

ORDINANCE NO. 24-1755

AN ORDINANCE OF THE CITY OF NORWALK AMENDING TITLE 17 (ZONING) OF THE NORWALK MUNICIPAL CODE RELATED TO DENSITY BONUS ORDINANCE AND UPDATE THE DEFINITION OF “FAMILY”

WHEREAS, the City of Norwalk (“City”) is a general law city, incorporated under the laws of the State of California; and

WHEREAS, the City adopts this Ordinance pursuant to the City’s general and police powers and property rights set forth under Government Code Sections 65850(a); and

WHEREAS, the City desires to amend Title 17 (“Zoning”) of the Norwalk Municipal Code (NMC) to repeal Section 17.04.235 of Title 17 of the Norwalk Municipal Code (NMC) and add a new Article V (“Supplemental Regulations”); a new Section 17.04.400 to be entitled “Density Bonus” of Chapter 17.04 (“Use Regulations”) as it relates to the requirements of State Density Bonus Law; amend Section 17.02.105 (“Review and Authority Table”) as it relates to the amendments to the City’s density bonus ordinance; and amend the City’s definition of “family” in Section 17.01.060 (“Definitions”); and

WHEREAS, on October 23, 2024, the Planning Commission for the City of Norwalk (“Planning Commission”) conducted a duly noticed public hearing to consider Zoning Text Amendment No. 24-05, and where after careful review of the evidence in the matter, it adopted Resolution 24-05 recommending the City Council of the City of Norwalk (“City Council”) approve the proposed Zone Text Amendment; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

THE CITY COUNCIL OF THE CITY OF NORWALK DOES ORDAIN AS FOLLOWS:

Section 1. The City Council for the City of Norwalk finds and declares that the foregoing recitals are true and correct and incorporates said recitals fully into this Ordinance as substantive findings.

Section 2. Purpose. The purpose and intent of this Ordinance is as follows:

1. Updating the current review procedures which are inconsistent with State law. Currently, the density bonus ordinance requires discretionary review requirements with the Planning Commission and City Council. The City’s ordinance was revised with streamlines review procedures and requirements consistent with State Density Bonus Law requirements;

2. Expand the list of incentives/concessions, waivers, and reductions that developers are eligible for to increase housing development in compliance with State law. The proposed amendments also include a list of development standards that the City has the authority to approve or deny dependent upon the findings of the application;
3. The proposed amendments expand the eligibility criteria for projects to receive density bonuses. These uses include household income levels, commercial developments; student housing, senior housing, and 100 percent affordable or shared housing developments;
4. Minor text amendments will include adding references to State law density bonus percentage calculations, modifying the density bonus housing agreement requirements, and updating the definitions;
5. The proposed text amendment will clarify and streamline the application and review process by modifying the roles and procedures of the review authority to approve density bonus applications;
6. The proposed text amendment will modify the Review Authority Table to be consistent with the amendments to the density bonus ordinance as required by State Density Bonus Law; and
7. The proposed text amendment will modify the definition of “family” to ensure it does not exclude allowed uses, increases inclusivity, and alleviates discrimination from the existing definition.

Section 3. **Finding.** The proposed Zone Text Amendment will be in the public interest since it will enact and reflect the requirements of State Density Bonus Law and increase inclusivity by modifying the current definition of “Family.”

Section 4. **Approvals.** The City Council of the City of Norwalk hereby approves Zone Text Amendment No. 24-05 amending Title 17 (Zoning) of the Norwalk Municipal Code as set forth in Exhibit “A” and incorporated within.

Section 5. **Environmental.** The City Council hereby finds and determines that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to “common sense” exception set forth in Section 15061(b)(3) of the California Code of Regulations where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Section 6. **Severability.** If any section, clause or phrase of this Ordinance is for any reason held to be unconstitutional, or otherwise invalid, such decision shall not affect the validity of the remaining sections of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause

and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases may be declared unconstitutional or invalid.

Section 7. Certification. The City Clerk shall certify to the passage of this Ordinance and shall cause this Ordinance to be published or posted as required by law.

PASSED, APPROVED, AND ADOPTED this ____ day of _____ 2024.

**MARGARITA L. RIOS
MAYOR**

ATTEST:

**THERESA DEVOY, CMC
CITY CLERK**

EXHIBIT “A”

ORDINANCE NO. 24-1755

Title 17 ZONING

Chapter 17.01 ADMINISTRATION

Article I. General Provisions and Definitions

“17.01.060 Definition of “Family.” The following definition was amended to read as follows and the remainder of the definitions shall remain unchanged:

"Family" means one or more persons living together as a single housekeeping unit in a single dwelling unit, with common access to and common use of all living, kitchen and eating areas within the dwelling unit.

Chapter 17.02 APPROVAL PROCEDURES

Article I. Procedure, Hearing, Notices

17.02.105 The Density bonus application in the Review Authority Table was amended to read as follows and the remainder of the table shall remain unchanged:

Density bonus	-	Decision	Appeal	Appeal
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Chapter 17.04 USE REGULATIONS

Article V. General Standards

17.04.400 The entirety of the current density bonus section is amended and replaced by the following section to read as follows:

- A. Purpose. It is the purpose of this section to encourage the production of very low-, low-, and moderate-income housing units, senior citizens housing units, provisions of childcare facilities, student housing units, and donations of land in accordance with Government Code Sections 65915 through 65918, as may be amended from time to time ("State Density Bonus Law"). In enacting this section, it is also the intent of the City to facilitate the development of affordable housing and to implement the goals, objectives, and policies of the housing element of the City's General Plan.
- B. Definitions. Whenever the following terms are used in this section, they shall have the meaning established:

"Affordable rent" as defined in Health and Safety Code Section 50053(b).

"Affordable sales price" means a sales price at which very low-, low-, or moderate-income households can qualify for the purchase of target units, calculated in accordance with Health and Safety Code Section 50052.5 and the regulations adopted by the California Department of Housing and Community Development.

"Base density" means the maximum allowable gross residential density permitted under this Title and the Land Use Element of the General Plan or any specific plan applicable to the proposed development, as of the date of application submittal by the applicant to the City. If the underlying zoning district is inconsistent with the base density allowed under the Land Use Element of the General Plan, the greater shall prevail.

"Base project" means the proposed housing development before any extra density is added through the State Density Bonus Law in accordance with all local regulations, without including any bonus units, concessions, or waivers.

"Base unit" means only those units permitted by the underlying zoning regulations, excluding any units added through a density bonus awarded pursuant to this section or any other provisions of the Norwalk Municipal Code granting a greater density bonus.

"Commercial project" means a development that includes commercial uses like retail, office, or industrial spaces, and may also apply to mixed-use developments.

"Concession" shall have the same meaning as the term "incentive" defined herein.

"Density bonus" means a density increase of up to those percentages specified in the State Density Bonus Law above the otherwise maximum residential density under the applicable zoning designation on the date the application is deemed complete.

"Density bonus housing agreement" means a legally binding agreement between a developer of a housing development and the City, which ensures that the requirements of this section and the State Density Bonus Law are satisfied. The agreement shall establish, among other things, the number of target units, their size, location, terms and conditions of affordability, and production schedule.

"Density bonus units" means those residential units granted pursuant to the provisions of this section that exceed the maximum residential density for the development site.

"Housing cost" means the sum of actual or projected monthly payments for all of the following associated with for-sale target units: principal and interest on a mortgage loan, including any loan insurance fees, property taxes and assessments, fire and casualty insurance, property maintenance and repairs, home-owner association fees, and a reasonable allowance for utilities.

"Housing development" means a construction project consisting of five or more residential units or lots, including single-family and multifamily units or lots, mixed-use developments, subdivision or common interest development as defined in Civil Code Section 4100, 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 multifamily dwelling as defined in Government Code Section 65863.4(h), where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. "Housing development" does not mean to include an ADU or SB 9 unit to count towards the five or more residential units or lots requirement.

"Incentive" means a regulatory incentive or concession as defined in Government Code Section 65915(k) that may include, but not be limited to, the reduction of site development standards or a modification of zoning code requirements, approval of mixed-use zoning in conjunction with the housing development, or any other regulatory incentive which would result in identifiable cost avoidance or reductions, that are offered in addition to a density bonus.

"Low-income household" means a household whose income does not exceed the low-income limits applicable to Los Angeles County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Health and Safety Code Section 50079.5.

"Major transit stop" means an existing rail or bus rapid transit station, a ferry terminal served by either bus or rail transit services, or the intersection of two or more major bus routes that provide service intervals of 15 minutes or less during peak commute periods, as defined in Public Resources Code Section 21064.3 and Government Code Section 65915(o)(3).

"Maximum residential density" means the maximum number of residential units permitted by the City's General Plan Land Use Element, applicable to the subject

property at the time an application for the construction of a housing development is deemed complete by the City, excluding the additional density bonus units permitted by this section. If a range of density is permitted by the Land Use Element, maximum residential density shall mean the maximum allowable density within the range of density.

"Moderate income household" means a household whose income does not exceed the moderate-income limits applicable to Los Angeles County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Health and Safety Code Section 50093.

"Senior citizen housing development" as defined in Civil Code Sections 51.3 and 51.12, or a mobile home park that limits residency based on age requirements for housing for older persons pursuant to Civil Code Section 798.76 or 799.5.

"Shared housing building" means a residential or mixed-use structure, with five or more shared housing units and one or more common kitchens and dining areas designed for permanent residence of more than 30 days by its tenants. The kitchens and dining areas within the shared housing building shall be able to adequately accommodate all residents. If a local ordinance further restricts the attributes of a shared housing building beyond the requirements established in this section, the local definition shall apply to the extent that it does not conflict with the requirements of this section. A shared housing building may include other dwelling units that are not shared housing units, provided that those dwelling units do not occupy more than 25% of the floor area of the shared housing building. A shared housing building may include 100% shared housing units.

"Target unit" means a dwelling unit within a housing development which will be reserved for sale or rent to, and affordable to, very low-, low-, or moderate-income households.

"Very low-income household" means a household whose income does not exceed the very low-income limits applicable to Los Angeles County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Health and Safety Code Section 50105.

- C. Applicability. This section shall apply to all zoning districts where residential housing developments of five or more dwelling units are proposed and where the applicant proposes and agrees to provide qualifying affordable units in the threshold amounts specified in State Density Bonus Law such that the resulting

density is beyond that which is permitted by the applicable zone. In such case, the City shall grant a density bonus, concessions and incentives, waivers and reductions as set forth in this section and the State Density Bonus Law.

D. Eligibility.

1. Except as set forth in subsection (D)(2), a housing development project shall be eligible for a density bonus, incentives and concessions, waivers, and reductions of development standards, and off-street parking ratios as set forth in this section.
 - a. Eligibility Requirements. The City shall grant one density bonus, the amount of which shall be specified per State Density Bonus Law as set forth in in subsection (F)(1), and, if requested by the applicant and consistent with the applicable requirements of this section, incentives and concessions, as set forth in subsection (G)(1), waivers or reductions of development standards, as set forth in subsections (G)(2) and (G)(3), and off-start parking ratios, as described in subsection (G)(3), to the applicant of a housing development when the applicant seeks and agrees to construct a housing development project that will, excluding any units permitted by the density bonus awarded pursuant to this section, contain at least any one of the following:
 - i. Very Low-income Units. 5% of the total units of the housing development, including shared housing building development, for rental or for-sale to very low-income households;
 - ii. Low-income Units. 10% of the total units of the housing development, including shared housing building development, for rental or for-sale to low-income households;
 - iii. Moderate-income Units (Applies Only to For-sale Projects). For for-sale projects only, 10% of the total units of the housing development are allocated to be for-sale units for moderate-income households and are available to all members of the public;
 - iv. Senior Citizen Housing Development. A senior citizen housing development, including a shared housing building development meeting these criteria;

- v. Special Development Types. 10% of the total units of a housing development for transitional foster youth, as defined in Education Code Section 66025.9; disabled veterans, as defined in Government Code Section 18541; or homeless persons, as defined in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.). These units are all subject to a recorded affordability restriction of 55 years and an affordability level of very low-income units;
 - vi. Student Housing. 20% of the total units in a student housing development are for low-income students and meet the requirements as set forth in Government Code Section 65915(b)(1)(F); or
 - vii. 100% Affordable Housing Developments or Shared Housing Development. 100% of all units in the development or shared housing development, including total units and density bonus units, but exclusive of a manager's unit or units, are for low-income households, except that up to 20% of the units in the development, including total units and density bonus units, may be for moderate-income households
- b. Land Donation. If an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to the City that satisfies the requirements of the State Density Bonus Law, then the applicant is entitled to a density bonus as set forth in the State Density Bonus Law.
 - c. Housing Development with Childcare Facility. If an applicant agrees to construct a housing development that qualifies for a density bonus and includes a childcare facility in compliance with the requirements of State Density Bonus Law, then the applicant shall be entitled to either an additional density bonus or an additional incentive as set forth in the State Density Bonus Law. The childcare facility shall remain in operation for at least the same amount of time which the density bonus units are required to remain affordable per Government Code Section 65915(c).
 - d. Condominium Conversions. If an applicant converts apartments to a condominium project as set forth in Government Code Section

65915.5, then the applicant shall be entitled to either a density bonus or additional incentives as set forth in the State Density Bonus Law.

2. Replacement and/or Demolition Requirements. Notwithstanding subsection (D)(1), an applicant shall be ineligible for a density bonus or any other incentives or concessions if the housing development is proposed on any property that includes a parcel or parcels on which rental dwelling units are (1) located if the dwelling units have been vacated or demolished in the five-year period preceding the 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; (2) subject to any other form of rent or price control per State law; or, (3) occupied by low- or very low-income households, unless the proposed housing development replaces those units, and either of the following applies:
 - a. The proposed housing development, inclusive of the units replaced pursuant to this section, contains affordable units at the percentages set forth in subsection (D)(1)(a): 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.
 3. Definition of "Replace." For the purposes of this section, "replace" shall be defined pursuant to Government Code Section 65915(c)(3)(B).
- E. Procedures. The following procedures provide the process for obtaining approval of a density bonus, incentive and concession, waiver or reduction of a development standard, or revised off-street parking standard.
1. Application Material Requirements. An application for a density bonus, incentive and concession, waiver or reduction of a development standard, or revised off-street parking standard pursuant to this section shall be submitted as part of the submittal of any formal request for approval of a housing development. The application shall include the following information:
 - a. A brief description of the proposed housing development demonstrating that the project meets the thresholds for State Density Bonus Law.

- b. A vicinity map and site plan showing the total number of units, number and location of target units, and number and location of proposed density bonus units, and the driveways and off-street parking layout.
- c. The calculations showing the maximum base density, the percentage of affordable units and identification of the income level at which such units will be restricted, additional market rate units resulting from the density bonus, and resulting unit per acre density. The density bonus units shall not be included in determining the percentage of base units that qualify a project for a density bonus pursuant to State law.
- d. If the applicant is requesting an additional density bonus, documentation showing that the housing development is eligible for the additional density bonus in accordance with Government Code Section 65915(v)(1).
- e. The zoning and General Plan designations and assessor's parcel number(s) of the project site.
- f. A description of all dwelling units existing on the site in the five-year period preceding the date of submittal of the application and identification of any units rented in the five-year period subject to any form of rent control through a public entity's valid exercise of its police power or subject to a recorded covenant, ordinance, or law restricting rents to levels affordable to households of low- or very-low income.
- g. If dwelling units on the site are currently rented, income and household size of all residents of currently occupied units, if known. If any dwelling units on the site were rented in the five-year period but are not currently rented, the income and household size of residents occupying the dwelling units when the site contained the maximum number of dwelling units, if known. If the incomes of the persons and families that currently or formerly occupy the dwelling units is not known, it shall be 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.

- h. Requests for Incentives and Concessions. Incentives are those defined by State Density Bonus Law. The number of incentives that may be requested shall be based upon the number the applicant is entitled to pursuant to the Incentives and Concessions listed in Table 17.04.400-1 and in accordance with State Density Bonus Law.

Table 17.04.400-1 Request for Incentives and Concessions			
Incentives/ Concessions	Percentage of Base Units, Very Low- Income	Percentage of Base Units, Low-Income	Percentage of Base Units, Moderate- Income
1	5 – 9	10 – 16	10 – 19
2	10 – 14	17 – 23	20 – 29
3	15 – 99	24 – 79	30 – 44
5	100; or 80 percent very low income and 20 percent moderate income	100; or 80 percent very low income and 20 percent moderate income	45 or greater

The applicant may be entitled to the additional incentives and concessions as provided in subsection (G)(1)(b) which shall be approved by-right through the Director's review. The application shall include the following minimum information for each incentive requested:

- i. A description of any requested incentives and concessions;
 - ii. Except where mixed-use zoning is proposed as a concession or incentive, reasonable documentation to show that any requested incentive will result in identifiable and actual cost reductions to provide for affordable housing costs or rents; and
 - iii. If approval of mixed-use zoning is proposed, reasonable documentation that nonresidential land uses will reduce the costs of the housing development, that the nonresidential land uses are compatible with the housing development and the existing or planned development in the area where the proposed housing development will be located, and that mixed-use zoning will provide for affordable housing costs and rents.
- i. Requests for Waivers or Reductions. If the applicant is requesting a waiver or reduction of any development standards, the applicant shall

provide a brief explanation of the waiver or reduction requested and evidence that the development standard for which the waiver or reduction is requested will have the effect of physically precluding the construction of the project with the density bonus incentives requested. The City shall not limit the number of waivers or reductions allowed in accordance with State Density Bonus Law. A waiver or reduction of development standards may include, but is not limited to, height, setbacks, FAR, open space, and/or off-street parking requirements.

- j. Request for Off-Street Parking Reduction. If a housing development is eligible for a density bonus pursuant to State Density Bonus Law, the applicant may request a reduction of the on-site vehicular off-street parking ratio requirements listed in Table 17.04.400-2, and as specified in Government Code Section 65915(p).

Table 17.04.400-2 Request for Off-Street Parking Reduction	
Qualifications	Maximum Off-Street Parking Ratio
All housing developments eligible for a density bonus	1 space for each 0–1-bedroom unit 1.5 spaces for each 2–3-bedroom unit 2.5 spaces for each 4+ bedroom unit
Projects located within one-half mile of a major transit stop (unobstructed access) and meeting any of the following minimum criteria: <ul style="list-style-type: none"> At least 11% of base units set aside for very low-income households; or At least 20% of base units set aside for lower-income households. 	0.5 spaces per unit
Projects located within one-half mile of a major transit stop (unobstructed access) and at least 40% of base units set aside for moderate-income households.	0.5 spaces per bedroom
Projects where 100% of the units are set aside affordable (up to 20% moderate-income, others low-income) and meeting any of the following criteria: <ul style="list-style-type: none"> Located with one-half mile of a major transit stop (unobstructed access); Senior citizen housing development that has either paratransit service or unobstructed access, within one-half mile of a fixed bus route that operates at least eight times per day; Supportive housing development for people with disabilities; or Special needs housing development that has either paratransit service or unobstructed access, within one- 	No off-street parking required

Table 17.04.400-2 Request for Off-Street Parking Reduction	
Qualifications	Maximum Off-Street Parking Ratio
half mile of a fixed bus route that operates at least eight times per day.	

An applicant may request these off-street parking reductions in addition to the incentives and waivers permitted by Government Code Sections 65915(p)(2) and 65915(p)(3). The application shall include a table showing off-street parking ratios required by the Norwalk Municipal Code, off-street parking proposed under State Density Bonus Law, Government Code Section 65915(p) (or other statute) under which the project qualifies for the off-street parking reduction, and reasonable documentation that the project is eligible for the requested off-street parking reduction.

- k. Request for a Childcare Facility. If a density bonus or concession is requested for a childcare facility, the application shall include all of the following:
 - i. Provide documentation demonstrating that the operator of the childcare facility is in compliance with all licensing and operating requirements of State law;
 - ii. The location and square footage of the childcare facilities; and
 - iii. As required in Government Code Section 65915(h), documentation that (1) the childcare 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, and (2) of the children who attend the childcare facility, the children of very-low-income households, low-income households, or families of moderate-income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very-low-income households, low-income households, or families of moderate-income.
- l. Request for Condominium Conversion. If a density bonus or concession is requested for a condominium conversion, the application

must adhere to the requirements in Government Code Section 65915.5.

- m. Request for Density Bonus for Commercial Development.
 - i. When an applicant proposes to construct a commercial development and has entered into a partnered housing agreement approved by the Director, the Director shall grant a commercial development bonus mutually agreed upon by the developer and the City. The commercial development may be granted incentives and concessions which may include but are limited to the Incentives in Table 17.04.400-3 pursuant to Government Code Section 65915.7(b).

<u>Table 17.04.400-3 Request for Density Bonus for Commercial Development</u>	
Qualification	Incentive and Concession Option
Eligible for a commercial development bonus	Maximum 20% increase of allowable intensity in the General Plan
	Maximum 20% increase of allowable FAR
	Maximum 20% increase of height
	Maximum 20% reduction of FAR
	Other exception to development standard

The commercial development bonus shall not include a reduction or waiver in fees imposed on the commercial development to provide affordable housing.

- ii. The partnered housing agreement shall include all of the following provisions: (1) The housing development shall be located either: (i) on the site of the commercial development; or (ii) on a site within the City that is within one-half mile of a major transit stop, as defined in Public Resources Code Section 21155, and is in close proximity to public amenities, including schools and employment centers; (2) at least 30% of the total units in the housing development shall be made available at an affordable ownership cost or affordable rent to low-income households, or at least 15% of the total units in the housing development shall be made

available at an affordable ownership cost or affordable rent to very low-income households; and, (3) the commercial development must agree either to directly build the affordable housing units, donate a site consistent with the requirements of Government Code Section 65915(g) for the development of the affordable housing units, or make a cash payment to the housing developer for the development of the affordable housing units.

- iii. An approved partnered housing agreement shall be described in the City's Housing Element annual report as required by Government Code Section 65915.7(k).
 - n. Request for Land Donations. If a density bonus or concession is requested for a land donation, the application shall include all of the following:
 - i. The location of the land to be dedicated;
 - ii. Proof of site control; and
 - iii. Documentation that each of the requirements in Government Code Section 65915(g) can be made.
 - o. Fees. The applicant shall submit a fee in an amount set by resolution of the City Council for the processing of the density bonus application and the density bonus housing agreement, which includes a reimbursement for time expended by City to staff to review said application.
 - p. Application for Density Bonus Housing Agreement. Once the land use permits and entitlements have been approved in accordance with this subsection, the applicant shall enter and execute into a Density Bonus Housing Agreement pursuant to subsection H.
2. Application Review Process and Criteria. An application for a density bonus, incentive and concession, waiver, or reduction pursuant to this section shall be processed as part of the application for the underlying housing development.
- a. Discretionary Approval Authority Retained of the Base Project. The granting of a density bonus or incentive shall not be interpreted in or of

itself to require a general plan amendment, zoning change, or other discretionary approval. If an incentive would otherwise trigger one of these approvals, when it is granted as an incentive, no general plan amendment, zoning change or other discretionary approval is required. However, if the base project without the incentive requires a general plan amendment, zoning change, or other discretionary approval, the City retains its discretion regarding the approval of the base project.

- b. Concurrent Processing of Application. The application for a density bonus and a housing development shall be processed concurrently with all other applications in accordance with an applicable State law, including, but not limited to, the Permit Streamlining Act, required for the housing development. The City shall provide to an applicant a letter that identifies project issues of concern and the procedures for compliance with this section at the time the City notifies an applicant on the decision and status of the application for the base project.
- c. Incentives and Concessions. For housing developments requesting an incentive or concession not included within the menu of by-right incentives or concessions listed in subsection (G)(1), the Director shall grant the concession or incentive requested by the applicant unless the Director makes any of the following written findings, based upon substantial evidence, pursuant to Government Code Section 65915(d)(1):
 - i. The concession or incentive does not result in identifiable and actual cost reductions to provide for affordable housing costs specified in Health and Safety Code Section 50052.5, including: (1) for extremely low-income households, the product of 30% times 30% of the area median income adjusted for family size appropriate for the unit; (2) for very low-income households, the product of 30% times 50% of the area median income adjusted for family size appropriate for the unit; (3) for lower-income households whose gross incomes exceed the maximum income for very low-income households and do not exceed 70% of the area median income adjusted for family size, the product of 30% times 70% of the area median income adjusted for family size appropriate for the unit. In addition, for any lower-income household with a gross income that equals or exceeds 70% of

the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable housing cost not exceed 30% of the gross income of the household; and (4) for moderate-income households, affordable housing cost shall not be less than 28% of the gross income of the household, nor exceed the product of 35% times 110% of area median income adjusted for family size appropriate for the unit. In addition, for any moderate-income household with a gross income that exceeds 110% of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable housing cost not exceed 35% of the gross income of the household;

- ii. The concession or incentive does not result in identifiable and actual cost reductions to provide for rents for the targeted units as specified in Government Code Section 65915(c), including: (1) the rent for at least 20% of the units in the development shall be set at an affordable rent as defined in Health and Safety Code Section 50052.5 and subsection (E)(2)(c)(i), and (2) the rent for the remaining units in the development shall be set at an amount consistent with the maximum rent levels for lower-income households, as determined by the California Tax Credit Allocation Committee;
- iii. The concession or incentive would have a specific, adverse impact upon public health and safety or on any real property that is listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid this specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households. As defined in Government Code Section 65589.5(d)(2), this includes 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, where the following shall not constitute a specific, adverse impact upon the public health or safety: (1) inconsistency with the zoning ordinance or general plan land use designation, and (2) the eligibility to claim

a welfare exemption under Revenue and Taxation Code Section 214(g); or

iv. The concession or incentive would be contrary to state or federal law.

d. **Waivers or Reductions.** For housing developments requesting a waiver or reduction pursuant to subsection (G)(2), the Director shall grant the waiver or reduction if the development will have the effect of physically precluding the construction of a housing development permitted in subsection F, or with the concessions or incentives permitted in subsection G. Notwithstanding, the Director shall not be required to grant a waiver or reduction as required by Government Code Section 65915(e)(1), which states that in no case may a city apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subsection (D)(1)(a) at the densities or with the concessions or incentives permitted by this subsection. Additionally, subject to Government Code Section 65915(e)(3), a housing development that receives a waiver from any maximum controls on density pursuant to Government Code Section(f)(3)(D)(ii) shall only be eligible for a waiver or reduction of development standards as provided in Government Code Section(d)(2)(D), unless the city, county, or city and county agrees to additional waivers or reductions of development standards. An applicant may submit to the city a proposal for the waiver or reduction of development standards that will physically preclude the construction of a development meeting the criteria of subdivision (D)(1)(a) at the densities or with the concessions or incentives permitted under this section and may request a meeting with the city. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. This subsection shall not 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 Section 65589.5(d)(2), which refers to 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. The following shall not constitute a specific, adverse

impact upon public health or safety: (1) inconsistency with the zoning ordinance or general plan land use designation, and (2) eligibility to claim a welfare exemption under Revenue and Taxation Code Section 214(g). This subsection shall not be interpreted to require the city to waive or reduce development standards that would adversely impact any real property listed in the California Register of Historical Resources or grant any waiver or reduction that would be contrary to state or federal laws.

F. Density Bonus.

1. Eligible Applicants. An eligible applicant that meets all of the requirements in section E and the requirements of State Density Bonus Law not specified herein may seek a density bonus in the amounts set forth in this section and in accordance with the procedures set forth in subsection E. Applicants may request a lesser percentage of density increase than that which is available for a housing development under this section, including, but not limited to, no increase in density; however, the City shall not be required to similarly reduce the number of units required to be dedicated pursuant to this section and Government Code Section 65915(b).
2. Determining Density Bonus Percentage. The number of density bonus units granted shall be in accordance with State Density Bonus Law as provided in Table 17.04.400-4.

Table 17.04.400-4 Determining Density Bonus Percentage							
Base Project Set Aside ¹	Very Low Income	Low Income	Moderate Income ²	Land Donation	Senior Housing ³	Foster Youth, Disabled Vets, Homeless ⁴	Student Housing ⁵
5%	20%	—	—	—	20%	—	—
6%	22.5%	—	—	—	20%	—	—
7%	25%	—	—	—	20%	—	—
8%	27.5%	—	—	—	20%	—	—
9%	30%	—	—	—	20%	—	—
10%	32.5%	20%	5%	15%	20%	20%	—
11%	35%	21.5%	6%	16%	20%	20%	—
12%	38.75%	23%	7%	17%	20%	20%	—
13%	42.5%	24.5%	8%	18%	20%	20%	—
14%	46.25%	26%	9%	19%	20%	20%	—
15%	50%	27.5%	10%	20%	20%	20%	—
16%	50%	29%	11%	21%	20%	20%	—
17%	50%	30.5%	12%	22%	20%	20%	—
18%	50%	32%	13%	23%	20%	20%	—
19%	50%	33.5%	14%	24%	20%	20%	—
20%	50%	35%	15%	25%	20%	20%	35%
21%	50%	38.75%	16%	26%	20%	20%	35%
22%	50%	42.5%	17%	27%	20%	20%	35%

Table 17.04.400-4 Determining Density Bonus Percentage

Base Project Set Aside ¹	Very Low Income	Low Income	Moderate Income ²	Land Donation	Senior Housing ³	Foster Youth, Disabled Vets, Homeless ⁴	Student Housing ⁵
23%	50%	46.25%	18%	28%	20%	20%	35%
24%	50%	50%	19%	29%	20%	20%	35%
25%	50%	50%	20%	30%	20%	20%	35%
26%	50%	50%	21%	31%	20%	20%	35%
27%	50%	50%	22%	32%	20%	20%	35%
28%	50%	50%	23%	33%	20%	20%	35%
29%	50%	50%	24%	34%	20%	20%	35%
30%	50%	50%	25%	35%	20%	20%	35%
31%	50%	50%	26%	35%	20%	20%	35%
32%	50%	50%	27%	35%	20%	20%	35%
33%	50%	50%	28%	35%	20%	20%	35%
34%	50%	50%	29%	35%	20%	20%	35%
35%	50%	50%	30%	35%	20%	20%	35%
36%	50%	50%	31%	35%	20%	20%	35%
37%	50%	50%	32%	35%	20%	20%	35%
38%	50%	50%	33%	35%	20%	20%	35%
39%	50%	50%	34%	35%	20%	20%	35%
40%	50%	50%	35%	35%	20%	20%	35%

Table 17.04.400-4 Determining Density Bonus Percentage							
Base Project Set Aside ¹	Very Low Income	Low Income	Moderate Income ²	Land Donation	Senior Housing ³	Foster Youth, Disabled Vets, Homeless ⁴	Student Housing ⁵
41%	50%	50%	38.75%	35%	20%	20%	35%
42%	50%	50%	42.5%	35%	20%	20%	35%
43%	50%	50%	46.25%	35%	20%	20%	35%
44%	50%	50%	50%	35%	20%	20%	35%
100% ⁶	80%	80%	80%	35%	20%	20%	35%

Footnote:

¹ Affordable unit percentage is calculated excluding the units added by density bonus.

² Only applies to for-sale units, not to rental units.

³ No affordable units are required. The bonus is limited to 20% of the number of senior units only if no units are affordable.

⁴ The bonus is equal to 25% of the number of units designated for very low income foster youth, disabled veterans, and the homeless.

⁵ The bonus is equal to 40% of the number of student housing units designated for low-income students.

⁶ Applies when 100% of the total units (other than manager's units) are restricted to very low, low, and moderate income (maximum 20% moderate). If the project is within one-half mile of a major transit stop, there is no maximum density.

3. Calculating Density Bonus. To calculate the maximum allowable density for the housing development, any fractional unit that results from the density calculation shall be rounded up to the next whole number when the fraction is 0.5 or greater, and rounded down when the fraction is less than 0.5. In accordance with Government Code Section 65915, any fractional units resulting from applying a density bonus shall be rounded up to the next whole number to ensure the project will achieve the maximum number of units. Except where a housing development is eligible for an additional bonus pursuant to Government Code Section 65915(v), each housing development is entitled to only one density bonus. If a housing development qualifies for a density bonus under more than one category, the applicant shall identify the category under which the density bonus is requested to be granted.
 4. Calculating Base Density. The calculations for determining base density shall be calculated as provided for in the State Density Bonus Law.
- G. Incentives and Concessions, Waivers and Reductions, and Reduced Off-Street Parking Ratios.
1. Incentives and Concessions.
 - a. Per State Density Bonus Law. An applicant for a density bonus pursuant to subsection D as set forth in Government Code Section 65915(b) shall receive the incentives and concessions as set forth in Government Code Section 65915(d)(2) in accordance with the procedures as set forth in subsection E.
 - b. Available for Director's Review and Approval. The Director may approve the following incentives and concessions without following the procedures set forth in subsection E in accordance with Government Code Section 65915(d)(1):
 - i. A 10% or greater reduction in the front yard setback;
 - ii. A 10% or greater reduction in the side yard setback of one side;
 - iii. A 10% or greater reduction in the rear yard setback;
 - iv. A 10% or greater reduction in the total shared open space required;

- v. A 10% or greater reduction in private open space for up to 50% of the units; or
 - vi. An additional story, not to exceed 10 feet of the total project height, or other regulatory concessions that result in identifiable and actual cost reductions to provide for affordable housing costs, or for rents for the affordable units as specified in Government Code Section 65915.
- c. Financial Incentives. This section does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements as set forth in Government Code Section 65915(I).

2. Waivers and Reductions.

- a. An applicant for a density bonus pursuant to subsection E as set forth in Government Code Section 65915(e) may request a waiver or reduction of development standards that will have the effect of physically precluding the construction of a development at the densities or with the concessions or incentives permitted in this section. The applicant shall demonstrate that the requested waiver or reduction will have the effect of physically precluding the construction of a development meeting the criteria of this section.
- b. The proposal for the waiver or reduction of development standards pursuant to this section shall neither reduce or increase the number of incentives or concessions to which the applicant is entitled in subsection (G)(1) as set forth in Government Code Section 65915(d).
- c. A housing development that receives a waiver from any maximum controls on density pursuant to Government Code Section 65915(f)(3)(d)(ii) shall only be eligible for a waiver or reduction of development standards as provided in Government Code Sections (d)(2)(D) and 65915(f)(3)(d)(ii) unless the City agrees to additional waivers or reductions of development standards

3. Reduced Off-Street Parking Ratios. An eligible project shall be entitled to the off-street parking ratio incentives as provided subsection E in accordance with Government Code Section 65915(p).

H. Density Bonus Housing Agreement.

1. The entry into and execution of the density bonus housing agreement shall be a condition of the applicant and consistent with Government Code Section 65915(c), which sets forth a binding affordable housing agreement, the conditions and guidelines provided below to be met in the implementation of State Density Bonus Law, and ensures compliance with all provisions of this section. The density bonus housing agreement shall establish specific compliance standards and remedies available to the City upon failure by the applicant to comply with State Density Bonus Law, this section or the affordable housing agreement. The density bonus housing agreement shall be recorded at the applicant's cost as a restriction running with the land on the parcel or parcels on which the target units will be constructed.
2. The terms of a draft density bonus housing agreement shall be reviewed, revised as appropriate, and approved by the Director and the City Attorney.
3. Following execution of the density bonus housing agreement by the applicant and the City, the completed density bonus housing agreement, or memorandum thereof, shall be recorded. The conditions contained in the density bonus housing agreement shall be filed and recorded on the parcel or parcels designated for the construction of target units as a condition of the discretionary approval for the underlying housing development, final map approval, or, where a map is not being processed, prior to issuance of building permits for such parcels or units. The density bonus housing agreement shall be binding upon all future owners and successors in interest for this property, which is the subject of the housing development application.
4. Senior Housing Developments Only.
 - a. The applicant shall enter into a restrictive covenant with the City in a form approved by the Director and the City Attorney, to be executed by the City Manager, to require that the housing development be operated as "housing for older persons" consistent with state and federal fair

housing laws and as set forth in Government Code Sections (c)(1)(A) and (c)(2).

- b. The executed density bonus housing agreement shall be recorded against the housing development prior to final or parcel map approval, or, where a map is not being processed, prior to issuance of building permits for the housing development. The agreement shall be binding on all future owners and successors in interest.
5. Required Information for All Density Bonus Housing Agreements. The density bonus housing agreement shall include the following information:
- a. A description of the property;
 - b. The total number of units proposed within the housing development, including the number of target units;
 - c. A description of the household income group to be accommodated by the housing development, and the standards for determining the corresponding affordable rent or affordable sales price and housing cost;
 - d. The length of affordability of the property;
 - e. The location, unit sizes (square feet), and number of bedrooms of target units;
 - f. The affordable unit design and appearance;
 - g. Tenure of use restrictions for target units of at least 30 years;
 - h. A schedule for completion and occupancy of target units;
 - i. A description of any additional incentive being provided by the City;
 - j. A description of remedies for breach of the agreement by either party (the City may identify tenants or qualified purchasers as third-party beneficiaries under the agreement); and
 - k. Other provisions to ensure implementation and compliance with this section.

6. For for-sale housing developments, the affordable housing agreement shall require that the initial purchasers of those for-sale units that qualified the applicant for the receipt of the density bonus, incentive, waiver, or off-street parking reduction are persons and families of low- or moderate-income, as applicable, or if any for-sale unit is not purchased by an income-qualified household within 180 days after the issuance of the certificate of occupancy, then the unit(s) must be sold pursuant to a contract that satisfies the requirements of Revenue and Taxation Code Section 402.1(a)(10) to a qualified non-profit housing corporation as defined in State Density Bonus Law and that the units are offered at an affordable housing cost, as that cost is defined in Health and Safety Code Section 50052.5; and shall contain other relevant provisions approved by the City Attorney. The density bonus housing agreement shall provide for the following conditions governing the initial sale and use of target units during the applicable use restriction period:
 - a. Target units shall, upon initial sale, be sold to and occupied by eligible very low-, low-, or, in the case of a condominium, moderate-income households at an affordable sales price and housing cost, or to qualified senior citizen residents (i.e., maintained as senior citizen housing).
 - b. The initial purchaser of each target unit shall execute a lien, an instrument, or agreement, approved by the City Attorney, restricting the sale of the target unit in accordance with this section during the applicable use restriction period. Such lien, instrument, or agreement shall be recorded against the parcel containing the target unit and shall contain the following provisions as the City may require to ensure continued compliance with this section and the State Density Bonus Law:
 - i. Provisions for recording restrictions against individual units as the affordable units are sold in the future;
 - ii. Procedures for selecting initial buyers, verifying incomes, determining affordable housing cost, and ensuring that buyers sign, and are aware of, required restrictions; and
 - iii. Mechanism for terminating the master developer agreement once homebuyer restrictions are recorded.

7. For rental housing developments, the affordable housing agreement shall require the continued affordability of all rental units that qualified the applicant for the receipt of the density bonus, incentive, waiver, or off-street parking reduction for a minimum of 55 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. The rental housing agreement may be drafted as a long-term agreement that will apply to successive owners of the development. Rents for the low-income density bonus units shall be set at an affordable rent as defined in State Density Bonus Law. The density bonus housing agreement shall provide for the following conditions governing the use of target units during the use restriction period:
 - a. The rules and procedures for qualifying tenants, establishing affordable rent, filling vacancies, and the proper management and maintenance of target units for qualified tenants;
 - b. Provisions requiring owners to verify tenant incomes and maintain books and records to demonstrate compliance with this section; and
 - c. Provisions requiring owners to submit an annual report to the City, which includes the name, address, and income of each person occupying target units, and which identifies the bedroom size and monthly rent or cost of each target unit.

I. Development and Design Standards.

1. Affordable units shall be constructed concurrently with market rate units and shall be integrated into the project. Any required building permits and final inspections or certificates of occupancy shall be issued concurrently for the market rate units and for any affordable units that qualified the project for a density bonus, incentive, waiver, or reduction so that the affordable units comprise the required percentage of total units.
2. Affordable units shall be of equal design and quality as the market rate units. Exteriors, including architecture and elevations, and floor plans of the affordable units shall be similar to the market rate units. Interior finishes and amenities may differ from those provided in the market rate units, but neither the workmanship nor the products may be of substandard or inferior quality as determined by the Building Official.

3. To comply with fair housing laws, the number of bedrooms in the affordable units shall be proportional with the mix of market rate units. In mixed-income buildings, the occupants of the affordable units shall have the same access to the common entrances and areas, off-street parking, and amenities of the project as the occupants of the market rate housing units, and the affordable units shall be located throughout the building and not isolated on one floor or to an area on a specific floor.
 4. Off-Street Parking standards shall be modified as allowable under Government Code Section 65915(p) and anything beyond those standards shall be considered a request for an incentive.
- J. Interpretation. If any portion of this section conflicts with State Density Bonus Law or other applicable State law, State law shall supersede this section. Any ambiguities in this section shall be interpreted to be consistent with State Density Bonus Law. Statutory references in this section include successor provisions.”