

DIVISION 11. - DENSITY BONUS

SEC. 36.14. - Density bonus.

SEC. 36.14.05. - 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. In offering these incentives, this section is intended to implement the requirements of state law (Government Code §§ 65302, 65913 and 65915).

(Ord. No. 18.13, § 1, 12/10/13.)

SEC. 36.14.10. - Definitions.

The following definitions apply to these density bonus provisions only:

- a. **Child-care facility.** A 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.
- b. **Density bonus.** A density increase over the otherwise maximum allowable residential density permitted under the applicable zoning ordinance as of the date of application by the applicant to the city.
- c. **Development standard.** A site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, 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, charter, or other local condition, law, policy, resolution or regulation.
- d. **Housing development.** A development project of five (5) or more residential units. Also includes a subdivision or common interest development, as defined in Civil Code § 1351, approved by the city 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 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.

- e. **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 is either the specified maximum density permitted, 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.

(Ord. No. 18.13, § 1, 12/10/13.)

SEC. 36.14.15. - General provisions for density bonus.

- a. The applicant may elect to accept a lesser percentage of density bonus.
- b. All density calculations resulting in fractional units shall be rounded up to the next whole number.
- c. In and of itself, the granting of a density bonus, concession or incentive shall not be interpreted to require a general plan amendment, zoning change or other discretionary approval.
- d. 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 geographic areas of the housing development other than the areas where the affordable units are located.
- e. Regardless of the number or extent of affordable units, senior housing, land dedication, child care facilities or other qualifications for a density bonus provided in any single housing development, no housing development may be entitled to a total density bonus of more than thirty-five (35) percent.
- f. 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.
- g. 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 or to grant any waiver or reduction that would be contrary to state or federal law.

- h. Nothing in this division shall be construed to prohibit the city from granting a density bonus greater than what is described in this division for a development that meets the requirements of this division or from granting a proportionately lower density bonus than what is required by this division for developments that do not meet the requirements of this division.

(Ord. No. 18.13, § 1, 12/10/13.)

SEC. 36.14.20. - Eligibility for density bonus and incentives.

The city shall grant one (1) density bonus, the amount of which shall be as specified in this section below (and Section 36.14.25) and provide concessions or incentives, as described in Section 36.14.45, when an applicant proposes to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to these density bonus provisions, containing:

- a. Five (5) or more dwelling units; and
- b. At least one (1) of the following:
 - 1. **Very low-income units.** Five (5) percent of the total 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 total 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 total dwelling units in a common-interest development as defined in Civil Code § 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 seniors, as defined in Civil Code §§ 51.3 and 51.12, or mobile home park that limits residency based on age requirements for housing for older persons pursuant to Civil Code §§ 798.76 or 799.5.

(Ord. No. 18.13, § 1, 12/10/13.)

SEC. 36.14.25. - Higher density bonus formulas.

Upon written request to the city, an applicant for a housing development that is eligible for a density bonus based upon the contribution of affordable units may receive a higher density bonus if the percentage of very low, low and moderate income housing units exceeds the base percentage established in Section 36.14.20, as follows:

- a. **Very low-income units.** For housing developments meeting the criteria of Section 36.14.20.b.1, the density bonus shall be calculated such that for each one (1) percent increase above five (5) percent in affordable units for very low-income households, the density bonus shall be increased by two and one-half (2½) percent up to the maximum of thirty-five (35) percent, as shown in Table 36.14-1:

TABLE 36.14-1: VERY LOW-INCOME UNITS

Percentage Very Low-Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

- b. **Lower-income units.** For housing developments meeting the criteria of Section 36.14.20.b.2, the density bonus shall be calculated such that for each one (1) percent increase above ten (10) percent in the affordable units for lower-income households, the density bonus shall be increased by one and one-half (1½) percent up to a maximum of thirty-five (35) percent, as shown in Table 36.14-2:

TABLE 36.14-2: LOWER-INCOME UNITS

Percentage Low-Income Units	Percentage Density Bonus
10	20

Percentage Low-Income Units	Percentage Density Bonus
11	21.5
12	23
13	24.5
14	26
15	27.5
16	29
17	30.5
18	32
19	33.5
20	35

- c. **Moderate-income units.** For housing developments meeting the criteria of Section 36.14.20.b.3, the density bonus shall be calculated such that for each one (1) percent increase above ten (10) percent in affordable units offered for sale to moderate-income households, the density bonus shall be increased by one (1) percent up to maximum thirty-five (35) percent, as shown in Table 36.14-3:

TABLE 36.14-3: MODERATE-INCOME UNITS

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

Percentage Moderate-Income Units	Percentage Density Bonus
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

- d. **Senior housing units.** For senior housing developments meeting the criteria of Section 36.14.20.b.4, the density bonus shall be twenty (20) percent of the number of senior housing units.

(Ord. No. 18.13, § 1, 12/10/13.)

SEC. 36.14.30. - Affordability requirements.

The applicant is required to maintain affordability in compliance with the following:

- a. **Very low-income and lower-income units.** An applicant shall agree to continued affordability of all very low and lower income units that qualified the applicant for the award of the density bonus for thirty (30) years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program or rental subsidy program. Rents for the low-income density bonus units shall be set at an affordable rent as defined in Health and Safety Code § 50053. Owner-occupied units shall be available at an affordable housing cost as defined in Health and Safety Code § 50052.5.
- b. **Moderate-income units.** An applicant shall agree that the initial occupants of the moderate-income units, which are directly related to the receipt of the density bonus in the common-interest development as defined in Civil Code § 1351, are persons and families of moderate income, as defined in Health and Safety Code § 50093, and that the units are offered at an affordable housing cost, as that cost is defined in Health and Safety Code § 50052.5. The applicant shall agree to and the city shall enforce an equity sharing agreement, unless it is in conflict with the requirements of another public funding source or law.
 1. The following apply to the equity sharing agreement:
 - (a) Upon resale, the seller of the unit shall retain the value of any improvements, the down payment and the seller's proportionate share of appreciation. The city shall recapture any initial subsidy, as defined in subsection (b) below, and its proportionate share of appreciation, as defined in subsection (c) below, which amount shall be used within five (5) years for any of the purposes described in Health and Safety Code § 33334.2(e) that promote home ownership.
 - (b) The city's initial subsidy shall be equal to the fair-market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any down payment assistance or mortgage assistance. If, upon resale, the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.
 - (c) The city's proportionate share of appreciation shall be equal to the ratio of the city's initial subsidy to the fair market value of the home at the time of initial sale.

- c. **Financial contribution by the city.** Where there is a direct financial contribution to a housing development by the city, which is neither limited nor required, through participation in cost of infrastructure, write-down of land costs or subsidizing the cost of construction, the city shall assure continued availability for low- and moderate-income units for thirty (30) years. When appropriate, an agreement as set forth in Section 36.14.30.b shall specify the mechanisms and procedures necessary to ensure continued affordability.

(Ord. No. 18.13, § 1, 12/10/13.)

SEC. 36.14.35. - Land donations.

- a. **Density bonus.** If an applicant for a tentative map, subdivision map, parcel map or other residential development approval donates land to the city in accordance with this section, the applicant shall be entitled to a fifteen (15) percent increase above the otherwise maximum allowable residential density for the entire development. This increase shall be in addition to any increase in density per Section 36.14.20, up to a maximum combined density increase of thirty-five (35) percent if an applicant seeks an increase pursuant to both this section and Section 36.14.20.
- b. **Affordability.** The donated land by the applicant is subject to a deed restriction ensuring continued affordability of the very low-income units for a minimum thirty (30) years or a longer period of time if required by a financing assistance program or rental subsidy program, which deed restriction shall be recorded upon the donated property at the time of its transfer.
- c. **Higher density bonus formula.** When an applicant donates land to the city in accordance with this section, a fifteen (15) percent density bonus shall be awarded for donated land that can accommodate ten (10) percent very low-income housing. For each one (1) percent increase above the ten (10) percent of very low-income housing units to be accommodated on the donated land, the maximum density bonus shall be increased by one (1) percent, up to a maximum of thirty-five (35) percent, as shown in Table 36.14-4:

TABLE 36.14-4: DONATED LAND

Percentage Very Low-Income	Percentage Density Bonus
10	15
11	16

Percentage Very Low-Income	Percentage Density Bonus
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32
28	33
29	34
30	35

- d. **Requirements.** Nothing in this section shall be construed to enlarge or diminish the authority of the city 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 section 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 ten (10) percent of the number of residential units of the proposed development.

3. The transferred land is at least one (1) acre in size or of sufficient size to permit development of at least forty (40) units, has the appropriate general plan designation, is appropriately zoned with appropriate development standards for development at the density described in Government Code § 65583.2(c)(3) and is or will be served by adequate public facilities and infrastructure.
4. The transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low-income housing units on the transferred land, not later than the date of approval of the final subdivision map, parcel map or residential development application, except that the city may subject the proposed development to subsequent design review to the extent authorized by Government Code § 65583.2(i) if the design is not reviewed by the city prior to the time of transfer.
5. The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with Section 36.14.30, which shall be recorded on the property at the time of the transfer.
6. The land is transferred to the city or to a housing developer approved by the city. The city may require the applicant to identify and transfer the land to the developer.
7. The transferred land shall be within the boundary of the proposed development or, if the city agrees, within one-quarter ($\frac{1}{4}$) mile of the boundary of the proposed development.
8. A proposed source of funding for the very low-income units shall be identified not later than the date of approval of the final subdivision map, parcel map or residential development application.

(Ord. No. 18.13, § 1, 12/10/13.)

SEC. 36.14.40. - Child-care facilities.

- A. When an applicant proposes to construct a housing development that conforms to the requirements of Section 36.14.20 and includes a child-care

facility that will be located on the premises of, as part of, or adjacent to the project, the city shall grant either of the following:

1. 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.
 2. An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child-care facility.
- b. **Requirements.** The city shall require, as a condition of approving the housing development, that the following occur:
1. 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 Section 36.14.30.
 2. Of the children who attend the child-care facility, the children of very low-income households, lower-income households or families of moderate-income households shall equal a percentage that is equal to or greater than the percentage of residential dwelling units that are required for very low-income households, lower-income households or families of moderate income pursuant to Section 36.14.20.
- c. Notwithstanding any requirement of this section, the city 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.

(Ord. No. 18.13, § 1, 12/10/13.)

SEC. 36.14.45. - Concessions or incentives.

- a. **Concessions or Incentives.** An applicant for a density bonus may submit a proposal to the city for the specific concessions or incentives that the applicant requests pursuant to this section.

The applicant shall receive the following number of concessions or incentives:

1. **One (1) concession or incentive.** One (1) concession or incentive for projects that include at least one of the following:
 - (a) Five (5) percent of the total units for very low-income households;
 - (b) Ten (10) percent of the total units for lower-income households; or
 - (c) Ten (10) percent of the total units for moderate-income households in a common-interest development.

 2. **Two (2) concessions or incentives.** Two (2) concessions or incentives for projects that include at least one (1) of the following:
 - (a) Ten (10) percent of the total units for very low-income households;
 - (b) Twenty (20) percent of the total units for lower-income households; or
 - (c) Twenty (20) percent of the total units for moderate-income households in a common-interest development.

 3. **Three (3) concessions or incentives.** Three (3) concessions or incentives for projects that include at one (1) of the following:
 - (a) Fifteen (15) percent of the total units for very low-income households;
 - (b) Thirty (30) percent of the total units for lower-income households; or
 - (c) Thirty (30) percent of the total units for moderate-income households in a common-interest development.
- b. For the purposes of this section, 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 § 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 that result in identifiable, financially sufficient, and actual cost reductions.
- c. **Exception.** Section 36.14.45.a 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 or the waiver of fees or dedication requirements.
- d. **Findings of denial.** The city shall grant a concession(s) or incentive(s) requested by the applicant unless the city makes a written finding, based upon substantial evidence, of any of the following:
1. The concession or incentive is not required in order to provide for affordable housing costs, as defined in Health and Safety Code § 50052.5, or for rents for the targeted units to be set as specified in Section 36.14.30.
 2. The concession or incentive would have a specific adverse impact, as defined in Government Code § 65589.5(d)(2), 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.
 3. The concession or incentive would be contrary to state or federal law.

(Ord. No. 18.13, § 1, 12/10/13.)

SEC. 36.14.50. - Waiver or reduction of development standards.

- a. An applicant may submit to the city a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of Section 36.14.20 at the densities or with the concessions or incentives permitted under this division. Burden of proof is on the applicant to demonstrate how and to what extent the development standard(s) has the effect of physically precluding the construction of the subject development.
- b. Nothing in this subdivision shall be interpreted to require the city to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in Government Code § 65589.5(d)(2), upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.
- c. A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of concessions or incentives to which the applicant is entitled pursuant to Section 36.14.45 and subsections "a." through "c." of this section, nor require the city to grant any waiver or reduction that would result in an adverse impact or be contrary to state or federal law.
- d. **Parking ratio.** Upon request of the applicant, the city shall not require a vehicular parking ratio, inclusive of handicapped and guest parking, for a housing development meeting the criteria of Section 36.14.20 that exceeds the following standards:
 1. Zero (0) to one (1) bedroom: one (1) on-site parking space.
 2. Two (2) to three (3) bedrooms: two (2) on-site parking spaces.
 3. Four (4) and more bedrooms: two and one-half (2½) parking spaces.

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 "on-site parking" through tandem parking or uncovered parking, but not through on-street parking. An applicant may request parking concessions or incentives beyond those provided in this section pursuant to Section 36.14.45.a.

(Ord. No. 18.13, § 1, 12/10/13.)

SEC. 36.14.55. - Application requirements.

- a. **Application.** An application for a density bonus, incentive, concession, waiver or revised development standard pursuant to this section shall be submitted in writing with the application for a housing development and processed concurrently with all other applications required for the housing development.
- b. **Affordable units.** If the housing development qualifies for a density bonus under this division, the applicant shall provide that information which is required per the City Code and, in addition, include the following information:
 1. Proposed category qualifying the housing development for a density bonus;
 2. Level of affordability of all affordable units and proposals for ensuring affordability; and
 3. A description of any requested incentives, concessions, waivers, modifications of development standards, or modified parking standards.
 4. If a density bonus or concession is requested for a land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the findings included in Sec. 36.14.60 can be made.

(Ord. No. 18.13, § 1, 12/10/13.)

SEC. 36.14.60. - Findings.

In addition to the required findings of other permits as part of the project, the approval of the density bonus by the city shall also require the following additional findings:

- a. The development project would not be a hazard or nuisance to the city at large or establish a use or development inconsistent with the goals and policies of the general plan;
- b. The number of dwellings can be accommodated by existing and planned infrastructure capacities;
- c. Adequate evidence exists to ensure that the development of the property would result in the provision of affordable housing in a manner consistent with the purpose and intent of this chapter and the general plan;

- d. In the event that the city does not grant at least one (1) financial concession or incentive as defined in state law (Government Code § 65915) in addition to the density bonus, that additional concessions or incentives are not necessary to ensure affordable housing costs; and
- e. There are sufficient provisions to guarantee that the dwelling units would remain affordable in the future.

(Ord. No. 18.13, § 1, 12/10/13.)

SEC. 36.14.65. - Other density bonus requests.

Pursuant to state law, the applicant can request a density bonus, incentives or concessions, and waivers or reductions in development standards for other types of housing projects that provide affordable units not discussed in this division, including converting apartments to condominiums. All requests permitted under state law shall be in compliance with Government Code §§ 65302, 65913 and 65915-65918, et seq.

(Ord. No. 18.13, § 1, 12/10/13.)