

**Chapter 17.58
DENSITY BONUSES**

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17.58.010 Purpose.

The purpose of this chapter is to implement Government Code Section 65915 et seq. (the “State Density Bonus and Incentive Law”). Any changes to the State Density Bonus and Incentive Law shall be deemed to supersede and govern any conflicting provisions contained herein

17.58.020 Definitions

“Community Development Director” means the means the Director of the City’s Community Development Department or designee.

“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 or, if elected by the applicant, a lesser percentage of density increase. All density calculations resulting in fractional units shall be rounded up to the next whole number.

“Density bonus agreement” means a legally binding agreement between a developer and the City to ensure that the requirements of this chapter are satisfied. The agreement shall establish, among other things, the number of restricted units, their size, location, terms and conditions of affordability, and production schedule.

“Housing development,” as used in this chapter, means a development project for five or more residential units, including mixed-use developments. For the purposes of this chapter, “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. For purposes of this chapter “housing development” includes a shared housing building development.

“Maximum allowable residential density” means the density allowed under the zoning ordinance and land use element of the general plan, or, if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general

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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, the general plan density shall prevail.

“Senior citizen housing development” means a development project as defined in Sections 51.3 and 51.12 of the California 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 chapter “development” includes a shared housing building development.

“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 that are 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. Such 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.

“Shared housing unit” means one or more habitable rooms, not within another dwelling unit, which includes a bathroom, sink, refrigerator, and microwave, and is used for permanent residence.

17.58.030 Density Bonus and Incentive Law.

A. For a housing development qualifying pursuant to the requirements of Government Code Section 65915, the City shall grant a density bonus in an amount specified by Government Code Section 65915. Except as otherwise required by Government Code Section 65915, the density bonus units shall not be included when calculating the total number of housing units that qualifies the housing development for a density bonus. Except as otherwise required by Government Code Section 65915, the maximum allowable density shall not exceed a 35 percent density bonus.

B. The City shall grant the applicant the number of incentives and concessions required by Government Code Section 65915. The City shall grant the specific concession(s) or incentive(s) requested by the applicant, unless it makes any of the relevant written findings stated in Government Code Section 65915(d). Senior citizen housing developments that qualify for a density bonus shall not receive any incentives or concessions, unless Government Code Section 65915 is amended to specifically require that local agencies grant incentives or concessions for senior citizen housing developments.

C. For any development project that is granted a density bonus or other benefit pursuant to this section, the affordable units that qualify the project as eligible for a density bonus, must be constructed concurrently with or prior to the construction of any market rate units. In addition, the affordable units must be integrated with the market rate units so that there is a mix of affordable and market rate units, if any, in each building of the development project.

E. An applicant shall not receive a density bonus or any other incentive or concession if the housing development would be excluded under Government Code Section 65915.

17.58.040 Processing of density bonus request.

A. In addition to any other review required for a proposed housing development, an application for a density bonus shall be filed with the Planning Division. The application shall be filed concurrently with an application for a development plan review or administrative approval. At the time the applications are submitted, the applicant shall pay all required processing fees.

B. The applicant shall submit reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, waivers or reductions of development standards, and parking ratios.

C. Except as restricted by Government Code Section 65915, the applicant for a density bonus may submit a proposal for the waiver or reduction of any development standards that have the effect of physically precluding the construction of a housing development incorporating the density bonus and any incentives or concessions granted to the applicant. A request for a waiver or reduction of development standards shall be accompanied by documentation demonstrating that the waiver or reduction is physically necessary to construct the housing development with the additional density allowed pursuant to the density bonus and incorporating any incentives or concessions required to be granted. The City shall approve a waiver or reduction of a development standard, unless it finds that:

1. The application of the development standard does not have the effect of physically precluding the construction of a housing development at the density allowed by the density bonus and with the incentives or concessions granted to the applicant;
2. The waiver or reduction of the development standard would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact;
3. The waiver or reduction of the development standard would have an adverse impact on any real property that is listed in the California Register of Historical Resources; or
4. The waiver or reduction of the development standard would be contrary to state or federal law.

D. The applicant may request, and the City shall grant, a reduction in parking requirements in accordance with Government Code Section 65915(p), as that section may be amended from time to time.

E. The applicant shall comply with all requirements stated in Government Code Section 65915.

17.58.50 Density bonus agreement.

A. The applicant shall enter into an agreement with the City to ensure the continued affordability of all affordable units or the continued reservation of such units for qualifying senior citizens. The density bonus agreement between the project applicant and the City shall be made a condition of the discretionary planning permits for all housing developments seeking a density bonus pursuant to this chapter.

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B. The terms of the draft density bonus agreement shall be reviewed and revised as appropriate by the Community Development Director and the City Attorney who shall formulate a recommendation to the Planning Commission for review and the City Council for final approval.

C. The Community Development Director is authorized to execute the density bonus agreement on behalf of the City. The executed density bonus agreement shall be recorded on the parcel or parcels designated for the construction of qualifying units, or donated for the purpose of constructing qualifying units. The approval and recordation shall occur prior to final map approval or, where a map is not being processed, prior to the issuance of building permits for the parcels or units. The density bonus agreement shall be binding upon all future owners and successors in interest.

17.58.060 Implementation.

A. The application for a density bonus shall be processed in the same manner as, and concurrently with the application for a development plan review. Project permitting processes are established in Chapter 17.415 LEMC, Permitting Requirements.

B. The provisions of this chapter shall be administered by the Community Development Department. Projects requesting density bonus are subject to processing through both Chapter 17.410 LEMC, General Application Processing Procedures, and the requirements in this chapter.