

STAFF REPORT



COMMUNITY DEVELOPMENT

DATE: November 17, 2020

TO: Justin Hess, City Manager

FROM: Patrick Prescott, Community Development Director
VIA: Fred Ramirez, Asst. Community Development Director Planning
Simone McFarland, Asst. Community Development Director Housing
and Economic Development

SUBJECT: Request for City Council Direction on Updates to the City of Burbank's
Density Bonus Regulations

RECOMMENDATION

Provide policy direction to City staff on updates to the Density Bonus regulations.

BACKGROUND

In 2017, the Council set the goal to build 12,000 dwelling units during the next 15 years. The goal is consistent with the City's Affordable Housing Strategy and is a key piece in the housing puzzle. Updating and implementing housing policies, coupled with the goal of 12,000 units, will assist the City's efforts to generate housing for all economic segments of the community while continuing to facilitate responsible development that builds and protects neighborhoods. Two policy areas staff is proposing for review are the current Inclusionary Housing and Density Bonus regulations. This report and accompanying study session address Density Bonus regulations, while a separate report and study session have been prepared for City Council consideration regarding updates to local Inclusionary Housing policies.



The City's Density Bonus Ordinance ("Ordinance") was adopted in 2006 (see Attachment 1, Ordinance No. 3693) and has not been updated since. This study session is the first focused discussion and request for City Council direction on the update to the Density Bonus regulations. City Council direction on these policy questions will help provide guidance to staff as we move to the next steps in the process, which includes community input and eventual development of updated regulations in the form of a new ordinance on Density Bonus.

DISCUSSION

Density Bonus

Background

Density Bonus refers to California's Density Bonus Law ("Density Bonus Law") – CA Government Code Sections 65915-65918 – that provides housing developers tools to encourage the development of mixed housing options, as well as childcare facilities. Generally, these tools include:

- Increases in density when projects facilitate the development of senior housing, student housing, childcare facilities, mixed-income developments, and developments that are 100% affordable;
- Reduced parking requirements; and
- Deviations from other regulatory requirements when necessary to make an affordable housing project feasible or to physically accommodate the construction of the development.

The total increase in density is set on a sliding scale, based upon the percentage and affordability of the units provided. Local jurisdictions across the State are required to abide by the provisions of the Density Bonus Law by making these tools available to housing developers.

As formerly mentioned, Burbank last updated the City's existing Ordinance in 2006. This is also when the City last updated the associated Density Bonus Implementing Regulations ("Implementing Regulations") that assist prospective developers in understanding the specific requirements placed upon projects. The purpose of the Ordinance is "to facilitate the development of affordable housing and to implement the goals, objectives, and policies of the City's Housing Element." The Ordinance allows for consistency between local and State statutes by codifying the provisions of the Density Bonus Law into the Burbank Municipal Code. A summary of the existing Ordinance is provided in Attachment 2.

In light of recent updates to State law, there is a need to amend the existing Ordinance and Implementing Regulations to be consistent with these updates and to incorporate best practices when reviewing density bonus projects.

Policy Questions

While the Density Bonus Law identifies the tools that shall be provided to developers, local jurisdictions can establish a tailored review process through which they evaluate

projects. Because of the variability, there are important policy questions to consider. Three of these big picture policy areas are summarized in the following section.

1.How Should the City Review Incentives, Concessions and Waivers?

Summary: The Density Bonus Law lets housing developers request deviations from regulatory requirements through incentives, concessions and waivers.

Incentives/Concessions – Incentives and concessions are defined as deviations from general regulatory requirements that result in identifiable and actual cost reductions necessary in order to make the affordable housing project economically feasible. A local jurisdiction is required to grant these deviations unless it finds that:

- A requested incentive or concession does not result in identifiable and actual cost reduction;
- It would have a specific adverse impact upon public health and safety, the physical environment or historical property; or
- Approval of the deviation would be contrary to State or Federal law.

State law goes on to define *specific adverse impact* as, “a significant, quantifiable, direct and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.” Local jurisdictions have the burden of proof in the event that they deny a requested incentive or concession.

The number of incentives and concessions a developer can request range from 1 – 4, based on the percentage of affordable units provided in the project.

Under the City’s existing Ordinance and Implementation Regulations, the review of incentives and concessions is broken down into the following three tiers:

Tier 1 – minor deviations that require Community Development Director approval.
Tier 2 and 3 – more considerable deviations that require Planning Board or City Council approval.

Waivers – Waivers are defined as deviations from development standards that physically prevent the construction of an affordable housing project at the residential density allowed under the Density Bonus Law. Per State law, local jurisdictions cannot apply development standards that physically preclude the construction of a density bonus project (e.g. height, number of stories, setbacks, open space). A local jurisdiction is required to grant waivers unless it finds that:

- The waiver would have a specific adverse impact upon public health and safety, or the physical environment;
- The waiver would harm property listed in the California Register of Historical Resources; or
- Granting of the waiver would be contrary to State or Federal law.

The definition of *specific adverse impact* discussed in the Incentives/Concessions section also applies.

Waivers from development standards do not count as incentives or concessions, and there is no limit on the number of waivers that can be requested as part of a density bonus project.

The City's existing Ordinance and Implementing Regulations do not have an established review process for waivers. They are currently reviewed in conjunction with the associated entitlement application. The decision-making body responsible for making a decision on the entitlement application is also responsible for making a decision on the waiver.

While the Density Bonus Law identifies when local jurisdictions must approve incentives, concessions and waivers, local jurisdictions could establish a review process through which they evaluate the merits of a request. In order to ensure alignment with Council goals and policies, staff is seeking City Council direction on how the City should approach the review of incentives, concessions and waivers,

Staff Recommendation: As identified in the 2017 Burbank Affordable Housing Analysis and Strategy and consistent with City Council goals and policies, the City Council has worked towards facilitating the production of affordable housing, while also promoting responsible development that protects and preserves existing residential neighborhoods.

Consistent with these efforts, staff recommends that the City Council consider maintaining a tiered approach when reviewing incentives and concessions that is extended to the review of waivers. Furthermore, staff recommends that the tiered approach be updated to only include two tiers (Tier 1 and Tier 2).

- Tier 1 would include a list of pre-established deviations that have been vetted through- and approved by- the City Council as part of a future ordinance review and adoption process. Once a list is established, requests for Tier 1 deviations would be reviewed and approved by the Community Development Director.
- Tier 2 would include requests for all other deviations that are not included in the Tier 1 list. These requests would be reviewed and approved by the Planning Board.

In light of recent updates to State law that have established objective criteria that outline when incentives, concessions and waivers shall be approved, it is staff's recommendation that the Planning Board be the decision-making body of Tier 2 requests. Such an approach would be consistent with the City's existing practices regarding land use applications that do not require policy decisions from the City Council. Such examples include City review of Conditional Use Permits and Variance Applications, which are both approved by the Planning Board. This would ensure that applications are reviewed for consistency with the objective criteria in the Density Bonus Law, while facilitating the streamlined review of affordable housing projects.

2. What Should the Appeals Process Look Like?

Summary: As previously referenced, the Density Bonus Law establishes objective criteria that developers can comply with in order to qualify for density increases and deviations from regulatory requirements. When reviewing density bonus projects, local jurisdictions have limited discretion over the approval or denial of the project. A city's review is limited to compliance with the applicable – and objective – zoning standards, as well as the objective requirements identified in the Density Bonus Law. A local jurisdiction cannot deny a project based on subjective standards. Further, if a density bonus project provides 20% or more lower income units or 100% moderate income, then the project is further protected under the Housing Accountability Act (HAA - CA Government Code Section 65589.5). The HAA also provides that a project may only be denied in limited circumstances based on objective standards. Objective is defined as, “involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official.”

Under the current Ordinance, decisions on density bonus projects are appealable to the Planning Board and City Council. In 2019, City Council considered an appeal on a density bonus project that was originally approved by the Community Development Director. Two key issues that were brought to light as a result of processing the project include:

- A need to revisit the City's existing Ordinance and Implementing Regulations, in order to update the regulations in compliance with State law and incorporate best practice approaches that will help process density bonus applications more effectively. Having received City Council direction, staff is currently undertaking this effort.
- Some members of the public expressed frustration that the density bonus project was going through multiple appeals, when the discretion that could be practiced by decision makers was limited. Generally, cities cannot make a policy decision to deny a by-right density bonus project. As already discussed, a city's discretion on these projects is limited and review of a density bonus project is limited to objective standards in the Zoning Code and the Density Bonus Law.

Staff Recommendation: Considering the City's limited discretion when reviewing density bonus projects, staff recommends that review of these projects be assigned to City Planning staff and the Planning Board, who already have designated duties and responsibility to assure compliance with applicable development standards and allowable land uses consistent with the City's zoning codes and the Burbank2035 General Plan. The determination of whether City planning staff or the Planning Board would be making the final decision on the project would be based on the previously described tiered system for incentives, concessions, and waivers.

Further, staff also recommends that the appeals process for by-right density bonus projects be updated so that a final decision is made by the Planning Board¹. The Planning Board would be responsible for confirming the project's compliance with all objective

¹ This would exclude density bonus projects that are processed concurrently with other entitlement requests that require City Council approval (i.e. Planned Developments, Development Agreements, Zone Map Amendments, General Plan Amendments and Zone Text Amendments.)

standards both in the Zoning Code as well as the Density Bonus Law. Projects would not be appealable to the City Council. This would allow for a more streamlined review of by-right projects that are only subject to objective standards. This approach is also consistent with the City's Economic Recovery Plan, which City Council approved earlier this year and which includes, amongst other things, the goal of improving the entitlement process by streamlining the review of multifamily housing projects.

3. How Should the City Confirm Compliance with the Density Bonus Law's Replacement Housing Provisions?

Summary: The Density Bonus Law imposes an obligation on developers requiring them to replace existing units as part of a proposed project in those instances when existing units are being removed from the rental market and the following applies:

- The units have been occupied by very low or lower income households within the last five years, or
- The units have been subject to a form of rent or price control within the last five years.

These units must be replaced in the proposed project and must be deed restricted as affordable units for a minimum of 55 years. When the income levels of the most recent household for a unit is unknown, the Density Bonus Law establishes a rebuttable presumption for the income level of the household that occupied that unit.² A copy of these provisions is provided in Attachment 3.

As part of reviewing density bonus projects, local jurisdictions have to establish whether developers are meeting this obligation. The City's existing Ordinance and Implementing Regulations do not provide guidance on how the City should establish compliance with these obligations. These policy documents were last updated in 2006, before the replacement housing provisions were incorporated into the Density Bonus Law.

In order to get further guidance on how Burbank can proceed with assessing density bonus projects for compliance with these provisions, City Council previously directed staff to look at best practice approaches. The information below provides an overview of other cities' existing practices – specifically Glendale, Pasadena and the City of Los Angeles. Below are some of staff's findings:

1. Cities generally attempt to get two pieces of information when completing their assessment:
 - Income Information from existing or prior residents; and

² "...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." [Government Code Section 65915(c)(3)(B)(i)].

- Property Information (i.e., a title report, record of agreements recorded on the property)
- 2. In attempting to gather the income information from existing or prior tenants', cities generally:
 - Send mailed correspondence to the address of each unit, making the residents aware of the project as well as their opportunity to share information as part of staff's review of the project. This correspondence is generally on a city letterhead; and
 - Look through City records to identify whether low income residents have resided on the property over the past five years via rental assistance programs, such as the Section 8 Voucher program.
- 3. In attempting to gather property information cities generally:
 - Look through city records to identify whether there are recorded affordability agreements on the property that the City may be a party to; and
 - Request title reports from housing developers.
- 4. In instances where the household income of existing units cannot be determined, pursuant to State law, cities rebuttably presume that lower income renter households occupy the units in the same proportion of lower income renter households to all renter households within the jurisdiction.

Since the City's existing Ordinance does not provide guidance on how staff should confirm a project's compliance with the replacement housing obligations, staff is seeking City Council direction on how staff should move forward in addressing this matter as part of updates to the Ordinance.

Staff Recommendation: To establish more structured guidance that outlines how the City would establish compliance with the Density Bonus Law's replacement housing requirement, staff recommends updating the Implementing Regulations to at a minimum include the four best practices identified in the section above. These would provide staff the information needed in order to meet the provisions in the Density Bonus Law. Should the City Council want to go a step further, City staff can look at the feasibility of hiring a third party consultant who would undertake these efforts on behalf of the City. However, securing third party consultants would result in added costs that would be incurred by the City. Pursuant to State law, this cost cannot be passed on to the housing developer.

FISCAL IMPACT

There is no fiscal impact associated with the City Council providing policy direction and input on the update to the City's Density Bonus regulations. As the draft ordinance is developed, staff will provide the City Council fiscal impact estimates that may result from the implementation of the updated ordinance.

CONCLUSION

Updates to the City's Density Bonus regulations present an opportunity for the City to plan for the future in a manner that leverages future development in order to meet the City's goals of facilitating the production of affordable housing – while also promoting responsible development that protects and preserves existing residential neighborhoods.

The three big picture policy areas summarized above are intended to confirm Council direction on key questions.

- How Should the City Review Incentives/Concessions and Waivers?
- What Should the Appeals Process Look Like?
- How Should the City Confirm Compliance with the Density Bonus Law's Replacement Housing Provisions?

While these don't encompass every aspect of the Density Bonus regulations, Council feedback on these items will allow staff to ensure alignment with Council goals and policies before moving forward with draft regulations.

ATTACHMENTS

Attachment 1 – Density Bonus City Council Ordinance No. 3693

Attachment 2 – City of Burbank Density Bonus Implementing Regulations

Attachment 3 – State of California Government Code Section 65915 - Density Bonus Law

ORDINANCE NO 3693

AN ORDINANCE OF THE COUNCIL OF THE CITY OF
BURBANK AMENDING CHAPTER 31 OF THE BURBANK
MUNICIPAL CODE RELATING TO DENSITY BONUS 1701

City Attorney's Synopsis

This Ordinance amends the Burbank Municipal Code to provide for a density bonus ordinance consistent with state law SB 1818, adopted in 2004, by Chapter 928 (Government Code Sec 65915 *et seq*) requires cities to adopt ordinances to implement the density bonus law Previous law required a 25% density bonus when housing projects provided between 10-20% of the units affordable (depending on the level of affordability) In addition, cities needed to provide at least one concession such as financial assistance or a reduction in development standards

State law, among other things, reduces the amount of units that a developer must provide in order to receive a density bonus and requires cities to provide between one to three concessions, depending upon the percentage of affordable units that the developer provides This Ordinance sets forth the incentives the City is offering, and the process for developers to apply for such concessions, as well as incorporating state law in Chapter 31

THE COUNCIL OF THE CITY OF BURBANK FINDS

A Affordable housing is a crisis in the City of Burbank as housing supply continues to lag behind housing demand, while rents increase For-sale housing prices have skyrocketed, rendering homeownership out of reach for all but upper income households

B The Housing Element of the General Plan documents the City's affordable housing needs, sets forth policies for the City to encourage and facilitate private sector development of affordable housing The Housing Element acknowledges that public sector support alone is insufficient to address Burbank's affordable housing needs

C In December 2001, the City completed a Housing Profile to more specifically evaluate the impact of the City's escalating housing market on Burbank's residents and workforce, and laid the groundwork for identifying gaps in the City's current affordable housing programs

D In response to the findings of the Housing Profile, in April 2002, the City of Burbank and Burbank Redevelopment Agency formed a Blue Ribbon Task Force ("Task Force") on Affordable Housing charged with taking a comprehensive look at the City's

affordable housing needs and providing recommendations to expand Burbank's stock of affordable housing. Over a period of six months and eight committee meetings, the Task Force developed a consensus report recommending implementation of a series of 16 housing programs, which were accepted by the Council on February 18, 2003, by the adoption of Resolution No. 26,434, and to return to Council with implementation of those recommendations.

E SB 1818, adopted in 2004, by Chapter 928 (Government Code Sec 65915 *et seq*) requires cities to adopt ordinances to implement the density bonus law.

F On October 24, 2005, the Planning Board, after a noticed public hearing, adopted Resolution No. 3008, which recommended that the Council approve the proposed Density Bonus Ordinance and the related Negative Declaration.

G On March 21, 2006, the Council held a duly noticed hearing.

H This Ordinance was examined in a Negative Declaration which was prepared in accordance with the California Environmental Quality Act (CEQA Guidelines, Section 15070). Council approved and adopted the subject Negative Declaration in Resolution No. 27,203. The Negative Declaration states that the proposed ordinance will not have the potential to cause significant adverse impacts.

THE COUNCIL OF THE CITY OF BURBANK ORDAINS

1 Division 5 to Article 6 of Chapter 31, entitled "Affordable Housing Incentives," is hereby added to the Burbank Municipal Code to read as follows:

Division 5. Affordable Housing Incentives

Sec. 31-633. Definitions.

The following words or phrases as used in this Division shall have the following meanings. These definitions shall apply only within this Division and shall not apply to other Divisions of this Chapter. In the event of a conflict between the definitions in this Section and the definitions of Section 31-203, these definitions shall prevail.

"Accessible Housing Unit" means for purposes of receiving an inclusionary housing credit, an accessible housing unit must be a fully built handicapped unit during time of construction with standards in excess of California Building Code Chapter 11A requirements.

"Adaptive Reuse" means conversion of all or part of a previously non-residential structure to residential use. For example, conversion of second story office space in the downtown to residential lofts would be Adaptive Reuse.

"Affordable Housing Fund" means a separate fund for deposit of In-Lieu Housing Fees, and other sources as applicable, as defined under Section 31-690 1 of this Division

"Affordable Ownership Housing Cost" means the Total Housing Costs paid by a qualifying household, which shall not exceed a specified fraction of their gross income as specified in California Health and Safety Code Section 50052 5

"Affordable Rent" means the Total Housing Costs, including a reasonable utility allowance, paid by a qualifying household, which shall not exceed a specified fraction of their gross income as specified in California Health and Safety Code Section 50053
 Affordable Unit means a dwelling unit within a Housing Development which will be reserved for, and restricted to, Very Low Income Households or Low Income Households at an Affordable Rent or is reserved for sale to a moderate income household at an Affordable Purchase Price

"Affordable Purchase Price" means the purchase price for an Affordable Unit for Moderate Income Households that is calculated so that the total monthly housing cost does not exceed the Affordable Ownership Housing Cost

"Affordable Unit" means a dwelling unit within a Housing Development which will be reserved for sale or rent to, and is made available at an Affordable Rent or Affordable Ownership Cost to, very low, low, or moderate-income households, or is a unit in a Senior Citizen Housing Development

"Area Median Income" means area median income for Los Angeles County as published pursuant to California Code of Regulations, Title 25, Section 6932, or successor provision

"Child Care Facility" means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and school age child care centers

"Condominium Project" means a Housing Development as defined in subdivision (f) of Section 1351 of the Civil Code, but not including the conversion of existing rental apartments to condominiums

"Density Bonus" means a density increase over the Maximum residential density, in the manner set forth in Section 31-635

"Density Bonus Housing Agreement" means a recorded agreement between a developer and the City as described in Section 31-642 of this Division to ensure that the requirements of this Division are satisfied The agreement, among other things, shall establish the number of Affordable Units, their size, location of the Affordable Units within the Housing Development, terms and conditions of affordability, and production schedule

"Density Bonus Units" means those residential units granted pursuant to the provisions of this Division which exceed the otherwise allowable maximum residential density for the development site

"Development Agreement" means an agreement entered into between the city and a developer pursuant to Section 65864 of the California Government Code, and under the authority vested in the Council pursuant to Section 31-1997 of the Burbank Municipal Code

"Development Standard" means any site or construction condition that applies to a Housing Development pursuant to this Chapter "Site and construction conditions" means standards that specify, control, or regulate the physical development of a site and buildings on the site in a Housing Development

"Director" means the Director of the Community Development Department of the City, or the designee or designees of such person, or such other persons as may be designated by the City Manager

"Discretionary Approval" means any entitlement or approval as in Chapter 31 of the Municipal Code, including but not limited to a conditional use permit, variance, and subdivision map Housing Development means one or more groups of projects for residential units constructed or to be constructed in the City for sale or for rent For the purposes of this Division, "Housing Development" also includes a subdivision, planned unit development, or Condominium Project, the substantial rehabilitation and conversion of an existing commercial building to residential use, and the substantial rehabilitation of an existing multifamily dwelling, where the rehabilitation or conversion would create a net increase of residential units

"Household Income Levels Very Low, Low and Moderate" means households whose gross incomes do not exceed the qualifying very low, low and moderate income limits established in Section 6932 of the California Code of Regulations, and amended periodically based on the U S Department of Housing and Urban Development (HUD) estimate of median income in the Los Angeles-Long Beach Primary Metropolitan Statistical Area, and as adjusted by the State Department of Housing and Community Development (HCD) Pursuant to Code Sections 6926, 6928 and 6930, these income limits are equivalent to the following

Very low income household 50 percent of area median income, adjusted for household size appropriate for the unit and other factors determined by State Department of Housing and Community Development pursuant to Section 50105 of the California Health and Safety Code

Low income household 80 percent of area median income, adjusted for household size appropriate for the unit and other factors determined by State Department of Housing and Community Development pursuant to Section 50079.5 of the California Health and Safety Code

Moderate income households 120 percent of area median income adjusted for

household size appropriate for the unit and other factors determined by State Department of Housing and Community Development pursuant to Section 50093 of the California Health and Safety Code

"Housing Development" means one or more groups of projects for residential units constructed or to be constructed in the City for sale or for rent. For the purposes of this Division, "Housing Development" also includes a subdivision, planned unit development, or Condominium Project, the substantial rehabilitation and conversion of an existing commercial building to residential use, and the substantial rehabilitation of an existing multifamily dwelling, where the rehabilitation or conversion would create a net increase of residential units

"Housing Units" shall mean the total number of residential units in a Housing Development, including the Affordable Units and the Market Rate Units

"Incentives" or concessions are defined in Section 31-640

"Inclusionary Housing Agreement" means a legally binding agreement between a developer and the city which sets forth those provisions necessary to ensure fulfillment of the requirements of this Division, whether through the provision of Inclusionary Units or through an alternative method

"Inclusionary Unit" means a dwelling unit offered for rent or sale to Very Low, Low or Moderate Income households, at an Affordable Rent or Affordable Ownership Housing cost, pursuant to this Division

"In-Lieu Fee" means a fee paid to the City by a developer subject to this Chapter in-lieu of providing the required Inclusionary Units

"Market Rate Unit/s" means all unit/s within a Housing Development excluding the Affordable Units

"Maximum Residential Density" means the maximum number of residential units permitted by this Chapter and the Land Use Element of the General Plan on the date an application for a Density Bonus and Incentives or Concessions is deemed complete, prior to the application of the Density Bonus pursuant to this Division

"Off-Site Unit" means an Inclusionary Unit that will be built separately or at a different location(s) than the main Residential Development, in accordance with the standards

"On-Site Unit" means an Inclusionary Unit that will be built as part of the main Residential Development, in accordance with the standards

"Qualifying Resident" means senior citizens or other persons eligible to reside in a Senior Citizen Housing Development

"Planned Development" means a development (other than a community apartment project, a Condominium Project, or a stock cooperative) having either or both of the following features

(1) The common area is owned either by an association or in common by the owners of the separate interests who possess appurtenant rights to the beneficial use and enjoyment of the common area

(2) A power exists in the association to enforce an obligation of an owner of a separate interest with respect to the beneficial use and enjoyment of the common area by means of an assessment which may become a lien upon the separate interests in accordance with Section 1367 or 1367.1 of the California Civil Code. As used in this Division, Planned Development is not development created by planned development zoning pursuant to Division 10 of Article 19 of this Chapter

"Residential Development" refers to projects involving new construction of residential dwelling units, inclusive of mixed use developments, Adaptive Reuse, and Substantial Rehabilitation involving a net increase in dwelling units, subject to the provisions of this Division

"Senior Citizen Housing Development" means a Housing Development as defined in California Civil Code Section 51.3

"Substantial Rehabilitation" means the rehabilitation of a dwelling unit(s) including correction of code violations, Title 24 upgrades, seismic rehabilitation (where appropriate), and accessibility upgrades such that the unit is returned to the City's housing supply as decent, safe and sanitary housing. The minimum cost threshold for substantial rehabilitation is \$40,000 per unit, as that amount may be adjusted for inflation pursuant to the Inclusionary Housing Implementing Regulations

"Total Housing Costs" means the total monthly or annual recurring expenses required of a household to obtain shelter. For a rental unit, total housing costs include the monthly rent payment and utilities. For an ownership unit, total housing costs include the mortgage payment (principal and interest), utilities, homeowner's association dues, taxes mortgage insurance and any other related assessments

Sec. 31-634. Purpose and intent – Density Bonus.

In accordance with Chapter 4.3 §65915 *et seq.* of the California Government Code, this Division is intended to provide incentives for the production of housing for very low, low income, and senior households and for the production of for-sale housing for moderate income households residing in condominium and planned development projects. In enacting this Division, it is also the intent of the City of Burbank to facilitate the development of affordable housing and to implement the goals, objectives, and policies of the City's housing element. Section 633 through 643 shall hereafter be referred to as the "Density Bonus Ordinance"

Sec. 31-635. Calculation of Density Bonus and Number of Incentives and Concessions.

(a) The City shall grant a Density Bonus to a developer of a Housing Development of 5 or more dwelling units who seeks a Density Bonus in accordance with this Division and agrees to construct at least one of the following

- (1) 10 percent of the total units of the Housing Development as Affordable Units affordable to low income households, or
- (2) 5 percent of the total units of the Housing Development as Affordable Units affordable to very low income households, or
- (3) A Senior Citizen Housing Development, or
- (4) 10 percent of the total units of a newly constructed Condominium Project or planned development as Affordable Units which are affordable to moderate income households

(b) In determining the number of Density Bonus Units to be granted pursuant to Subsection (a) of this Section, the maximum residential density for the site shall be multiplied by 0.20 for Subsections (1), (2), and (3) and 0.05 for Subsection (4), unless a lesser number is selected by the developer

(1) For each one percent increase above 10 percent in the percentage of units affordable to low income households, the Density Bonus shall be increased by 1.5 percent up to a maximum of 35 percent

(2) For each one percent increase above 5 percent in the percentage of units affordable to very low income households, the Density Bonus shall be increased by 2.5 percent up to a maximum of 35 percent

(3) For each one percent increase above 10 percent of the percentage of units affordable to moderate-income households, the Density Bonus shall be increased by one percent up to a maximum of 35 percent

When calculating the number of permitted Density Bonus Units, any calculations resulting in fractional units shall be rounded to the next larger integer

(c) The Density Bonus Units shall not be included when determining the number of Affordable Units required to qualify for a Density Bonus. When calculating the required number of Affordable Units, any calculations resulting in fractional units shall be rounded to the next larger integer

(d) The developer may request a lesser Density Bonus than the project is entitled to, but no reduction will be permitted in the number of required Affordable Units pursuant to Subsection (a) above. Regardless of the number of Affordable Units, no Housing Development may be entitled to a Density Bonus of more than 35 percent

(e) Subject to the findings included in Section 31-641, when a developer seeks a Density Bonus, the City shall grant incentives or concessions listed in Section 31-641 as follows

(1) One incentive or concession for projects that include at least 10 percent of the total units for low 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 condominium or planned development

(2) Two incentives or concessions for projects that include at least 20 percent of the total units for low 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 condominium or planned development

(3) Three incentives or concessions for projects that include at least 30 percent of the total units for low 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 condominium or planned development

(f) A Housing Development may be entitled to more than one Density Bonus, but in no event can the total Density Bonus for any Housing Development exceed 35%. For example, if a Developer provides ten percent (10%) of the Housing Units for Low Income Households and an additional five percent (5%) Very Low Income, Developer shall be entitled to two Density Bonuses. Multiple Density Bonuses will only be allowed where the affordable units are separately and independently counted, however, in any event, the maximum Density Bonus for any Housing Development is 35%.

(g) In accordance with state law, neither the granting of a concession or incentive nor the granting of a Density Bonus shall be interpreted, in and of itself, to require a General Plan amendment, zoning change, or other discretionary approval.

(h) If the Director makes any of the findings set forth in Government Code Section 65915 (d)(1), the written findings shall be provided to the developer, who may within 20 days of the postmarked findings, appeal the decision to the City Council by providing a written request to the Director.

Sec. 31-636. Land Donation.

(a) When a developer of a Housing Development or 5 or more dwelling units donates land to the City as provided for in this Section, the developer shall be entitled to a 15 percent increase above the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for the entire development. For each 1 percent increase above the minimum 10 percent land donation described in paragraph (2) of this Section, the Density Bonus shall be increased by 1 percent, up to a maximum of 35 percent. This increase shall be in addition to any increase in density allowed by Section 31-635, up to a maximum combined Density Bonus of 35 percent if a developer seeks both the increase required pursuant to this Section and Section 31635. When calculating the number of permitted Density Bonus Units, any calculations resulting in fractional units shall be rounded to the next larger integer.

(b) A Housing Development shall be eligible for the Density Bonus described in this Section if the City makes all of the following findings:

(1) The developer will donate and transfer the land no later than the date of approval of the final subdivision map, parcel map, or other development application for the Housing Development.

(2) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development, or will permit construction of a greater percentage of units if proposed by the developer.

(3) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is

appropriately zoned for development as very low income housing, and will, at the time of transfer or at the time of construction, be served by adequate public facilities and infrastructure at no cost to the City. The land must also be appropriately zoned and have the appropriate Development Standards to make the development of the very low income units feasible. No later than the date of approval of the final subdivision map, parcel map, or other development application for the Housing Development, the transferred land will 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.

(4) The transferred land and the very low income units constructed on the land will be subject to a deed restriction ensuring continued affordability of the units consistent with this Division, which restriction will be recorded on the property at the time of dedication.

(5) The land will be transferred to the City, the Redevelopment Agency, or to a housing developer approved by the City.

(c) Denial of requested land donations can be appealed in accordance with Section 635(h).

Sec. 31-637. Child Care Facilities.

(a) When a developer proposes to construct a Housing Development that includes Affordable Units as specified in Section 31-635 and includes a Child Care Facility that will be located on the premises of, as part of, or adjacent to the Housing Development, the City shall grant either of the following if requested by the developer:

(1) An additional Density Bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the Child Care Facility.

(2) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the Child Care Facility.

(b) A Housing Development shall be eligible for the Density Bonus or concession described in this Section if the City makes all of the following findings:

(1) The Child Care Facility will remain in operation for a period of time that is as long as or longer than the period of time during which the Affordable Units are required to remain affordable pursuant to Section 31-639 of this Division.

(2) Of the children who attend the Child Care Facility, the percentage of children of very low income households, low income households, or moderate income households shall be equal to or greater than the percentage of dwelling units that are proposed to be affordable to very low income households, low income households, or moderate income households.

(c) Notwithstanding any requirement of this Section, the City shall not be required to provide a Density Bonus or concession for a Child Care Facility if it finds, based upon substantial evidence, that the community already has adequate child care facilities.

Sec. 8-638. Condominium Conversions.

Any developer converting condominiums of a Housing Development of 5 units or more who seeks a Density Bonus, shall make such application in conjunction with its tract map application pursuant to the Subdivision Map Act and this code and consistent with

Government Code § 65915.5 Any appeal of any concession or incentive or review by Planning Board or Council, shall automatically require an appeal of the underlying map to that body

Sec. 31-639. Affordability and Development Standards.

(a) Affordable Units shall be constructed concurrently with Market Rate Units or pursuant to a schedule included in the Density Bonus Housing Agreement

(b) Affordable Units offered for rent to for low income and very low income households shall be made available for rent at an affordable rent and shall remain restricted and affordable to the designated income group for a minimum period of 30 years. A longer period of time may be specified if required by any construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program applicable to the housing development. Affordable Units targeted to Low Income Households and/or Very Low Income Households will not meet the requirements for rental inclusionary units contained in Division 5 of this Article unless they remain restricted and affordable for 55 years pursuant to Section 31-651(c). The Director is authorized to execute the necessary agreement which shall be prepared by the City Attorney.

(c) Affordable Units offered for sale to moderate income households in condominiums and planned developments shall be sold by the developer of the housing development at a price that does not exceed the Affordable Purchase Price. At the time of the sale of an Affordable Unit from the developer of the Housing Development to the initial purchaser, the purchaser shall execute a promissory note secured by a subordinate deed of trust in favor of the City. The promissory note shall require payment, upon resale of the unit, the difference between the market rate price of the Affordable Unit at time of the purchaser's purchase of the Affordable Unit and the Affordable purchase price, and a proportionate share of the appreciation. Upon a resale, the seller of the unit shall retain the market value at the time of sale of any capital improvements made by the seller, the down payment, and the seller's proportionate share of appreciation. The City's proportion of the share of appreciation shall be equal to the percentage by which the Affordable Purchase Price was less than the fair market value of the Affordable Unit at the time of the initial sale.

(d) Affordable Units shall be built on site, and shall be dispersed within the housing development. The number of bedrooms of the Affordable Units shall be equivalent to the bedroom mix of the non-Affordable Units of the housing development, except that the developer may include a higher proportion of Affordable Units with more bedrooms. The design and appearance of the Affordable Units shall be compatible with the design of the overall housing development. Housing developments shall comply with all applicable Development Standards, except those which may be modified as provided by this Division.

(e) (1) Upon the request of the developer, the City shall permit a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of Section 31-635 at the following ratios:

- (A) Zero to one bedrooms one onsite parking space
- (B) Two to three bedrooms two onsite parking spaces
- (C) Four and more bedrooms two and one-half parking spaces

(2) If the total number of parking spaces required for a housing development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this Section only, a housing development may provide "onsite parking" through tandem parking or uncovered parking, but not through on-street parking.

(f) The Director is authorized to execute the necessary agreement which shall be prepared by the City Attorney. The agreement shall set forth affordability restrictions and granted a concession and incentive once approved and appealed, if applicable.

Sec. 31-640. Development Standards Modified as Incentive or Concession.

(a) Incentives or concessions that may be requested pursuant to Section 31-635 and Section 31-637 may include the following:

(1) A reduction of site Development Standards or a modification of zoning code requirements or architectural design requirements which exceed the minimum building standards provided in Part 2.5 (commencing with Section 18901) of Division 13 of the California Health and Safety Code and which result in identifiable, financially sufficient, and actual cost reductions, including, but not limited to:

- (A) Reduced minimum lot sizes and/or dimensions
- (B) Reduced minimum lot setbacks
- (C) Reduced minimum outdoor and/or private outdoor living area
- (D) Increased maximum lot coverage
- (E) Increased maximum building height and/or stories
- (F) Reduced minimum building separation requirements
- (G) Reduced street standards, such as reduced minimum street widths

(2) Approval of mixed use zoning in conjunction with the Housing Development if non-residential land uses will reduce the cost of the Housing Development and if the City finds that the proposed non-residential uses are compatible with the Housing Development and with existing or planned development in the area where the proposed Housing Development will be located.

(3) Deferred development impact fees (e.g., capital facilities, parkland in-lieu, park facilities, fire, or traffic impact fees).

(3) Expedited processing of application.

(4) Incentives pursuant to an Inclusionary Housing Development Standard Ordinance in Chapter 31 including off-site construction of Affordable Units, provided that the necessary findings required under that Ordinance are made,

(6) Other regulatory incentives or concessions proposed by the Developer or the City which result in identifiable, financially sufficient, and actual cost reductions.

(b) Developers may seek a waiver or modification of Development Standards that will have the effect of precluding the construction of a Housing Development meeting the criteria of Section 31-635 at the densities or with the concessions or incentives permitted by this Division. The Developer shall show that the waiver or modification is necessary to make the Housing Development, with the Affordable Units, economically feasible.

(c) The Director shall establish implementing procedures or regulations to implement the provisions of this part, including application form requirements as well as the

processing requests for certain concession and incentives ("Implementing Regulations") The Regulations, and any substantive changes thereto, shall be subject to approval by the Council by resolution The Implementing Regulations may provide more specific detail regarding the Incentives or Concessions that the City may grant pursuant to this Division The Regulations shall provide a tiered approval process for the Incentives and Concessions based upon the level of review administrative approval by the Director, approval by the Planning Board, or approval by the City Council The Regulations shall establish which Incentives or Concessions require which tier of approval The City Clerk shall maintain a copy of the current Implementing Regulations

(d) If the Director makes any of the findings set forth in Government Code Section 65915(d)(1) or (e), the written finding shall be provided to developer who may within 20 days of the postmarked findings, appeal the decision to the City Council by providing a written request to the Director

Sec. 31-641. Application requirements and review.

(a) An application for a Density Bonus, incentive, concession, waiver, modification, or revised parking standard pursuant to this Division shall be submitted with the first application for approval of a Housing Development and processed concurrently with all other applications required for the Housing Development To the extent feasible, a developer may submit its application for a Density Bonus and Incentives or Concessions with its Inclusionary Housing Plan in accordance with Division 14 of this Article in the event Division 14 is applicable to the Housing Development The application shall be submitted on a form provided by the City Planner and shall include all information required on the Implementing Regulations The Development Review ("DR") Application shall be processed together with the concession and incentives and no DR shall be final until such concession and incentives have been final Appeal of concession and incentives shall comply with DR appeal procedures

(b) An application for a Density Bonus, Incentive or Concession, waiver, modification, or revised parking standard pursuant to this Division shall be considered by and acted upon by the approval body with authority to approve the Housing Development Any decision regarding a Density Bonus, Incentive or Concession, waiver, modification, or revised parking standard may be appealed to the planning board and from the planning board to the City Council

(c) Before approving an application for a Density Bonus, Incentive or Concession, or other waiver, or modification, the approval body, whether the Director, Planning Board, or Council, shall make the following findings

(1) If the Density Bonus is based all or in part on donation of land, the findings included in Section 31-636

(2) If the Density Bonus, incentive, or concession is based all or in part on the inclusion of a Child Care Facility, the findings included in Section 31-637

(3) If the incentive or concession includes mixed use development, the finding included in Section 31-640

(4) If a waiver or modification is requested, the developer has shown that the waiver or modification is necessary to make the Housing Development with the Affordable Units economically feasible

(d) If a request for an Incentive or Concession is otherwise consistent with this Division, the approval body may deny a concession or incentive if it makes a written finding, based upon substantial evidence, of either of the following

(1) The concession or incentive is not required to provide for Affordable Rents or affordable ownership costs

(2) The concession or incentive would have a specific adverse impact upon public health or safety or the physical environment or on any real property that is listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households. For the purpose of this subsection, "specific adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application was deemed complete

(e) If a request for a waiver or modification other than required Incentives or Concessions is otherwise consistent with this Division, the approval body may deny a concession or incentive only if it makes a written finding, based upon substantial evidence, of one of the following

(1) The waiver or modification would have a specific adverse impact upon health, safety, or the physical environment, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households. For the purpose of this subsection, "specific adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application was deemed complete

(2) The additional waiver(s) or modification(s) would have an adverse impact on any real property that is listed in the California Register of Historical Resources

(3) The additional waiver(s) or modification(s) do not preclude the use of the Density Bonus and granted Incentives or Concessions

(f) If a Density Bonus or Incentive or Concession is based on the provision of child care facilities, the approval body may deny the bonus or concession if it finds, based on substantial evidence, that the City already has adequate child care facilities

Sec. 31-642. Density Bonus Housing Agreement.

(a) Developers requesting a Density Bonus shall agree to enter into a Density Bonus Housing Agreement with the City. A Density Bonus Housing Agreement shall be made a condition of the discretionary planning permits for all Housing Developments pursuant to this Division and shall be recorded as a restriction on any parcels on which the Affordable Units or Density Bonus Units will be constructed

(b) The Density Bonus Housing Agreement shall be recorded prior to final or parcel map approval, or, where the Housing Development does not include a map, prior to issuance of a building permit for any structure in the Housing Development. The Density Bonus Housing Agreement shall run with the land and bind on all future owners and successors in interest

(c) The Density Bonus Housing Agreement shall include but not be limited to the

following

- (1) The total number of units approved for the Housing Development, the number, location, and level of affordability of Affordable Units, and the number of Density Bonus Units
 - (2) Standards for determining Affordable Rent or Affordable Ownership Cost for the Affordable Units
 - (3) The location, unit size in square feet, and number of bedrooms of Affordable Units
 - (4) Provisions to ensure affordability in accordance with Sections 31-639 of this Division
 - (5) A schedule for completion and occupancy of Affordable Units in relation to construction of Market Rate Units
 - (6) A description of any incentives, concessions, waivers, or reductions being provided by the City
 - (7) A description of remedies for breach of the agreement by either party. The City may identify tenants or qualified purchasers as third party beneficiaries under the agreement
 - (8) Procedures for qualifying tenants and prospective purchasers of Affordable Units
 - (9) Other provisions to ensure implementation and compliance with this Article
- (d) In the case of for-sale Housing Developments, the Density Bonus Housing Agreement shall include the following conditions governing the sale and use of Affordable Units during the applicable use restriction period
- (1) Affordable Units shall be owner-occupied by eligible moderate income households
 - (2) The purchaser of each Affordable Unit shall execute an affordable housing agreement, inclusive of the promissory note and deed of trust described in Section 31-639 approved by the City and to be recorded against the parcel including such provisions as the City may require to ensure continued compliance with this Division
- (e) In the case of rental Housing Developments, the Density Bonus Housing Agreement shall provide for the following
- (1) Procedures for establishing Affordable Rent, filling vacancies, and maintaining Affordable Units for eligible tenants,
 - (2) Provisions requiring verification of household incomes
 - (3) Provisions requiring maintenance of records to demonstrate compliance with this sub-section
- (f) Density Bonus Housing Agreements for child care facilities and land dedication shall ensure continued compliance with all conditions included in Section 31-636 and 31-637, respectively

Sec. 31-643. Automatic Incorporation by Reference of Future Amendments to the State Density Bonus Law.

This Division implements Chapter 4 3, Density Bonuses and other incentives, Government Code Sections 65915-65918. In the event these sections are amended, those amended provisions shall be incorporated into this Division. Should any

inconsistencies exist between the amended state law and the provisions set forth herein, the amended state law shall prevail. Until the Code is formally amended to eliminate any such inconsistencies, the City Planner shall maintain an explanation of all such amendments. A copy of that document shall further be available at the City Clerk's Office.

2 Section 31-632 of the Burbank Municipal Code is deleted in its entirety.

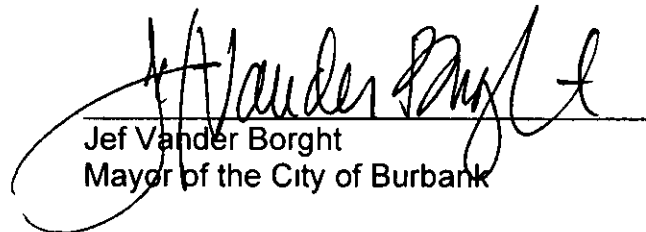
3 If any part of this Ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portion of this Ordinance, and this City Council hereby declares that it would have passed the remainder of this Ordinance, if such invalid portion thereof has been deleted.

4 This Ordinance shall become effective at 12:01 a.m. of the thirty-first day after publication. In the event this Ordinance and Ordinance No. 3694 (Inclusionary Ordinance) each become effective, the City Clerk shall only print Section 31-633 once. Each Ordinance provides for the exact same Section 31-633.

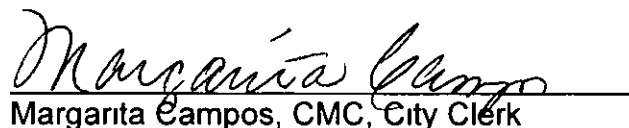
5 The City Clerk shall certify to the passage of this Ordinance and cause the City Attorney Synopsis of this Ordinance to be published once in a newspaper of general circulation, published and circulated in the City of Burbank, California.

6 This Ordinance shall become effective at 12:01 a.m. of the thirty-first day after publication.

PASSED AND ADOPTED this 28th day of March, 2006


Jef Vander Borcht
Mayor of the City of Burbank

Attest


Margarita Campos, CMC, City Clerk

Approved as to Form and Legal Content
Dennis A. Barlow, City Attorney

By 
Mary F. Riley, Sr. Asst. City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss
CITY OF BURBANK)

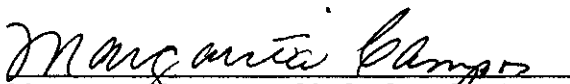
I, Margarita Campos, CMC, City Clerk of the City of Burbank, do hereby certify that the foregoing Ordinance No 3693 was duly and regularly passed and adopted by the Council of the City of Burbank at its regular meeting held on the 28th day of March, 2006, by the following vote

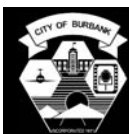
AYES Council Members Campbell, Golonski, Ramos and Vander Borght.

NOES Council Member Gordon.

ABSENT Council Members None.

I further certify that said Synopsis was published as required by law in a newspaper of general circulation in the City of Burbank, California on the 5th day of April, 2006


Margarita Campos, CMC, City Clerk



City of Burbank
Planning Division
DENSITY BONUS
Implementing Regulations

275 East Olive Avenue
Burbank, California 91502
www.burbankca.org/planning
818.238.5250

The State of California has adopted density bonus laws which allow developers of residential units to receive a density bonus when a portion of the units are rented or sold at affordable rates. The City of Burbank has codified these laws and these guidelines will assist potential developers who wish to use the density bonus program. Over time, as state law changes, these regulations will be updated to reflect the new requirements.

APPLICABILITY

A developer must request a density bonus as part of their application to construct a residential project.

REQUIREMENTS

A developer may receive a density bonus from 5% up to 35% based on the percentage of affordable units provided with the project. The following is a summary of the requirements (attached table lists out each possible density bonus):

If a developer provides 10% **low** income units, they will receive a 20% density bonus. For every 1% increase in affordable units, the developer shall receive a 1.5% density bonus increase. Therefore, if the developer provides 20% **low** income units, they will receive a 35% density bonus.

If a developer provides 5% **very low** income units, they will receive a 20% density bonus. For every 1% increase in affordable units, the developer shall receive a 2.5% density bonus increase. Therefore, if the developer provides 11% **very low** income units, they will receive a 35% density bonus.

If a developer provides 10% **moderate** income units **for sale**, they will receive a 5% density bonus. For every 1% increase in affordable units, the developer shall receive a 1% density bonus increase. Therefore, if the developer provides 40% **moderate income** units **for sale**, they will receive a 35% density bonus.

The density bonus law also applies to senior housing projects and projects which include a child care facility. Please ask staff for applicable standards.

Developers may choose to use the affordable units required by the City's inclusionary housing ordinance to meet the minimum thresholds for the state density bonus law. However, in that case, the units must meet both requirements, or the more stringent of the two requirements.

Developers may not use moderate income units to meet low or very low income unit requirements. Very Low income households are defined as those earning 50% of the median family income (MFI) for LA County, Low income are those earning 80% MFI, and moderate

income are those earning 120% MFI. Income levels are adjusted for household size appropriate for the unit. These income definitions are based upon the housing cost definition within the California Health and Safety Code and are consistent with income thresholds used in Burbank's other housing programs.

The attached sheet lists the current median family income by household size and the maximum affordable rents and/or housing costs permitted for Very Low, Low, and Moderate Income units. These incomes, rents and housing cost figures are updated annually consistent with the published U.S. Department of Housing and Urban Development (HUD) income limits.

In calculating the overall number of required affordable units, any decimal fraction shall be rounded up to the nearest whole number. Any additional units granted as a density bonus will not be counted in determining the required number of affordable units. In calculating the bonus to be received, any decimal fraction shall be rounded up to the nearest whole number.

Example: Construction of 15 new units to be offered for rent

15 units x 15% = 3 low income units

15 units x 27.5% = 5 unit density bonus

Conclusion: A 15 unit project must provide a total of three low income units to receive a five unit bonus. Therefore, the project may be constructed with a total of 20 units, 17 of which may be offered for rent at market rates.

LAND DONATION ALTERNATIVE

Under certain circumstances, described in more detail in the ordinance, developers may be permitted to donate land in-lieu of constructing the units on site. The land must be at least one acre in size or of a sufficient size to permit development of at least 40 units. The land must also have the appropriate zoning designation and entitlements to construct the units.

CONCESSIONS FOR CONSTRUCTION

The City is permitted to grant concessions for density projects. It is important to note that all concessions given will be based on the applicant demonstrating that it is not financially feasible to build the project without the incentives.

The incentives (or concessions) are broken down into three tiers depending on their level of impact on residents of the project and/or the surrounding community. Concessions with an anticipated greater impact require a higher level of review and approval. The three tiers of approval are administrative (Community Development Director), Planning Board, and City Council as outlined below.

If a single project requests multiple concessions from different tiers, all requested concessions would be subject to the highest applicable level of review and approval. For example, if a proposed project requested two Tier 1 concessions and one Tier 2 concession, all concessions, including those from Tier 1, would be subject to Planning Board approval under Tier 2.

The number of concessions permitted is based on the amount and level of affordability constructed:

AFFORDABILITY TYPE	THRESHOLD OF AFFORDABILITY	NUMBER OF CONCESSIONS
Very Low Income	5%	1
	10%	2
	15%	3
Low Income	10%	1
	20%	2
	30%	3
Moderate Income (for sale condominium or planned development)	10%	1
	20%	2
	30%	3

Tier 1

(Administrative approval by the Community Development Director with appeal to Planning Board and City Council)

- Reduce common open space area by up to 30% and/or reduce private open space area by up to 30% per unit or eliminate private open space for 30% of units
 - 30% reduction of both common and private open space not allowed – must mix and match between the two to reach average equivalent
 - Does not allow for reduced minimum open space dimensions
- Increase lot coverage from 60% to 70% when greater than 300 feet from R-1 zoned property
- Increase building height up to the maximum height otherwise allowed in the zone when greater than 300 feet from R-1 zoned property
- Allow laundry/utility room on third floor when 150 to 300 feet from R-1 zoned property
- Reduce side yard setback for three story projects from 6 feet to 5 feet
- Density bonuses as permitted under State Law
- Tenant and/or purchaser screening and qualification for affordable units conducted by the City of Burbank at the City's cost
- Marketing of for-sale affordable units conducted by the City of Burbank at the City's cost

Tier 2

(Planning Board approval with appeal to City Council)

- Other increases in lot coverage not covered in Tier 1
- Reduce front, side or rear average setbacks and façade breaks (not minimum setbacks)
- Reduce 50% of amenities

Tier 3

(City Council approval)

- Any additional reductions or variations thereof not specifically covered in Tiers 1 and 2 (e.g. reduce open space greater than 30%, three stories of habitable space when less than 300 feet from R-1, etc.)
- Deviation from any other development standards not addressed in Tiers 1 and 2 (e.g. parking, landscaping, amenities, etc.)
- Density bonuses in excess of what is provided for under state law

- Development impact fee waivers on affordable units, and fee deferrals on market rate units until issuance of certificate of occupancy
- Any direct financial assistance, including that for purchasers of affordable units.

Findings which must be made in order to grant incentives:

Under state density bonus provisions, finding must be made in order to grant any of the allowed concessions. Before granting any of the above concessions, the Community Development Director, Planning Board, or City Council must make each of the following state mandated findings:

1. The concession or incentive is required in order to provide for affordable housing costs or for rents for the targeted units to be set as required.
2. The concession or incentive would not have a specific adverse impact upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is not feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low and moderate income households.
3. The applicant has shown that the waiver of modification of development standards is necessary to make the housing units economically feasible.

MODIFIED DEVELOPMENT STANDARDS

In addition to the concessions allowed, developers may request modified parking requirements as follows:

- Zero to one bedroom units – one onsite parking space
- Two to three bedroom units – two onsite parking spaces
- Four and more bedrooms – two and one-half parking spaces

These spaces are inclusive of handicapped and guest parking. All fractions of numbers shall be rounded up. The developer may also use tandem or uncovered parking to meet these parking requirements.

OTHER REQUIREMENTS

Listed below are various other requirements found in the ordinance:

- 1) Affordable units shall be constructed concurrently with market rate units or pursuant to a schedule included in the Density Bonus Housing Agreement.
- 2) Affordable units offered for rent to low income and very low income households shall be made available for rent at an affordable rent and shall remain restricted and affordable to the designated income group for a minimum period of 30 years. A longer period of time may be specified if required by any construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program applicable to the housing development. Affordable units will not meet the requirements for rental inclusionary units under the Burbank Municipal Code unless they remain restricted and affordable for 55 years.
- 3) Affordable units offered for sale to moderate income households in condominiums and planned developments shall be sold by the developer of the housing development at a price that does not exceed the affordable purchase price. At the time of the sale of an affordable

unit from the developer to the initial purchaser, the purchaser shall execute a promissory note secured by a subordinate deed of trust in favor of the City. The promissory note shall require payment, upon resale of the unit, the difference between the market rate price of the affordable unit at time of the purchaser's purchase of the affordable unit and the affordable purchase price, and a proportionate share of the appreciation. Upon a resale, the seller of the unit shall retain the market value at the time of sale of any capital improvements made by the seller, the down payment, and the seller's proportionate share of appreciation. The City's proportion of the share of appreciation shall be equal to the percentage by which the affordable purchase price was less than the fair market value of the affordable unit at the time of the initial sale. Affordable units that are also satisfying the City's inclusionary requirement shall be available for moderate income households in perpetuity for the life of the structure.

- 4) Affordable units shall be built on site, and shall be dispersed within the development. The number of bedrooms of the affordable units shall be equivalent to the bedroom mix of the non-affordable units of the development, except that the developer may include a higher proportion of affordable units with more bedrooms. The design and appearance of the affordable units shall be compatible with the design of the overall housing development. Housing developments shall comply with all applicable development standards, except those which may be modified as provided by the ordinance.

APPLICATION PROCEDURES

Request for a density bonus and any concessions or modifications shall be submitted with the Development Review application for the housing development and will be processed concurrently with all other applications required. The request shall be submitted on an application form and shall include at least the following information:

- 1) Site plan showing total number of units (including density bonus units) and number and location of affordable units.
- 2) Level of affordability of affordable units and proposals for ensuring affordability.
- 3) Description of any requested incentives, concessions, waivers or modifications of development standards, or modified parking standards. For all incentives and concessions, the application shall include evidence that the requested incentives and concessions result in identifiable, financially sufficient, and actual cost reductions. For waivers or modifications of development standards, the application shall show that the waiver or modification is necessary to make the development with the affordable units economically feasible and that the development standards will have the effect of precluding the construction of a housing development meeting the criteria of Code at the densities or with the concessions or incentives permitted by Code.
- 4) If a density bonus or concession is requested for a land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the findings as specified in the ordinance can be made.
- 5) If a density bonus or concession is requested for a child care facility, the application shall show the location and square footage of the child care facilities and provide evidence that each of the findings required by the ordinance can be made.

HOUSING AGREEMENT REQUIREMENTS

If approved, the developer agrees to enter into a Density Bonus Housing Agreement with the City. The Housing Agreement shall contain the following information:

- i. The total number of units approved for the housing development, the number, location, and level of affordability of affordable units, and the number of density bonus units.
- ii. Standards for determining affordable rent or affordable ownership cost for the affordable units.
- iii. The location, unit size in square feet, and number of bedrooms of affordable units.
- iv. Provisions to ensure affordability in accordance with Code.
- v. A schedule for completion and occupancy of affordable units in relation to construction of market rate units.
- vi. A description of any incentives, concessions, waivers, or reductions being provided by the City.
- vii. A description of remedies for breach of the agreement by either party. The City may identify tenants or qualified purchasers as third party beneficiaries under the agreement.
- viii. Procedures for qualifying tenants and prospective purchasers of affordable units.
- ix. Other provisions to ensure implementation and compliance with Code.
- x. Where applicable, affordable units shall be owner-occupied by eligible moderate income households.
- xi. Where applicable, the purchaser of each affordable unit shall execute an affordable housing agreement, inclusive of the promissory note and deed of trust approved by the City and to be recorded against the parcel including such provisions as the City may require to ensure continued compliance with Code.
- xii. In the case of rental housing developments, the Density Bonus Housing Agreement shall provide procedures for establishing affordable rent, filling vacancies, and maintaining affordable units for eligible tenants.
- xiii. Where applicable, provisions requiring verification of household incomes will be required as well as records to demonstrate compliance with the requirement.

CODE CHANGES

If State Law changes, Burbank's Municipal Code has a provision to automatically be amended if inconsistencies exist. These Implementing Regulations will also change as a result of State Law changes when necessary.

ATTACHMENTS

- Density bonus levels and target group thresholds.
- Current median family income by household size and the maximum affordable rents and/or housing costs permitted by Very Low, Low, and Moderate income units.

DENSITY BONUS LEVELS & TARGET GROUP THRESHOLDS

TYPE OF UNITS	LEVEL OF AFFORDABILITY/ THRESHOLD	DENSITY BONUS
Very Low	5% (minimum)	20%
	6%	22.5%
	7%	25%
	8%	27.5%
	9%	30%
	10%	32.5%
	11%	35% (maximum)
Low Income	10% (minimum)	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% (maximum)
Moderate Income (for sale condominium or planned development)	10% (minimum)	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% (maximum)
Senior Housing	35 units or more	20%
Child Care	No threshold	Proportionate amount of square footage

2007 AFFORDABLE RENTS AND INCOMES

State Income Limits for Los Angeles County (2007)

Income Level	1 person household	2 person household	3 person household	4 person household	5 person household	6 person household	7 person household	8 person household
Extremely Low	\$15,550	\$17,750	\$20,000	\$22,200	\$24,000	\$25,750	\$27,550	\$29,300
Very Low	\$25,900	\$29,600	\$33,300	\$37,000	\$39,950	\$42,900	\$45,900	\$48,850
Lower	\$41,450	\$47,350	\$53,300	\$59,200	\$63,950	\$68,650	\$73,400	\$78,150
Median	\$39,600	\$45,200	\$50,900	\$56,500	\$61,000	\$65,500	\$70,100	\$74,600
Moderate	\$47,500	\$54,200	\$61,000	\$67,800	\$73,200	\$78,600	\$84,100	\$89,500

Area Median Income: \$56,200

State Rent Limits for Los Angeles County (2007)

Household Income Level	0 bedroom	1 bedroom	2 bedroom	3 bedroom	4 bedroom	5 bedroom
Extremely Low	\$297.00	\$339.00	\$381.75	\$423.75	\$457.50	\$491.25
Very Low	\$495.00	\$565.00	\$636.25	\$706.25	\$762.50	\$818.75
Lower	\$594.00	\$678.00	\$763.50	\$847.50	\$915.00	\$982.50
Moderate	\$1,089.00	\$1,243.00	\$1,399.75	\$1,553.75	\$1,677.50	\$1,801.25

State Homeownership Limits for Los Angeles County (2007)

Household Income Level	0 bedroom	1 bedroom	2 bedroom	3 bedroom	4 bedroom	5 bedroom
Extremely Low Buyers	\$297.00	\$339.00	\$381.75	\$423.75	\$457.50	\$491.25
Very Low Buyers	\$495.00	\$565.00	\$636.25	\$706.25	\$762.50	\$818.75
Lower Buyers	\$693.00	\$791.00	\$890.75	\$988.75	\$1,067.50	\$1,146.25
Moderate Buyers	\$1,270.50	\$1,450.17	\$1,633.04	\$1,812.71	\$1,957.08	\$2,101.46

Monthly housing payments may not exceed these amounts

The rent and homeowner limits do not include the mandatory utility allowance. The utility allowance provides reasonable allowances for tenant-paid utilities. It consists of electricity, gas, water, trash, sewer, utility user tax and appliances.

State of California

GOVERNMENT CODE

Section 65915

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. 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), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for 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 for 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.

(D) Ten percent of the total dwelling units in a common interest development, as defined in Section 4100 of the Civil Code, for persons and families of moderate income, as defined in Section 50093 of the 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. For purposes of this clause, “lower income students” means students who have a household income and asset level that does not exceed the level for Cal Grant A or Cal Grant B award recipients as set forth in paragraph (1) of subdivision (k) of Section 69432.7 of the Education Code. The eligibility of a student under this clause shall be verified by an affidavit, award letter, or letter of eligibility provided by the institution of higher education that the student is enrolled in, as described in subclause (I), or by the California Student Aid Commission that the student receives or is eligible for financial aid, including an institutional grant or fee waiver, from the college or university, the California Student Aid Commission, or the federal government shall be sufficient to satisfy this subclause.

(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 (d) 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 the total units, 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 total units in the development may be for moderate-income households, as defined in Section 50053 of the Health and Safety Code.

(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).

(3) For the purposes of this section, “total units,” “total dwelling units,” or “total rental beds” does not include units added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

(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 a housing development that receives an allocation of state or federal low-income housing tax credits from the California Tax Credit Allocation Committee.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of all for-sale units that qualified the applicant for the award of the density bonus are persons and families of very low, low, or moderate income, as required, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code. The local government shall enforce an equity sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following apply to the equity sharing agreement:

(A) Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The local government shall recapture any initial subsidy, as defined in subparagraph (B), and its proportionate share of appreciation, as defined in subparagraph (C), 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.

(B) 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.

(C) 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.

(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 the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-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 common interest development.

(B) Two incentives or concessions for projects that include at least 20 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 common interest development.

(C) Three incentives or concessions for projects that include at least 30 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 common interest development.

(D) Four incentives or concessions for projects 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, as defined in subdivision (b) of Section 21155 of the Public Resources Code, the applicant shall also receive a height increase of up to three additional stories, or 33 feet.

(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. Nothing in this subdivision shall 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, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require 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. Nothing in this subdivision shall 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, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require 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 not be eligible for, and shall not receive, a waiver or reduction of development standards pursuant to this subdivision, other than as expressly provided in subparagraph (D) of paragraph (2) of subdivision (d) and clause (ii) of subparagraph (D) of paragraph (3) of subdivision (f).

(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
17	30.5
18	32
19	33.5
20	35

(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 Very Low Income Units	Percentage Density Bonus
5	20

6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(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 clause (ii), 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, as defined in subdivision (b) of Section 21155 of the Public Resources Code, 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:

Percentage Moderate-Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
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

(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
29
30

33
34
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) “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, 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.

(2) “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 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.

(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 handicapped and guest parking, 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: two onsite parking spaces.

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

(2) Notwithstanding paragraph (1), if a development includes the maximum percentage of low-income or very low income units provided for in paragraphs (1) and (2) of subdivision (f) and 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 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 handicapped and guest parking, that exceeds 0.5 spaces per bedroom. For purposes of this subdivision, a development shall have unobstructed access to a major transit stop if a resident is able to access the major transit stop without encountering natural or constructed impediments.

(3) Notwithstanding paragraph (1), if a development consists solely of rental units, exclusive of a manager’s unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health and Safety Code, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds the following ratios:

(A) If the development 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 there is unobstructed access to the major transit stop from the development, the ratio shall not exceed 0.5 spaces per unit.

(B) If the development is a for-rent housing development for individuals who are 62 years of age or older that complies with Sections 51.2 and 51.3 of the Civil Code, the ratio shall not exceed 0.5 spaces per unit. The 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) Notwithstanding paragraphs (1) and (8), if a development consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health and Safety Code, and 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, then, upon the request of the developer, a city, county, or city and county shall not impose any minimum vehicular parking requirement. A development that is a special needs housing development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(5) 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.

(6) 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).

(7) 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.

(8) 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.

(9) 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.

(Amended (as amended by Stats. 2018, Ch. 937) by Stats. 2019, Ch. 666, Sec. 1. (AB 1763) Effective January 1, 2020.)