

CITY OF MOUNTAIN VIEW  
ENVIRONMENTAL PLANNING COMMISSION  
RESOLUTION NO.  
SERIES 2021

A RESOLUTION OF THE ENVIRONMENTAL PLANNING COMMISSION  
OF THE CITY OF MOUNTAIN VIEW RECOMMENDING  
THAT THE CITY COUNCIL ADOPT AN ORDINANCE  
TO REPEAL, IN ITS ENTIRETY, DIVISION 11 OF ARTICLE IV  
OF CHAPTER 36 OF THE MOUNTAIN VIEW CITY CODE AND  
ADD DIVISION 8 OF ARTICLE XVI OF CHAPTER 36  
OF THE MOUNTAIN VIEW CITY CODE RELATED TO DENSITY BONUS

WHEREAS, amendments to Chapter 36 (Zoning Ordinance) of the City Code are necessary to be consistent with recent State legislation updates related to Density Bonus, including Assembly Bill 2345, and to clarify the purpose and intent of the regulations; and

WHEREAS, the Environmental Planning Commission held a public hearing on January 20, 2021 on said Zoning Text Amendments pursuant to Section 36.52.65 of the City Code;

NOW, THEREFORE, BE IT RESOLVED by the Environmental Planning Commission of the City of Mountain View:

1. That the Environmental Planning Commission hereby recommends the City Council adopt a Zoning Text Amendment pursuant to the following required findings in Section 36.52.70 of the City Code:

a. The proposed text amendments are consistent with the General Plan because they update the Zoning Ordinance to conform to State law that allow for residential densities to exceed the maximum otherwise specified in the General Plan and provide guidance for how to apply State law to each of the areas in the City, regardless of what metric the General Plan uses to define density (such as units per acre and/or floor area ratio); and

b. The proposed text amendments will not be detrimental to the public interest, health, safety, convenience, or welfare of the City because they are consistent with State law, will increase clarity of the City's local density bonus program, and projects will still be subject to CEQA; and

c. The proposed text amendments are internally consistent with Chapter 36 of the Mountain View City Code; and

d. The proposed text amendments do not constitute a “project” within the meaning of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(2), Section 15378(a), and Section 15378(b)(5). There is no potential the ordinance will result in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment because the ordinance deals with administrative activities consistent with State law. Even if the text amendments were a project within the meaning of CEQA, the proposed amendments comply with CEQA pursuant to CEQA Guidelines Section 15061(b)(3), the common-sense exception, because the ordinance simply defines procedures for implementing required density bonuses and other project benefits that are mandated under state law, and the ordinance does not authorize any specific development or otherwise affect the physical characteristics of development in the City, nor is any new development proposed or approved by adoption of this ordinance. Therefore, it can be seen with certainty that adoption the action would not cause significant environmental effects.

2. That the Zoning Ordinance Amendment, Attachment A, attached hereto and incorporated herein by reference, is recommended for approval.

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AS/2/CDD  
802-01-20-21epcr-so

Attachment: A. Zoning Ordinance Amendment

**ZONING ORDINANCE AMENDMENT**

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF MOUNTAIN VIEW TO REPEAL,  
IN ITS ENTIRETY, DIVISION 11 OF ARTICLE IV OF CHAPTER 36  
OF THE MOUNTAIN VIEW CITY CODE AND ADD DIVISION 8  
OF ARTICLE XVI OF CHAPTER 36 OF THE MOUNTAIN VIEW CITY CODE  
RELATED TO DENSITY BONUS

Section 1. Chapter 36, Article IV, Division 11 of the Mountain View City Code is hereby repealed.

Section 2. Chapter 36, Article XVI, Division 8 of the Mountain View City Code is hereby added to the Mountain View City Code, to read as follows:

**“DIVISION 8. - DENSITY BONUS**

**SEC. 36.48.65 - Density bonus.**

**SEC. 36.48.66. - Purpose.**

This section provides incentives for the development of housing that is affordable to the types of households and qualifying residents identified below. The incentives include the ability to construct more residential dwelling units than the maximum residential density permitted by the applicable zoning and general plan designations, and other incentives provided by this section. State Density Bonus Law will be implemented, as required by Government Code Section 65915(a).

**SEC. 36.48.70. - Definitions.**

Definitions. The definitions found in State Density Bonus Law shall apply to the terms contained in this division, with the clarifications and additions shown below.

a. Affordable units. The proposed housing units available for rent or sale to households with income levels of extremely low, very low, low or moderate income, the percentage of which establishes allowable density bonus.

b. **Base units.** The total number of units in a project, not including units added by a density bonus awarded pursuant to this division.

c. **Bonus FAR.** Gross floor area allowed through a discretionary process prescribed through zoning or precise plans, also called “density or intensity tiers” in some precise plans.

d. **Development standard.** A site or construction condition other than a maximum control on density, including, but not limited to, a height limitation, a setback requirement, a floor area ratio (except in zones where floor area ratio defines the maximum allowable residential density pursuant to Paragraph g of this section), an on-site open-space requirement or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, precise plan, charter, or other local condition, law, policy, resolution or regulation.

e. **Housing development.** A development project of five (5) or more residential units, including mixed-use developments. Also includes a subdivision or common-interest development, as defined in city code § 1351, subject to city approval and consisting of residential units or unimproved residential lots. Also includes the substantial rehabilitation and conversion of an existing commercial building to residential use or the substantial rehabilitation of an existing multi-family dwelling, as defined in Government Code § 65863.4(d), where the result of the rehabilitation would be a net increase in available residential units.

f. **Incentives/concessions.** A reduction in local regulatory or development standards that results in identifiable and actual cost reductions to provide for affordable housing costs or affordable rents as defined in State Density Bonus Law.

g. **Maximum allowable residential density.** The maximum allowable residential density applicable to the project under the zoning ordinance and land use element of the general plan, or, if a range of density is permitted, the maximum allowable density of that range. 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. For general plan land use and zoning designations with a defined dwelling units per acre standard, such standard shall define the maximum allowable residential density. For general plan land use and zoning designations without a defined dwelling units per acre standard, the maximum floor area ratio shall define the maximum allowable residential density.

h. **Maximum floor area ratio.** The density defined by reference to floor area ratio authorized through the city’s general plan, zoning or precise plan designations.

i. **Project Units.** All of the units in the project, including base units, affordable units and units in addition to base density granted through density bonus.

j. **Specific Adverse Impact.** A significant, quantifiable, direct, and unavoidable impact, based on objective, and identified, written public health or safety standards, policies or conditions as they existed on the date that the application for the housing development was deemed complete or the date that a preliminary application that satisfies the requirements of Government Code Section 65941.1 was submitted.

k. **State Density Bonus Law.** State of California Government Code Sections 65915 *et seq.*

l. **Waivers.** A waiver or reduction in development standards that would physically preclude the construction of a development at the density or with the incentives/concessions permitted by this division.

**SEC. 36.48.75. - General provisions for density bonus.**

a. **Lesser density bonus.** The applicant may elect to accept a lesser percentage of density bonus or none at all.

b. **Rounding.** All density calculations resulting in fractional units shall be rounded up to the next whole number.

c. **No legislative act, discretionary approval or study.** In and of itself, the granting of a density bonus, incentive/concession shall not require a general plan amendment, zoning change, study, or other discretionary approval; however, as used in this section, "study" does not include reasonable documentation necessary to establish a housing development's eligibility for a density bonus, incentives/concessions, waivers, or parking reductions required pursuant to Sec. 36.48.90.

d. **Contiguous project sites.** For the purpose of calculating a density bonus, the dwelling units shall be on contiguous sites that are the subject of one (1) development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in any geographic area of the housing development.

e. **Equal distribution and design of affordable units.** Affordable units qualifying for a density bonus shall be dispersed throughout the housing development and compatible with the design of market-rate units in terms of appearance, materials and finished quality. For developments with multiple market-rate units containing different numbers of bedrooms, affordable units qualifying for a density bonus shall be representative of the market-rate mix. This paragraph does not apply to projects donating land to qualify for a density bonus.

f. **Limitations to waivers and incentives/concessions.** Nothing in this division shall be interpreted to require the city to waive or reduce development standards that would have an adverse impact on any real property listed in the California Register of Historical Resources; to grant any waiver or reduction that would be contrary to state or federal law; or to waive or reduce development standards that would have a specific, adverse impact upon public health or safety or the physical environment, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the housing development unaffordable to lower- and moderate-income households.

g. **Other density bonuses.** The city, at its sole discretion, may grant a proportionately lower density bonus than what is required in State Density Bonus Law for developments that do not meet the requirements of this division.

h. **Direct financial incentives.** Nothing in this division requires the provision of direct financial incentives for the housing development, including, but not limited to, the provision of financial subsidies, publicly owned land, fee waivers or waiver of dedication requirements. The city, at its sole discretion, may choose to provide such direct financial incentives.

i. **Number of incentives/concessions.** The number of incentives/concessions that may be requested shall be based upon the number the applicant is entitled to pursuant to Government Code Section 65915(d)(2).

j. **Calculation of base units.** Base density will be calculated as follows:

1. Where dwelling units per acre is the density standard, the base units equal the maximum allowable residential density or the project units, whichever is smaller.

2. Where floor area ratio is the density standard, the base units are proportional to the number of project units and maximum allowable residential floor area, with the same ratio of project units to residential floor area; calculated as follows:

Base Units =

$$\text{Project Units} * \frac{\text{Maximum Allowable Gross Floor Area} - \text{Project Nonresidential Gross Floor Area}}{\text{Project Gross Floor Area} - \text{Project Nonresidential Gross Floor Area}}$$

If the project residential gross floor area is less than the maximum allowable residential gross floor area, the base units equal the project units.

3. Where bonus FAR is less than or equal to the maximum allowable residential density in the general plan, the bonus FAR may be combined with a State Density Bonus. The base units are calculated as set forth in Paragraph 2 of this subsection, provided that the maximum floor area ratio may include the bonus FAR if the project otherwise qualifies for bonus FAR.

4. Where bonus FAR is greater than the maximum allowable residential density in the general plan, the bonus FAR cannot be combined with a State Density Bonus. The base units are calculated as set forth in Paragraph 2 of this subsection, provided that the maximum floor area ratio shall not include any bonus FAR. See Sec. 36.48.80(c).

k. **Replacement of existing units.** For housing developments that are required under other laws or ordinances to replace existing residential units, those replacement units can qualify a project for a density bonus as long as minimum eligibility requirements are met as defined in Sec. 36.48.80.

1. **Administrative guidelines.** The community development director shall have the authority to prepare, adopt and periodically update administrative guidelines consistent with this division and State Density Bonus Law.

#### **SEC. 36.48.80. - Density bonus.**

a. **Eligibility.** The city shall grant one (1) density bonus, the amount of which shall be as specified in this section below, provide incentives/concessions, waive development standards, and apply no more than the parking maximums as described in State Density Bonus Law when an applicant proposes to construct a housing development with five (5) or more base units, containing at least one (1) of the following:

1. **Very low-income units.** Five (5) percent of the base units of a housing development for very low-income households, as defined in Health and Safety Code § 50105.

2. **Lower-income units.** Ten (10) percent of the base units of a housing development for lower-income households, as defined in Health and Safety Code § 50079.5.

3. **Moderate-income.** Ten (10) percent of the base units in a common-interest development as defined in city code Sec. 1351 for persons and families of moderate income, as defined in Health and Safety Code § 50093, provided that all units in the development are offered to the public for purchase.

4. **Senior housing units.** A housing development for senior citizens that has at least thirty-five (35) dwelling units, as defined in Sec. 51.3 and 51.12 of the city code, or mobile home park that limits residency based on age requirements for housing for older persons pursuant to §§ 798.76 or 799.5 of the city code.

5. **Other housing developments.** Section 65915(b) of the State Density Bonus Law makes other housing developments eligible for specific density bonuses, including housing developments with units intended to serve transitional foster youth, disabled veterans, or homeless persons; student housing developments with units for lower-income students; or housing developments with one hundred (100) percent of the project units for lower-income households, except the manager's unit or units and except that up to twenty (20) percent of the project units may be affordable for moderate-income households.

b. **State Density Bonus.** The amount of density increase above the otherwise maximum allowable residential density 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 Paragraph a, pursuant to formulas and tables in Section 65915(f) of State Density Bonus Law.

c. **Bonus FAR.** Where Bonus FAR allows densities that are greater than the maximum allowable residential density in the General Plan, a project may qualify for either a density bonus under the State Density Bonus Law or under the Bonus FAR program established in the applicable Zoning or Precise Plan, and an applicant may elect to apply for either bonus program for which its project qualifies, but not both. The city's approval of additional density under the Bonus FAR program as an alternative to State Density Bonus Law shall not be interpreted to require the city to allow a State Density Bonus or incentives/concessions, waivers or parking reductions required by State Density Bonus Law.

d. **NOFA Projects.** Pursuant to Section 65915(n) of the State Density Bonus Law, one hundred (100) percent affordable developments that receive authorization (and reservation of funding allocation) through the notice of funding availability (NOFA) process are eligible for density increases greater than those prescribed by State Density Bonus Law if they meet the requirements thereof.



**SEC. 36.48.85. - Affordability requirements.**

Any applicant requesting a density bonus and any incentive/concession(s), waiver(s), parking reductions, is required to maintain affordability in compliance with the following:

a. **Rental units.** An applicant shall agree to continued affordability of all units that qualified the applicant for the award of the density bonus for at least fifty-five (55) years, or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, rental subsidy program or compliance with the Below-Market-Rate Housing Program. Rents for the affordable density bonus units shall be set at an affordable rent as defined in Health and Safety Code § 50053.

b. **For-sale units.** An applicant shall agree that the initial occupants of all for-sale units, are persons and families of very low-, low-, or moderate income, and that the units are offered at an affordable housing cost, as defined in Health and Safety Code § 50052.5. For-sale units shall be subject to recorded restrictions that ensure that the affordable units are resold at an affordable price to very low-, low-, or moderate-income households, as applicable, and such restrictions shall be maintained in perpetuity.

1. **Lower-income for-sale units.** For very low- and low-income ownership units, developers shall set aside a reserve and the reserve shall be described in the CC&Rs to cover future special assessments and increases in HOA dues for those households, such that the total annual housing cost will not exceed thirty (30) percent of the household's annual income for the unit for the life of the unit. The community development director or designee may establish standards for calculating the amount of the reserve.

c. **Agreements.** An agreement pursuant to this Section shall be approved as to form by the city attorney, and shall be recorded against the housing development project prior to final map or parcel map approval, or, where a map is not being processed, prior to issuance of any building permit for the housing development. The agreement shall include, but not be limited to the following:

1. The total number of units approved for the housing development, the number, location, and level of affordability of target units, and the number of density bonus units.

2. Standards for determining affordable rent or ownership cost for target units.

3. The location, unit size in square feet and number of bedrooms of target units.

4. Provisions as required by this Section to ensure continued affordability.

5. A schedule for completion and occupancy of target units in relation to construction of market-rate units.

6. A description of any incentive/concession, waiver or reduction of development standard, or modification of parking standard being provided by the city.

7. A description of remedies for breach by either party, and the identification of any third-party beneficiary or beneficiaries eligible to enforce a breach by the applicant.

8. In the case of rental housing, procedures for filling vacancies, provisions requiring maintenance of records to demonstrate compliance with this division, and the developer's agreement that restrictions on rents are consistent with the Costa-Hawkins Act (city code Sec. 1954.51, et seq.).

9. Procedures for verifying household incomes.

10. Financing of ongoing administrative and monitoring costs.

11. Other provisions as necessary or convenient to ensure implementation and compliance with this division.

**SEC. 36.48.90. - Application requirements.**

Any applicant requesting a density bonus and any incentive/concession(s), waiver(s), parking reductions, shall submit reasonable documentation as described below.

a. **Project summary table.** Summary table showing the maximum allowable density permitted by the zoning and general plan designations excluding any density bonus; base units; proposed affordable units by income level; proposed bonus percentage; project units; residential gross floor area and total gross floor area proposed on the site; resulting density in units per acre or floor area ratio, depending on the density definition for the land use designation and zoning applicable to the housing development site; proposed parking stalls; and unit bedroom counts and unit types for the purpose of calculating parking requirements.

b. **Site plan.** A tentative map and/or preliminary site plan, drawn to scale, showing the number and location of all proposed units, designating the location of proposed affordable units.

c. **Site description.** The zoning and general plan designations, assessor's parcel number(s) of the housing development site, and, if reduced parking is requested on the basis of location, the distance and unobstructed path to the nearest major transit stop, as defined in Section 21155 of the Public Resources Code.

d. **Replacement determination.** To determine whether the project is subject to replacement requirements as described in Government Code Section 65915(c)(3), provide the following.

1. The total number of rental dwelling units existing on the site in the five (5) year period preceding the date of submittal of the application.

2. The total number of bedrooms in each rental dwelling unit existing on the site in the five (5) year period preceding the date of submittal of the application.

3. The total number of rental dwelling units that are or were subject to a recorded covenant, ordinance or law applicable to the site that restricted rents to levels affordable to very low or lower-income households, including, but not limited, to the Community Stabilization and Fair Rent Act in the five (5) year period preceding the date of submittal of the application.

4. The total number of occupied rental dwelling units and the income and household size of all residents of currently occupied units, or a statement from the applicant that such information is unknown.

5. The total number of vacant rental dwelling units on the site and the income and household size of the prior residents occupying those rental dwelling units when the site contained the maximum number of dwelling units, or a statement from the applicant that such information is unknown.

e. **Land donation.** If a density bonus is requested for a land donation, the location of the land to be dedicated, proof of site control, and reasonable documentation that each of the requirements included in Government Code Section 65915(g) can be met.

f. **Child care.** If the density bonus or incentive/concession is based all or in part on the inclusion of a child-care facility, a written summary addressing the eligibility requirements as described in Government Code Section 65915(h) have been met.

g. **Condominium conversion.** If the density bonus or incentive/concession is based all or in part on the inclusion of affordable units as part of a condominium conversion, written summary addressing the eligibility requirements as described in Government Code Section 65915.5 have been met.

h. **Waivers.** If waivers or reductions of development standards are requested, the following minimum information for each waiver requested on each lot, shown on a site plan if appropriate:

1. The city's usual development standard and the requested development standard waiver.

2. Reasonable documentation that the development standards for which a waiver is requested will have the effect of physically precluding the construction of a development at the densities or with the incentive/concession permitted by Government Code Section 65915 and the waiver is no greater than necessary to reasonably accommodate the construction of such a development.

i. **Incentives/Concessions.** If incentives/concessions are requested, the following information for each incentive/concession:

1. The number of incentives/concessions the applicant is eligible for pursuant to State Density Bonus Law.

2. The city's usual development standard or other regulatory standard and the requested incentive/concession.

3. Reasonable documentation that the incentive/concession will result in identifiable and actual cost reductions.

4. Reasonable documentation that the amount of cost reduction is used to provide the affordable units at affordable house costs or affordable rents.

**SEC. 36.48.95. - Findings.**

a. An application for a density bonus shall be approved pursuant to State Density Bonus Law if the following findings are met, in addition to the required findings of other permits as part of the project. Finding 1 is required for all density bonus applications, while Findings 2, 3, 4 and 5 are only required if the density bonus request includes bonus density, reduced parking, incentives/concessions or waivers, respectively.

1. The project is a housing development that contains at least one (1) of the features described in Section 65915(b) of the State Density Bonus Law to qualify for a density bonus, and all other eligibility requirements as described in Section 65915(c) of the State Density Bonus Law, such as replacement of existing units, have been met.

2. If bonus density is requested, the project has provided sufficient affordable units or otherwise meets the eligibility requirements for the bonus as described in Section 65915(f) of the State Density Bonus Law.

3. If reduced parking ratios are requested, the project meets the eligibility requirements thereof as described in Section 65915(p) of the State Density Bonus Law.

4. If incentives/concessions are requested, the project meets the eligibility requirements as described in Section 65915(d) of the State Density Bonus Law and the incentive/concession results in reduced costs to provide the affordable units.

5. If waivers are requested, the development standards requested to be waived would physically preclude the units or incentives/concessions provided in the project as described in Section 65915(e) of the State Density Bonus Law.

b. A state density bonus, or any waivers or incentives/concessions thereof, may be denied only pursuant to the findings of denial in Paragraphs (d)(1), (e)(1), or (p)(8) of Section 65915 of the State Density Bonus Law.”

Section 3. Chapter 36, Article XIV, Division 1, Section 36.40.05.d is hereby amended to read as follows:

“d. “Density bonus” means an approval of additional dwelling units, reduced parking, incentives and concession, or waivers of development standards under ~~City Code Sec. s. 36.14~~ ~~36.14.65~~ 36.48.65 - 36.48.95 and Government Code Sections 65915 – 65918.”

Section 4. Chapter 36, Article XVI, Division 1, Section 36.44.10 is hereby amended to read as follows:

**“SEC. 36.44.10. - Review authority.**

The following sections describe the duties and powers of city officials and administrative bodies responsible for acting on the land use permits and entitlements contained in this chapter.

Amendments to the zoning ordinance text, rezonings or zoning map amendments, adoption or amendment of precise plans, and amendments to the general plan are legislative acts reviewed by the environmental planning commission with final determination by the city council. In addition to the authority specifically described below, the zoning administrator may, in accordance with ~~Section~~ ~~Sec.~~ 36.44.45, designate other community development staff to review projects and issue zoning permits for projects not requiring public hearings. Each of the city officials and

administrative bodies with final decision authority as listed below shall have the power to approve, conditionally approve or disapprove projects, permits and amendments. A summary of the review authority described in this article is given in Table 36.44-1.

**Table 36.44-1  
REVIEW AUTHORITY**

Type of Permit or Decision	Subdivision Committee	Development Review Committee	Zoning Administrator	Environmental Planning Commission	City Council
CEQA			F/R	R	F
Conditional Use Permits		R	F		A
<del>Density Bonus (Residential)</del>		<del>R</del>	<del>F</del>		<del>A</del>
Development Agreements			R		F
Development Review		R	F		F/A
Extensions			F		A
General Plan Amendments				R	F
Interpretations			F		A
Lot Line Adjustments <sup>1</sup>	F				A
Mobile Home Park Permit		R	F		A
Planned Unit Development Permits		R	F		A

Type of Permit or Decision	Subdivision Committee	Development Review Committee	Zoning Administrator	Environmental Planning Commission	City Council
Planned Community Permits		R	R/F		F
Precise Plans				R	F
Special Design Permit		R	F		A
Subdivisions <sup>1</sup> Parcel Maps Tentative Tract Maps	F R				A F
Temporary Use Permits			F		A
Variances		R	F		A
Zoning Map and/or Text Amendments				R	F

**Key:** R – Review and recommendation body

F – Final decision-making body

A – Appeal body

<sup>1</sup> Listed for reference only. Refer to subdivision regulations in [Chapter 28](#) of the City Code.”

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