

## DIVISION 10 – AFFORDABLE HOUSING

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### **CHAPTER 17.100 – DENSITY BONUS PROVISIONS**

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#### **17.100.010 – Purpose.**

The State Density Bonus Law (Gov. Code § 65915 et seq.) requires each local government to adopt an ordinance that specifies how the jurisdiction will comply with and effectuate applicable state law requirements. This Chapter is intended to satisfy this requirement. Pursuant to state law, this Chapter shall be interpreted liberally in favor of producing the maximum number of total housing units. Any ambiguities in this Chapter shall be interpreted to be consistent with State Density Bonus Law.

#### **17.100.020 – Applicability.**

The provisions of this Chapter apply only to multiple-family residential and mixed-use development project's consisting of five (5) or more dwelling units, not including units granted as a density bonus. The definitions found in State Density Bonus Law shall apply to the terms contained in this Chapter.

#### **17.100.030 – General Procedures.**

The rules and procedures for applications, records, investigations applicable to applications for a Density Bonus, Incentives, Concessions or Waivers shall be as follows:

- A. **Application.** Applications for a Density Bonus (with or without concessions or waivers) shall require the approval of an Administrative Permit.

- B. **Affordability Agreement.** Before the issuance of a building permit for any dwelling unit in a development for which density bonus units have been awarded or incentives or concessions have been received, the applicant shall enter into a written agreement with the City to guarantee the continued affordability of all lower income and restricted occupancy density bonus units as required by California Government Code Section 65915. The agreement shall specify the number and type of reserved units and the length of time for which they must be reserved. The agreement shall run with the land, be binding upon successor(s)-in-interest, be recorded in the County Recorder's Office, and be approved as to form by the City Attorney.

**17.100.040 – Minimum Qualifications for a Density Bonus.**

The City shall grant one (1) density bonus, the amount of which shall be as specified in Section 17.100.050 of this Chapter, and, if requested by the applicant and consistent with the applicable requirements of this Chapter, incentives or concessions, as described in Section 17.100.070, waivers or reductions of development standards, as described Section 17.100.080 of this Chapter, and parking ratios, as described in Section 17.100.090 of this Chapter, when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this Chapter, that will contain at least any one (1) of the following:

- A. **Very Low Income:** Five (5) percent of the total units of a housing development for rental or for-sale projects for very low income households, as defined in Section 50105 of the California Health and Safety Code.
- B. **Lower Income:** Ten (10) percent of the total units of a housing development for rental or for-sale projects for lower income households, as defined in Section 500079.5 of the California Health and Safety Code.
- C. **Seniors:** A senior citizen housing development with 35 or more units, as defined in Sections 51.3 and 51.12 of the Civil Code, or a mobilehome park, that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.
- D. **Moderate Income:** Ten (10) percent of the total dwelling units in a common interest development, as defined in Section 4100 of the Civil Code, for persons and families of moderate income, as defined in Section 50093 of the California Health and Safety Code, provided that all units in the development are offered to the public for purchase.
- E. **Transitional Foster Youth/Veterans/Homeless:** Ten (10) percent of the total units of a housing development for transitional foster youth, as defined in Section 66025.9 of the Education Code, disabled veterans, as defined in Section 18541, or homeless persons, as defined in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.). The units described in this Subsection shall be subject to a recorded affordability restriction of 55 years and shall be provided at the same affordability level as very low income units.

- F. **Student Housing:** 20 percent of the total units for lower income students in a student housing development that meets the following requirements:
1. All units in the student housing development will be used exclusively for undergraduate, graduate, or professional students enrolled full time at an institution of higher education accredited by the Western Association of Schools and Colleges or the Accrediting Commission for Community and Junior Colleges. In order to be eligible under this Subsection, the developer shall, as a condition of receiving a certificate of occupancy, provide evidence to the City that the developer has entered into an operating agreement or master lease with one or more institutions of higher education for the institution or institutions to occupy all units of the student housing development with students from that institution or institutions. An operating agreement or master lease entered into pursuant to this Subsection is not violated or breached if, in any subsequent year, there are not sufficient students enrolled in an institution of higher education to fill all units in the student housing development.
  2. The applicable 20 percent units will be used for lower income students. For purposes of this clause, “lower income students” means students who have a household income and asset level that does not exceed the level for Cal Grant A or Cal Grant B award recipients as set forth in Paragraph (1) of Subdivision (k) of Section 69432.7 of the Education Code. The eligibility of a student under this clause shall be verified by an affidavit, award letter, or letter of eligibility provided by the institution of higher education that the student is enrolled in, as described in this Subsection, or by the California Student Aid Commission that the student receives or is eligible for financial aid, including an institutional grant or fee waiver, from the college or university, the California Student Aid Commission, or the federal government shall be sufficient to satisfy this Subsection.
  3. The rent provided in the applicable units of the development for lower income students shall be calculated at 30 percent of 65 percent of the area median income for a single-room occupancy unit type.
  4. The development will provide priority for the applicable affordable units for very low or lower income students experiencing homelessness. A homeless service provider, as defined in Paragraph (3) of Subdivision (d) of Section 103577 of the California Health and Safety Code, or institution of higher education that has knowledge of a person’s homeless status may verify a person’s status as homeless for purposes of this Subsection.
  5. For purposes of calculating a density bonus granted pursuant to this Subsection, the term “unit” as used in this Section means one (1) rental bed and its pro rata share of associated common area facilities. The units described in this Subsection shall be subject to a recorded affordability restriction of 55 years.
- G. **Affordable Housing:** A minimum 80 percent of the total units, exclusive of a manager’s unit or units, are for very low or lower income households, as defined by Section 50079.5 of the California Health and Safety Code, and a maximum 20 percent of the total units in the development are for moderate income households, as defined in Section 50053 of the California Health and Safety Code.

**17.100.050 – Density Bonus Rules and Calculations.**

- A. For purposes of calculating the amount of the density bonus pursuant to this Section, an applicant who requests a density bonus shall elect whether the bonus shall be awarded on the basis of Section 17.100.040 of this Chapter.
- B. For purposes of this Chapter, “base density” is the maximum allowable gross residential density permitted under this Title and the Land Use Element of the General Plan as of the date of application submittal by the applicant to the City.
- C. For the purposes of this Chapter, “density bonus” means a density increase over the base density, or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density. The amount of density increase 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 Section 17.100.040 of this Chapter.
- D. For purposes of this Chapter, “total units,” “total dwelling units,” or “total rental beds” does not include units added by a density bonus awarded pursuant to this Chapter or any local law granting a greater density bonus.
- E. All density calculations resulting in fractional units shall be rounded up to the next whole number.
- F. The granting of a density bonus shall not require, or be interpreted, in and of itself, to require a general plan amendment, zoning change, or other discretionary approval.
- G. For housing developments that contain an affordable housing set aside for very low income households meeting the criteria of Subsection 17.100.040(A) of this Chapter, the density bonus shall be calculated as shown in Table 17.100-1.
- H. For housing developments that contain an affordable housing set aside for lower income households meeting the criteria of Subsection 17.100.040(B) of this Chapter, the density bonus shall be calculated as shown in Table 17.100-2.
- I. For senior housing developments or mobile park for senior citizens meeting the criteria of Subsection 17.100.040(C) of this Chapter, the density bonus shall be 20 percent of the number of senior housing units.
- J. For housing developments that contain an affordable housing set aside for moderate income households meeting the criteria of Subsection 17.100.040(D) of this Chapter, the density bonus shall be calculated as shown in Table 17.100-3.
- K. For housing developments that contain units set aside for transitional foster youth, disabled veterans, or homeless persons meeting the criteria of Subsection 17.100.040(E) of this Chapter, the density bonus shall be 20 percent of the number of the type of housing.
- L. For student housing developments meeting the criteria of Subsection 17.100.040(F) of this Chapter, the density bonus shall be 35 percent of the student housing units.

Table 17.100-1 – Very Low Income Units (50% Area Median Income)		Table 17.100-2 – Lower Income Units (80% Area Median Income)	
% Set-Aside Very Low Income Units	% Density Bonus	% Set-Aside Lower Income Units	% Density Bonus
5	20	10	20
6	22.5	11	21.5
7	25	12	23
8	27.5	13	24.5
9	30	14	26
10	32.5	15	27.5
11	35	16	29
12	38.75	17	30.5
13	42.5	18	32
14	46.25	19	33.5
15	50	20	35
100	80	21	38.75
		22	42.5
		23	46.25
		24	50
		100	80

- M. For housing developments that contain all units set aside for affordable housing meeting the criteria of Subsection 17.100.040(G) of this Chapter, the following shall apply:
1. Except as otherwise provided in Subsection (M)(2) below, the density bonus shall be 80 percent of the number of units for very low or lower income households.
  2. If the housing development is located within one-half (½) mile of a Major Transit Stop (MTS)<sup>1</sup>, the City shall not impose any maximum controls on density.

**17.100.060 – Maps; Donations of Land.**

- A. When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to the City in accordance with the subdivision, the applicant shall be entitled to a 15 percent increase above the otherwise maximum allowable residential density for the entire development as shown in Table 17.100-4.

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<sup>1</sup> As defined in Subdivision (b) of Section 21155 of the Public Resources Code.

Table 17.100-3 – Moderate Income Units (120% Area Median Income)				
% Set-Aside Moderate Income Units	% Density Bonus		% Set-Aside Moderate Income Units	% Density Bonus
10	5		28	23
11	6		29	24
12	7		30	25
13	8		31	26
14	9		32	27
15	10		33	28
16	11		34	29
17	12		35	30
18	13		36	31
19	14		37	32
20	15		38	33
21	16		39	34
22	17		40	35
23	18		41	38.75
24	19		42	42.5
25	20		43	46.25
26	21		44	50
27	22			

Table 17.100-4 – Maps and Donations of Land				
% Very Low Income Units	% Density Bonus		% Lower Income Units	% Density Bonus
10	15		21	26
11	16		22	27
12	17		23	28
13	18		24	29
14	19		25	30
15	20		26	31
16	21		27	32
17	22		28	33
18	23		29	34
19	24		30	35
20	25		--	--

- B. Any increase pursuant to this Section shall be in addition to any increase in density mandated by Section 17.100.040 of this Chapter, up to a maximum combined mandated density increase of 35 percent if an applicant seeks an increase pursuant to both this Section and Section 17.100.040 of this Chapter. 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 acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned with appropriate development standards for development at the density described in Paragraph (3) of Subdivision (c) of Section 65583.2, 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 local government may subject the proposed development to subsequent design review to the extent authorized by Subdivision (i) of Section 65583.2 if the design is not reviewed by the City before 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 Paragraphs (1) and (2) of Subdivision (c) of Section 65583.2, 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 local agency agrees, within one-quarter ( $\frac{1}{4}$ ) mile of the boundary of the proposed development; and
  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.

**17.100.070 – Concessions and Incentives.**

- A. For purposes of this Chapter, a concession or incentive means any of the following:
1. A revision in the development standards of this Title that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the California Health and Safety Code. This includes, but is not limited to, a reduction in setbacks and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable and actual cost reductions, to provide for affordable housing costs, as defined in Section 50052.5 of the California Health and Safety Code, or for rents for the targeted units to be set as specified in Sections 17.100.100 and 17.100.110 of this Chapter;
  2. Approval of mixed-use development 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; or
  3. Other regulatory incentives or concessions proposed by the developer or the City that result in identifiable and actual cost reductions to provide for affordable housing costs, as defined in Section 50052.5 of the California Health and Safety Code, or for rents for the targeted units to be set as specified in Sections 17.100.100 and 17.100.110 of this Chapter.
- B. An applicant for a density bonus, pursuant to Section 17.100.040 of this Chapter, may submit to the City a proposal for the specific incentives or concessions that the applicant requests pursuant to this Section, and may request a meeting with the City. The City shall grant the concession or incentive 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 does not result in identifiable and actual cost reductions, consistent with Subsection (A) on the previous page, to provide for affordable housing costs, as defined in Section 50052.5 of the California Health and Safety Code, or for rents for the targeted units to be set as specified in Sections 17.100.100 and 17.100.110 of this Chapter;
  2. The concession or incentive would have a specific, adverse impact, as defined in Paragraph (2) of Subdivision (d) of Section 65589.5 of the California Health and Safety Code 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 lower income and moderate income households; or
  3. The concession or incentive would be contrary to state or federal law.
- C. The applicant of an eligible project shall receive the number of incentives or concessions as shown in Table 17.100-5:



Table 17.100-5 – Number of Incentives or Concessions <sup>2</sup>			
Number of Incentives/ Concessions	Very Low Income Percentage	Lower Income Percentage	Moderate Income Percentage
1	5%	10%	10%
2	10%	17%	20%
3	15%	24%	30%
4	Minimum 80% Very-Low and/or Lower and Maximum 20% moderate		

- D. The applicant may initiate judicial proceedings if the City refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of the State Density Bonus Law, the court shall award the plaintiff reasonable attorney’s fees and costs of suit. Nothing in this Section shall be interpreted to require the City to grant an incentive or concession that has a specific, adverse impact, as defined in Paragraph (2) of Subdivision (d) of California Government Code Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require the City to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.
- E. This Section shall 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.
- F. The City bears the burden of proof for the denial of a requested concession or incentive.

**17.100.080 – Waivers or Reductions of Development Standards.**

- A. In no case may the City apply any development standard that will have the effect of physically precluding a development from meeting the criteria of Section 17.100.040 of this Chapter at the densities or with the concessions or incentives permitted by this Chapter. Subject to Subdivision (D) below, an applicant may submit 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 17.100.040 of this Chapter at the densities or with the concessions or incentives permitted under this Chapter and may request a meeting with the City.
- B. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of the State Density Bonus Law, the court shall award the plaintiff reasonable attorney’s fees and costs of suit. Nothing in this subdivision shall be interpreted to require a City to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in Paragraph (2) of Subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method

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<sup>2</sup> This is based on the percentage of units designated for very-low, lower and moderate income households.

to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this Section shall be interpreted to require the City to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

- C. A proposal for the waiver or reduction of development standards pursuant to this Section shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to Section 17.100.070 of this Chapter.
- D. A housing development located within one-half (½) mile of an MTS that receives a waiver from any maximum controls on density pursuant to Subsection 17.100.050(M)(2) of this Chapter shall not be eligible for, and shall not receive, a waiver or reduction of development standards pursuant to this subdivision, other than as expressly provided in Subsections 17.100.050(M)(2) and 17.100.070(C) of this Chapter.

**17.100.090 – Parking Reductions.**

- A. Upon the request of the developer, the City shall not require a vehicular parking ratio, inclusive of handicapped and guest parking, greater than as shown in Table 17.100-6:

Table 17.100-6 – Parking Reductions			
	Level 1 Affordable Project	Level 2 Affordable Project	Level 3 Affordable Project
Minimum affordability levels	Comply with Section 17.100.040 of this Chapter	Rental or for sale projects with at least 20% lower income units or 11% very low income units	Rental projects with 100% lower or very low income units
Required transit	None	Unobstructed access within 0.5 miles of an MTS	Unobstructed access within 0.5 miles of an MTS
Required onsite parking:			
Studio or 1 bedroom	1.0 spaces per unit	0.5 spaces per unit	None
2 or 3 bedrooms	1.5 Spaces per unit		
4 or more bedrooms	2.5 spaces per unit		

1. The affordability levels shall be as provided in Section 50052.5 of the California Health and Safety Code.
2. The affordability levels shall be exclusive of the manager’s unit(s).
3. For purposes of this Subsection, a project shall have unobstructed access to a major transit stop if a resident is able to access the MTS without encountering natural or

constructed impediments. Per Subdivision (p)(2)(B) of California Government Code Section 65915, "Natural or constructed impediments" includes, but is not limited to, freeways, rivers, mountains, and bodies of water, but does not include residential structures, shopping centers, parking lots, or rails used for transit.

- B. Notwithstanding Subsection (A) above and on the previous page, if a development consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the California Health and Safety Code, then, upon the request of the developer, the City shall not impose vehicular parking standards if the development meets the following criteria:
  - 1. The development is a for-rent housing development for individuals who are 62 years of age or older that complies with Sections 51.2 and 51.3 of the Civil Code, and
  - 2. The development has either paratransit service or unobstructed access, within one-half (½) mile, to fixed bus route service that operates at least eight (8) times per day.
- C. Notwithstanding Subsection (A) above and on the previous pages and Subsection (G) on the following page, if a development consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the California Health and Safety Code, and the development is either a special needs housing development, as defined in Section 51312 of the California Health and Safety Code, or a supportive housing development, as defined in Section 50675.14 of the California Health and Safety Code, then, upon the request of the developer, the City shall not impose any minimum vehicular parking requirement. A development that is a special needs housing development shall have either paratransit service or unobstructed access, within one-half (½) mile, to fixed bus route service that operates at least eight (8) times per day.
- D. If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this Section, a development may provide onsite parking through tandem parking or uncovered parking, but not through on street parking.
- E. This Section shall apply to a development that meets the requirements of Sections 17.100.040, 17.100.100 and 17.100.110 of this Chapter, but only at the request of the applicant. An applicant may request parking incentives or concessions beyond those provided in this subdivision pursuant to Section 17.100.070 of this Chapter.
- F. This Section does not preclude the City from reducing or eliminating a parking requirement for development projects of any type in any location.
- G. Notwithstanding Subsection (A) and Subsection (B) on the previous pages, if the City or an independent consultant has conducted an area wide or jurisdiction wide parking study in the last seven (7) years, then the City may impose a higher vehicular parking ratio not to exceed the ratio described in Table 17.100-6, based upon substantial evidence found in the parking study, that includes, but is not limited to, an analysis of parking availability, differing levels of transit access, walkability access to transit services, the potential for shared parking, the effect of parking requirements on the cost of market-rate and subsidized developments, and

the lower rates of car ownership for lower income and very low income individuals, including seniors and special needs individuals. The City shall pay the costs of any new study. The City shall make findings, based on a parking study completed in conformity with this Subsection, supporting the need for the higher parking ratio.

- H. A request pursuant to this Section shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to Section 17.100.070 this Chapter.

**17.100.100 – Continued Affordability; Setting of Affordable Rent.**

An applicant shall agree to, and the City shall ensure, the continued affordability of all very low and lower income rental units that qualified the applicant for the award of the density bonus for at least 55 years from the issuance of the final certificate of occupancy by the Building and Safety Division or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

- A. Except as set forth in Subsection (B) below, rents for the lower income density bonus units shall be set at an affordable rent, as defined in Section 50053 of the California Health and Safety Code.
- B. For housing developments meeting the criteria of Subsection 17.100.040(G) of this Chapter, rents for all units in the development, including both base density and density bonus units, shall be as follows:
  - 1. The rent for at least 20 percent of the units in the development shall be set at an affordable rent, as defined in Section 50053 of the California Health and Safety Code.
  - 2. The rent for the remaining units shall be set at an amount consistent with the maximum rent levels for a housing development that receives an allocation of state or federal lower income housing tax credits from the California Tax Credit Allocation Committee.

**17.100.110 – Initial Occupancy of For-Sale Units; Equity Sharing.**

- A. The applicant shall agree to, and the City shall ensure that, the initial occupant of all for-sale units that qualified the applicant for the award of the density bonus are persons and families of very low, lower, or moderate income, as required, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the California Health and Safety Code.
- B. The City shall enforce an equity sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following apply to the equity sharing agreement:
  - 1. 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 local government shall recapture any initial subsidy, as defined in Subsection (B)(2) below, and its proportionate share of appreciation, as defined in Subsection (B)(3) below, which amount shall be used within five (5) years for any of the purposes described in

subdivision (e) of Section 33334.2 of the California Health and Safety Code that promote home ownership.

2. For purposes of Sections 17.100.100 and 17.100.110 of this Chapter, 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.
3. For purposes of Sections 17.100.100 and 17.100.110 of this Chapter, 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.

**17.100.120 – Replacement of Pre-Existing Affordable Units.**

- A. An applicant shall be ineligible for a density bonus or any other incentives or concessions under this Chapter if the housing development is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five (5) 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 lower or very low income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low income households, unless the proposed housing development replaces those units, and either of the following applies:
  1. The proposed housing development, inclusive of the units replaced pursuant to this Section, contains affordable units at the percentages set forth in Section 17.100.040 of this Chapter; or
  2. Each unit in the development, exclusive of the manager's unit or units, is affordable to and occupied by, either a lower or very low income household.
- B. For the purposes of this Section, "replace" shall mean any of the following:
  1. If dwelling units described in Subsection (A) above are occupied on the date of application, the proposed housing development shall provide at least the same number of units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy.
  2. For unoccupied dwelling units described in Subsection (A) above in a development with occupied units on the date of application, the proposed housing development shall provide units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as the last household in occupancy.
  3. If dwelling units described in Subsection (A) above have been vacated or demolished within the five (5) year period preceding on the date of application, the proposed housing development shall provide at least the same number of units of equivalent size as existed

at the highpoint of those units in the five (5) year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known.

- C. When income categories of current or former occupants described in Subsection (B) above are not known, the income level of replacement units shall be determined as follows:
  - 1. For occupied units, if the income category of the household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter household within the City, as determined by the most recent available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database.
  - 2. For unoccupied units on a property with occupied units, if the income category of the last household in occupancy is no known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the City, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database.
  - 3. For units that have been vacated or demolished within the past five (5) years, if the incomes of the persons and families in occupancy at the highpoint as set forth in Subsection (B)(3) on the previous page is not known, it shall be rebuttably presumed that lower income and very low income renter households occupied these units in the same proportion of lower-income and very low income renter households to all renter households within the City, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database.
- D. All replacement calculations resulting in fractional units shall be rounded up to the next whole number.
- E. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to Section 17.100.110 of this Chapter.
- F. Notwithstanding Subsection (B) on the previous page, any dwelling unit described in Subsection (A) on the previous page, that is or was, within the five (5) year period preceding the application, subject to a form of rent or price control through the City's valid exercise of its police power and that is or was occupied by persons or families above lower income, the City may, at its discretion, do either of the following:
  - 1. Require that the replacement units be made available at affordable rent or affordable housing cost to, and occupied by, lower income persons or families. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability

restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to Subsection (F)(2) below.

2. Require that the units be replaced in compliance with any applicable City rent or price control ordinance, provided that each unit described in Subsection (A) on the previous page is replaced. Unless otherwise required by any City rent or price control ordinance, these units shall not be subject to a recorded affordability restriction.
- G. For purposes of this Section, “equivalent size” means that the replacement units contain at least the same total number of bedrooms as the units being replaced.

**17.100.130 – Child Care Facilities.**

- A. When an applicant proposes to construct a housing development that conforms to the requirements of Section 17.100.040 of this Chapter and includes a childcare facility that will be located on the premises of, as part of, or adjacent to, the project, and conforms to the requirements of California Government Code Section 65917.5, then, 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 childcare facility.
  2. An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the childcare facility.
- B. The City shall require, as a condition of approving the housing development, that the following occur:
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 pursuant to Sections 17.100.100 and 17.100.110 of this Chapter.
  2. Of the children who attend the childcare facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to Section 17.100.040 of this Chapter.
- C. Notwithstanding any requirement of this Section, the City shall not be required to provide a density bonus or concession for a childcare facility if it finds, based upon substantial evidence, that the community has adequate childcare facilities.

**17.100.140 – Time Periods.**

- A. The Density Bonus with or without Concessions or Waivers shall be valid for 12 months after the date of approval by the Community Development Director.
- B. If the applicant has proceeded in good faith toward the implementation of the Density Bonus with or without Concessions or Waivers, then the applicant may request a 12-month extension of the permit. The applicant shall submit the request prior to the expiration date.

The extension shall be considered by the Community Development Director within 30 days of the request. No additional extensions shall be permitted.

**17.100.150 – Appeals.**

Community Development Director decisions regarding this Chapter are appealable to the Planning Commission and ultimately, the City Council. Refer to Section 17.10.100 (General Regulations – Ability to Appeal) of this Title for additional information.



## **CHAPTER 17.102 – INCLUSIONARY HOUSING**

***Reserved.***

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