



CONSENT CALENDAR

Agenda Item # 5

AGENDA REPORT SUMMARY

Meeting Date: October 10, 2017

Subject: Ordinance No. 2017-435: Density Bonus Ordinance

Prepared by: Jon Biggs, Community Development Director

Approved by: Chris Jordan, City Manager

Attachments:

1. Ordinance No. 2017-435

Initiated by:
City Council

Previous Council Consideration:

September 27, 2106; October 4, 2016; October 18, 2016; November 15, 2016; March 14, 2017; September 12, 2017; and September 26, 2017

Fiscal Impact:

None

Environmental Review:

This Ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the State Guidelines implementing the California Environmental Quality Act of 1970, as amended.

Policy Question for Council Consideration:

Shall the City Council adopt a set of density bonus regulations that provide for affordable housing opportunities and have been tailored to address land use issues unique to Los Altos or shall it continue to rely on the State's Density Bonus regulations by reference?

Summary:

A City's Density Bonus regulations establish procedures that implement the State's Density Bonus requirements, which are intended to increase the production of affordable housing, as well as housing for designated populations, such as seniors, disabled veterans, and foster youth. At present, the Los Altos Municipal Code incorporates the State's Density Bonus Law by reference. The draft regulations provide rules intended to implement the State's directive to adopt a local ordinance implementing the statutory framework and address circumstances unique to Los Altos.

Staff Recommendation:

Move to adopt Ordinance No. 2017-435 amending Section 14.28.040, Title 14 of the Municipal Code adopting new Density Bonus regulations



Subject: Ordinance No. 2017-433: Larkellen Lane Single-Story Overlay District

Purpose

The proposed zoning code amendments are intended to bring the Municipal Code into consistency with State legislation and provide a framework for the exceptions to development standards that can be sought as incentives or waivers for a project seeking density bonus units.

Background

On September 26, 2017, the City Council held a public hearing and voted 3-2 to introduce and waive further reading of Ordinance No. 2017-435 to establish a new set of Density Bonus regulations for the City.

Discussion/Analysis

The City Council directed modifications to Ordinance 2017-435 at its meeting of September 26 have been incorporated into the attached ordinance.

Ordinance No. 2017-435 will go into effect 31 days from the day of adoption.

Options

- 1) Adopt Ordinance No. 2017-435

Advantages: Introduces a set of regulations that provide affordable housing opportunities and addresses land use issues unique to Los Altos and fulfills the state requirement to adopt a local Density Bonus ordinance.

Disadvantages: May require frequent updating of code to keep pace with State's Density Bonus Law changes.

- 2) Decline Adoption of Ordinance No. 2017-435

Advantages: Retains current regulations that incorporate State's Density Bonus regulations by reference.

Disadvantages: Does not provide an ordinance tailored to address the unique characteristics of Los Altos or fulfill statutory requirement to adopt a local ordinance.

Recommendation

Staff recommends Option 1

ORDINANCE NO. 2017-435

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS
ALTOS AMENDING SECTION 14.28.040, DENSITY BONUSES, OF
THE LOS ALTOS MUNICIPAL CODE**

WHEREAS, it is a priority of the Los Altos City Council to further the housing goals identified in the Housing Element of the Los Altos General Plan; and

WHEREAS, the City of Los Altos has a unique arrangement of land uses that require development standards that achieve projects that are in keeping with the character of the community and provide for compatibility of adjacent uses; and

WHEREAS, the State of California has adopted a Density Bonus Law (California Government Code §§ 65915-65918) that regulates the provision of density bonuses for housing projects across the state; and

WHEREAS, the Density Bonus Law requires cities to adopt local ordinances implementing the state law; and

WHEREAS, staff has thus prepared a revised Density Bonus ordinance for the City of Los Altos, which is intended to replace existing Los Altos Municipal Code 14.28.040; and

WHEREAS, the revised Density Bonus regulations provide for additional affordable housing opportunities and include standards intended to achieve compatibility between density bonus projects and adjacent land uses; and

WHEREAS, the purpose of the Density Bonus regulations is to establish procedures for implementing State Density Bonus requirements, as set forth in California Government Code Sections 65915 to 65918, and to increase the production of affordable housing, consistent with City policies; and

WHEREAS, on August 17, 2017 the Planning and Transportation Commission reviewed the proposed ordinance and voted 6-0, to recommend that the City Council approve the adoption of a new Section 14.28.040, Density Bonuses, finding that the revised regulations are in the best interest for the protection or promotion of the public health, safety, comfort, convenience, prosperity, or welfare and is in conformance with the adopted general plan of the City; and

WHEREAS, this Ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the State Guidelines implementing the California Environmental Quality Act of 1970, as amended, as it can be seen with certainty that its adoption has no possibility of having a significant effect on the environment.

NOW THEREFORE, the City Council of the City of Los Altos does hereby ordain as follows:

SECTION 1. FINDINGS. After considering the record before it, including but not limited to the agenda report, presentation of staff, public comment, and discussion, the City Council hereby finds that adoption of this Ordinance is in the best interest for protection or promotion of the public health, safety, comfort, convenience, prosperity, and welfare, per Los Altos Municipal Code §14.86.080.

SECTION 2. AMENDMENT OF CODE. Title 14 (Zoning) of the Los Altos Municipal Code shall be revised to reflect that the current Section 14.28.040, Density Bonuses, is deleted in its entirety and a new Section 14.28.040 Density Bonuses, as reflected in Exhibit 1 of this ordinance (attached hereto and incorporated herein), is adopted and inserted in its place.

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

SECTION 4. PUBLICATION. This ordinance shall be published as provided in Government Code section 36933.

SECTION 5. EFFECTIVE DATE. This ordinance shall be effective upon the commencement of the thirty-first day following the adoption date.

The foregoing ordinance was duly and properly introduced at a regular meeting of the City Council of the City of Los Altos held on _____, 2017 and was thereafter, at a regular meeting held on _____, 2017 passed and adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mary Prochnow, MAYOR

Attest:

Jon Maginot, CMC, CITY CLERK

Chapter 14.28 - MULTIPLE-FAMILY AFFORDABLE HOUSING
Section 14.28.040 – DENSITY BONUSES

A. Purpose.

The purpose of this Section is to establish procedures for implementing State Density Bonus requirements, as set forth in California Government Code Sections 65915 to 65918, and to increase the production of affordable housing, consistent with City policies. In order to promote the construction of affordable units, density bonuses, development incentives, waivers, and parking alterations shall be granted pursuant to the provisions of this Section.

B. Definitions.

For the purposes of this Section, unless otherwise apparent from the context, certain words or phrases used in this Section are defined as follows:

1. “Affordable housing unit” means an ownership or rental dwelling unit affordable to households with extremely low, very low, low or moderate incomes as published periodically by HCD for households in Santa Clara County or equivalent as approved by the community development director. Calculations for the required affordable housing resulting in fractional units shall be rounded up to the next whole number.
2. “Area median income” (AMI) means the median family income in Santa Clara County as determined annually by HCD, adjusted for household size.
3. “Common interest development” means that as defined in Civil Code Section 4100.
4. “Concession or incentive” means any of the following:
 - a. 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 Health and Safety Code Division 13, Part 2.5 (commencing with Section 18901) to provide for affordable housing costs, as defined in Health and Safety Code Section 50052.5, or for rents for the targeted units to be set as specified in subdivision Government Code Section 65915, Subdivision (c).
 - b. 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.
 - c. Other regulatory incentives or concessions proposed by the developer or the city that result in identifiable and actual cost reductions to provide for affordable housing costs, as defined in Health and Safety Code Section 50052.5, or for rents for the targeted

units to be set as specified in subdivision Government Code Section 65915, Subdivision (c).

5. “Density bonus” means a density increase over the otherwise maximum allowable gross residential density as of the date of application by the applicant or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density.
6. “Development standard” includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking requirement that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation, as specified in Government Code Section 65915, Subsection (o)(1).
7. “Disabled person” means a person who has a physical or mental impairment that limits one or more major life activities, anyone who is regarded as having that type of an impairment or, anyone who has a record of having that type of an impairment.
8. “Disabled veterans” means that as defined in California Government Code Section 18541.
9. “Dwelling unit” means a dwelling designed and intended for occupancy by a household.
10. “Floor Area Ratio” means the multiplier applied to the total buildable area of the lot to determine the total floor area of all buildings on a lot.
11. “HCD” means California Department of Housing and Community Development or any successor agency.
12. “Homeless person” means that as defined in the United States McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.).
13. “Housing development project” means the construction of five or more new residential dwelling units, including mixed-use developments, the addition of five or more residential dwelling units to an existing building or buildings, and the remodeling of a building or buildings containing five or more residential dwelling units. For the purpose of establishing the minimum number of five dwelling units, Restricted Affordable Units shall be included and density bonus units shall be excluded.
14. “Incentive,” see “concession or incentive.”
15. “Income, very low, low or moderate” means an annual income of a household that does not exceed the amounts designated for each income category as determined by HCD.
16. “Major transit stop” means that as defined in Public Resources Code Section 21155, Subdivision (b).

17. “Maximum allowable residential density” means the density allowed under the zoning ordinance and land use element of the general plan, or, if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. Where the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.
18. “Multiple-family residential projects” as applied in this Section means all residential projects exceeding four (4) units per acre and all mixed-use projects.
19. “Project” means the entire parcel of real property, including all structures thereon, all or part of which is intended to be rented or purchased for residential purposes.
20. “Residential hotel” means any building containing six or more guest rooms or efficiency dwelling units, which are intended or designed to be used, or are used, rented, or hired out to be occupied, or are occupied for sleeping purposes by guests, so long as the guest rooms or efficiency dwelling units are also the primary residence of those guests, but not including any building containing six or more guest rooms or efficiency dwelling units, which is primarily used by transient guests who do not occupy that building as their primary residence.
21. “Residential unit” means the same as “dwelling” as used in Los Altos Municipal Code Title 14.
22. “Restricted affordable unit” means a residential unit for which rental or mortgage amounts are restricted so as to be affordable to and occupied by very low, low or moderate income households.
23. “Senior citizen housing development” means a housing development project for senior citizens that has at least 35 units as defined in California Civil Code Sections 51.3 and 51.12.
24. “Senior citizen mobilehome park” means a mobilehome park that limits residency based on age requirements for older persons pursuant to California Civil Code Sections 798.76 and 799.5.
25. “Senior citizens” means individuals who are at least 62 years of age, except that for projects of at least 35 units that are subject to this subdivision, a threshold of 55 years of age may be used, provided all applicable City, state and federal regulations are met.
26. “Special needs housing development” means that as defined in California Health and Safety Code Section 51312.
27. “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 the application was deemed complete. Inconsistency

with the zoning ordinance or general plan land use designation shall not constitute a specific adverse impact upon the public health or safety.

28. “Transitional foster youth” means that as defined in California Education Code Section 66025.9
29. “Unobstructed access to the major transit stop” means that from the development, a resident is able to access the major transit stop without encountering natural or constructed impediments.
30. “Waiver” means the deletion or reduction of any development standards that would otherwise have the effect of physically precluding the construction of a development identified and permitted in this Section.

C. Development eligibility, bonus densities, and incentive counts.

1. Eligible Developments, Bonus Densities, and Incentive Counts. The developments identified in this Subsection are eligible for density bonuses and/or incentives as well as parking requirement alterations and waivers. For each development, this Section provides levels of density bonus available and the number of incentives available. For applicable standards, see Subsections (E) (Density Bonus Standards), (F) (Incentive Standards), (G) (Parking Requirement Alteration Standards), and (H) (Waivers Standards).
- a. Housing Development with Low Income Restricted Affordable Units, for Sale or for Rent. A housing development project that includes at least 10 percent of the total units of the project for low income households, either in for sale or for rent, shall be granted the following:
 - i. Density Bonus. A project that includes 10 percent low income housing shall be granted a density bonus of 20 percent. For each 1 percent increase above the required 10 percent low income units, the density bonus shall be increased by 1.5 percent, up to a maximum density bonus of 35 percent. See Table DB 1.

Table DB 1

Percentage Low Income Units	Percentage Density Bonus
10	20.0
11	21.5
12	23.0
13	24.5
14	26.0
15	27.5
16	29.0
17	30.5
18	32.0
19	33.5
20 or more	35.0

- ii. Incentives. A project that includes at least 10 percent low income units shall be granted one incentive. A project that includes at least 20 percent low income units shall be granted two incentives. A project that includes at least 30 percent low income units shall be granted three incentives. See Table DB 2.

Table DB 2

Percentage Low Income Units	Number of Incentives
10 or more	1
20 or more	2
30 or more	3

- b. Housing Development With Very Low Income Restricted Affordable Units, for Sale or for Rent. A housing development project that includes at least 5 percent of the total units of the project for very low income households, either for sale units or for rent, shall be granted the following:

- i. Density Bonus. A project that includes 5 percent very low income housing shall be granted a density bonus of 20 percent. For each 1 percent increase above the required 5 percent very low income units, the density bonus shall be increased by 2.5 percent, up to a maximum density bonus of 35 percent. See Table DB 3.

Table DB 3

Percentage Very Low Income Units	Percentage Density Bonus
5	20.0
6	22.5
7	25.0
8	27.5
9	30.0
10	32.5
11 or more	35.0

- ii. Incentives. A project that includes at least 5 percent very low income units shall be granted one incentive. A project that includes at least 10 percent very low income units shall be granted two incentives. A project that includes at least 15 percent very low income units shall be granted three incentives. See Table DB 4.

Table DB 4

Percentage Very Low Income Units	Number of Incentives
5 or more	1
10 or more	2
15 or more	3

- c. Market Rate Senior Housing, for Sale or for Rent. A senior citizen housing development or a senior citizen mobilehome park, comprised of units for sale or for

rent, shall be granted a minimum density bonus of 20 percent, which may be applied to the senior units only.

- d. Common Interest Development with Moderate Income Restricted Affordable Units, for Sale. A common interest development that includes at least 10 percent of its units for moderate income households, provided all of the development's units are for sale, shall be granted the following:
 - i. Density Bonus. A development that includes 10 percent moderate income housing shall be granted a density bonus of 5 percent. For each 1 percent increase above the required 10 percent moderate income units, the density bonus shall be increased by 1 percent, up to a maximum density bonus of 35 percent. See Table DB 5.

Table DB 5

Percentage Moderate Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33

39	34
40 or more	35

- ii. Incentives. A project that includes at least 10 percent moderate income units shall be granted one incentive. A project that includes at least 20 percent moderate income units shall be granted two incentives. A project that includes at least 30 percent moderate income units shall be granted three incentives. See Table DB 6.

Table DB 6

Percentage Moderate Income Units	Number of Incentives
10 or more	1
20 or more	2
30 or more	3

- e. Housing for Transitional Foster Youth, Disabled Veterans, or Homeless Persons. A housing development project that includes at least 10 percent of the total units of the project for transitional foster youth, disabled veterans, or homeless persons; provided these units are at the affordability level of very low income housing, and provided an affordability restriction of 55 years is recorded against these units, shall be granted a density bonus equal to 20 percent of the number of these units.
- f. Land Donated for Very Low Income Housing. A housing development project that, by way of the application for subdivision map, parcel map, or other residential development approval, donates land to the City that satisfies the requirements of California Government Code Section 65915(g) to include 10 percent the total units of the project for very low income households shall be granted a density bonus of 15 percent. For each 1 percent increase above the required 10 percent very low income units, the density bonus shall be increased by 1 percent, up to a maximum density bonus of 35 percent. See Table DB 7.

Table DB 7

Percentage Very Low Income Units	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27

23	28
24	29
25	30
26	31
27	32
28	33
29	34
30 or more	35

- g. Child Care Facility included with a Housing Development Project. A housing development project, which conforms to the requirements of Subsections (C)(1)(a) (Housing Development with Low Income Restricted Affordable Units, for Sale or for Rent), (C)(1)(b) (Housing Development with Very Low Income Restricted Affordable Units, for Sale or for Rent), (C)(1)(c) (Market Rate Senior Housing, for Sale or for Rent), (C)(1)(d) (Common Interest Development with Moderate Income Restricted Affordable Units, for Sale), or (C)(1)(e) (Housing for Transitional Foster Youth, Disabled Veterans, or Homeless Persons) of this section, and includes a child care facility located on the premises of, as part of, or adjacent to, the project, shall be granted one of the following:
 - i. An additional density bonus that is, for purposes of calculating residential density, an increase in the floor area of the project equal to the floor area of the child care facility included in the project; or
 - ii. An additional incentive that contributes significantly to the economic feasibility of the construction of the child care facility.
 - h. Condominium Conversion to Moderate or Low Income Housing. Subject to the requirements of California Government Code Section 65915.5, a housing development project that involves the conversion of apartments into condominiums and that includes at least 33 percent of the total units of the project for low or moderate income households or 15 percent of the total units of the project for lower income households, shall be granted one of the following:
 - i. A density bonus of 25 percent; or
 - ii. Up to three incentives of, in the aggregate, equivalent financial value to the density bonus of 25 percent.
2. Ineligible Developments.
- a. Vacated Rental Property, Generally. A housing development project is ineligible for a density bonus, incentives, parking alterations, or any other concessions provided in this Section if the development is located on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the date of the application described in Subsection 14.28.040.A (Application), have been subject to a recorded covenant,

ordinance, or law that restricts rents to levels affordable to persons and families of low or very low income; subject to any other form of governmental rent or price control; or occupied by lower or very low income households, unless:

- i. The proposed housing development replaces those units, as defined in Subsection (C)(2)(c) (Replacement); and
- ii. Either of the following applies:
 - A. The proposed development, inclusive of the units replaced pursuant to this Subsection, contains affordable units at the percentages required in Subsections (C)(1)(a) (Housing Development with Low Income Restricted Affordable Units, for Sale or for Rent), (C)(1)(b) (Housing Development Very Low Income Restricted Affordable Units, for Sale or for Rent), (C)(1)(c) (Market Rate Senior Housing, for Sale or for Rent), (C)(1)(d) (Common Interest Development with Moderate Income Restricted Affordable Units, for Sale), or (C)(1)(e) (Housing for Transitional Foster Youth, Disabled Veterans, or Homeless Persons); or
 - B. Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a low or very low income household.
- b. Vacated Rental Property, Condominium Conversion. An applicant for a condominium conversion described in Subsection (C)(1)(h) (Condominium Conversion to Moderate or Low Income Housing) shall be ineligible for a density bonus, incentives, parking alterations, or any other concessions provided in this Section if the condominium project is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application Subsection (D)(1) (Application), have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of low or very low income; subject to any other form of governmental rent or price control; or occupied by lower or very low income households, unless:
 - i. The proposed condominium project replaces those units, as defined in Subsection (c) (Replacement) below; and
 - ii. Either of the following applies:
 - A. The proposed condominium project, inclusive of the units replaced, contains affordable units at the percentages set forth in Subsection (D)(1) (Condominium Conversion to Moderate or Low Income Housing); or
 - B. Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a low or very low income household.

- c. Replacement. For purposes of this Subsection (C)(2) (Ineligible Developments), “replace” shall mean either of the following:
- i. If any dwelling units described in Subsections (C)(2)(a) (Vacated Rental Property, Generally) or (C)(2)(b) (Vacated Rental Property, Condominium Conversion) are occupied on the date an application as described in Subsection (D)(1) (Application) is submitted, the proposed housing development shall provide at least the same number of units of equivalent size, to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy. For unoccupied dwelling units described in Subsection (C)(2)(a) in a development with occupied units, the proposed housing development shall provide units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as the last household in occupancy. If the income category of the last household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to covenant requirements of Subsection I (Covenants).
 - ii. If all dwelling units described in Subsections (C)(2)(a) (Vacated Rental Property, Generally) have been vacated or demolished within the five-year period preceding the application, the proposed housing development shall provide at least the same number of units of equivalent size as existed at the highpoint of those units in the five-year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known. If the incomes of the persons and families in occupancy at the highpoint is not known, it shall be rebuttably presumed that low-income and very low income renter households occupied these units in the same proportion of low-income and very low income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to the covenant requirements of Subsection (I) (Covenants).

D. Application processing and review.

1. Application. An application for a density bonus, incentives, parking requirements alterations, and/or waiver or any other provision in this Section shall:
 - a. Be submitted in conjunction with an applicable development permit application;
 - b. Be made on a form provided by the Community Development Department;
 - c. Be accompanied by applicable fees;
 - d. Include reasonable documentation, using forms prepared by the City, and supporting materials that demonstrate how any concessions and/or incentives requested by applicant result in identifiable and actual cost reductions to provide the affordable housing;
 - e. Include reasonable documentation and supporting materials that demonstrate how a requested modification to or waiver of an applicable development standard is needed in order to avoid physically precluding the construction of the proposed project at the densities authorized under this Section or with the concessions and/or incentives requested; and
 - f. Include any other documentation or materials required by this Section or by the City for the purpose of density bonus, incentives, parking requirements alterations, and/or waivers or any other provision in this Section.
2. Review Authority. Applications shall be reviewed by the review authority charged to review the applicable development permit application.

E. Density bonus standards.

Developments eligible for density bonuses as provided in Subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) may receive the density bonuses as provided below:

1. No Waiver Required. The granting of a density bonus shall not require or be interpreted to require the waiver of a local ordinance or provisions of a local ordinance unrelated to development standards.
2. Density Calculation. The area of any land required to be dedicated for street or alley purposes may be included as lot area for purposes of calculating the maximum density permitted by the underlying zone in which the project is located.
3. Fractional Units. All density bonus calculations shall be rounded up to the next whole number including the base density, Restricted Affordable units, and the number of affordable units required to be eligible for a density bonus.
4. Minimum Number of Dwelling Units. For the purpose of establishing the minimum number of five dwelling units in a project, the restricted affordable units shall be included and density bonus units shall be excluded.

5. Other Discretionary Approval. Approval of density bonus units shall not, in and of itself, trigger other discretionary approvals required by this Code.
6. Other Affordable Housing Subsidies. Approval of density bonus units does not, in and of itself, preclude projects from receipt of other government subsidies for affordable housing.
7. Optional Density Bonuses. Nothing in this section shall be construed to prohibit the city 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.
8. Lesser Percentage of Density Bonus. If elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density, is permissible.

F. Incentive standards.

A development eligible for incentives as provided in Subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) may receive incentives or concessions as provided in Subsections (F)(1) (On-Menu Incentives) or (F)(2) (Off-Menu Incentives).

1. On-Menu Incentives.

The City Council has determined that the On-Menu Incentives listed below would not have a specific, adverse impact.

- a. Lot Coverage. Up to 20 percent increase in lot coverage limits.
- b. Lot Width. Up to 20 percent decrease from a lot width requirement.
- c. Floor Area Ratio. In zone districts with a floor area ratio maximum, an increase in the maximum floor area equal to the floor area of the affordable housing units for the housing development project, up to a 35% increase in the floor area maximum.
- d. Height. Up to an eleven foot (11') increase in the allowable height.
- e. Yard/Setback. Up to 20 percent decrease in the required width or depth of any individual yard or setback except along any property line that abuts a single-family R1 zoned property.
- f. Open Space. Up to 20 percent decrease from an open space requirement, provided that (i) the landscaping for the Housing Development Project is sufficient to qualify for the number of landscape points equivalent to 10 percent more than otherwise required by Chapter 12.40 (Uniform Code for the Abatement of Dangerous Buildings) and Landscape Ordinance Guidelines "O," and (ii) any such reduction is first applied to open space on any project floor or floors above grade.

2. Off-Menu Incentives. An applicant may request an incentive not included in Subsection (F)(1) (On-Menu Incentives), so long as such incentive meets the definition under state law. The review authority will determine whether any such requested Off-Menu Incentive may have a specific, adverse impact.
3. Denial of Requested Incentive.

The reviewing authority may deny a request for an incentive only if it makes a written finding, based on substantial evidence, of any of the following:

- a. The concession or incentive does not result in identifiable and actual cost reductions, consistent with the definition of “concession” or “incentive”, to provide for affordable housing costs, as defined in Health & Safety Section 50052.5, or for rents for the targeted units to be set as specified in Subsection (I).
- b. The concession or incentive would have a specific, adverse impact upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households
- c. The concession or incentive would be contrary to state or federal law.

G. Parking Requirement Alteration Standards.

1. General Parking Requirement. Developments eligible for density bonuses and/or incentives as provided in Subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) must comply with the applicable parking provisions of Chapter 14.74 (Off-Street Parking and Loading), unless the development qualifies for a parking requirement alteration as provided in Subsections (G)(2) (On-Menu Parking Requirement Alterations) or (G)(3) (Off-Menu Parking Requirement Alterations).
2. On-Menu Parking Requirement Alterations.
 - a. For Any Development Eligible for a Density Bonus. Upon the request of the developer, the City shall not impose a parking requirement, inclusive of handicapped and guest parking, of a development, that exceeds the following requirements:
 - i. For zero to one bedroom, one onsite parking space.
 - ii. For two to three bedrooms, two onsite parking spaces.
 - iii. For four and more bedrooms, two and one-half parking spaces.

- b. For Low or Very Low Income Housing near Major Transit Stop. Upon the request of the developer, the City shall not impose a parking requirement, inclusive of handicapped and guest parking, that exceeds 0.5 parking spaces per bedroom if:
 - i. The development includes the maximum percentage of low or very Low Income units; and
 - ii. The development is located within one-half mile from a major transit stop; and
 - iii. There is unobstructed access to the major transit stop to the development.
 - c. For Senior Housing Developments with Only Rentals and Transportation. Upon the request of the developer, the City shall not impose a parking requirement, inclusive of handicapped and guest parking, that exceeds 0.5 parking spaces per bedrooms if:
 - i. The development is a Senior Housing Development; and
 - ii. The development consists solely of rental units, excluding a manager's unit or units, at affordable housing cost to low income families; and
 - iii. The development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.
 - d. Special Needs Housing Development with Only Rentals and Transportation. Upon the request of the developer, the City shall not impose a parking requirement, inclusive of handicapped and guest parking, that exceeds 0.3 parking spaces per bedrooms if:
 - i. The development is a special needs housing development; and
 - ii. The development consists solely of rental units, excluding a manager's unit or units, at an affordable housing cost to low income families; and
 - iii. The development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.
 - e. No Change to Incentive Count. A request pursuant to these On-Menu Parking Requirement Alterations shall neither reduce nor increase the number of incentives to which the applicant is entitled pursuant to Subsections (C) (Development Eligibility, Bonus Densities, and Incentive Counts) or (F) (Incentives/Concessions Standards).
3. Off-Menu Parking Requirement Alterations. An applicant may request parking requirement alterations beyond those provided in Subsection (G)(2) (On-Menu Parking Requirement Alterations) as an incentive pursuant to (C) (Development Eligibility, Bonus Densities, and Incentive Counts) or (F) (Incentives/Concessions Standards).

4. Optional Parking Requirement Alterations. This Section does not preclude the City from reducing or eliminating a parking requirement for development projects of any type in any location.
5. Provision of Parking. 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 section, a development may provide onsite parking through tandem parking or uncovered parking, but not through on-street parking.
6. Parking Study. Notwithstanding the parking requirement alterations available in Subsections (G)(2) (On-Menu Parking Requirement Alterations) and (G)(3) (Off-Menu Parking Requirement Alterations), if the City or an independent consultant has conducted an area-wide or jurisdiction-wide parking study in the last seven years from the date of the application described in Subsection (D)(1) (Application), then the City may impose a higher parking requirement not to exceed the requirement described in Subsection (G)(2)(a) (For Any Development), based upon substantial evidence found in the parking study, that includes, but is not limited to, an analysis of parking availability, differing levels of transit access, walkability access to transit services, the potential for shared parking, the effect of parking requirements on the cost of market-rate and subsidized developments, and the lower rates of car ownership for low and very low income individuals, including seniors and special needs individuals. The City shall pay the costs of any new study. The City shall make findings, based on a parking study completed in conformity with this paragraph, supporting the need for the higher parking requirement.

H. Waiver standards.

1. Waivers or Reduction. An applicant may apply for a waiver or reduction of development standards that will have the effect of physically precluding the construction of a development identified in Subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) at the densities or with the concessions or incentives permitted under this Section, and may request a meeting with the City to discuss the proposed waiver or reduction.
2. No Change in Other Incentives. A proposal for the waiver or reduction of development standards described in Subsection A shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to this Section.
3. Denial of Requested Waiver. The reviewing authority may deny a request for a waiver under this Section if it finds the waiver would:
 - a. Waive or reduce a development standard that would not have the effect of physically precluding the construction of a development meeting the criteria of this Section at the densities or with the incentives permitted under this Section; or
 - b. Have a specific, adverse impact upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact; or

- c. Have an adverse impact on any real property that is listed in the California Register of Historical Resources; or
- d. Be contrary to state or federal law.

I. Covenants.

1. Covenant Required. Prior to issuance of a building permit for a development identified in Subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) that qualified for a density bonus, incentive, and/or parking alteration, the developer must record a restrictive covenant against the development as provided in Subsection (I)(2) (Covenants for Specific Developments).
2. Covenants for Specific Developments.
 - a. For Rental Developments for Low or Very Low Income Households. For a development that contains rental housing for low or very low income households, a covenant acceptable to the City shall be recorded with the Santa Clara County Recorder, guaranteeing that the affordability criteria will be observed for at least 55 years from the issuance of the Certificate of Occupancy or a longer period of time if required by the construction or mortgage financing assistance program, mortgage assistance program, or rental subsidy program.
 - b. For For-Sale Developments for Very Low, Low, and Moderate Income Households. For a for-sale development that contains housing for initial occupants of very low, low, and/or moderate incomes, an equity sharing agreement acceptable to the City and consistent with the for-sale requirements of California Government Code Section 65915(c)(2) shall be recorded with the Santa Clara County Recorder.
3. Private Right of Action. Any covenant described in this Section must provide for a private right of enforcement by the City, any tenant, or owner of any building to which a covenant and agreement applies.
4. Conflict of Durations. If the duration of affordability covenants provided for in this section conflicts with the duration for any other government requirement, the longest duration shall control.

J. State regulations.

All other provisions of California Government Code Sections 65915 to 65918, and any amendments thereto, not specified herein are incorporated by reference into this Section.