alcheck.

8  
9 Commissioner Alcheck: I hope that this ordinance encourages the development of affordable  
10 housing units to a greater extent than we've seen in the last eight years in this City. So we shall  
11 see.

12  
13 VOTE

14  
15 Chair Martinez: Anyone else? Ok, let's call for a vote on the Motion. Those in favor say aye  
16 (Aye). Got to make sure I got it right this time. Motion passes unanimously. Thank you. Now  
17 we will take our 10 minute break for changing of the guard.

18  
19 MOTION PASSED (7-0)

**Senate Bill No. 1818**

## CHAPTER 928

An act to amend Section 65915 of the Government Code, relating to housing.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

## LEGISLATIVE COUNSEL'S DIGEST

SB 1818, Hollingsworth. Density bonuses.

The Planning and Zoning Law requires, when a developer of housing proposes a housing development within the jurisdiction of the local government, that the city, county, or city and county provide the developer with a density bonus or other incentives or concessions for the production of lower income housing units within the development if the developer meets certain requirements, including a requirement that the applicant agree or propose to construct a specified percentage of the total units for specified income households or qualifying residents. Existing law also requires an additional density bonus or additional concession or incentive to be granted to a developer of housing that meets those requirements and includes a child care facility, as defined, subject to specified conditions. Existing law prohibits the legislative body from establishing fees to support the work of the planning agency that exceed the reasonable cost of providing the service for which the fee is charged.

This bill would revise the above-described provision to, among other things, require, when a developer seeks a density bonus for a housing development within, or for the donation of land within, the jurisdiction of the local government, that the local government provide a density bonus or other incentives or concessions for the production of housing units and child care facilities, as specified. By increasing the duties of local officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.



*The people of the State of California do enact as follows:*

SECTION 1. Section 65915 of the Government Code is amended to read:

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 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.

(b) A city, county, or city and county shall grant a density bonus and incentives or concessions described in subdivision (d) when the applicant for the housing development seeks and agrees to construct at least any one of the following:

(1) 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.

(2) 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.

(3) A senior citizen housing development as defined in Sections 51.3 and 51.12 of the Civil Code.

(4) Ten percent of the total dwelling units in a condominium project as defined in subdivision (f) of, or in a planned development as defined in subdivision (k) of, Section 1351 of the Civil Code, for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code.

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all lower income density bonus units 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. Those units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 60 percent of area median income. Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 50 percent of area median income.

(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 condominium project as defined in subdivision (f) of, or in the planned



unit development as defined in subdivision (k) of, Section 1351 of the Civil Code, are persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code. 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 its proportionate share of appreciation, which shall then be used within three years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote homeownership. For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the percentage by which the initial sale price to the moderate-income household was less than the fair market value of the home at the time of initial sale.

(d) (1) An applicant 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 either 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.

(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 condominium or planned 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 condominium or planned 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 condominium or planned 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. The city, county, or city and county shall also establish procedures for waiving or modifying development and zoning standards that would otherwise inhibit the utilization of the density bonus on specific sites. These procedures shall include, but not be limited to, such items as minimum lot size, side yard setbacks, and placement of public works improvements.

(e) In no case may a city, county, or city and county apply any development standard that will have the effect of 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 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.

(f) The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible.

(g) (1) For the purposes of this chapter, except as provided in paragraph (2), “density bonus” means a density increase of at least 20 percent, unless a lesser percentage is elected by the applicant, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. 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). For each 1 percent increase above 10 percent in the percentage of units affordable to lower income households, the density bonus shall be increased by 1.5 percent up to a maximum of 35 percent. For each 1 percent increase above 5 percent in the percentage of units affordable to very low income households, the density bonus shall be increased by 2.5 percent up to a maximum of 35 percent. 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. The density bonus shall not be included when determining the number of housing units that is equal to 5 or 10 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(2) For the purposes of this chapter, if a development does not meet the requirements of paragraph (1), (2), or (3) of subdivision (b), but the applicant agrees or proposes to construct a condominium project as defined in subdivision (f) of, or a planned development as defined in subdivision (k) of, Section 1351 of the Civil Code, in which at least 10 percent of the total dwelling units are reserved for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, a “density bonus” of at least 5 percent shall be granted, unless a lesser percentage is elected by the applicant, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. For each 1 percent increase above 10 percent of the percentage of units affordable to moderate-income households, the density bonus shall be increased by 1 percent up to a maximum of 35 percent. 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. The density bonus shall not be included when determining the number of housing units that is equal to 10 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(h) 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 as provided for in this subdivision, the applicant shall be entitled to a 15 percent increase above the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for the entire development. For each 1 percent increase above the minimum 10 percent land donation described in paragraph (2) of this subdivision, the density bonus shall be increased by 1 percent, up to a maximum of 35 percent. 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 both the increase required pursuant to 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:

(1) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(2) 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.

(3) 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 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. 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 of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, 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.

(4) 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 dedication.

(5) 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.

(6) 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.

(i) (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 a 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.

(j) “Housing development,” as used in this section, means one or more groups of projects for residential units constructed in the planned development of a city, county, or city and county. For the purposes of this section, “housing development” also includes a subdivision or a planned unit development or condominium project, as defined in Section 1351 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 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.

(k) 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.

(l) 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.



This subdivision 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) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).

(n) 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 site or construction conditions that apply to a residential development pursuant to any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation.

(2) "Maximum allowable residential density" means the density allowed under the zoning ordinance, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project.

(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 bedrooms: 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 additional parking incentives or concessions beyond those provided in this section, subject to subdivision (d).

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service



mandated by this act, within the meaning of Section 17556 of the Government Code.

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