

ORDINANCE 22-06

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN
REPEALING AND REPLACING SECTIONS 159.335-159.342 OF TITLE XV
OF THE AUBURN MUNICIPAL CODE REGARDING RESIDENTIAL
DENSITY BONUS

**THE CITY COUNCIL OF THE CITY OF AUBURN DOES ORDAIN AS
FOLLOWS:**

Section One: Repeal and Replace. Sections 159.335–159.342 of Chapter 159 of Title XV of the Auburn Municipal Code with Sections 159.330-159.42 as set forth in the attached Exhibit "A".

Section Two: California Environmental Quality Act. The City Council has considered all of the evidence in the record, including the staff reports, the testimony received during the meeting on the matter held by the City Council, and hereby determines that that the adoption of this Ordinance will not have a significant effect on the environment. This Ordinance is therefore exempt from California Environmental Quality Act (CEQA) review pursuant to Title 14, Section 15061(b)(3) of the California Code of Regulations and other applicable law.

Section Three: Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance or the rules adopted hereby. The City Council hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

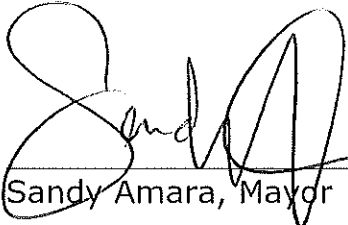
Section Four: Inconsistent Provisions. Any provision of the Auburn Municipal Code or appendices thereto, and any resolution or policy adopted by the City Council, which is inconsistent with the provisions of this Ordinance, is hereby repealed or modified only to the extent necessary to implement the provisions of this Ordinance.

Section Five: Publication and Effective Date. This ordinance shall take effect 60 days after final adoption. The City Clerk shall certify to the passage and adoption of this Ordinance and shall give notice of its

adoption as required by law. Pursuant to Government Code section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting of the entire text.

Section Six: Implementation. City staff is authorized and directed to take all steps necessary or convenient to implement this Ordinance including, but not limited to, creating, modifying, and requiring the reimbursement agreement referenced in this Ordinance.

DATED: November 14, 2022


Sandy Amara, Mayor

ATTEST:


Amy Lind, City Clerk

I, Amy Lind, City Clerk of the City of Auburn, hereby certify that the foregoing ordinance was duly passed at a regular meeting of the City Council of the City of Auburn held on the 14th day of November 2022 by the following vote on roll call:

Ayes: Spokely, Berlant, Dowdin Calvillo, Radell-Harris, Amara

Noes:

Absent:

Abstain:


Amy Lind, City Clerk

EXHIBIT "A"

159 Residential Density Bonus (Sections 159.330-159.342)

159.330 Purpose

159.331 Definitions

159.332 Density Bonus Permit Application

159.333 Density Bonus

159.334 Concessions And Incentives

159.335 Waivers Or Reductions Of Development Standards

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159.342 Density Bonus Housing Agreement

159.330 Purpose

The purpose of §§ 159.330 through 159.342 of this subchapter is to facilitate the development of affordable housing in accordance with Cal. Gov't Code §§ 65915 through 65918. In enacting this subchapter, it is the intent of the city of Auburn to assist the private sector in making housing units affordable to very low, low, and moderate income households economically viable, and to implement the goals, policies and objectives of the city's housing element.

159.331 Definitions

For the purposes of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

AFFORDABLE HOUSING COST. Total monthly housing costs, including mortgage debt service, homeowner association dues, insurance, utility allowances and property taxes, paid by a qualifying household, which shall not exceed a specified fraction of their gross income as specified in Cal. Health & Safety Code § 50052.5 as follows:

- A. Very Low Income: 50% of the area median income for Placer County, adjusted for household size, multiplied by 30% and divided by twelve.

- B. Lower Income 70% of the area median income for Placer County, adjusted for household size, multiplied by 30% and divided by twelve.
- C. Moderate Income: 100% of the area median income for Placer County, adjusted for household size, multiplied by 35% and divided by twelve.

AFFORDABLE RENT. Total monthly housing expenses, including a reasonable allowance for utilities, paid by a qualifying household, which shall not exceed a specified fraction of their gross income as specified in Cal. Health & Safety. Code § 50053 as follows:

- A. Very Low Income: 50% of the area median income for Placer County, adjusted for household size, multiplied by 30% and divided by twelve.
- B. Lower Income: 60% of the area median income for Placer County, adjusted for household size, multiplied by 30% and divided by twelve.
- C. Moderate-Income: 110% of the area median income for Placer County, adjusted for household size, multiplied by 35% and divided by twelve.

AFFORDABLE UNIT. A dwelling unit within a housing development which will be reserved for sale or rent to very low, lower, or moderate income households, or qualifying residents, as specified in Cal. Gov't Code § 65915(b).

BASE DENSITY UNIT. The total number of residential units of a housing development permitted under the development standards of this code.

CHILDCARE FACILITY. A child daycare facility, including an infant center, preschool, extended daycare facility, and school age childcare center, and excluding a family daycare home, as specified in Cal. Gov't Code § 65915(h)(4).

COMMON INTEREST DEVELOPMENT. A community apartment complex, condominium project, planned development, or stock cooperative, as specified in Cal. Civ. Code § 4100.

DENSITY BONUS. A density increase over the otherwise maximum allowable gross residential density under the applicable zoning ordinance and land use element of the General Plan as of the date of application, or a lesser percentage of density increase at the applicant's election, as specified in Cal. Gov't Code § 65915(f).

DENSITY BONUS HOUSING AGREEMENT. A legally binding agreement between a developer and the city to ensure that the requirements of this subchapter are satisfied.

DENSITY BONUS PERMIT. A ministerial permit granting a density bonus, incentive, concession, waiver, or parking ratio as required by this subchapter.

DENSITY BONUS UNIT. Those residential units of the housing development granted pursuant to the provisions of this subchapter which exceed the otherwise maximum residential density for the development site and are in addition to the base density units.

DEVELOPMENT STANDARDS. A site or construction condition, including, but not limited to, a minimum lot or unit size, a height limitation, a setback requirement, a floor area ratio, lot coverage, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, or other local condition, law, policy, resolution, or regulation, as specified in Cal. Gov't Code § 65915(o)(l).

DISABLED VETERAN. Any person who has served full time in the armed forces in time of national emergency or state military emergency or during any expedition of the armed forces and who has been discharged or released under conditions other than dishonorable and who is currently declared by the United States Veterans Administration to be 10% or more disabled as a result of service in the armed forces, as specified in Gov't Code §18541.

FOSTER YOUTH. A person in California whose dependency was established or continued by the court on or after the youth's sixteenth birthday and who is no older than 25 years of age at the commencement of the academic year, as specified in Cal. Edu. Code § 66025.9(b)(1).

HOMELESS PERSON. An individual or family who lacks a fixed, regular, and adequate nighttime residence or any other person within the definition of 42 U.S.C.A. § 11302(a).

HOUSING DEVELOPMENT. A development project consisting of 5 or more residential units, including a mixed-use development. A housing development includes a subdivision or a common interest development that 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, where the result of the rehabilitation would be a net increase in available residential units, as specified in Cal. Gov't Code § 65863.4(d).

LOCATED WITHIN ONE-HALF MILE OF A MAJOR TRANSIT STOP. That any point on a proposed development, for which an applicant seeks a density bonus, other incentives or concessions, waivers or reductions of development standards, or a vehicular parking ratio pursuant to this section, is within one-half mile of any point on the property on which a major transit stop is located, including any parking lot owned by the transit authority or other local agency operating the major transit stop."

LOWER INCOME HOUSEHOLD or LOW INCOME HOUSEHOLD. Households whose income does not exceed the lower income limits applicable to Placer County, as published and periodically updated by the State Department of Housing and Community Development and specified in Cal. Health & Safety Code § 50079.5 and 25 C.F.R. § 6932.

MAJOR TRANSIT STOP. A site as specified in Cal. Gov't Code § 65915(p)(2) and Cal. Pub. Res. Code §§ 21064.3 & 21155(b).

MODERATE INCOME HOUSEHOLD. Households whose income does not exceed the moderate-income limits applicable to Placer County, as published and periodically updated by the State Department of Housing and Community Development and specified in Cal. Health & Saf. Code § 50093 and 25 CCR § 6932.

OTHER INCENTIVES OF EQUIVALENT FINANCIAL VALUE. A reduction or waiver of requirements which the city might otherwise apply as a condition of approval, that are equivalent in financial value to the density bonus for which the applicant is eligible, as specified in Cal. Gov't Code § 65915.5(c).

SENIOR CITIZEN HOUSING DEVELOPMENT. A residential development developed, substantially rehabilitated, or substantially renovated for persons 55 years of age or older that has at least 35 dwelling units, as specified in Cal. Civ. Code § 51.3.

SPECIFIC, ADVERSE IMPACT. 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, as specified in Cal. Gov't Code § 65589.5(d)(2).

VERY LOW INCOME HOUSEHOLD. Households whose income does not exceed the very low income limits applicable to Placer County, as published and periodically updated by the State Department of Housing and Community Development and specified in Cal. Health & Saf. Code § 50093 and 25 CCR § 6932.

159.332 Density Bonus Permit Application

- A. An applicant for a density bonus permit must submit a density bonus permit application that includes the following information:
1. A brief description of the proposed housing development, including the number of affordable units, market rate units, base density units, density bonus units proposed, and the total anticipated number of units;
 2. The general plan, specific plan, and zoning designations for the project site;
 3. The assessor's parcel number(s) of the project site;
 4. A vicinity map and preliminary site plan, including building footprints, elevations, and driveway and parking layouts;
 5. The number and type of incentives and concessions requested;
 6. The number and type of waivers and reductions in development standards requested;
 7. The parking ratio requested;
 8. A financial pro forma including capital costs, operating expenses, return on investment, revenues, loan-to-value and debt-coverage ratios, any contribution provided by subsidy programs, and the economic effect of the use and income restrictions on the affordable units;

9. An appraisal report indicating the value of the density bonus and incentives or concession requested;
 10. An explanation indicating how the incentive or concession or the waiver or reduction in the development standards significantly contributes to the economic feasibility of providing the affordable units;
- B. Within thirty days of receipt of the density bonus application, the Director will determine whether the application is complete and notify the applicant of:
1. The amount of density bonus for which the applicant is eligible;
 2. The number of concessions or incentives for which the applicant is eligible;
 3. Whether the applicant provided adequate information for the city to make a determination as to the applicant's requested concessions or incentives and waivers or reductions of development standards; and
 4. The parking ratio for which the applicant is eligible.
- C. An application for a density bonus permit will be processed concurrently with any other application(s) required for the housing development. The director is responsible for reviewing a density bonus permit application, unless the application is combined with another entitlement application for which a higher reviewing authority is required, in which case such authority will act as the reviewing body for the density bonus permit.
- D. Filing Fee. Each such original application shall be accompanied by a filing and processing fee in an amount as set by the city council.

159.333 Density Bonus

- A. Eligibility for Affordable Housing Units. All housing developments which include at least the minimum number of affordable units are eligible for a density bonus. The number of density bonus units are determined by calculating the percentage of affordable units out of the base density units for a certain type of project, as provided in the tables below:

Table 1: Density Bonus for Very Low Income Units in a Housing Development

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

Table 2: Density Bonus for Lower Income Units in a Housing Development

Percentage of Lower Income Units	Percentage of Density Bonus
10%	20%
11%	21.5%
12%	23%
13%	24.5%
14%	26%
15%	27.5%
16%	29%
17%	30.5%
18%	32%
19%	33.5%
20%	35%
21%	38.75%
22%	42.5%

23%	46.25%
24%	50%

Table 3: Density Bonus for Moderate Income For-Sale Units in a Common Interest Development

Percentage of Moderate Income Units	Percentage of Density Bonus
10%	5%
11%	6%
12%	7%
13%	8%
14%	9%
15%	10%
16%	11%
17%	12%
18%	13%
19%	14%
20%	15%
21%	16%
22%	17%
23%	18%
24%	19%
25%	20%
26%	21%
27%	22%
28%	23%
29%	24%
30%	25%
31%	26%
32%	27%
33%	28%
34%	29%

35%	30%
36%	31%
37%	32%
38%	33%
39%	34%
40%	35%
41%	38.75%
42%	42.5%
43%	46.25%
44%	50%

B. Eligibility for Other Qualifying Housing Developments.

1. A senior citizen housing development is eligible for a 20% density bonus.
2. If at least 10% of the base density units are for foster youth, disabled veterans, or homeless persons, with rents restricted for very low income households, the housing development is eligible for a 20% density bonus.
3. If 100% of the base density units, exclusive of the manager's units, are restricted to very low, lower or moderate income households, with no more than 20% of the base density units restricted to moderate income households, the housing development is eligible for a density bonus of 80% of the number of units for lower income households.
4. If 100% of the base density units, exclusive of the manager's units, are restricted to very low, lower or moderate income households, with no more than 20% of the base density units restricted to moderate income households, and the housing development is located within one-half miles of a major transit stop, the city may not impose any maximum controls on density. The housing development will still be constrained by all other development standards.

C. Findings. To grant a density bonus, the reviewing body must make the following findings.

1. The amount of density bonus corresponds to the affordability thresholds in Tables 1—3 of this section;
2. The housing development is not proposed on any property on which dwelling units have been vacated or demolished in the five-year period preceding the application, which have been:
 - a. Subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons or families of lower or very low income;
 - b. Subject to any other form of rent or price control through a public entity's valid exercise of its police power; or
 - c. Occupied by lower or very low income households; unless, either of the following apply:
 - i. The proposed housing development, inclusive of the units replaced, contains affordable units at the percentages qualifying for a density bonus; or
 - 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.

159.334 Concessions And Incentives

- A. Eligibility. The number of concessions and incentives are calculated based on certain eligibility thresholds for affordable housing projects. An applicant who is eligible for a density bonus under this subchapter may request one or more concessions or incentives as permitted in the table below:

Incentives or Concessions	Total Units of Very Low Income Households	Total Units of Lower Income Households	Total Units of Moderate Income in Common Interest Developments
1	5% minimum	10% minimum	10% minimum
2	10% minimum	17% minimum	20% minimum
3	15% minimum	24% minimum	30% minimum

B. Types of Concessions and Incentives.

1. Reduction in site development standards;
2. Modification of a zoning requirement or architectural design requirement that exceeds the minimum building standards approved by the California Building Standards Commission.
3. Approval of mixed-use zoning if commercial, office, industrial, or other land uses will reduce the cost of the housing development and are compatible with the housing development and the existing or planned development in the area where the proposed housing project will be located.
4. Other regulatory concessions or incentives proposed by the applicant that result in identifiable and actual cost reductions to provide for affordable housing costs or for rents for the targeted units.
5. If the housing development is entitled to four concessions or incentives and is located within one-half mile of a major transit stop, the applicant shall also receive a height increase of up to three additional stories, or thirty-three feet.

C. Findings. To grant a concession or incentive, the reviewing body must make the following findings.

1. The number of concessions or incentives correspond to the affordability thresholds in Table 1 of this section;
2. The concessions or incentives are among the types identified in this section;
3. The housing development is not a foster youth, disabled veteran, homeless person, or senior citizen housing development;
4. The concession or incentive results in identifiable and actual cost reductions to provide affordable housing costs;

5. The concession or incentive will not have a specific, adverse impact on public health, public safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the housing development unaffordable to lower and moderate income households;
6. The concession or incentive will not have an adverse impact on a 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 housing development unaffordable to low- and moderate-income households;
7. The concession or incentive would not be contrary to state or federal law;
8. The housing development is not proposed on any property on which dwelling units have been vacated or demolished in the five-year period preceding the application, which have been:
 - a. Subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons or families of lower or very low income;
 - b. Subject to any other form of rent or price control through a public entity's valid exercise of its police power; or
 - c. Occupied by very low or lower income households; unless, either of the following apply:
 - i. The proposed housing development, inclusive of the units replaced, contains affordable units at the percentages qualifying for a density bonus; or
 - 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.

159.335 Waivers Or Reductions Of Development Standards

- A. Eligibility. If compliance with a development standard would physically preclude construction of a housing development utilizing the density bonus or a concession or incentive, the

applicant may submit a proposal for a waiver or reduction of the development standard. There is no maximum limit on the number of waivers an applicant may request. An applicant must first exhaust his or her available incentives and concessions before requesting a waiver.

B. Findings. To grant a waiver, the reviewing body must make the following findings.

1. The housing development qualifies for a density bonus or a concession or incentive;
2. The requested waiver or reduction applies to a development standard;
3. The development standard would physically preclude construction of the housing development at the densities or with the concessions or incentives permitted under this subchapter:
4. The waiver or reduction in the development standard will not have a specific, adverse impact on public health, public safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the housing development unaffordable to low- and moderate-income households;
5. The waiver or reduction in the development standard will not have an adverse impact on a 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 housing development unaffordable to low- and moderate-income households;
6. The waiver or reduction in the development standard would not be contrary to state or federal law;
7. The waiver or reduction in the development standard does not change the number of affordable units in such a way that either reduces or increases the number of incentives or concessions to which the applicant is entitled; and

8. The housing development does not seek a waiver from any maximum controls on density.

159.336 Parking

- A. Eligibility. An application that qualifies for a density bonus or a concession or incentive may request alternative or special parking standards. The number of on-site parking spaces required under an alternative parking standard will be based on the number of bedrooms per unit. The number of on-site parking spaces required under a special parking standard will be based on the number of bedrooms or units in the housing development. An applicant may request the following alternative or special parking standards.

Number of Bedrooms	On-Site Parking Spaces
0—1	1
2—3	1.5
4 or more	2

Threshold	Parking Ratio Per Unit
Housing development with at least 11% very low income or 20% lower income units and located within one-half mile of a major transit stop	0.5
Rental development 100% affordable to lower income households and located within one-half mile of major transit stop	0
Rental senior housing development 100% affordable to lower income households, with paratransit service or located within one-half mile of a bus route operating at least 8 times per day	0
Rental special needs housing development 100% affordable to lower income households, with paratransit service or located within one-half mile of a bus route operating at least 8 times per day	0

A supportive housing development 100% affordable to lower income households	0
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- B. Findings. For the alternative or special parking standards to apply, the reviewing body must make the following findings.
1. The housing development qualifies for a density bonus or a concession or incentive;
 2. The requested parking ratio is not in conflict with an area-wide or jurisdiction-wide parking study supporting the need for a higher parking ratio.
- C. Handicap and Guest Parking. The parking ratios in this section are inclusive of handicapped and guest parking.
- D. Configuration. A housing development may provide onsite parking through covered parking, tandem parking or uncovered parking, but not through on-street parking.

159.337 Childcare Facilities

- A. Eligibility. An application for a development project that complies with the density bonus requirement of this subchapter and that also includes a childcare facility that will be located on the premises of, as part of, or adjacent to, the housing development may request one additional bonus or concession as follows:
1. An additional density bonus based on square footage instead of density bonus units. The density bonus for a childcare facility will be an amount of square feet of residential space that is equal to or greater than the amount of square feet in the childcare facility; or
 2. An additional concession or incentives that contributes significantly to the economic feasibility of the construction of the childcare facility.
- B. Findings. To grant a bonus or concession for a childcare facility, the reviewing body must make the following findings:
1. The housing development qualifies for a density bonus or a concession or incentive;

2. The bonus or concession will contribute significantly to the economic feasibility of the construction of the childcare facility;
 3. The city does not have adequate childcare facilities;
 4. The bonus or concession will not have a specific, adverse impact on public health, public safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the housing development unaffordable to lower and moderate income households; and
 5. The bonus or concession will not have an adverse impact on a 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 housing development unaffordable to low- and moderate- income households.
- C. Conditions of Approval. The childcare facility will comply with the following conditions of approval:
1. The childcare facility will remain in operation for a period of time that is equal to or longer than the period during which the designated dwelling units are required to be affordable; and
 2. Of the children who attend the childcare facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low or lower income households or families of moderate income.

159.338 Density Bonus For Donation Of Land

- A. Land Donation. An applicant for a tentative subdivision map, parcel map, or other residential development approval who donates land to the city is entitled to a density bonus in addition to any other density bonus for the housing development, up to a maximum combined density increase of 35%. The density bonus for the donation of land will be calculated as follows:

Table 1. Density Bonus for Land Donation	
Percentage of Very Low-Income Units	Percentage of Density Bonus
10%	15%
11%	16%
12%	17%
13%	18%
14%	19%
15%	20%
16%	21%
17%	22%
18%	23%
19%	24%
20%	25%
21%	26%
22%	27%
23%	28%
24%	29%
25%	30%
26%	31%
27%	32%
28%	33%
29%	34%
30%	35%

B. Requirements for Bonus. A bonus for the donation of land must meet the following requirements:

1. The applicant shall donate and transfer the land no later than the date of approval of the final tract, parcel map, or residential development application;
2. The developable acreage and zoning classification of the land being transferred must be sufficient to permit construction of units affordable to very low income households in an amount not less

than 10% of the number of residential units of the proposed housing development;

3. The transferred land shall be at least one acre in size or of sufficient size to permit development of at least forty units, has the appropriate general plan designation, is appropriately zoned for development as affordable housing, and is or will be served by adequate public facilities and infrastructure. The land shall have appropriate zoning and development standards to make the development of the affordable units feasible;
4. No later than the date of approval of the final subdivision map, parcel map, or residential development application, the transferred land shall have all of the permits and approvals, other than design review and building permits necessary for development of the very low income housing units on the transferred land;
5. The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of units.
6. The land is transferred to the city or to a housing developer approved by the city.
7. The transferred land must be within a quarter mile of the boundary of the proposed housing development;
8. A proposed source of funding for the very low income units is identified not later than the date of approval of the final parcel, tract map, or residential development application.

159.339 Condominium Conversions

- A. Eligibility. When an applicant seeks to convert apartments to a condominium project and provide affordable housing, he or she will receive either (1) a density bonus or (2) other incentives of equivalent financial value.

Percentage of Units at Income Level	Percentage of Density Bonus
33% for moderate income households	25%
11% for lower income households	25%

B. Findings. To grant a bonus or incentive, the reviewing body must make the following findings.

1. The requested bonus or incentive corresponds to the affordability thresholds in Table 1 of this section;
2. The condominium project does not seek and has not benefitted from a density bonus, incentive, concession, waiver, or parking ratio under this subchapter;
3. The condominium project is not proposed on any property on which dwelling units have been vacated or demolished in the five-year period preceding the application, which have been:
 - a) Subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons or families of lower or very low income;
 - b) Subject to any other form of rent or price control through a public entity's valid exercise of its police power; or
 - c) Occupied by lower or very low income households;

Unless, either of the following apply:

- i. The proposed condominium project, inclusive of the units replaced, contains affordable units at the percentages qualifying for a density bonus; or
- ii. Each unit in the condominium project is affordable to, and occupied by, either a lower or very low income household.

159.340 Standards Governing Affordable Units

- A. Affordable units must be dispersed throughout the project;
- B. Affordable unit types shall be provided in approximately the same proportion as units in the project as a whole;
- C. Affordable units must be compatible with the design of the market-rate units, except that the applicant may reduce the interior amenities for affordable units upon approval by the city as necessary to retain project affordability;

- D. Affordable units must comply with all applicable development standards, except those which may be modified by this subchapter.

159.341 Miscellaneous

- A. Contiguity. For purposes 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.
- B. Proximity. The density bonus units will be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.
- C. Combinations. Density bonuses must be selected from one category and cannot be combined, except for density bonuses for childcare facilities in § 159.337 and the donation of land in § 159.338.
- D. Rounding. If the total number resulting from a calculation based on the allowances in any of the tables of this subchapter are other than a whole number, the number will be rounded up to the next whole number.
- E. Timing. Affordable units and density bonus units in a housing development will be constructed concurrently with or prior to the construction of market-rate units, unless both the city and the applicant agree within the density bonus housing agreement to an alternative schedule for development.

159.342 Density Bonus Housing Agreement

- A. Deed Restriction. A density bonus housing agreement will be made a condition of the density bonus permit. The terms and conditions of the density bonus agreement will run with the land which is to be developed, shall be binding upon the successor(s)-in-interest of the density bonus permit applicant, shall be recorded in the county recorder's office, and shall be approved as to form by the city attorney as to compliance with applicable state law.
- B. Timing. The recordation shall take place prior to final map approval, or, where a map is not being processed, prior to issuance of building permits for such parcels or units.

- C. Required Provisions. The density bonus housing agreement shall include at least the following:
1. The total number of units approved for the housing development, including the number of affordable units;
 2. A description of the household income group to be accommodated by the housing development and the standards for determining the corresponding affordable rent or affordable housing cost;
 3. The location, unit sizes (square feet), and number of bedrooms of affordable units;
 4. Tenure of use restrictions of at least 55 years for affordable units and, as applicable, density bonus units;
 5. A schedule for completion and occupancy of affordable units;
 6. A description of the incentives or concessions;
 7. A description of the waivers;
 8. A description of the parking ratio;
 9. A prohibition on any rentals whereby a residence or a portion of a residence is rented to a tenant for a period of less than thirty days;
 10. A clause allowing for the recovery of any legal costs incurred in any action taken to enforce compliance with the density bonus housing agreement;
 11. Applicable deed restrictions, in a form satisfactory to the city attorney, containing provisions for the enforcement of owner or developer compliance. Any default or failure to comply may result in foreclosure, specific performance, or withdrawal of the certificate of occupancy;
 12. Other provisions to ensure implementation and compliance with this subchapter.
- D. For-Sale Housing Developments. In the case of for-sale housing developments, the density bonus housing agreement shall provide

for the following conditions governing the initial sale and use of affordable units during the applicable use restriction period:

1. Affordable units shall, upon initial sale, be sold to eligible very low or lower income households, or moderate income households for condominiums, at an affordable housing cost;
2. Purchasers of affordable units shall be required to occupy the unit except with approval from the city. Evidence must be presented to the city that the owner is unable to occupy the unit due to illness or incapacity. In such cases, the unit shall be rented to a person within the same household income category; and
3. A resale restriction shall be recorded against all affordable units restricting the price at which the unit may be resold during the applicable use restriction period.
4. The agreement shall specify that subsequent owners must meet the same qualifications as the original owner and must be pre-approved for purchase by the city. The agreement shall also grant the city the right-of-first-refusal to purchase an affordable unit each time it is sold.
5. The city will enforce an equity sharing agreement which will require that, upon resale, the seller of the unit will retain the value of any improvements, the down payment, and the seller's proportionate share of appreciation. For purposes of this section, the city's initial subsidy will be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate income household, plus the amount of any down payment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale will be used as the initial market value. The city's proportionate share of appreciation will be equal to the ratio of the city's initial subsidy to the fair market value of the home at the time of the initial sale.
6. Provisions requiring sellers to submit an annual report to the city on December 31st, which includes the name, address, and income of each buyer of an affordable unit, and which identifies the purchase price upon sale or resale.

- E. Rental Housing Developments. In the case of rental housing developments, the density bonus housing agreement shall provide for the following conditions governing the use of affordable units during the use restriction period:
1. Affordable units will be let to qualified residents at an affordable rent;
 2. Affordable units within housing developments where 100% of the base density units are restricted to very low, lower, or moderate income households will be let to qualified residents at an affordable rent as calculated by Cal. Gov't Code § 65915(c)(1)(B)(ii).
 3. The rules and procedures for qualifying tenants, establishing affordable rent, filling vacancies, and maintaining affordable units for qualified tenants;
 4. Provisions requiring owners to verify tenant incomes and maintain books and records to demonstrate compliance with this subchapter; and
 5. Provisions requiring owners to submit an annual report to the city on December 31st, which includes the name, address, and income of each person occupying affordable units, and which identifies the bedroom size and monthly rent or cost of each affordable unit.