From: Jennifer Tanaka <jletanaka@gmail.com>
Sent: Tuesday, May 16, 2023 11:23 AM
To: CITY COUNCIL; PC Public Comments
Cc: CITY CLERK; Marc CMABS; Andrew Personal
Subject: City Council Letter - Inclusionary Housing Study Session (May 16 2023)
Attachments: City Council Letter - Inclusionary Housing Study Session (May 16 2023).pdf

Members of the City Council and Planning Commission:

Please find attached a letter from me, my husband Andrew Nowobilski, and Marc Vukcevich regarding the inclusionary housing ordinance study session this evening. Marc and I look forward to sharing our public comments this evening as well.

Best,
Jenn Tanaka

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May 16, 2023
Via Email

Costa Mesa City Council
Planning Commission of the City of Costa Mesa
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Dear Members of the City Council and Planning Commission:

We are residents of Costa Mesa with backgrounds in law, economics and state and local policy. While we have no experience or association with affordable or for-profit housing development, we are interested residents who have been following the issues of housing and affordability closely. We write to share our views on the potential adoption of an inclusionary housing ordinance in Costa Mesa.

What problem are we trying to solve?

The housing affordability crisis in Costa Mesa is dire. Aside from the human impact of market rents increasing over 28.9% in the last five years[1], we are seeing serious economic impacts as well. Unemployment rates are extremely low while rental vacancy rates are also low, meaning that the labor shortages being experienced by Costa Mesa employers are likely being exacerbated by the lack of affordable housing.

Therefore, we believe the goals of our housing policy should be **(1) slowing the pace of rent inflation,** and **(2) preserving and expanding the existing stock of housing affordable to very low, low and moderate income residents.**

Increasing the overall supply of housing, in particular market-rate housing, is the best path to achieve both goals. The Legislative Analyst's Office of the California Legislature (LAO) has noted that "existing affordable housing programs assist only a small proportion of low-income Californians. Most low-income Californians receive little to no assistance." Therefore:

> *Encouraging additional private housing construction can help the many low-income Californians who do not receive assistance. Considerable evidence suggests that construction of market-rate housing reduces housing costs for low-income households and, consequently, helps to mitigate displacement in many cases. Bringing about more private home building, however, would be no easy task, requiring state and local policymakers to confront very challenging issues and taking many years to come to fruition. Despite these difficulties, these efforts could provide significant widespread benefits: lower housing costs for millions of Californians.*[2]

In other words, even if thousands of deed-restricted affordable units are built in Costa Mesa in the next decade, the vast majority of low-income residents, not to mention moderate- and above moderate-income

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[1] https://www.zumper.com/rent-research/costa-mesa-ca, comparing May 2018 to May 2023 average rents for studio apartments.
[2] https://lao.ca.gov/Reports/2016/3345/Low-Income-Housing-020816.pdf

residents, will still live in market-rate housing. The report (the KMA Report) by Keyser Marston Associates (KMA) further confirms this: "it is important to recognize that the requirements imposed by an Inclusionary Housing Program can only be expected to fulfill **a small portion** of the unmet need for affordable housing in Costa Mesa" (emphasis ours).

Given this reality, we feel that any proposed inclusionary housing ordinance (IHO) should be first judged by its impact on the production and maintenance of **market-rate housing**, and only secondarily on the number of deeded affordable units produced or in lieu fees generated.

Can an inclusionary housing ordinance help us with our housing problems?

Frankly, we are skeptical that IHO is the best policy to address our housing needs. First, there is some evidence that IHOs may suppress the overall production of housing and lead to higher market rate rents.[3] And while the comparative picture is muddied by the highly variable program structures and markets present in each city, we are aware of *no* scholarship that suggests IHOs stimulate *overall* housing production.

Yet according to the Agenda Report, over 170 cities in California have adopted IHOs. We wonder: how have these cities fared in terms of housing affordability? Are these cities where people of moderate or even above-moderate incomes can comfortably afford a home? No. Among such cities are some of the highest cost-of-living jurisdictions in the State, with some of the lowest overall rates of housing production. They include cities like Huntington Beach and Redondo Beach, both municipalities proudly on the record as resisting infill development. **Therefore, the burden of proof is on you and on Staff show that an IHO is a pro-housing policy.** It is not "one tool among many" to improve our affordable housing stock; it is an approach with a mixed track record at best, one that has been repeatedly abused by bad actors, and that, even at peak performance, will only address a fraction of our affordable housing needs.

However, if we must move forward with an IHO, we urge the City Council to keep three ideas top of mind:

1. **We must restart housing production in the City.**

Measure Y has had a devastating effect on the production of housing in Costa Mesa. Now, thanks to the passage of Measure K, the City has an opportunity to restart housing development. But we must do so understanding that much has changed since Measure Y's passage in 2016: the area has enjoyed robust job growth as well as housing cost inflation; construction material and labor costs have substantially increased; and, most recently, the cost of capital has risen significantly due to rising interest rates.

If an IHO is enacted alongside the zoning reforms permitted by Measure K, we will not have the opportunity to establish a development baseline of housing production before the IHO is imposed. ***The truth is: even KMA can't know what our housing production market can bear, because we effectively have no housing production market.*** Therefore, it is imperative that the thresholds within the IHO be set ***extremely conservatively***. The cost for setting those thresholds too aggressively is simply too high: if we find ourselves three, five or ten years from now with minimal housing production, we

[3] Some studies have found that cities that adopted IHOs experienced higher home prices and fewer homes overall compared to cities that did not adopt IHOs (see, for example, https://www.sjsu.edu/economics/docs/econ-ws/BMR.Mandates.2012.01.pdf). However, this should be compared to other studies that have found IHOs have a negligible impact on development (see, for example: https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-9906.2010.00495.x)

will have lost the opportunity to build homes ***and*** to gather vital information about the housing production market in Costa Mesa. We ***must*** get robust development started first, and then (and only then) adjust our regulations to achieve our secondary and tertiary policy goals, such as producing deeded affordable housing and funding our housing fund.

2. **An IHO is a very expensive way to generate affordable housing, and the high costs will effectively function as a tax on Costa Mesa residents.**

Proponents of IHOs will claim that the costs associated with IHO compliance can be extracted from developer profits, leading to net gains for an important City policy with no impact on current or future residents. However, in essence, IHOs are taxes on development. And taxes on development are ultimately borne by *residents, not developers.* This is because developers, for both financial and practical reasons, will seek to protect their profit margins by passing through taxes on development two ways:

1. They are passed through to landowners in the form of lower prices they are willing to pay for developable land.
2. They are passed through to the market rate tenants of the new developments, assuming the market can bear it, by raising rents on those units.

KMA implicitly agrees that an IHO is likely to act as a tax, and a hefty one at that: it estimates it will equate to a ~13% tax on the sale of developable properties[4], and an additional ~5-6% tax on future market-rate renters in such developments[5].

And imposing these taxes is not without substantial risk: if developers cannot make projects pencil – meaning they cannot preserve the profit margins required to move forward with financing, entitlement and construction due to the risks involved and the expect return on investment owed to investors while shouldering the costs of complying with an IHO – **they will walk away.** Investors can always back other ventures and developers can always build elsewhere. Housing production will be suppressed and rents citywide will increase through supply and demand. Then our residents will be taxed through housing cost inflation, with nothing to show for it.

3. **The KMA Report is fundamentally incomplete and inadequate as it does not address all of the material considerations in a potential IHO. Hard questions should be asked of KMA, whom we hired at taxpayer's expense.**

While the KMA Report is helpful, it fails to address key considerations that could determine whether the IHO is a success or a failure. We urge the City Council to instruct KMA to address the following questions:

- *What kind of projects fall under the IHO?* Would the IHO apply to *all* projects, or just a subset? There are number of subfactors to consider:

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[4] See the line item labeled "property acquisition cost reduction" in Summary Tables 1 and 2 appended to the KMA Report. The KMA Report does not expand on what this line item represents, but we assume this cost reduction accounts for lower price developers will be willing to pay property owners in light of the IHO.

[5] See the line item labeled "market price increase to offset impact" in Summary Tables 1 and 2 appended to the KMA Report. The KMA Report does not expand on what this line item represents, but we assume this offset accounts for higher prices the developers will attempt to charge to market-rate renters and purchasers in the same development to account for the costs imposed by the IHO.

- *Rental or Purchase?* The KMA Report lays out pro forma models for an IHO that applies to both rental and for purchase development projects. However, it doesn't address whether imposing the IHO on either market is a good idea. We have serious reservations about applying IHO-logic to for-purchase residential developments. In particular, we are concerned that an IHO in the for-purchase context will be prohibitively expensive to administer, will undermine the communal benefits of ownership by capping returns, and suppress the production of for-purchase housing. We would like to see KMA address this question directly.

- *What size of development?* **First off, we strongly disagree with the Agenda Report's recommendation that the minimum unit size for IHO applicability be set at 10 units.** In the areas subject to Measure K, such a low threshold means that effectively every development will be subject to the IHO, without knowing in advance the mix of incentives and zoning increases needed to encourage development in these areas. Citywide, 10-unit residential developments were unaffected by Measure Y. So if we already had the right set of policies in place to develop these smaller projects, **where are they?** Our development has been tepid at ALL levels, not just within developments that fell within Measure Y. Adding the burden of an IHO on these medium-sized developments without additional incentives is not a recipe for success. ***At a minimum, we would think the threshold for the IHO <u>without additional incentives</u> should be 40 units – the same threshold as Measure Y.*** If KMA believes a threshold below 40 units is supportable, we would like to understand its reasoning given the last seven years of development experience in Costa Mesa.

- *Where in the City should it apply?* While the KMA Report and the Agenda Report assume the IHO will apply citywide, this isn't a decision the City Council should make without directly addressing whether that's appropriate. KMA suggests that imposing the IHO now is a good idea because the significant amount of upzoning contemplated by Measure K will increase property values and help to offset the "property acquisition cost reduction" likely to be imposed on property owners under the IHO. ***But that logic will not apply to the vast majority of residentially-zoned land that is not subject to Measure K.*** Property *outside* the Measure K areas will not be upzoned, and therefore the IHO will represent a straight reduction in value without countervailing compensation. To avoid this, we would imagine limiting the IHO to the Measure K sites would be appropriate. It would be helpful for KMA to answer whether applying the IHO citywide would implicate the "confiscatory" and "fair and reasonable return on investment" considerations for parcels that are not subject to offsetting upzoning.[6]

- *What about using incentives to go* ***above*** *the minimum affordability thresholds?* While KMA does briefly discuss the applicability of the State density bonus law, it does not address what the *City*

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[6] We note that there is some evidence that estimating the value of upzoning, and therefore the amount of "offset" the market can bear when an upzone is paired with the imposition of a development tax like an IHO, is very difficult. Evidence from Seattle, where upzoning on certain parcels was conditioned on compliance with a mandatory affordable housing ordinance, suggests that developers avoided these parcels altogether and chose instead to develop parcels that was not subject to the ordinance (https://furmancenter.org/files/publications/Upzoning_with_Strings_Attached_508.pdf). Additionally, we note that the Builder's Remedy effectively acts as an upzoning provision so long as affordability requirements are met. As today there have only been a handful of Builder's Remedy projects proposed throughout the State, and none in Costa Mesa.

could do to create a framework for developers to add affordable units above the minimum thresholds set by the City in exchange for concessions. For example, SB 35, the State housing streamlining bill, has been very successful at stimulating housing production by requiring jurisdictions to create a quick approval process for qualifying projects. There is nothing stopping the City from creating its own framework where projects that produce more affordable units or deeper affordability than required get an expedited review with set approval deadlines, such as 60 days or 90 days. It would be useful to get KMA's feedback on alternative pathways the City could offer other than just the State density bonus framework.

- *Where should we set the in-lieu fees?* The KMA Report addresses the level at which in-lieu fees are economically supportable, but not where they should be set. In the Agenda Report, Staff requests that the City Council consider setting such fees "on a sliding scale" to "incentivize certain housing types and characteristics". With all due respect to the Staff, *we are in no position to know what fees will incentivize what kind of development, because we* <u>*have no meaningful development*</u>. City Council should reject this kind of micromanagement and set a flat, easy-to-understand fee until we have a meaningful development track record. To help us do this, KMA should provide the City Council with comparative data from our neighboring OC cities that have IHOs regarding the amount of in-lieu fees generated by each jurisdiction.

- *What should we do with the in-lieu fees generated by the IHO program?* The Agenda Report lays out a number of potential options for our proposed "housing fund", but the KMA Report contains no analysis of such options. It would be useful for KMA to opine on each option's relative economic impact. For example: how much will administering the IHO cost, and how much money will the IHO program generate at different in-lieu fee levels? What is the net economic effect of providing long-term rental assistance out of City funds, rather than out of State and Federal grants? And are there other potential uses that might be more complimentary to the IHO, such as relocation payments for renters displaced by impending development?

- *What will this really cost the City?* The KMA Report doesn't address administrative costs of the IHO program, though the Agenda Report acknowledges these costs could be substantial and will represent a long term liability for the City. If possible, it would be useful for KMA to provide the City Council with estimates of the ongoing maintenance and operating costs associated with IHOs in other jurisdictions.

Thank you for giving this important issue the time and attention it deserves. This policy truly will guide development in the City for *decades* to come, so we must get it right.

Best,

Jenn Tanaka
Andrew Nowobilski
Marc Vukcevich

From: cmcdonald.home@gmail.com
Sent: Monday, May 15, 2023 9:20 PM
To: STEPHENS, JOHN; HARLAN, JEFFREY; REYNOLDS, ARLIS; MARR, ANDREA; CHAVEZ, MANUEL; GAMEROS, LOREN; HARPER, DON; TOLER, RUSSELL; ZICH, JON; VIVAR, JIMMY; ROJAS, JOHNNY; VALLARTA, ANGELY; ERETH, ADAM; TABER, TIM
Cc: GREEN, BRENDA; CITY CLERK
Subject: Joint Study Session - 05/16/23 - Inclusionary Housing Ordinance
Attachments: California Density Bonus Law_2023.pdf

Honorable Mayor, City Council Members and Planning Commissioners:

I'm glad that the City is addressing the adoption of an Inclusionary Housing Ordinance (IHO). I suggest that you review other cities' ordinances. If you haven't been provided with copies of the ordinances I gave to Mayor Stephens a few weeks back at a City Council meeting, let me know and I'll send you links.

Newport Beach is in the process of adopting an IHO. Here is a link to the financial evaluation that contains information you might find helpful:
https://www.newportbeachca.gov/home/showpublisheddocument/71330/637806982305000000

I want to point out what I believe is an error or misunderstanding by Staff. The City's draft Housing Element has not been deemed compliant by the State. If you look at Attachment 1 to the Agenda Report, the letter dated May 9, 2023, from the State to the City Manager, it states in the third paragraph ". . . the housing element is out of compliance and will remain out of compliance until the rezoning has been completed." The letter continues to say that the City must implement all programs in the draft Housing Element, including Program 2A, the adoption of an IHO. There has been no change in Costa Mesa's status on the HCD's website as of this afternoon.

While the Housing Element and the Agenda report states the City will consider an IHO, the State requested that the City change the goal of Program 2A to adopt an IHO, with a deadline of December 2023. Further, the first paragraph on page 2 of the State's letter shows its desire that the City implement all the programs in the draft Housing Element. Failure to achieve housing element compliance will result in penalties, as pointed out in the penultimate paragraph of page 2 of the State's letter.

On Page 3 of the Agenda Report (page 7 of the Agenda Packet), in "Housing Cost Burdens/Overpayment," the third paragraph states the average rent in Costa Mesa during 2020. Since this was the first year of the pandemic and there was a moratorium on evictions, it would be helpful if a more recent year of rental pricing was used for this statistic. In addition, the source of data should be provided.

In the "Low Vacancy Rates" section, there isn't any consideration given to the fact that Costa Mesa is a built-out city and the scarcity of unimproved parcels has increased the cost of land, thereby contributing to the lack of affordable housing. As noted in the "Stakeholders Feedback" section, developers have cited the cost of land as a factor in the difficulty of producing affordable units. While flexibility in modifying the ordinance is desired, developers like to negotiate anything that will get a project to "pencil out" better, so don't be surprised if they request modifications as soon as an IHO is adopted.

The "Inclusionary Housing Programs in Orange County Cities" section of Agenda Report (page 7 of the Agenda Report, page 11 of the Agenda Packet) is limited to Orange County cities, but there are many other cities with IHOs in Southern California that may be closer to Costa Mesa in demographics. Please see the chart in Attachment 1, Appendix B to the Newport Beach analysis (link above) to compare those jurisdictions.

There are limited options to consider when drafting an IHO. I spoke about them in a public comment a few months back, and Staff has adequately covered them in the Agenda Report. However, one option I didn't see discussed in the report was creating an affordable housing overlay district, as the City of San Clemente did. This may not be a "best practice," but it is an option of which you should be aware. Please note that Newport Beach is considering this concept for its IHO. Considerations such as walkability, bikeability, location of affordable housing close in proximity to services, shopping and public transit should be taken into account when planning affordable housing.

While Staff has not recommended the use of in-lieu fees and I generally do not like them because it just decreases the chances of affordable housing being built, other cities have used a fund created for lieu fees to offer low or zero percent loans to developers who will include affordable units in their projects.

Attachment 3, the Density Bonus Chart, comes from a report by Meyers Nave. I've attached the 2023 report (updated from 2021, but the chart appears to be the same) which you may find enlightening.

I look forward to tomorrow's meeting and moving forward on an IHO.

Cynthia McDonald

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Guide to the California Density Bonus Law

BY JON GOETZ AND TOM SAKAI

REVISED JANUARY 2023

meyers | nave

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Introduction and Overview

Savvy housing developers are taking advantage of California's Density Bonus Law, a mechanism which allows them to obtain more favorable local development requirements in exchange for offering to build or donate land for affordable or senior units. The Density Bonus Law (found in California Government Code Sections 65915 – 65918) provides developers with powerful tools to encourage the development of affordable and senior housing, including up to a 50% increase in project densities for most projects, depending on the amount of affordable housing provided, and an 80% increase in density for projects which are completely affordable. The Density Bonus Law is about more than the density bonus itself, however. It is actually a larger package of incentives intended to help make the development of affordable and senior housing economically feasible. Other tools include reduced parking requirements, and incentives and concessions such as reduced setback and minimum square footage requirements. Often these other tools are even more helpful to project economics than the density bonus itself, particularly the special parking benefits. Sometimes these incentives are sufficient to make the project pencil out, but for other projects financial assistance is necessary to make the project feasible.

In determining whether a development project would benefit from becoming a density bonus project, developers also need to be aware that:

- The Density Bonus is a state mandate. A developer who meets the requirements of the state law is entitled to receive the density bonus and other benefits as a matter of right. As with any state mandate, some local governments will resist complying with the state requirement. But many local governments favor the density bonus as a helpful tool to cut through their own land use requirements and local political issues.

- Use of a density bonus may be particularly helpful in those jurisdictions that impose inclusionary housing requirements for new developments.

- Special development bonuses are available for developers of commercial projects who partner with affordable housing developers to provide onsite or offsite affordable housing. Special bonuses are also available for condominium conversion projects and projects that include childcare facilities.

- The Legislature has adopted density bonuses for housing developments for foster youth, disabled veterans, homeless persons and college students.

How the Density Bonus Works

PROJECTS ENTITLED TO A DENSITY BONUS

Cities and counties are required to grant a density bonus and other incentives or concessions to housing projects which contain one of the following:

- At least 5% of the housing units are restricted to very low income residents.
- At least 10% of the housing units are restricted to lower income residents.
- At least 10% of the housing units in a for-sale common interest development are restricted to moderate income residents.
- 100% of the housing units (other than manager's units) are restricted to very low, lower and moderate income residents (with a maximum of 20% moderate).
- At least 10% of the housing units are for transitional foster youth, disabled veterans or homeless persons, with rents restricted at the very low income level.
- At least 20% of the housing units are for low income college students in housing dedicated for full-time students at accredited colleges.
- The project donates at least one acre of land to the city or county for very low income units, and the land has the appropriate general plan designation, zoning, permits and approvals, and access to public facilities needed for such housing.
- The project is a senior citizen housing development (no affordable units required).
- The project is a mobilehome park age-restricted to senior citizens (no affordable units required).

DENSITY BONUS AMOUNT

The density bonus is the number of units permitted to be built in addition to the "base density" of the number of units that would be permitted to be built under generally applicable local requirements without a density bonus. The amount of the density bonus is set on a sliding scale, based upon the percentage of affordable units at each income level, as shown in the chart on the following page. (Note that maximum density bonus amounts for very low, lower and moderate income housing were increased by legislation approved in 2020.)

DENSITY BONUS CHART*

AFFORDABLE UNIT PERCENTAGE**	VERY LOW INCOME DENSITY BONUS	LOW INCOME DENSITY BONUS	MODERATE INCOME DENSITY BONUS***	LAND DONATION DENSITY BONUS	SENIOR****	FOSTER YOUTH/ DISABLED VETS/ HOMELESS	COLLEGE STUDENTS
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%
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%
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%*****	80%	80%	80%	35%	20%	20%	35%

*All density bonus calculations resulting in fractions are rounded up to the next whole number.
**Affordable unit percentage is calculated excluding units added by a density bonus.
***Moderate income density bonus applies to for sale units, not to rental units.
****No affordable units are required for senior units.
***** Applies when 100% of the total units (other than manager's units) are restricted to very low, lower and moderate income (maximum 20% moderate).

REQUIRED INCENTIVES AND CONCESSIONS

In addition to the density bonus, the city or county is also required to provide one or more "incentives" or "concessions" to each project which qualifies for a density bonus (except that market rate senior citizen projects with no affordable units, and land donated for very low income housing, do not appear to be entitled to incentives or concessions). A concession or incentive is defined as:

- A reduction in site development standards or a modification of zoning code or architectural design requirements, such as a reduction in setback or minimum square footage requirements; or
- Approval of mixed use zoning; or
- Other regulatory incentives or concessions which actually result in identifiable and actual cost reductions.

The number of required incentives or concessions is based on the percentage of affordable units in the project:

NO. 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	100% Low/Very Low/Mod (20% Moderate allowed)	100% Low/Very Low/Mod (20% Moderate allowed)	100% Low/Very Low/Mod (20% Moderate allowed)

* One incentive or concession is also required for projects that include at least 20 percent of the total units for lower income students in a student housing development.

The city or county is required to grant the concession or incentive proposed by the developer unless it finds that the proposed concession or incentive does not result in identifiable and actual cost reductions to provide for affordable housing costs or rents, would cause a public health or safety problem, would harm historical property, or would be contrary to law. The Density Bonus Law restricts the types of information and reports that a developer may be required to provide to the local jurisdiction in order to obtain the requested incentive or concession. A 2021 appellate court case, *Schreiber v. City of Los Angeles*, held that a local government may not require an applicant to submit a pro forma or other documentation to prove that a requested incentive or concession is required in order to make the housing development economically feasible. However, local agenices can require applicants to show that requested incentives and concessions will result in cost reductions for the project to provide for affordable housing costs or rents. The local jurisdiction has the burden of proof in the event it declines to grant a requested incentive or concession. Financial incentives, fee waivers and reductions in dedication requirements may be, but are not required to be, provided by the city or county. The developer may be entitled to the incentives and concessions even without a request for a density bonus.

OTHER FORMS OF ASSISTANCE

A development qualifying for a density bonus also receives two additional forms of assistance which have important benefits for a housing project:

- **Waiver or Reduction of Development Standards.** If any other city or county development standard would physically prevent the project from being built at the permitted density and with the granted concessions/incentives, the developer may propose to have those standards waived or reduced. The city or county is not permitted to apply any development standard which physically precludes the construction of the project at its permitted density and with the granted concessions/incentives. The city or county is not required to waive or reduce development standards that would cause a public health or safety problem, cause an environmental problem, harm historical property, or would be contrary to law. The waiver or reduction of a development standard does not count as an incentive or concession, and there is no limit on the number of development standard waivers that may be requested or granted. Development standards which have been waived or reduced utilizing this section include setback, lot coverage and open space requirements, and should apply to building height limits as well. This ability to force the locality to modify its normal development standards is sometimes the most compelling reason for the developer to structure a project to qualify for the density bonus. A recent appellate court case, *Banker's Hill 150 v. City of San Diego*, ruled that a developer who seeks to waive or reduce development standards under the Density Bonus Law cannot be required to strip the project of amenities or redesign the project in order to meet local development standards.

- **Maximum Parking Requirements.** Upon the developer's request, the city or county may not require more than the following parking ratios for a density bonus project (inclusive of parking for persons with disabilities):

Studio	1 space
1 Bedroom	1 space
2 Bedroom	1.5 spaces
3 Bedroom	1.5 spaces
4 Bedroom	2.5 spaces

- **Special Parking Requirements.** Lower parking ratios apply to specified projects (although local jurisdictions can require higher parking ratios if supported by a specified parking study):

Rental/for sale projects with at least 11% very low income or 20% lower income units, within 1/2 mile of accessible major transit stop	0.5 spaces per unit
Rental projects 100% affordable to lower income, within 1/2 mile of accessible major transit stop	0 spaces per unit
Rental senior projects 100% affordable to lower income, either with paratransit service or within 1/2-half mile of accessible bus route (operating at least eight times per day)	0 spaces per unit
Rental special needs projects 100% affordable to lower income households, either with paratransit service or within 1/2-half mile of accessible bus route (operating at least eight times per day)	0 spaces per unit
Rental supportive housing developments 100% affordable to lower income households	0 spaces per unit
For sale projects with at least 40% moderate income units, within ½ mile of accessible major transit stop	0.5 spaces per bedroom

Onsite spaces may be provided through tandem or uncovered parking, but not onstreet parking. Requesting these parking standards does not count as an incentive or concession, but the developer may request further parking standard reductions as an incentive or concession. This is one of the most important benefits of the density bonus statute. In many cases, achieving a reduction in parking requirements may be more valuable than the additional permitted units. In higher density developments requiring the use of structured parking, the construction cost of structured parking is very expensive, costing upwards of $20,000 per parking space. While this provision of the density bonus statute can be used to reduce excessive parking requirements, care must be taken not to impact the project's marketability by reducing parking to minimum requirements which lead to parking shortages.

AFFORDABLE HOUSING RESTRICTIONS

- **Rental Units.** Affordable rental units must be restricted by an agreement which sets maximum incomes and rents for those units. As of January 1, 2015, the income and rent restrictions must remain in place for a 55 year term for very low or lower income units (formerly only a 30 year term was required).

  Rents must be restricted as follows (continue to page 7):

  - For very low income units, rents may not exceed 30% x 50% of the area median income for a household size suitable for the unit.
  - For lower income units, rents may not exceed 30% x 60% of the area median income for a household size suitable for the unit.
  - In 100% affordable housing developments, the rent for at least 20% of the units must meet the rent standards of Health and Safety Code Section 50053, and the remaining units may instead meet Low Income Housing Tax Credit rent standards.
  - Area median income is determined annually by regulation of the California Department of Housing and Community Development, based upon median income regulations adopted by the U.S. Department of Housing and Urban Development.
  - Rents must include a reasonable utility allowance.
  - Household size appropriate to the unit means 1 for a studio unit, 2 for a one bedroom unit, 3 for a two bedroom unit, 4 for a three bedroom unit, etc.

- **For Sale Units.** Affordable for sale units must be sold to the initial buyer at an affordable housing cost. Housing related costs include mortgage loan payments, mortgage insurance payments, property taxes and assessments, homeowner association fees, reasonable utilities allowance, insurance premiums, maintenance costs, and space rent.

  - For very low income units, housing costs may not exceed 30% x 50% of the area median income for a household size suitable for the unit.
  - For lower income units, housing costs may not exceed 30% x 70% of the area median income for a household size suitable for the unit.
  - For moderate income units, housing costs may not exceed 35% x 110% of the area median income for a household size suitable for the unit.
  - Buyers must enter into an equity sharing agreement with the city or county, unless the equity sharing requirements conflict with the requirements of another public funding source or law. The

equity sharing agreement does not restrict the resale price, but requires the original owner to pay the city or county a portion of any appreciation received on resale.

- The city/county percentage of appreciation is the purchase price discount received by the original buyer, plus any down payment assistance provided by the city/county. (For example, if the original sales price is $300,000, and the original fair market value is $400,000, and there is no city/county down payment assistance, the city/county subsidy is $100,000, and the city/county's share of appreciation is 25%).
- The seller is permitted to retain its original down payment, the value of any improvements made to the home, and the remaining share of the appreciation.
- The income and affordability requirements are not binding on resale purchasers (but if other public funding sources or programs are used, the requirements may apply to resales for a fixed number of years).

As an alternative to the above requirements, developers of for-sale density bonus housing developments may sell affordable units to nonprofit housing corporations rather than selling the units directly to a low or moderate income homebuyer. The nonprofit housing corporation must then sell each home to a lower income buyer subject to affordability requirements with a term of at least 45 years, an equity sharing agreement, and a repurchase option in favor of the nonprofit corporation.

LOCAL GOVERNMENT PROCESSING OF DENSITY BONUS APPLICATIONS

Under new legislation effective in 2019, local governments are now required to notify developers what information must be submitted for a complete density bonus application. Once a development application is determined to be complete, the local government must notify the developer the level of density bonus and parking ratio the development is eligible to receive. If the developer requests incentives, concessions, waivers or reductions of development standards, the local jurisdiction is required to notify the developer if it has submitted sufficient information necessary for the local government to make a determination on those issues.

HOW THE DENSITY BONUS WORKS FOR 100% AFFORDABLE PROJECTS

2019 legislation requires local governments to grant an 80% density bonus to housing projects in which all of the units (other than manager's units) are restricted to very low, low and moderate income residents, with a maximum of 20% restricted to moderate income units. If a 100% affordable project is located within a half mile of a major transit stop, or is in a "very low vehicle travel area," the local government may not impose any maximum density limits at all, and the project is further entitled to receive a maximum height increase of up to three additional stories or 33 feet. However, if the project receives a waiver from maximum controls on density, it is not eligible for the waiver or reduction of any development standards which would otherwise be available. 100% affordable projects are also entitled to a fourth incentive or concession.

HOW THE DENSITY BONUS WORKS FOR SENIOR PROJECTS

As shown in the Density Bonus Chart on page 4, a senior citizen housing development of at least 35 units meeting the requirements of Section 51.3 or 51.12 of the Civil Code qualifies for a 20% density bonus. This is a very desirable option for senior housing developments. In jurisdictions where the local ordinances do not reduce the parking requirements for senior housing developments, the reduced parking requirements alone may justify applying for a density bonus.

HOW THE DENSITY BONUS WORKS FOR STUDENT HOUSING PROJECTS

New legislation taking effect in 2019 requires cities and counties to grant a 35% density bonus for housing developments that will include at least 20% of the units for low income college students. The housing must be used exclusively for full-time students at accredited colleges, and must be subject to an operating agreement or master lease with one or more colleges. Unlike the maximum income requirements for other forms of affordable housing, resident income levels are determined through the student's eligibility for the state's Cal Grant financial aid program. Affordable rent levels are also specially tailored for a student population, with maximum rents established per bed for individual residents, rather than for the entire apartment unit. Homeless students receive priority for affordable units.

HOW THE DENSITY BONUS WORKS FOR COMMERCIAL PROJECTS

The Density Bonus Law requires that cities and counties provide a "development bonus" to commercial developers who partner with affordable housing developers for the construction of affordable housing on the commercial project site, or offsite within the jurisdiction located near schools, employment and a major transit stop. The commercial developer may participate through the donation of land or funds for the affordable housing, or direct construction of the housing units. The partnership between the commercial developer and the affordable developer can occur through a newly formed legal entity such as a corporation, LLC or partnership, or can take the shape of a contractual agreement between the parties. To be eligible for the development bonus, at least 30% of the housing units must be restricted to lower income residents or 15% of the housing units must be restricted to very low income residents. Unlike the primary Density Bonus Law, there is no fixed amount of increased density awarded to the developer. Instead, the development bonus can be any mutually agreeable incentive, including up to a 20% increase in development intensity, floor area ratio, or height limits, up to a 20% reduction in parking requirements, use of a limited use elevator, or an exception to a zoning ordinance or land use requirement. Commercial developers who need extra leverage to obtain more favorable development standards for their project may want to consider providing affordable housing in order to take advantage of the benefits of the development bonus.

HOW THE DENSITY BONUS WORKS FOR CONDOMINIUM CONVERSION PROJECTS

The density bonus statute provides for a density bonus of up to 25% for condominium conversion projects providing at least 33% for the total units to low or moderate income households or 15% of the units to lower income households. Many condominium conversion projects are not designed in a manner that allows them to take advantage of the opportunity to construct additional units, but some projects may find this helpful.

HOW THE DENSITY BONUS WORKS FOR CHILDCARE

Housing projects that provide childcare are eligible for a separate density bonus equal to the size of the childcare facility. The childcare facility must remain in operation for at least the length of the affordability covenants. A percentage of the childcare spaces must also be made available to low and moderate income families. A separate statute permits cities and counties to grant density bonuses to commercial and industrial projects of at least 50,000 square feet, when the developer sets aside at least 2,000 square feet in the building and 3,000 square feet of outside space for a childcare facility.

HOW TO OBTAIN A DENSITY BONUS THROUGH LAND DONATION

Many market rate housing developers are uncomfortable with building and marketing affordable units themselves, whether due to their lack of experience with the affordable housing process or because of their desire to concentrate on their core market rate homes. Other developers may have sites that are underutilized in terms of project density. The Density Bonus Law contains a special sliding scale bonus for land donation which allows those developers to turn over the actual development of the affordable units to local agencies or experienced low income developers. The density bonus is available for the donation of at least an acre of fully entitled land, with all needed public facilities and infrastructure, and large enough for the construction of a high density very low income project containing 10% of the total homes in the development. The parcel must be located within the boundary of the proposed development or, subject to the approval of the jurisdiction, within one-fourth mile of the boundary of the proposed development. The more units that can be built on the donated land, the larger the density bonus. Because of the parcel size requirements, this option is only practical for larger developments. The land donation density bonus can be combined with the regular density bonus provided for the development of affordable units, up to a maximum 35% density bonus. A master planned community developer needs to carefully evaluate the land donation option as opposed to engaging an affordable housing developer to fulfill the project's affordable housing obligations. In many cases the master developer will prefer to control the affordable component of the project through a direct agreement with the affordable housing developer, rather than allowing the local government to control the project.

FLOOR AREA RATIO BONUSES

Under new legislation effective in 2019, a local jurisdiction is permitted to grant a floor area ratio bonus rather than a traditional density bonus to certain high density affordable housing projects adjacent to public transit. Eligible projects are also entitled to special parking ratios of one-tenth of a parking space per affordable unit and one-half space per market rate unit. To be eligible for the floor area ratio bonus, the project must restrict at least 20 percent of the units to very low income tenants, must be located within a transit priority area or near a major transit stop, and must be in compliance with local height limits.

How the Density Bonus Can Help in a Friendly Jurisdiction

While the Density Bonus Law is often used by developers to obtain more housing than the local jurisdiction would ordinarily permit, it can also be a helpful land use tool in jurisdictions which favor the proposed project and want to provide support. Planners in many cities and counties may be disposed by personal ideology or local policy to encourage the construction of higher density housing and mixed use developments near

transit stops and downtown areas, but are hampered by existing general plan standards and zoning from approving these sorts of projects. Elected officials often support these projects too, but may find it politically difficult to oppose neighborhood and environmental groups over the necessary general plan amendments, zoning changes and CEQA approvals.

The density bonus can provide a useful mechanism for increasing allowable density without requiring local officials to approve general plan amendments and zoning changes. A project that satisfies the requirements of the Density Bonus Law often can obtain the necessary land use approvals through the award of the density bonus units and requested concessions and incentives, without having to amend the underlying land use requirements. Friendly local officials may encourage the use of the density bonus to "force" the jurisdiction to approve a desired project.

How the Density Bonus Law Can Help in a Hostile Jurisdiction

It is important to know that the density bonus is a state law requirement which is mandatory on cities and counties, even charter cities which are free from many other state requirements. A developer who meets the law's requirements for affordable or senior units is entitled to the density bonus and other assistance as of right, regardless of the locality's desires (subject to limited health and safety exceptions). The density bonus statute can be used to achieve reductions in development standards or the granting of concessions or incentives from jurisdictions that otherwise would not be inclined to grant those items. Examples might include a reduction in parking standards if those standards are deemed excessive by the developer, or other reductions in development standards if needed to achieve the total density permitted by the density bonus.

Developers who nonetheless encounter hostility from local jurisdictions are provided several tools to ensure that a required density bonus is actually granted. Developers are entitled to an informal meeting with a local jurisdiction which fails to modify a requested development standard. If a developer successfully sues the locality to enforce the density bonus requirements, it is entitled to an award of its attorneys' fees. The obligation to pay a developer's attorneys' fees is a powerful incentive for local jurisdictions to voluntarily comply with the state law density bonus requirements, even when the jurisdiction is not in favor of its effects on the project.

CEQA Issues in Density Bonus Projects

Although there is no specific density bonus exemption from the California Environmental Quality Act (CEQA), many density bonus projects are likely candidates for urban infill and affordable housing exemptions from CEQA. One commonly invoked exemption is the Class 32 urban infill exemption found in CEQA Guidelines Section 15332. That exemption is available if the project is consistent with applicable general plan designation and zoning, the site is five acres or less and surrounded by urban uses, is not habitat for endangered, rare or threatened species, does not have any significant effects relating to traffic, noise, air quality or water quality, and is adequately served by utilities and public services. Other exemptions are available for high density housing projects near major transit stops (CEQA Guidelines Section 15195) and affordable housing projects of up to 100 units (CEQA Guidelines Section 15194).

A 2011 case, *Wollmer v. City of Berkeley*, clarified the use of the CEQA infill exemption for density bonus projects. In that case, an opponent of a Berkeley density bonus project challenged the City's use of the urban infill exemption on the grounds that the City's modifications and waivers of development standards, as required under the Density Bonus Law, meant that the project was not consistent with existing zoning. The court rejected that argument, finding that the modifications required by the Density Bonus Law did not disqualify the project from claiming the exemption.

Not all density bonus projects will qualify for one of these CEQA exemptions, however. Sometimes the additional density provided to non-exempt projects may bring the project out of the coverage of an existing CEQA approval for a general plan, specific plan or other larger project. For instance, if a previously approved environmental impact report analyzed a 100 unit project as the largest allowed under existing zoning, but the developer is able to qualify for 120 units with a density bonus, the existing EIR may not cover the larger project. The larger density bonus project may require additional CEQA analysis for approval.

Using the Density Bonus to Satisfy Inclusionary Housing Requirements

Many of California's cities and counties have adopted inclusionary housing ordinances, which typically require that a specified percentage of units in a new housing development be restricted as affordable units. The inclusionary requirements significantly reduce income from rental units and sales prices of for-sale homes. In today's tight housing market, compliance with local inclusionary requirements may make many projects economically infeasible. The density bonus provides one method for developers to improve the economics of their project while still complying with the inclusionary A 2013 case, *Latinos Unidos del Valle de Napa y Solano v. County of Napa*, held that inclusionary units qualify as affordable units for purposes of the Density Bonus Law. The case confirmed that the density bonus is a financial tool available to help developers achieve city and county inclusionary housing requirements. In 2021, the Legislature clarified that for purposes of qualifying for a density bonus, the "total units" in a housing development include affordable units that are designated to satisfy local inclusionary housing requirements.

How the Density Bonus Works for Supportive Housing Projects

The Legislature has adopted legislation (AB 2162 of 2018) that is very helpful to developers of "supportive housing projects" that are linked to services for residents. This legislation streamlines project approvals for these developments, making supportive housing a use by right in zones where multifamily housing is permitted, even in nonresidential zones. "Use by right" means that the local jurisdiction may not require a discretionary approval for the project, such as a conditional use permit or planned unit development permit, although it may apply written objective development standards to the project. As a use by right, the project is also exempt from CEQA. In addition, special parking rules are available to supportive housing projects within a half mile of a public transit stop.

There are a number of requirements that must be satisfied in order to qualify for the streamlined approval process for supportive housing projects. All of the units in the project (other than manager's units) must be restricted to lower income residents at an affordable rent, for a 55 year period. A minimum number of those units must also be made available to a target population that may include persons with disabilities or other persons who are homeless or at risk of homelessness. The project must provide a plan for providing onsite supportive services to residents, and must devote a minimum amount of space in the development that can be used for providing those services.

The supportive housing legislation specifically allows applicants for these projects to also obtain the benefits of the density bonus law. Supportive housing projects should generally qualify for a density bonus due to the 100% low income affordability requirement under the supportive housing law. The density bonus law can be a helpful tool for supportive housing projects that require additional density, modifications or waivers of development standards, or relaxed parking requirements.

How the Density Bonus Works for Low Income Housing Tax Credit Projects

The density bonus can be a very helpful tool for housing projects that qualify for federal and state low income housing tax credits (LIHTC). These projects often need both density increases and changes in local development requirements in order to be economically feasible. The Legislature's recent adoption of the 80% density bonus for projects that are 100% affordable has made the density bonus law even more useful for LIHTC housing projects.

In order to successfully compete for tax credits, most LIHTC projects in California restrict the income limits of project residents at levels that also meet the density bonus law's affordability requirements. While the tenant income levels required under the two programs are generally compatible, the maximum rent levels for affordable units permitted under the state density bonus law can often be significantly lower than the rents permitted for affordable units under the LIHTC standards. In some circumstances. this difference in permitted rent levels can significantly impact the economics of a LIHTC project that obtains a density bonus. However, the rent requirements for the 80% density bonus are specifically tailored to be compatible with the LIHTC law, allowing up to 80% of the affordable units to meet the LIHTC affordable rent restrictions instead of the affordable rent levels normally required under the density bonus law. This feature has made the density bonus increasingly attractive for LIHTC projects.

While the density bonus law and LIHTC program are largely compatible, it is still necessary for LIHTC projects to meet all of the requirements of the density bonus law for tenant incomes and affordable rents. These requirements will be contained in separate regulatory agreements implementing the density bonus requirements. Compliance with LIHTC requirements does not supersede or automatically satisfy all density bonus law requirements.

Density Bonus and Replacement Housing

Developers obtaining a density bonus are required to replace existing units which were previously occupied by very low or lower income households or subject to rent control, when those units have been demolished or vacated prior to the density bonus application. The housing development must also meet the applicable affordable housing standards, including the replacement units. As a result of uncertainty about how to apply these standards when the income levels of prior residents is unknown, the Density Bonus Law establishes a rebuttable presumption for the income level of the replacement unit when the income level of the actual prior resident is unknown.

Density Bonus in the Coastal Zone

When affordable housing is proposed in the coastal zone, the Density Bonus Law's focus on encouraging the development of affordable housing could clash with the California Coastal Act's focus on environmental protection. Legislation effective in 2019 now requires the density bonus to be administered in the Coastal Zone in a manner that is consistent and harmonized with the California Coastal Act. This legislation overturns a 2016 appellate court ruling, *Kalnel Gardens, LLC v. City of Los Angeles*, which found that a proposed housing project that violates the Coastal Act as a result of a density bonus could be denied on that basis. The court in *Kalnel Gardens* held that the Density Bonus Law is subordinate to the Coastal Act, but the new language attempts to strike a balance between the state goals of promoting housing and protecting the coast.

Density Bonus – A Flexible Tool

The Density Bonus Law can be a powerful tool for different types of development projects, whether they are traditional affordable housing projects, predominantly market rate housing developments, or senior projects. Obtaining greater density can help the developer of any project bring costs and financing sources into line by putting more homes on the land, reducing the per unit land costs. Use of the favorable parking requirements can reduce the amount of costly land needed for parking. The incentives and concessions to be provided by the local government can provide a helpful way to modify development requirements which may stand in the way of a successful project. Of course there is a price to pay for these benefits—the affordable units needed to earn the density bonus. Developers need to make a cost-benefit determination whether the cost of compliance is worth the benefits. But the Density Bonus Law is unquestionably a usful option for housing developers trying to make financial sense of projects in today's economy.

Density Bonus Statutes

Government Code Sections 65915 – 65918.
Effective as of January 1, 2023

65915.

(a) (1) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall comply with this section. A city, county, or city and county shall adopt an ordinance that specifies how compliance with this section will be implemented. Except as otherwise provided in subdivision (s), failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.

(2) A local government shall not condition the submission, review, or approval of an application pursuant to this chapter on the preparation of an additional report or study that is not otherwise required by state law, including this section. This subdivision does not prohibit a local government from requiring an applicant to provide reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p).

(3) In order to provide for the expeditious processing of a density bonus application, the local government shall do all of the following:

(A) Adopt procedures and timelines for processing a density bonus application.

(B) Provide a list of all documents and information required to be submitted with the density bonus application in order for the density bonus application to be deemed complete. This list shall be consistent with this chapter.

(C) Notify the applicant for a density bonus whether the application is complete in a manner consistent with the timelines specified in Section 65943.

(D) (i) If the local government notifies the applicant that the application is deemed complete pursuant to subparagraph (C), provide the applicant with a determination as to the following matters:

(I) The amount of density bonus, calculated pursuant to subdivision (f), for which the applicant is eligible.

(II) If the applicant requests a parking ratio pursuant to subdivision (p), the parking ratio for which the applicant is eligible.

(III) If the applicant requests incentives or concessions pursuant to subdivision (d) or waivers or reductions of development standards pursuant to subdivision (e), whether the applicant has provided adequate information for the local government to make a determination as to those incentives, concessions, or waivers or reductions of development standards.

(ii) Any determination required by this subparagraph shall be based on the development project at the time the application is deemed complete. The local government shall adjust the amount of density bonus and parking ratios awarded pursuant to this section based on any changes to the project during the course of development.

(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f), and, if requested by the applicant and consistent with the applicable requirements of this section, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p), if 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 section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development, including a shared housing building development, for rental or sale to lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Five percent of the total units of a housing development, including a shared housing building development, for rental or sale to very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) A senior citizen housing development, 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. For purposes of this subparagraph, "development" includes a shared housing building development.

(D) Ten percent of the total dwelling units of a housing development are sold to persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.
(E) Ten 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 subparagraph 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) (i) Twenty percent of the total units for lower income students in a student housing development that meets the following requirements:

(I) 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 subclause, the developer shall, as a condition of receiving a certificate of occupancy, provide evidence to the city, county, or city and county 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 subclause 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.

(II) The applicable 20-percent units will be used for lower income students.

(III) 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.

(IV) The development will provide priority for the applicable affordable units for lower income students experiencing homelessness. A homeless service provider, as defined in paragraph (3) of subdivision (e) of Section 103577 of the 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 subclause.

(ii) For purposes of calculating a density bonus granted pursuant to this subparagraph, the term "unit" as used in this section means one rental bed and its pro rata share of associated common area facilities. The units described in this subparagraph shall be subject to a recorded affordability restriction of 55 years.

(G) One hundred percent of all units in the development, including total units and density bonus units, but exclusive of a manager's unit or units, are for lower income households, as defined by Section 50079.5 of the Health and Safety Code, except that up to 20 percent of the units in the development, including total units and density bonus units, may be for moderate-income households, as defined in Section 50053 of the Health and Safety Code. For purposes of this subparagraph, "development" includes a shared housing building development.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), an applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), (D), (E), (F), or (G) of paragraph (1).

(c) (1) (A) An applicant shall agree to, and the city, county, or city and county shall ensure, the continued affordability of all very low and low-income rental units that qualified the applicant for the award of the density bonus for 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.

(B) (i) Except as otherwise provided in clause (ii), rents for the lower income density bonus units shall be set at an affordable rent, as defined in Section 50053 of the Health and Safety Code.

(ii) For housing developments meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b), rents for all units in the development, including both base density and density bonus units, shall be as follows:

(I) 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 Health and Safety Code.

(II) 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 those rents and incomes are determined by the California Tax Credit Allocation Committee.

(2) (A) An applicant shall agree to ensure, and the city, county, or city and county shall ensure, that a for-sale unit that qualified the applicant for the award of the density bonus meets either of the following conditions:

(i) The unit is initially occupied by a person or family of very low, low, or moderate income, as required, and it is offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code and is subject to an equity sharing agreement.

(ii) The unit is purchased by a qualified nonprofit housing corporation pursuant to a recorded contract that satisfies all of the requirements specified in paragraph (10) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code and that includes all of the following:

(I) A repurchase option that requires a subsequent purchaser of the property that desires to resell or convey the property to offer the qualified nonprofit corporation the right to repurchase the property prior to selling or conveying that property to any other purchaser.

(II) An equity sharing agreement.

(III) Affordability restrictions on the sale and conveyance of the property that ensure that the property will be preserved for lower income housing for at least 45 years for owner-occupied housing units and will be sold or resold only to persons or families of very low, low, or moderate income, as defined in Section 50052.5 of the Health and Safety Code.

(B) For purposes of this paragraph, a "qualified nonprofit housing corporation" is a nonprofit housing corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 of the Revenue and Taxation Code for properties intended to be sold to low-income families who participate in a special no-interest loan program.

(C) The local government shall enforce an equity sharing agreement required pursuant to clause (i) or (ii) of subparagraph (A), unless it is in conflict with the requirements of another public funding source or law or may defer to the recapture provisions of the public funding source. The following apply to the equity sharing agreement:

(i) Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation.

(ii) Except as provided in clause (v), the local government shall recapture any initial subsidy, as defined in clause (iii), and its proportionate share of appreciation, as defined in clause (iv), which amount shall be used within five years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote home ownership.

(iii) For purposes of this subdivision, the local government'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 downpayment 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.

(iv) For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the ratio of the local government's initial subsidy to the fair market value of the home at the time of initial sale.

(v) If the unit is purchased or developed by a qualified nonprofit housing corporation pursuant to clause (ii) of subparagraph (A) the local government may enter into a contract with the qualified nonprofit housing corporation under which the qualified nonprofit housing corporation would recapture any initial subsidy and its proportionate share of appreciation if the qualified nonprofit housing corporation is required to use 100 percent of the proceeds to promote homeownership for lower income households as defined by Health and Safety Code Section 50079.5 within the jurisdiction of the local government.

(3) (A) An applicant shall be ineligible for a density bonus or any other incentives or concessions under this section 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-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:

(i) The proposed housing development, inclusive of the units replaced pursuant to this paragraph, contains affordable units at the percentages set forth in subdivision (b).

(ii) Each unit in the development, exclusive of a 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 paragraph, "replace" shall mean either of the following:

(i) If any dwelling units described in subparagraph (A) 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. 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 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. For unoccupied dwelling units described in subparagraph (A) in a development with occupied units, the proposed housing development shall provide units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as the last household in occupancy. If the income category of the last household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) If all dwelling units described in subparagraph (A) have been vacated or demolished within the five-year period preceding the application, the proposed housing development shall provide at least the same number of units of equivalent size as existed at the highpoint of those units in the five-year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known. If the incomes of the persons and families in occupancy at the highpoint is not known, it shall be rebuttably presumed that low-income and very low income renter households occupied these units in the same proportion of low-income and very low income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(C) Notwithstanding subparagraph (B), for any dwelling unit described in subparagraph (A) that is or was, within the five-year period preceding the application, subject to a form of rent or price control through a local government's valid exercise of its police power and that is or was occupied by persons or families above lower income, the city, county, or city and county may do either of the following:

(i) Require that the replacement units be made available at affordable rent or affordable housing cost to, and occupied by, low-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 paragraph (2).

(ii) Require that the units be replaced in compliance with the jurisdiction's rent or price control ordinance, provided that each unit described in subparagraph (A) is replaced. Unless otherwise required by the jurisdiction's rent or price control ordinance, these units shall not be subject to a recorded affordability restriction.

(D) For purposes of this paragraph, "equivalent size" means that the replacement units contain at least the same total number of bedrooms as the units being replaced.

(E) Subparagraph (A) does not apply to an applicant seeking a density bonus for a proposed housing development if the applicant's application was submitted to, or processed by, a city, county, or city and county before January 1, 2015.

(d) (1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:

(A) The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.

(C) The concession or incentive would be contrary to state or federal law.

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

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a development in which the units are for sale.

(B) Two incentives or concessions for projects that include at least 17 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a development in which the units are for sale.

(C) Three incentives or concessions for projects that include at least 24 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a development in which the units are for sale.

(D) Four incentives or concessions for a project meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b). If the project is located within one-half mile of a major transit stop or is located in a very low vehicle travel area in a designated county, the applicant shall also receive a height increase of up to three additional stories, or 33 feet.

(E) One incentive or concession for projects that include at least 20 percent of the total units for lower income students in a student housing development.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county 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 this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. This subdivision shall not be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. This subdivision shall not be interpreted to require a local government 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. The city, county, or city and county shall establish procedures for carrying out this section that shall include legislative body approval of the means of compliance with this section.

(4) The city, county, or city and county shall bear the burden of proof for the denial of a requested concession or incentive.

(e) (1) In no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. Subject to paragraph (3), an applicant may submit to a city, county, or city and county 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 subdivision (b) at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the city, county, or city and county. 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 subdivision shall not be interpreted to require a local government 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 or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. This subdivision shall not be interpreted to require a local government 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.

(2) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(3) A housing development that receives a waiver from any maximum controls on density pursuant to clause (ii) of subparagraph (D) of paragraph (3) of subdivision (f) shall only be eligible for a waiver or reduction of development standards as provided in subparagraph (D) of paragraph (2) of subdivision (d) and clause (ii) of subparagraph (D) of paragraph (3) of subdivision (f), unless the city, county, or city and county agrees to additional waivers or reductions of development standards.

(f) For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable gross residential density as of the date of application by the applicant to the city, county, or city and county, 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 subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
16	29
17	30.5
18	32
19	33.5
20	35
21	38.75
22	42.5
23	46.25
24	50

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35
12	38.75
13	42.5
14	46.25
15	50

(3) (A) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of senior housing units.

(B) For housing developments meeting the criteria of subparagraph (E) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of the type of units giving rise to a density bonus under that subparagraph.

(C) For housing developments meeting the criteria of subparagraph (F) of paragraph (1) of subdivision (b), the density bonus shall be 35 percent of the student housing units.

(D) For housing developments meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b), the following shall apply:

(i) Except as otherwise provided in clauses (ii) and (iii), the density bonus shall be 80 percent of the number of units for lower income households.

(ii) If the housing development is located within one-half mile of a major transit stop, the city, county, or city and county shall not impose any maximum controls on density.

(iii) If the housing development is located in a very low vehicle travel area within a designated county, the city, county, or city and county shall not impose any maximum controls on density.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Perecentage Moderate-Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24

30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35
41	38.75
42	42.5
43	46.25
44	50

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not require, or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

(g) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county in accordance with this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density for the entire development, as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32
28	33
29	34
30	35

(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks an increase pursuant to both this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county 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 subdivision if all of the following conditions are met:

(A) 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.

(B) 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 10 percent of the number of residential units of the proposed development.

(C) 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.

(D) 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 local government before the time of transfer.

(E) 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), which shall be recorded on the property at the time of the transfer.

(F) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(G) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(H) 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.

(h) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a childcare facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) 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.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the childcare facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) 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 subdivision (c).

(B) 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 subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or city and county 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.

(4) "Childcare facility," as used in this section, means a child daycare facility other than a family daycare home, including, but not limited to, infant centers, preschools, extended daycare facilities, and schoolage childcare centers.

(i) "Housing development," as used in this section, means a development project for five or more residential units, including mixed-use developments. For the purposes of this section, "housing development" also includes a subdivision or common interest development, as defined in Section 4100 of the Civil Code, approved by a city, county, or city and county 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 subdivision (d) of Section 65863.4, 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. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(j) (1) The granting of a concession or incentive shall not require or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, study, or other discretionary approval. For purposes of this subdivision, "study" does not include reasonable documentation to establish eligibility for the concession or incentive or to demonstrate that the incentive or concession meets the definition set forth in subdivision (k). This provision is declaratory of existing law.

(2) Except as provided in subdivisions (d) and (e), the granting of a density bonus shall not require or be interpreted to require the waiver of a local ordinance or provisions of a local ordinance unrelated to development standards..

(k) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable and actual cost reductions, to provide for affordable housing costs, as defined in Section 50052.5 of the Health

and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(2) Approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable and actual cost reductions to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(l) Subdivision (k) 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.

(m) This section does not supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which the applicant is entitled under this section shall be permitted in a manner that is consistent with this section and Division 20 (commencing with Section 30000) of the Public Resources Code.

(n) If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) "Designated county" includes the Counties of Alameda, Contra Costa, Los Angeles, Marin, Napa, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Francisco, San Mateo, Santa Barbara, Santa Clara, Solano, Sonoma, and Ventura.

(2) "Development standard" includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, a minimum lot area per unit requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.

(3) "Located within one-half mile of a major transit stop" means that any point on a proposed development, for which an applicant seeks a density bonus, other incentives or concessions, waivers or reductions of development standards, or a vehicular parking ratio pursuant to this section, is within one-half mile of any point on the property on which a major transit stop is located, including any parking lot owned by the transit authority or other local agency operating the major transit stop.

(4) "Lower income student" means a student who has 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 to occupy a unit for lower income students under this section shall be verified by an affidavit, award letter, or letter of eligibility provided by the institution of higher education in which the student is enrolled 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.

(5) "Major transit stop" has the same meaning as defined in subdivision (b) of Section 21155 of the Public Resources Code.

(6) "Maximum allowable residential density" or "base density" means the maximum number of units allowed under the zoning ordinance, specific plan, or land use element of the general plan, or, if a range of density is permitted, means the maximum number of units allowed by the specific zoning range, specific plan, or land use element of the general plan applicable to the project. If the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan or specific plan, the greater shall prevail. Density shall be determined using dwelling units per acre. However, if the applicable zoning ordinance, specific plan, or land use element of the general plan does not provide a dwelling-units-per-acre standard for density, then the local agency shall calculate the number of units by:

(A) Estimating the realistic development capacity of the site based on the objective development standards applicable to the project, including, but not limited to, floor area ratio, site coverage, maximum building height and number of stories, building setbacks and stepbacks, public and private open space requirements, minimum percentage or square footage of any nonresidential component, and parking requirements, unless not required for the base project. Parking requirements shall include considerations regarding number of spaces, location, design, type, and circulation. A developer may provide a base density study and the local agency shall accept it, provided that it includes all applicable objective development standards.

(B) Maintaining the same average unit size and other project details relevant to the base density study, excepting those that may be modified by waiver or concession to accommodate the bonus units, in the proposed project as in the study.

(7) (A) (i) "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.

(ii) 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 percent of the floor area of the shared housing building. A shared housing building may include 100 percent shared housing units.

(B) "Shared housing unit" means one or more habitable rooms, not within another dwelling unit, that includes a bathroom, sink, refrigerator, and microwave, is used for permanent residence, that meets the "minimum room area" specified in Section R304 of the California Residential Code (Part 2.5 of Title 24 of the California Code of Regulations), and complies with the definition of "guestroom" in Section R202 of the California Residential Code. 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.

(8) (A) "Total units" or "total dwelling units" means a calculation of the number of units that:

(i) Excludes a unit added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

(ii) Includes a unit designated to satisfy an inclusionary zoning requirement of a city, county, or city and county.

(B) For purposes of calculating a density bonus granted pursuant to this section for a shared housing building, "unit" means one shared housing unit and its pro rata share of associated common area facilities.

(9) "Very low vehicle travel area" means an urbanized area, as designated by the United States Census Bureau, where the existing residential development generates vehicle miles traveled per capita that is below 85 percent of either regional vehicle miles traveled per capita or city vehicle miles traveled per capita. For purposes of this paragraph, "area" may include a travel analysis zone, hexagon, or grid. For the purposes of determining "regional vehicle miles traveled per capita" pursuant to this paragraph, a "region" is the entirety of incorporated and unincorporated areas governed by a multicounty or single-county metropolitan planning organization, or the entirety of the incorporated and unincorporated areas of an individual county that is not part of a metropolitan planning organization.

(p) (1) Except as provided in paragraphs (2), (3), and (4), upon the request of the developer, a city, county, or city and county shall not require a vehicular parking ratio, inclusive of parking for persons with a disability and guests, of a development meeting the criteria of subdivisions (b) and (c), that exceeds the following ratios:

(A) Zero to one bedroom: one onsite parking space.

(B) Two to three bedrooms: one and one-half onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) (A) Notwithstanding paragraph (1), if a development includes at least 20 percent low-income units for housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b) or at least 11 percent very low income units for housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), is located within one-half mile of a major transit stop, and there is unobstructed access to the major transit stop from the development, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of parking for persons with a disability and guests, that exceeds 0.5 spaces per unit. Notwithstanding paragraph (1), if a development includes at least 40 percent moderate-income units for housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and the residents of the development have unobstructed access to the major transit stop from the development then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of parking for persons with a disability and guests, that exceeds 0.5 spaces per bedroom.

(B) For purposes of this subdivision, "unobstructed access to the major transit stop" means a resident is able to access the major transit stop without encountering natural or constructed impediments. For purposes of this subparagraph, "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.

(3) Notwithstanding paragraph (1), if a development meets the criteria of subparagraph (G) of paragraph (1) of subdivision (b), then, upon the request of the developer, a city, county, or city and county shall not impose vehicular parking standards if the development meets any of the following criteria:

(A) The development is located within one-half mile of a major transit stop and there is unobstructed access to the major transit stop from the development.

(B) The development is a for-rent housing development for individuals who are 55 years of age or older that complies with Sections 51.2 and 51.3 of the Civil Code and the development has either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(C) The development is either a special needs housing development, as defined in Section 51312 of the Health and Safety Code, or a supportive housing development, as defined in Section 50675.14 of the Health and Safety Code. A development that is a special needs housing development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(4) 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 subdivision, a development may provide onsite parking through tandem parking or uncovered parking, but not through onstreet parking.

(5) This subdivision shall apply to a development that meets the requirements of subdivisions (b) and (c), but only at the request of the applicant. An applicant may request parking incentives or concessions beyond those provided in this subdivision pursuant to subdivision (d).

(6) This subdivision does not preclude a city, county, or city and county from reducing or eliminating a parking requirement for development projects of any type in any location.

(7) Notwithstanding paragraphs (2) and (3), if a city, county, city and county, or an independent consultant has conducted an areawide or jurisdictionwide parking study in the last seven years, then the city, county, or city and county may impose a higher vehicular parking ratio not to exceed the ratio described in paragraph (1), based upon substantial evidence found in the parking study, that includes, but is not limited to, an analysis of parking availability, differing levels of transit access, walkability access to transit services, the potential for shared parking, the effect of parking requirements on the cost of market-rate and subsidized developments, and the lower rates of car ownership for low-income and very low income individuals, including seniors and special needs individuals. The city, county, or city and county shall pay the costs of any new study. The city, county, or city and county shall make findings, based on a parking study completed in conformity with this paragraph, supporting the need for the higher parking ratio.

(8) A request pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(q) Each component of any density calculation, including base density and bonus density, resulting in fractional units shall be separately rounded up to the next whole number. The Legislature finds and declares that this provision is declaratory of existing law.

(r) This chapter shall be interpreted liberally in favor of producing the maximum number of total housing units.

(s) Notwithstanding any other law, if a city, including a charter city, county, or city and county has adopted an ordinance or a housing program, or both an ordinance and a housing program, that incentivizes the development of affordable housing that allows for density bonuses that exceed the density bonuses required by the version of this section effective through December 31, 2020, that city, county, or city and county is not required to amend or otherwise update its ordinance or corresponding affordable housing incentive program to comply with the amendments made to this section by the act adding this subdivision, and is exempt from complying with the incentive and concession calculation amendments made to this section by the act adding this subdivision as set forth in subdivision (d), particularly subparagraphs (B) and (C) of paragraph (2) of that subdivision, and the amendments made to the density tables under subdivision (f).

(t) When an applicant proposes to construct a housing development that conforms to the requirements of subparagraph (A) or (B) of paragraph (1) of subdivision (b) that is a shared housing building, the city, county, or city and county shall not require any minimum unit size requirements or minimum bedroom requirements that are in conflict with paragraph (7) of subdivision (o).

(u) (1) The Legislature finds and declares that the intent behind the Density Bonus Law is to allow public entities to reduce or even eliminate subsidies for a particular project by allowing a developer to include more total units in a project than would otherwise be allowed by the local zoning ordinance in exchange for affordable units. It further reaffirms that the intent is to cover at least some of the financing gap of affordable housing with regulatory incentives, rather than additional public subsidy.

(2) It is therefore the intent of the Legislature to make modifications to the Density Bonus Law by the act adding this subdivision to further incentivize the construction of very low, low-, and moderate-income housing units. It is further the intent of the Legislature in making these modifications to the Density Bonus Law to ensure that any additional benefits conferred upon a developer are balanced with the receipt of a public benefit in the form of adequate levels of affordable housing. The Legislature further intends that these modifications will ensure that the Density Bonus Law creates incentives for the construction of more housing across all areas of the state.

65915.1

For purposes of Section 65915, affordable housing impact fees, including inclusionary zoning fees and in-lieu fees, shall not be imposed on a housing development's affordable units.

65915.2

If permitted by local ordinance, nothing in Section 65915 shall be construed to prohibit a city, county, or city and county from requiring an affordability period longer than 55 years for any units that qualified the applicant for the award of the density bonus developed in compliance with a local ordinance that requires, as a condition of the development of residential units, that the development include a certain percentage of units that are affordable to, and occupied by, low-income, lower income, very low income, or extremely low income households and that will be financed without low-income housing tax credits.

65915.5

(a) When an applicant for approval to convert apartments to a condominium project agrees to provide at least 33 percent of the total units of the proposed condominium project to persons and families of low or moderate income as defined in Section 50093 of the Health and Safety Code, or 15 percent of the total units of the proposed condominium project to lower income households as defined in Section 50079.5 of the Health and Safety Code, and agrees to pay for the reasonably necessary administrative costs incurred by a city, county, or city and county pursuant to this section, the city, county, or city and county shall either (1) grant a density bonus or (2) provide other incentives of equivalent financial value. A city, county, or city and county may place such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value as it finds appropriate, including, but not limited to, conditions which assure continued affordability of units to subsequent purchasers who are persons and families of low and moderate income or lower income households.

(b) For purposes of this section, "density bonus" means an increase in units of 25 percent over the number of apartments, to be provided within the existing structure or structures proposed for conversion.

(c) For purposes of this section, "other incentives of equivalent financial value" shall not be construed to require a city, county, or city and county to provide cash transfer payments or other monetary compensation but may include the reduction or waiver of requirements which the city, county, or city and county might otherwise apply as conditions of conversion approval.

(d) An applicant for approval to convert apartments to a condominium project may submit to a city, county, or city and county a preliminary proposal pursuant to this section prior to the submittal of any formal requests for subdivision map approvals. The city, county, or city and county shall, within 90 days of receipt of a written proposal, notify the applicant in writing of the manner in which it will comply with this section. The city, county, or city and county shall establish procedures for carrying out this section, which shall include legislative body approval of the means of compliance with this section.

(e) Nothing in this section shall be construed to require a city, county, or city and county to approve a proposal to convert apartments to condominiums.

(f) An applicant shall be ineligible for a density bonus or other incentives under this section if the apartments proposed for conversion constitute a housing development for which a density bonus or other incentives were provided under Section 65915.

(g) An applicant shall be ineligible for a density bonus or any other incentives or concessions under this section if the condominium project is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, 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 condominium project replaces those units, as defined in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65915, and either of the following applies:

(1) The proposed condominium project, inclusive of the units replaced pursuant to subparagraph (B) of paragraph (3) of subdivision (c) of Section 65915, contains affordable units at the percentages set forth in subdivision (a).

(2) Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.
(h) Subdivision (g) does not apply to an applicant seeking a density bonus for a proposed housing development if their application was submitted to, or processed by, a city, county, or city and county before January 1, 2015.

65915.7

(a) When an applicant for approval of a commercial development has entered into an agreement for partnered housing described in subdivision (c) to contribute affordable housing through a joint project or two separate projects encompassing affordable housing, the city, county, or city and county shall grant to the commercial developer a development bonus as prescribed in subdivision (b). Housing shall be constructed on the site of the commercial development or on a site that is all of the following:

(1) Within the boundaries of the local government.

(2) In close proximity to public amenities including schools and employment centers.

(3) Located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code.

(b) The development bonus granted to the commercial developer shall mean incentives, mutually agreed upon by the developer and the jurisdiction, that may include, but are not limited to, any of the following:

(1) Up to a 20-percent increase in maximum allowable intensity in the General Plan.

(2) Up to a 20-percent increase in maximum allowable floor area ratio.

(3) Up to a 20-percent increase in maximum height requirements.

(4) Up to a 20-percent reduction in minimum parking requirements.

(5) Use of a limited-use/limited-application elevator for upper floor accessibility.

(6) An exception to a zoning ordinance or other land use regulation.

(c) For purposes of this section, the agreement for partnered housing shall be between the commercial developer and the housing developer, shall identify how the commercial developer will contribute affordable housing, and shall be approved by the city, county, or city and county.

(d) For purposes of this section, affordable housing may be contributed by the commercial developer in one of the following manners:

(1) The commercial developer may directly build the units.

(2) The commercial developer may donate a portion of the site or property elsewhere to the affordable housing developer for use as a site for affordable housing.

(3) The commercial developer may make a cash payment to the affordable housing developer that shall be used towards the costs of constructing the affordable housing project.

(e) For purposes of this section, subparagraph (A) of paragraph (3) of subdivision (c) of Section 65915 shall apply.

(f) Nothing in this section shall preclude any additional allowances or incentives offered to developers by local governments pursuant to law or regulation.

(g) If the developer of the affordable units does not commence with construction of those units in accordance with timelines ascribed by the agreement described in subdivision (c), the local government may withhold certificates of occupancy for the commercial development under construction until the developer has completed construction of the affordable units.

(h) In order to qualify for a development bonus under this section, a commercial developer shall partner with a housing developer that provides at least 30 percent of the total units for low-income households or at least 15 percent of the total units for very low-income households.

(i) Nothing in this section shall preclude an affordable housing developer from seeking a density bonus, concessions or incentives, waivers or reductions of development standards, or parking ratios under Section 65915.

(j) A development bonus pursuant to this section shall not include a reduction or waiver of the requirements within an ordinance that requires the payment of a fee by a commercial developer for the promotion or provision of affordable housing.

(k) A city or county shall submit to the Department of Housing and Community Development, as part of the annual report required by Section 65400, information describing a commercial development bonus approved pursuant to this section, including the terms of the agreements between the commercial developer and the affordable housing developer, and the developers and the local jurisdiction, and the number of affordable units constructed as part of the agreements.

(l) For purposes of this section, "partner" means formation of a partnership, limited liability company, corporation, or other entity recognized by the state in which the commercial development applicant and the affordable housing developer are each partners, members, shareholders or other participants, or a contract or agreement between a commercial development applicant and affordable housing developer for the development of both the commercial and the affordable housing properties.

(m) This section shall remain in effect only until January 1, 2028, and as of that date is repealed.

65916.

Where there is a direct financial contribution to a housing development pursuant to Section 65915 through participation in cost of infrastructure, write-down of land costs, or subsidizing the cost of construction, the city, county, or city and county shall assure continued availability for low- and moderate-income units for 30 years. When appropriate, the agreement provided for in Section 65915 shall specify the mechanisms and procedures necessary to carry out this section.

65917.

In enacting this chapter it is the intent of the Legislature that the density bonus or other incentives offered by the city, county, or city and county pursuant to this chapter shall contribute significantly to the economic feasibility of lower income housing in proposed housing developments. In the absence of an agreement by a developer in accordance with Section 65915, a locality shall not offer a density bonus or any other incentive that would undermine the intent of this chapter.

65917.2

(a) As used in this section, the following terms shall have the following meanings:

(1) "Eligible housing development" means a development that satisfies all of the following criteria:

(A) The development is a multifamily housing development that contains five or more residential units, exclusive of any other floor area ratio bonus or incentive or concession awarded pursuant to this chapter.

(B) The development is located within one of the following:

(i) An urban infill site that is within a transit priority area.

(ii) One-half mile of a major transit stop.

(C) The site of the development is zoned to allow residential use or mixed-use with a minimum planned density of at least 20 dwelling units per acre and does not include any land zoned for low density residential use or for exclusive nonresidential use.

(D) The applicant and the development satisfy the replacement requirements specified in subdivision (c) of Section 65915.

(E) The development includes at least 20 percent of the units, excluding any additional units allowed under a floor area ratio bonus or other incentives or concessions provided pursuant to this chapter, with an affordable housing cost or affordable rent to, and occupied by, persons with a household income equal to or less than 50 percent of the area median income, as determined pursuant to Section 50093 of the Health and Safety Code, and subject to an affordability restriction for a minimum of 55 years.

(F) The development complies with the height requirements applicable to the underlying zone. A development shall not be eligible to use a floor area ratio bonus or other incentives or concessions provided pursuant to this chapter to relieve the development from a maximum height limitation.

(2) "Floor area ratio" means the ratio of gross building area of the eligible housing development, excluding structured parking areas, proposed for the project divided by the net lot area. For purposes of this paragraph, "gross building area" means the sum of all finished areas of all floors of a building included within the outside faces of its exterior walls.

(3) "Floor area ratio bonus" means an allowance for an eligible housing development to utilize a floor area ratio over the otherwise maximum allowable density permitted under the applicable zoning ordinance and land use elements of the general plan of a city or county, calculated pursuant to paragraph (2) of subdivision (b).

(4) "Major transit stop" has the same meaning as defined in Section 21155 of the Public Resources Code.

(5) "Transit priority area" has the same meaning as defined in Section 21099 of the Public Resources Code.

(b) (1) A city council, including a charter city council or the board of supervisors of a city and county, or county board of supervisors may establish a procedure by ordinance to grant a developer of an eligible housing development, upon the request of the developer, a floor area ratio bonus, calculated as provided in paragraph (2), in lieu of a density bonus awarded on the basis of dwelling units per acre.

(2) In calculating the floor area ratio bonus pursuant to this section, the allowable gross residential floor area in square feet shall be the product of all of the following amounts:

(A) The allowable residential base density in dwelling units per acre.

(B) The site area in square feet, divided by 43,560.

(C) 2,250.

(c) The city council or county board of supervisors shall not impose any parking requirement on an eligible housing development in excess of 0.1 parking spaces per unit that is affordable to persons and families with a household income equal to or less than 120 percent of the area median income and 0.5 parking spaces per unit that is offered at market rate.

(d) A city or county that adopts a floor area ratio bonus ordinance pursuant to this section shall allow an applicant seeking to develop an eligible residential development to calculate impact fees based on square feet, instead of on a per unit basis.

(e) In the case of an eligible housing development that is zoned for mixed-use purposes, any floor area ratio requirement under a zoning ordinance or land use element of the general plan of the city or county applicable to the nonresidential portion of the eligible housing development shall continue to apply notwithstanding the award of a floor area ratio bonus in accordance with this section.

(f) An applicant for a floor area ratio bonus pursuant to this section may also submit to the city, county, or city and county a proposal for specific incentives or concessions pursuant to subdivision (d) of Section 65915.

(g) (1) This section shall not be interpreted to do either of the following:

(A) Supersede or preempt any other section within this chapter.

(B) Prohibit a city, county, or city and county from providing a floor area ratio bonus under terms that are different from those set forth in this section.

(2) The adoption of an ordinance pursuant to this section shall not be interpreted to relieve a city, county, or city and county from complying with Section 65915.

65917.5

(a) As used in this section, the following terms shall have the following meanings:

(1) "Child care facility" means a facility installed, operated, and maintained under this section for the nonresidential care of children as defined under applicable state licensing requirements for the facility.

(2) "Density bonus" means a floor area ratio bonus over the otherwise maximum allowable density permitted under the applicable zoning ordinance and land use elements of the general plan of a city, including a charter city, city and county, or county of:

(A) A maximum of five square feet of floor area for each one square foot of floor area contained in the child care facility for existing structures.

(B) A maximum of 10 square feet of floor area for each one square foot of floor area contained in the child care facility for new structures.

For purposes of calculating the density bonus under this section, both indoor and outdoor square footage requirements for the child care facility as set forth in applicable state child care licensing requirements shall be included in the floor area of the child care facility.

(3) "Developer" means the owner or other person, including a lessee, having the right under the applicable zoning ordinance of a city council, including a charter city council, city and county board of supervisors, or county board of supervisors to make an application for development approvals for the development or redevelopment of a commercial or industrial project.

(4) "Floor area" means as to a commercial or industrial project, the floor area as calculated under the applicable zoning ordinance of a city council, including a charter city council, city and county board of supervisors, or county board of supervisors and as to a child care facility, the total area contained within the exterior walls of the facility and all outdoor areas devoted to the use of the facility in accordance with applicable state child care licensing requirements.

(b) A city council, including a charter city council, city and county board of supervisors, or county board of supervisors may establish a procedure by ordinance to grant a developer of a commercial or industrial project, containing at least 50,000 square feet of floor area, a density bonus when that developer has set aside at least 2,000 square feet of floor area and 3,000 outdoor square feet to be used for a child care facility. The granting of a bonus shall not preclude a city council, including a charter city council, city and county board of supervisors, or county board of supervisors from imposing necessary conditions on the project or on the additional square footage. Projects constructed under this section shall conform to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other health, safety, and zoning requirements generally applicable to construction in the zone in which the property is located. A consortium with more than one developer may be permitted to achieve the threshold amount for the available density bonus with each developer's density bonus equal to the percentage participation of the developer. This facility may be located on the project site or may be located offsite as agreed upon by the developer and local agency. If the child care facility is not located on the site of the project, the local agency shall determine whether the location of the child care facility is appropriate and whether it conforms with the intent of this section. The child care facility shall be of a size to comply with all state licensing requirements in order to accommodate at least 40 children.

(c) The developer may operate the child care facility itself or may contract with a licensed child care provider to operate the facility. In all cases, the developer shall show ongoing coordination with a local child care resource and referral network or local governmental child care coordinator in order to qualify for the density bonus.

(d) If the developer uses space allocated for child care facility purposes, in accordance with subdivision (b), for purposes other than for a child care facility, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. If the developer fails to have the space allocated for the child care facility within three years, from the date upon which the first temporary certificate of occupancy is granted, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors in accordance with procedures to be developed by the legislative body of the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. A penalty levied against a consortium of developers shall be charged to each developer in an amount equal to the developer's percentage square feet participation. Funds collected pursuant to this subdivision shall be deposited by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors into a special account to be used for child care services or child care facilities.
(e) Once the child care facility has been established, prior to the closure, change in use, or reduction in the physical size of, the facility, the city, city council, including a charter city council, city and county board of supervisors, or county board of supervisors shall be required to make a finding that the need for child care is no longer present, or is not present to the same degree as it was at the time the facility was established.

(f) The requirements of Chapter 5 (commencing with Section 66000) and of the amendments made to Sections 53077, 54997, and 54998 by Chapter 1002 of the Statutes of 1987 shall not apply to actions taken in accordance with this section.

(g) This section shall not apply to a voter-approved ordinance adopted by referendum or initiative.

65918.

The provisions of this chapter shall apply to charter cities.

CONNECTIONS START HERE
COSTA MESA
Chamber of Commerce

May 16, 2023

The Honorable John Stephens
Costa Mesa City Council
Costa Mesa Planning Commission
77 Fair Drive
Cosa Mesa, CA 92626

Dear Mayor Stephens, Councilmembers, and Planning Commissioners,

On behalf of the Costa Mesa Chamber of Commerce, I request that you postpone any action at the" *Joint Study Session Regarding Inclusionary Zoning*" scheduled for May 16, 2023. We respectfully request that you table any discussion regarding Inclusionary Zoning, and instead initiate a collaborative approach to meeting the housing needs in our entire community, including affordable/workforce housing.

The Chamber is extremely concerned about the housing crisis, not only in Costa Mesa, but throughout our region. Housing availability and production are a priority for our organization. Employers throughout Costa Mesa, whether they be small family-owned businesses or large publicly traded companies, depend on housing availability and affordability. Housing options for all income levels is a backbone to a healthy economy and employment opportunities for Costa Mesa residents and families.

Because of the seriousness of this issue, the Chamber respectfully recommends the City initiate a deliberative and collaborative process regarding future housing policy, beginning with stakeholder awareness and engagements. Like other community stakeholders who will bring insight to this discussion, we only learned of the Joint Study Session when the agenda was posted online.

We are concerned that by scheduling a meeting and providing direction to staff on Inclusionary Zoning or any affordable housing that does not begin with community outreach and stakeholder engagement will only magnify and not help to alleviate the housing challenges in Costa Mesa. While we appreciate the City Council's and Planning Commission's willingness to prioritize the housing issue, we are mindful that many well-intended policies have only made our state's housing crisis worse.

We are confident that by working together on a thoughtful housing strategy here in Costa Mesa, positive results can be achieved. Therefore, we request you table any discussions regarding Inclusionary Zoning at your May 16, 2023 meeting.

Thank you for your consideration.

Sincerely,

David Haithcock
President and CEO

May 16th, 2023

Re: Inclusionary Housing Ordinance Study Session

To the City Council, Planning Commission, Planning Department, and KM Associates,

These are my initial thoughts on the Inclusionary Housing Ordinance (IHO) based on the excellent May 16th staff report and joint CC/PC study session. No hard feelings if we're not on the same page. I think we will ultimately come up with something good together. Thank you for all your helpful comments at the study session. It is great that we have leadership in this city that is so committed to such a good cause.

I was surprised that the presentation gave us the *how* of inclusionary zoning but not the *why*, which is a much more important question. "We need affordable housing" is not a good enough answer to this question. Of course that's true, but as far as my (limited) research has shown me, the verdict is decidedly *out* as to whether this is an effective tool in making cities generally more affordable. I found this article persuasive: https://www.mercatus.org/research/policy-briefs/inclusionary-zoning-hurts-more-it-helps. (To remain balanced, I also just read Shane Phillip's *The Affordable City*, which has great ideas and is worth reading).

It seems to me that the *internal* goal of making Costa Mesa more affordable to more people and the *externally-imposed* goal of meeting our RHNA at all affordability levels are two different challenges with the latter being a potential constraint to the former. When push comes to shove, I think that pursuing broader affordability is more important than chasing unrealistic quotas for below market rate (BMR) units.

Based on the data in our Housing Element…

- About half of Costa Mesa's households are low income or lower (≈ 20,000 households).
- About 40% of our RHNA is for low-income units or lower (≈ 4,700 units).
- This means that *even if* we were able to build all required units in this cycle (best case scenario) and therefore were able to generate all 4,700 units that are restricted to low-income households and lower, then we will have provided units for less than a quarter of our city's low-income households, leaving 3/4 of them on waiting lists.

This leads to the questions:

- At what cost do we get these underwhelming results? (Less *overall* supply of new housing? Administrative costs and staff time?).
- Who pays this cost? (At least in part, it's the residents of the new market-rate units that are subsidizing their low-income neighbors).

Rather than put too much hope in an IHO, I believe that we should:

- Spend our resources on:
    - Ensuring that we have straightforward design standards so that new development comes in beautifully and by-right *everywhere*. This includes wraps and podiums along our corridors, missing middle housing in our residential neighborhoods, and everything in between. We should control form and character rather than density.
    - Continuously working towards an excellent, high-quality public realm (streets and open spaces) throughout the city. Streets and open spaces need to be nice enough for developers to *want to* front their buildings on them.
    - Improving the safety, comfort, and convenience of "alternative" mobility options to reduce car-dependency.
- Only when we are fully committed to the goals above should we <u>unleash supply</u> by reducing the primary barriers to the production of housing:
    - Increase density limits wherever we can (control form - height, footprint, etc. - instead).
    - Eliminating minimum parking requirements.
    - Revise our development fees, and scale them down to be project-size appropriate.
- Increasing housing supply is one thing we can do to increase affordability (supply and demand, price filtering), but we should also spend our resources on:
    - Housing stability. This can include displacement policy and local rent stabilization policy (the statewide anti-rent gouging law AB-1482 sunsets in 2030 for example).
    - Housing subsidy. Affordable housing *development*; transitional & supportive housing, etc.

But because we need to at least make an attempt to do our state-imposed homework in creating BMR units, I understand that maybe we do need to have an IHO. Here are my *tentative thoughts* on what that could look like:

- Not apply (not even in-lieu fees) to projects with fewer than 40 units or those that are subject to Measure Y. I don't have any ideas at the moment for what to do about the threshold problem.
- Not apply (not even in-lieu fees) to for-sale units. This works against our goals of increasing home ownership opportunities in Costa Mesa, and the affordability gap is *just too great*.
- For projects subject to our IHO, it should be something like:
    - 5% very low income (or in-lieu fee), or
    - 10% low income (or in-lieu fee)
- We should rely heavily on *incentives* to provide BMR units (and other things!), such as:
    - Permit streamlining
    - Fee reduction
    - Density bonus. This would be our own "sweeter deal" and be available to applicants that opt out of State DB. This would have the benefit of being able to *maintain design contro*l (concessions and waivers - from local design standards - are available to the recipients of density bonuses).
- Require 99 year covenants, with a high buyout option. This is free affordable housing with no downside: no developer's pro forma extends 55 years into the future anyway.

Again, these are just my initial thoughts. Please feel free to reach out to talk about any of these things.

Thanks for reading!

Russell Toler
Costa Mesa Planning Commission