



**CITY OF SOLANA BEACH**  
**SOLANA BEACH CITY COUNCIL, SUCCESSOR AGENCY TO THE REDEVELOPMENT**  
**AGENCY, PUBLIC FINANCING AUTHORITY, & HOUSING AUTHORITY**

# AGENDA

## Joint SPECIAL Meeting

**Wednesday, November 20, 2024 \* 6:00 p.m.**

City Hall / Council Chambers, 635 S. Highway 101, Solana Beach, California

- City Council meetings are video recorded and archived as a permanent record. The [video](#) recording captures the complete proceedings of the meeting and is available for viewing on the City's website.
- Posted Reports & Supplemental Docs contain records up to the cut off time prior to meetings for processing new submittals. Complete records containing meeting handouts, PowerPoints, etc. can be obtained through a [Records Request](#).



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### PUBLIC MEETING ACCESS

The Regular Meetings of the City Council are scheduled for the 2nd and 4th Wednesdays and are broadcast live. The video taping of meetings are maintained as a permanent record and contain a detailed account of the proceedings. Council meeting tapings are archived and available for viewing on the City's [Public Meetings](#) webpage.

### WATCH THE MEETING

- Live web-streaming: Meetings web-stream live on the City's website on the City's [Public Meetings](#) webpage. Find the large Live Meeting button.
- Live Broadcast on Local Govt. Channel: Meetings are broadcast live on Cox Communications - Channel 19 / Spectrum (Time Warner)-Channel 24 / AT&T U-verse Channel 99.
- Archived videos online: The video taping of meetings are maintained as a permanent record and contain a detailed account of the proceedings. Council meeting tapings are archived and available for viewing on the City's [Public Meetings](#) webpage.

### AGENDA MATERIALS

A full City Council agenda packet including relative supporting documentation is available at City Hall, the Solana Beach Branch [Library](#) (157 Stevens Ave.), La Colonia Community Ctr., and online [www.cityofsolanabeach.org](http://www.cityofsolanabeach.org). Agendas are posted at least 72 hours prior to regular meetings and at least 24 hours prior to special meetings. Writings and documents regarding an agenda of an open session meeting, received after the official posting, and distributed to the Council for consideration, will be made available for public viewing at the same time. In addition, items received at least 1 hour 30 minutes prior to the meeting time will be uploaded online with the agenda posting. Materials submitted for consideration should be forwarded to the [City Clerk's department](#) 858-720-2400. The designated location for viewing of hard copies is the City Clerk's office at City Hall during normal business hours.

### PUBLIC COMMENTS

Written correspondence (supplemental items) regarding an agenda item at an open session meeting should be submitted to the City Clerk's Office at [clerkoffice@cosb.org](mailto:clerkoffice@cosb.org) with a) Subject line to include the meeting date b) Include the Agenda Item # as listed on the Agenda.

- Correspondence received after the official posting of the agenda, but two hours prior to the meeting start time, on the meeting day, will be distributed to Council and made available online along with the agenda posting. All submittals received before the start of the meeting will be made part of the record.
- Written submittals will be added to the record and not read out loud.

And/Or

Verbal Comment Participation:

Please submit a speaker slip to the City Clerk prior to the meeting, or the announcement of the Section/Item, to provide public comment. Allotted times for speaking are outlined on the speaker's slip for each agenda section: Oral Communications, Consent, Public Hearings and Staff Reports. Public speakers have 3 minutes each to speak on each topic. Time may be donated by another

individual who is present at the meeting to allow an individual up to 6 minutes to speak. Group: Time may be donated by two individuals who are present at the meeting allowing an individual up to 10 minutes to speak. Group Hearings: For public hearings only, time may be donated by two individuals who are present at the meeting allowing an individual up to 15 minutes to speak.

**COUNCIL DISCLOSURE**

*Pursuant to the Levine Act (Gov't Code Section 84308), any party to a permit, license, contract (other than competitively bid, labor or personal employment contracts) or other entitlement before the Council is required to disclose on the record any contribution, including aggregated contributions, of more than \$250 made by the party or the party's agents within the preceding 12 months to any Council Member. Participants and agents are requested to make this disclosure as well. The disclosure must include the name of the party or participant and any other person making the contribution, the name of the recipient, the amount of the contribution, and the date the contribution was made.*

**SPECIAL ASSISTANCE NEEDED**

In compliance with the Americans with Disabilities Act of 1990, persons with a disability may request an agenda in appropriate alternative formats as required by Section 202. Any person with a disability who requires a modification or accommodation in order to participate in a meeting should direct such request to the [City Clerk's office](#) (858) 720-2400 at least 72 hours prior to the meeting.

As a courtesy to all meeting attendees, please set all electronic devices to silent mode and engage in conversations outside the Council Chambers.

**CITY COUNCILMEMBERS**

**Lesa Heebner**  
Mayor

**Jewel Edson**  
Deputy Mayor / Councilmember District 3

**Kristi Becker**  
Councilmember District 2

**Jill MacDonald**  
Councilmember District 4

**David A. Zito**  
Councilmember District 1

Alyssa Muto  
City Manager

Johanna Canlas  
City Attorney

Angela Ivey  
City Clerk

**SPEAKERS:**

Please submit your speaker slip to the City Clerk prior to the meeting or the announcement of the Item. Allotted times for speaking are outlined on the speaker's slip for Oral Communications, Consent, Public Hearings and Staff Reports.

**READING OF ORDINANCES AND RESOLUTIONS:**

Pursuant to [Solana Beach Municipal Code](#) Section 2.04.460, at the time of introduction or adoption of an ordinance or adoption of a resolution, the same shall not be read in full unless after the reading of the title, further reading is requested by a member of the Council. If any Councilmember so requests, the ordinance or resolution shall be read in full. In the absence of such a request, this section shall constitute a waiver by the council of such reading.

**CALL TO ORDER AND ROLL CALL:**

**CLOSED SESSION REPORT:**

**FLAG SALUTE:**

**APPROVAL OF AGENDA:**

**PRESENTATIONS:** Ceremonial items that do not contain in-depth discussion and no action/direction.  
None at the posting of this agenda

**PROCLAMATIONS/CERTIFICATES:** *Ceremonial*  
None at the posting of this agenda

**ORAL COMMUNICATIONS:**

Comments relating to items on this evening's agenda are taken at the time the items are heard. This portion of the agenda provides an opportunity for members of the public to address the City Council on items relating to City business and not appearing on today's agenda by submitting a speaker slip (located on the back table) to the City Clerk. Pursuant to the Brown Act, no action shall be taken by the City Council on public comment items. Council may refer items to the City Manager for placement on a future agenda. The maximum time allotted for each presentation is THREE MINUTES. No donations of time are permitted (SBMC 2.04.190). Please be aware of the timer light on the Council Dais.

**CITY COUNCIL COMMUNITY ANNOUNCEMENTS - COMMENTARY:**

*An opportunity for City Council to make brief announcements or report on various activities. These items are not agendized for official City business with no action or substantive discussion.*

**CITY MANAGER / CITY ATTORNEY REPORTS:**

*An opportunity for the City Manager and City Attorney to make brief announcements or report on various activities. These items are not agendized for official City business with no action or substantive discussion.*

**NOTE: The City Council shall not begin a new agenda item after 10:30 p.m. unless approved by a unanimous vote of all members present. (SBMC 2.04.070)**

**B. PUBLIC HEARINGS:** (B.1. – B.2.)

This portion of the agenda provides citizens an opportunity to express their views on a specific issue as required by law after proper noticing by submitting a speaker slip (located on the back table) to the City Clerk. After considering all of the evidence, including written materials and oral testimony, the City Council must make a decision supported by findings and the findings must be supported by substantial evidence in the record. An applicant or designee(s) for a private development/business project, for which the public hearing is being held, is allotted a total of fifteen minutes to speak, as per SBMC 2.04.210. A portion of the fifteen minutes may be saved to respond to those who speak in opposition. *All other speakers should refer to the public comment section at the beginning of the agenda for time allotment.* Please be aware of the timer light on the Council Dais.

**B.1. Public Hearing: Zoning Ordinance Amendments Consistent with the City's 6<sup>th</sup> Cycle Housing Element Programs – Introduction of Ordinance 534 (1<sup>st</sup> Reading).**  
(File 0610-10)

Recommendation: That the City Council

1. Conduct the Public Hearing: Open the Public Hearing, Report Council Disclosures, Receive Public Testimony; Close the Public Hearing.
2. Introduce **Ordinance 534** which updates various Zoning Code sections regarding housing development standards and housing types.

**[Item B.1. Report \(click here\)](#)**

*Posted Reports & Supplemental Docs contain records up to the cut off time, prior to the start of the meeting, for processing new submittals. The final official record containing handouts, PowerPoints, etc. can be obtained through a Records Request to the City Clerk's Office.*

**B.2. Public Hearing: Density Bonus Ordinance Update – Introduction of Ordinance 536 (1<sup>st</sup> Reading).** (File 0610-10)

Recommendation: That the City Council

1. Conduct the Public Hearing: Open the Public Hearing, Report Council Disclosures, Receive Public Testimony; Close the Public Hearing.
2. Introduce **Ordinance 536** replacing Section 17.20.050 of the Municipal Code and adopting the State Density Bonus Law by reference, finding the action exempt from CEQA pursuant to CEQA Guidelines Sections 15060(c)(2), 15060(c)(3), 15061(b)(3).

[Item B.2. Report \(click here\)](#)

*Posted Reports & Supplemental Docs contain records up to the cut off time, prior to the start of the meeting, for processing new submittals. The final official record containing handouts, PowerPoints, etc. can be obtained through a Records Request to the City Clerk's Office.*

**WORK PLAN COMMENTS:**

*Adopted June 26, 2024*

**COMPENSATION & REIMBURSEMENT DISCLOSURE:**

GC: Article 2.3. Compensation: 53232.3. (a) Reimbursable expenses shall include, but not be limited to, meals, lodging, and travel. 53232.3 (d) Members of a legislative body shall provide brief reports on meetings attended at the expense of the local agency "City" at the next regular meeting of the legislative body.

**COUNCIL COMMITTEE REPORTS:** [Council Committees](#)

**REGIONAL COMMITTEES: (outside agencies, appointed by this Council)**

- a. City Selection Committee (meets twice a year) Primary-Heebner, Alternate-Edson
- b. Clean Energy Alliance (CEA) JPA: Primary-Becker, Alternate-Zito
- c. County Service Area 17: Primary-MacDonald, Alternate-Edson
- d. Escondido Creek Watershed Authority: Becker / Staff (no alternate).
- e. League of Ca. Cities' San Diego County Executive Committee: Primary-MacDonald, Alternate-Becker. Subcommittees determined by its members.
- f. League of Ca. Cities' Local Legislative Committee: Primary-MacDonald, Alternate-Becker
- g. League of Ca. Cities' Coastal Cities Issues Group (CCIG): Primary-MacDonald, Alternate-Becker
- h. North County Dispatch JPA: Primary-MacDonald, Alternate-Becker
- i. North County Transit District: Primary-Edson, Alternate-MacDonald
- j. Regional Solid Waste Association (RSWA): Primary-Zito, Alternate-MacDonald
- k. SANDAG: Primary-Heebner, 1<sup>st</sup> Alternate-Zito, 2<sup>nd</sup> Alternate-Edson. Subcommittees determined by its members.
- l. SANDAG Shoreline Preservation Committee: Primary-Becker, Alternate-Zito
- m. San Dieguito River Valley JPA: Primary-MacDonald, Alternate-Becker
- n. San Elijo JPA: Primary-Zito, Primary-Becker, Alternate-City Manager
- o. 22<sup>nd</sup> Agricultural District Association Community Relations Committee: Primary-Edson, Primary-Heebner

**STANDING COMMITTEES: (All Primary Members) (Permanent Committees)**

- a. Business Liaison Committee – Zito, Edson
- b. Fire Dept. Management Governance & Organizational Evaluation – Edson, MacDonald
- c. Highway 101 / Cedros Ave. Development Committee – Heebner, Edson
- d. Parks and Recreation Committee – Zito, Edson

- e. Public Arts Committee – Edson, Heebner
  - f. School Relations Committee – Becker, MacDonald
  - g. Solana Beach-Del Mar Relations Committee – Heebner, Edson
- CITIZEN COMMISSION(S)**
- a. Climate Action Commission – Zito, Becker

**ADJOURN:**

**Next Regularly Scheduled Meeting is December 11, 2024**

*Always refer to the City’s website Event Calendar for an updated schedule or contact City Hall. [www.cityofsolanabeach.org](http://www.cityofsolanabeach.org) 858-720-2400*

**AFFIDAVIT OF POSTING**

STATE OF CALIFORNIA  
 COUNTY OF SAN DIEGO  
 CITY OF SOLANA BEACH } §

I, Megan Bavin, Deputy City Clerk of the City of Solana Beach, do hereby certify that this Agenda for the November 20, 2024 Council Meeting was called by City Council, Successor Agency to the Redevelopment Agency, Public Financing Authority, and the Housing Authority of the City of Solana Beach, California, was provided and posted on November 14, 2024 at 5:20 p.m. on the City Bulletin Board at the entrance to the City Council Chambers. Said meeting is held at 6:00 p.m., November 20, 2024, in the Council Chambers, at City Hall, 635 S. Highway 101, Solana Beach, California.

Megan Bavin, Deputy City Clerk  
 City of Solana Beach, CA

**UPCOMING CITIZEN CITY COMMISSION AND COMMITTEE MEETINGS:**

*Regularly Scheduled, or Special Meetings that have been announced, are posted on each Citizen Commission’s Agenda webpage. See the [Citizen Commission’s Agenda webpages](#) or the City’s Events [Calendar](#) for updates.*

- **Budget & Finance Commission**
- **Climate Action Commission**
- **Parks & Recreation Commission**
- **Public Arts Commission**
- **View Assessment Commission**



# STAFF REPORT CITY OF SOLANA BEACH

**TO:** Honorable Mayor and City Councilmembers  
**FROM:** Alyssa Muto, City Manager  
**MEETING DATE:** November 20, 2024  
**ORIGINATING DEPT:** Community Development Department – Joseph Lim, Community Development Director  
**SUBJECT:** **Zoning Ordinance Amendments Consistent with the City’s 6<sup>th</sup> Cycle Housing Element Programs – Introduction of Ordinance 534**

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## **BACKGROUND:**

This item is before the City Council to consider introduction of Ordinance 534 which would update the City’s Zoning Code consistent with the Programs adopted in the City’s 6<sup>th</sup> Cycle Certified Housing Element.

## **DISCUSSION:**

The City of Solana Beach’s (City) General Plan provides strategic planning for community sustainability and evaluates, defines, and sets goals for development preservation and rehabilitation of distinct neighborhoods and commercial areas. State Housing Element Law (Article 10.6 of the Government Code (Sections 65580-65590)) requires the City Council to adopt a Housing Element as part of the City’s General Plan to accommodate the City’s regional housing need allocation (RHNA). To comply with the State Housing Element Law, the City prepared the 6th Cycle Housing Element Update (Housing Element) that assesses the City’s housing needs, inventories the resources and constraints relevant to meeting those needs, and provides a program of scheduled actions the City will take to implement the Housing Element’s policies, goals, and objectives.

On April 7, 2023, the City received a letter from the California Housing and Community Development Department (HCD) providing its findings regarding the draft Housing Element as revised, which concluded that the Housing Element meets applicable

COUNCIL ACTION:

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statutory requirements and that the Housing Element will substantially comply with the State Housing Element Law when it is adopted, submitted to, and approved by HCD. On May 10, 2023, the City Council adopted the Housing Element, which consists of housing programs intended to encourage and foster various housing development types to meet the City's Regional Housing Need (RHNA). HCD found that the adopted Housing Element complied with state law requirements on June 8, 2023, thereby certifying the City's adopted Housing Element. The following summarizes the proposed ordinance changes and notes the specific Housing Element Programs that were certified by HCD and adopted by City Council and that give rise to the proposed changes.

### SUMMARY OF PROPOSED CHANGES

HE Program 1H – Amend the Solana Beach Municipal Code to allow and permit manufactured housing in the same manner and in the same zone as conventional structures are permitted. The proposed changes update the definition and development regulations by which a manufactured home and mobile home may be permitted within the City's residential zone districts. The proposed changes further allow for a manufactured home to be used as either a primary unit and/or accessory dwelling unit consistent with State Law.

HE Program 1K – Amend Table 17.12.020-A of the Solana Beach Municipal Code regarding Transitional and Supportive Housing. The proposed change adds Supportive and Transitional Housing to the use matrix where multifamily and mixed uses are permitted, including nonresidential zones permitting multifamily uses pursuant to Government Code 65651.

HE Program 1L – Amend the Solana Beach Municipal Code to define Employee Housing consistent with State Law. A definition has been drafted and the language is proposed to be added to the list of Residential Uses that is consistent with Section 17008 of the Health and Safety Code.

HE Program 3E – Amend Parking Requirement for Emergency Shelters. Assembly Bill 139 states that standards cannot require more parking for emergency shelters than other residential and commercial uses within the same zone. Section 17.60.180.B.5.b is proposed to be amended to clarify the vehicle parking requirements consistent with State Law.

HE Program 3F – Group Home Definition/Requirement within Municipal Code. This program committed to amending the Municipal Code to treat group homes of 6 or fewer people as a single-family residential use, and be subject to the same development standards, consistent with the City's current practice and State Law. The proposed changes to accomplish this objective is to add subsection "e" to Section 17.20.020.B.1 which would permit group residential facilities with 6 or fewer persons as a principally permitted use in the ER-1, ER-2, LR, LMR, and MR zones. The zones are intended for residential development characterized by predominantly single-family homes. The use



matrix (Table 17.20.020-A) would also be amended to reflect group residential facilities with 6 or fewer people as permitted.

HE Program 3G – Definition of Density – Currently the City defines density as the number of dwelling units per net acre, which excludes land area which will be required for public streets, easement or other areas to be dedicated or reserved for public use or open space. HCD required that the definition be amended to base the calculation on gross acreage instead of net acreage. Sections 17.08.030 Density definition, 17.20.010, and 17.20.030.B.1 through 3 would replace references of net acreage to gross acreage.

HE Program 3H – Development Standards Update – Building Height. HCD has required language be added to clarify building height within the General Commercial (C) and Special Commercial (SC) zones in order to assist with development flexibility and provide a greater range of development types. The SBMC already permits building heights of 35 feet within the C and SC zones. HCD requested that the development standards include 3 stories. Typically, 3 stories can fit within the prescribed 35 feet. In order to conform to HCD's request Table 17.24.030- D would add "3 stories" to the Maximum Building Height table for C zones and Section 17.28.030 would be amended to add "up to 3 stories" within the SC zone.

HE Program 3I – Objective Design Standards for Group Residential Facilities. The SBMC currently requires a conditional use permit for group residential facility of seven or more people. HCD has required that the City replace the requirement for a CUP with objective development standards that permit group residential facilities administratively and treat parking requirement similar to other residential uses of the same form. To accomplish this change, group residential facilities of 7 or more would be added to Table 17.12.020-A and would permit these uses based on objective development standards that are proposed as a new Section 17.60.200 Group Residential Facilities. Group Residential Facilities would be permitted in the MHR, HR, and C zone districts. As proposed the proposed objective development standards would include: 1) a minimum 300 foot separation requirement from other similar uses; 2) a maximum of one bed per 150 feet of sleeping area, not to exceed 20 beds; 3) minimum interior and exterior multipurpose areas for resident gathering areas; 4) requirement for a management plan for facility operation that includes on-site management, staff levels and qualifications, client services, behavior guidelines, facility maintenance, emergency plan, and security plan; and 5) a parking requirement consistent with State Law.

HE Program 4B – Emergency, Transitional and Supportive Housing and Lower Barrier Navigation Centers. This program is intended to add Low Barrier Navigation Center Development as a matter of right in appropriate zoning districts consistent with State Law. This type of use is similar to an emergency shelter in that it is used primarily as temporary housing with support services, therefore, to comply with State Law the Zoning Code would be updated by adding Low Barrier Navigation Center as a permitted use subject to the same objective standards as an Emergency Shelter. As drafted Table 17.12.020-A and Section 17.60.180 would be amended to include Low Barrier



Navigation Centers as permitted within the general commercial zone and conditionally permitted in the public/institutional zone.

HE Program 4C & 4F – Amend Reasonable Accommodation Criteria. HCD requested that certain existing evaluation criteria be removed from the SBMC to better accommodate approval of accessibility retrofit efforts by applicants and allow for reasonable accommodations for persons with physical and developmental disabilities. Section 17.66.050 regarding reasonable accommodation findings and decision have been revised to address HCD’s concern by removing the following subjective criteria: 1) whether there are alternative reasonable accommodations available that would provide an equivalent level of benefit; and 2) whether the requested reasonable accommodation substantially affects the physical attributes of the property or has impact on surrounding properties that would fundamentally alter a city program or law.

The Housing Element contains 37 Programs. If adopted, this ordinance would represent completion and implementation of 11 of the Programs that the City Council committed to as part of the 6<sup>th</sup> Cycle Housing Element adoption. Other Housing Element Programs that have been completed and implemented to date include the following:

- HE Program 1B – Promotion of Accessory Dwelling Unit (ADU) and Junior Accessory Dwelling Unit (JADU) Development
- HE Program 1C – Create ADU Monitoring Program
- HE Program 1J – Update ADU/JADU Ordinance to be consistent with State Law
- HE Program 1O – Promote Affordable Housing Production on City-Owned Land
- HE Program 1P – Promotion of ADU Development east of I-5
- HE Program 3A – Compliance with SB 35 Provisions
- HE Program 3B – Public Education
- HE Program 3C – Water and Sewer Resources
- HE Program 5A – Energy Conservation

**CEQA COMPLIANCE STATEMENT:**

The proposed City Council action is exempt under State CEQA Guidelines §15061(b)(3) common sense exemption, because the Project involves policies, programs, and actions to meet the City’s RHNA allocation that would not cause a significant effect on the environment. Given their nature and scope as programmatic changes to facilitate housing production that is already permitted under the City’s existing General Plan and zoning designations, the proposed Housing Element programs and policies would not result in physical environmental impacts. Additionally, the Housing Element Programs do not grant any development entitlements or authorize development beyond what is allowed under the City’s current General Plan and Zoning Code (Municipal Code Title 17). It can be seen with certainty that there is no possibility that the adoption of this Zoning Code amendments that are required pursuant to the City’s 6th Cycle Housing Element Programs would not have a significant effect on the environment; therefore, this ordinance is exempt from CEQA under the commonsense exemption.

**FISCAL IMPACT:**

There are no direct fiscal impacts related to this item.

**STAFF RECOMMENDATION:**

Open and conduct the public hearing and introduce Ordinance 534 which updates various Zoning Code sections regarding housing development standards and housing types.



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Alyssa Muto, City Manager

Attachment:

1. Ordinance 534

## ORDINANCE 534

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SOLANA BEACH, CALIFORNIA, ADOPTING REVISIONS TO THE CITY'S ZONING ORDINANCE CONSISTENT WITH THE CITY'S 6<sup>TH</sup> CYCLE HOUSING ELEMENT PROGRAMS

**WHEREAS**, the City of Solana Beach's (City) General Plan provides strategic planning for community sustainability and evaluates, defines, and sets goals for development preservation and rehabilitation of distinct neighborhoods and commercial areas; and

**WHEREAS**, State Housing Element Law (Article 10.6 of the Government Code (Sections 65580-65590)) requires the City Council to adopt a Housing Element as part of the City's General Plan to accommodate the City's regional housing need allocation (RHNA); and

**WHEREAS**, to comply with the State Housing Element Law, the City prepared the 6th Cycle Housing Element Update (Housing Element) that assesses the City's housing needs, inventories the resources and constraints relevant to meeting those needs, and provides a program of scheduled actions the City will take to implement the Housing Element's policies, goals, and objectives; and

**WHEREAS**, on April 7, 2023, the City received a letter from HCD providing its findings regarding the draft Housing Element as revised, which concluded that the revised draft Housing Element meets applicable statutory requirements and that the Housing Element will substantially comply with the State Housing Element Law when it is adopted, submitted to, and approved by HCD; and

**WHEREAS**, on May 10, 2023, the City Council adopted the 6<sup>th</sup> Cycle Housing Element which included numerous housing policies and programs intended to encourage and foster various housing development types to meet the City's RHNA; and

**WHEREAS**, adoption of this Ordinance is exempt under State CEQA Guidelines §15061(b)(3) common sense exemption, because the Project involves policies, programs, and actions to meet the City's RHNA allocation that would not cause a significant effect on the environment. Given their nature and scope as programmatic changes to facilitate housing production that is already permitted under the City's existing General Plan and zoning designations, the proposed Housing Element programs and policies would not result in physical environmental impacts. Additionally, the Housing Element Programs do not grant any development entitlements or authorize development beyond what is allowed under the City's current General Plan and Zoning Code (Municipal Code Title 17). It can be seen with certainty that there is no possibility that the adoption of this Zoning Code amendments that are required pursuant to the City's 6<sup>th</sup> Cycle Housing Element Programs would not have a significant effect on the environment; therefore, this ordinance is exempt from CEQA under the commonsense exemption; and

**WHEREAS**, the City Council wishes to continue to support and encourage various types of housing development to meet the housing needs for all income levels of the community.

**NOW, THEREFORE**, the City Council of the City of Solana Beach hereby ordains as follows:

Section 1. All of the above statements are true; and

Section 2. The City Council finds that the proposed amendments are consistent with Chapter 17.76 of the Solana Beach Municipal Code (Amendments) as it implements programs required by the City's General Plan Housing Element. The proposed amendment does not change the use or intensity of any designations as it simply clarifies the procedures for review and administration of development applications to facilitate housing production and therefore further consistent with the City's Land Use Element. Therefore, it would not be detrimental to the public interest, health, safety, convenience, or welfare because it implements existing Housing Element policies to facilitate creation of housing determined to be necessary and beneficial to the community.

Section 3. Section 17.12.010.D.1.i Mobile Homes and Manufactured Housing shall be amended (HE Program 1H) as follows:

i. Mobile Homes and Manufactured Housing. A factory-built or manufactured home as permitted by the State of California Government Code Section 65852.3 and installed on a permanent foundation system.

Section 4. Section 17.20.040.B Manufactured Housing and Mobile Homes shall be repealed and replaced (HE Program 1H) as follows:

B. Manufactured Housing and Mobile Homes. One mobile home or manufactured house is permitted on a lot in the (ER-1), (ER-2), (LR), (LMR), (MR), (MHR), and (HR) zones subject to all regulations of this chapter and the following additional requirements:

1. The structure has been certified under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.) and has not been altered in violation of applicable codes.

2. The structure is occupied as a single-family detached residential dwelling or detached accessory dwelling unit.

3. The structure is attached to a permanent foundation system in compliance with the provisions of Section 18551 of the state of California Health and Safety Code.

4. The structure is covered with an exterior material customarily used on conventional dwellings. The exterior material shall extend to the ground, except that when a skirt or solid concrete or masonry perimeter foundation is used, the exterior covering material need not extend below the top of the foundation.

5. The roof material shall consist of shingles or other material customarily used for conventional dwellings.

6. Prior to installation of a mobile home on a permanent foundation system, the owner or a licensed contractor shall obtain a building permit from the department of community development. To obtain a permit, the owner or contractor shall comply with all requirements of Section 18551(a) of the Health and Safety Code.

Section 5. Section 17.12.010.D.1 Residential Uses shall be amended by adding subsection “s” defining Employee Housing (HE Program 1L) as follows:

s. Employee Housing. Defined in Section 17008 of the Health and Safety Code, shall include any portion of any housing accommodation, or property upon which a housing accommodation is located, if all of the following factors exist:

- i. The accommodation consists of any living quarters, dwelling, boardinghouse, tent, bunkhouse, maintenance-of-way car, mobile home, manufactured home, recreational vehicle, travel trailer, or other housing accommodation, maintained in one or more buildings or one or more sites, and the premises upon which they are situated or the area set aside and provided for parking of mobile homes or camping of five or more employees by the employer.
- ii. The accommodations are maintained in connection with any work or place where work is being performed, whether or not rent is involved.
- iii. Employee housing for six or fewer employees will be treated as a single-family structure and permitted in the same manner as other dwelling of the same type in the same zone.
- iv. An employee housing accommodation consisting of no more than 12 units or 36 beds will be permitted in the same manner as other agricultural uses in the same zone.

Section 6. Table 17.12.020-A Use Regulations Matrix regarding group residential facilities, transitional and supportive housing (HE Program 1K, 1L, 3F, 3I & 4B) shall be modified to revise the use matrix as follows:

**Table 17.12.020-A**

|                            |  | ZONE |      |    |     |    |     |    |    |    |    |    |    |    |   |     |     |
|----------------------------|--|------|------|----|-----|----|-----|----|----|----|----|----|----|----|---|-----|-----|
| USE                        |  | ER-1 | ER-2 | LR | LMR | MR | MHR | HR | C  | SC | LC | OP | PI | LI | A | OSR | ROW |
| <b>1. RESIDENTIAL USES</b> |  |      |      |    |     |    |     |    |    |    |    |    |    |    |   |     |     |
| 9                          | Group Residential Facilities (6 or fewer people) | P    | P    | P  | P   | P  | E   | E  | E  | E  | E  | E  | E  | E  | E | E   | E   |
| 9.1                        | Group Residential Facilities (7+ people)         | E    | E    | E  | E   | E  | PL  | PL | PL | E  | E  | E  | E  | E  | E | E   | E   |
| 9.2                        | Supportive Housing                               | E    | E    | E  | E   | P  | P   | P  | P  | P  | E  | E  | E  | E  | E | E   | E   |
| 9.3                        | Transitional Housing                             | E    | E    | E  | E   | P  | P   | P  | P  | P  | E  | E  | E  | E  | E | E   | E   |

|      | USE                           | ZONE |      |    |     |    |     |    |    |    |    |    |    |    |    |     |     |
|------|-------------------------------|------|------|----|-----|----|-----|----|----|----|----|----|----|----|----|-----|-----|
|      |                               | ER-1 | ER-2 | LR | LMR | MR | MHR | HR | C  | SC | LC | OP | PI | LI | A  | OSR | ROW |
| 9.4  | Employee Housing              | PL   | PL   | PL | E   | E  | E   | E  | E  | E  | E  | E  | E  | E  | PL | E   | E   |
| 16.5 | Emergency Shelter             | E    | E    | E  | E   | E  | E   | E  | PL | E  | E  | E  | C  | E  | E  | E   | E   |
| 16.6 | Low Barrier Navigation Center | E    | E    | E  | E   | E  | E   | E  | PL | E  | E  | E  | C  | E  | E  | E   | E   |

Section 7. Section 17.60.180.B.5.b shall be amended (HE Program 3E) to read to as follows:

b. Vehicle Parking. The number of off-street parking spaces shall be calculated based on the square footage of office space at the facility plus one parking space per 10 beds. Sufficient parking to accommodate all staff working in the emergency shelter shall be required, provided that the standards shall not require more parking than other residential or commercial uses within the same zone.

Section 8. Section 17.20.020.B.1 shall add subsection “e” (HE Program 3F) to read as follows:

e. Group residential facilities with 6 or fewer persons shall be a permitted as a principal use in the (ER-1), (ER-2), (LR), (LMR), and (MR) zones

Section 9. Section 17.08.030. Definitions (HE Program 3G) shall amend the definition of “DENSITY” to read as follows:

DENSITY: The number of dwelling units per gross acre (see also ACREAGE, GROSS).

Section 10. Section 17.20.010. Purpose and Intent (HE Program 3G) shall amended to read as follows:

17.20.010 Purpose and intent.

The residential zones are intended to implement the goals and objectives for single-family and multifamily residential development as established in the Solana Beach general plan. The individual zones which are required to implement the land use designations in the Solana Beach general plan are described as follows:

A. Estate Residential Zone (ER-1), (ER-2) – (zero to two dwelling units/ acre): These zones are intended for residential development in areas characterized by single-family homes on semirural estate lots of one-half acre or larger. The estate sized parcels help preserve the natural terrain and minimize grading requirements.

B. Low Residential Zone (LR) – (three dwelling units/ acre): This zone is intended for residential development in areas characterized by detached single-family homes on older

subdivided lots. Within the scaled residential overlay zone (SROZ), development in the LR zone shall also be subject to the SROZ superseding development regulations (SBMC 17.48.040).

C. Low Medium Residential Zone (LMR) – (four dwelling units/ acre): This zone is intended for residential development in areas characterized primarily by detached single-family homes on both older and newer subdivided lots. Within the SROZ, development in the LMR zone shall also be subject to the SROZ superseding development regulations (SBMC 17.48.040).

D. Medium Residential Zone (MR) – (five to seven dwelling units/ acre): This zone is intended to provide for residential development in areas characterized primarily by detached single-family dwellings on older subdivided lots and two-family and multiple-family dwellings within newer, large lot, planned developments. Within the SROZ, development in the MR zone shall also be subject to the SROZ superseding development regulations (SBMC 17.48.040).

E. Medium High Residential Zone (MHR) – (eight to 12 dwelling units/ acre): This zone is intended for a wide range of residential development types including detached single-family and attached duplex units at the low end of the density range and multiple-family attached units at the higher end of the density range.

F. High Residential Zone (HR) – (13 to 20 dwelling units/ acre): This zone is intended for multiple-family attached units such as apartments and condominium buildings. Such areas are located in close proximity to major community facilities, commercial centers and transportation routes. It is intended that development in this zone utilize innovative site planning and provide on-site recreational amenities.

Section 11. Section 17.20.030.B.1 through 3 Density Regulations (HE Program 3G) shall be amended to read as follows:

1. The maximum allowable densities for the (ER-1), (ER-2), (LR), (LMR), (MR), (MHR), and (HR) zones shall be as follows:

**Table 17.20.030-B  
 Maximum Dwelling Unit Density**

| <b>Zone</b> | <b>As of Right<sup>a</sup><br/>(base density)</b> | <b>With Development<br/>Review Permit</b> |
|-------------|---|---|
| ER-1        | 1 du/ acre <sup>b</sup>                           | N/A                                       |
| ER-2        | 2 du/ acre <sup>b</sup>                           | N/A                                       |
| LR          | 3 du/ acre <sup>b</sup>                           | N/A                                       |
| LMR         | 4 du/ acre <sup>b</sup>                           | N/A                                       |
| MR          | 5 du/ acre  | 7 du/ acre <sup>c</sup>                   |
| MHR         | 8 du/ acre  | 12 du/ acre <sup>c</sup>                  |
| HR          | 13 du/ acre                                       | 20 du/ acre <sup>c</sup>                  |

a. The permitted density in the situation where the minimum range cannot be met shall be the first whole number above the minimum of the range. In no instance, however, shall it exceed



the maximum number permitted by the general plan and these zoning regulations (See Council Policy #7).

- b. In the (ER-1), (ER-2), (LR), and (LMR) zones, no lot shall be occupied by more than one principal dwelling unit.
- c. Densities exceeding the base density in excess of those permitted by subsection (a) of this table are allowable, up to the maximum density specified; provided the development is approved pursuant to a development review permit. The maximum density shall not be construed to be a “guaranteed right” and shall be granted only upon demonstration that the proposed development incorporates exemplary site planning and design and complies with all applicable zoning regulations and general plan objectives. Whenever the proposed density for a site is greater than that permitted by subsection (a) of this table, the increased density shall be justified by consideration of such matters as: superior project design; public facility availability; availability of public transportation; proximity to public recreation; proximity to public facilities or community amenities provided by the developer of the site; whether the increased density will assist the city in meeting its regional housing obligations and local housing goals; whether the increased density will adversely affect the neighborhood; or whether the increased density will assist the city in meeting other general plan goals and objectives.

2. The maximum number of units per lot or site shall be equal to the product of the total area of the lot or site (expressed in acres) multiplied by the applicable density (Units = Lot Size in Acres x Dwelling Unit Density). A fractional density of 0.70 or more may be rounded up to the nearest whole number of dwelling units; provided the project incorporates superior design and site planning as set forth in subsection (B)(1) of this section. A fractional density of less than 0.70 shall be rounded down to the nearest whole number of dwelling units.

3. The area of the site shall consist of those portions of the site exclusive of public rights-of-way for streets, railroad rights-of-way, utility easements for high voltage electrical transmission lines and undevelopable slopes, bluffs and sensitive lands as set forth in subsection (B)(4) of this section.

Section 12. Table 17.24.030.D Maximum Building Height (HE Program 3H) for Zone (C) shall be amended to read as follows:

**Table 17.24.030-D  
Maximum Building Height**

| <b>Zone</b> | <b>Maximum Height</b>       |
|-------------|-----------------------------|
| C           | 35 feet and up to 3 stories |

Section 13. Section 17.28.030.D Maximum Building Height (HE Program 3H) shall be amended to read as follows:

D. Maximum Building Height. The maximum height of any building or structure within the (SC) zone shall be 35 feet and up to 3 stories. Pursuant to a development review permit, up to 15 percent of the roof plane may exceed a height of 35 feet to allow for architectural projections of exceptional quality and merit.

Section 14. Section 17.60.200 Group Residential Facilities (HE Program 3I) shall be added to read as follows:

17.60.200 Group Residential Facilities.

A. Purpose and Intent. This section establishes standards for the development and operation of group residential facilities of 7 or more people. Group residential facilities of 7 or more people shall be allowed as a permitted use without the need for a conditional use permit or other discretionary review and therefore are exempt from CEQA (California Environmental Quality Act).

B. Group Residential Facility Regulations. Group Residential Facilities shall be subject to the following regulations:

1. Eligible Locations. A new facility shall be a permitted use in the Medium-High Residential (MHR), High Residential (HR) and General Commercial (C) Zones.

2. Separation Between Group Residential Facilities. A new group residential facility shall not be closer than 300 feet to another group residential facility as measured between property lines.

3. Lighting. Adequate external lighting shall be provided for security purposes to ensure fully lit parking, gathering and waiting areas. Lighting shall be contained on site per SBMC 17.60.060, Exterior lighting regulations.

4. Building Design Standards.

a. Number of Beds. A group residential facility shall contain a maximum of one bed per 150 square feet of sleeping area not to exceed 20 beds and shall serve no more than 20 persons.

b. Resident Gathering Areas. Group Residential Facilities shall have an interior multipurpose area separate from the sleeping area. The multipurpose area shall be provided with space equal to at least 10 square feet per bed, but not be less than 150 square feet. The exterior multipurpose area shall have a gathering area equal to at least 25 square feet per bed and shall be fenced, screened, and landscaped.

5. Facility Operating Standards.

a. On-Site Management. The facility shall maintain a management plan. The management plan must document that management and staffing is sufficient for adequate control of the facility. The management plan shall include descriptions of:

- i. On-site management.
- ii. Staffing levels and qualifications.
- iii. Client services offered and case management.

- iv. Behavior guidelines including no drug or alcohol use.
- v. Facility maintenance.
- vi. Emergency plan.
- vii. Security plan.

b. Vehicle Parking. The number of off-street parking spaces shall be calculated based on the square footage of office space at the facility plus one parking space per 10 beds. Sufficient parking to accommodate all staff working in the emergency shelter shall be required, provided that the standards shall not require more parking than other commercial uses.

Section 15. Section 17.60.180 Emergency Shelters and Low Barrier Navigation Centers (HE Program 4B) shall be amended to read as follows:

17.60.180 Emergency Shelters and Low Barrier Navigation Centers.

A. Purpose and Intent. This section establishes standards for the development and operation of emergency shelters and low barrier navigation centers in the general commercial zone. Emergency shelters and low barrier navigation centers shall be allowed as a permitted use without the need for a conditional use permit and are exempt from CEQA (California Environmental Quality Act).

B. Emergency Shelter and Low Barrier Navigation Center Regulations. Emergency shelters and low barrier navigation centers shall be subject to the following regulations:

1. Eligible Locations. A new facility shall be a permitted use in the general commercial (C) zone only, and may be located in the public/institutional zone with a director's use permit.

2. Separation Between Emergency Shelters and Low Barrier Navigation Centers. A new facility shall not be closer than 300 feet to another emergency shelter or low barrier navigation center as measured between property lines.

3. Lighting. Adequate external lighting shall be provided for security purposes to ensure fully lit parking, gathering and waiting areas. Lighting shall be contained on site per SBMC 17.60.060, Exterior lighting regulations.

4. Building Design Standards.

a. Number of Beds. An emergency shelter or low barrier navigation center shall contain a maximum of one bed per 150 square feet of sleeping area not to exceed 20 beds and shall serve no more than 20 persons.

b. Client Waiting Areas. Facilities shall have an interior, enclosed client waiting and intake area large enough to accommodate the number of persons equal to 25 percent of the number of beds. The area shall be based on space

required for seated persons. Any exterior overflow waiting area shall be fenced, screened, gated, and covered and shall not obstruct sidewalks or driveways.

c. Client Gathering Areas. Facilities shall have an interior multipurpose area separate from the sleeping area. The multipurpose area shall be provided with space equal to at least 10 square feet per bed, but not be less than 150 square feet. The exterior multipurpose area shall have a gathering area equal to at least 25 square feet per bed and shall be fenced, screened, and landscaped.

#### 5. Facility Operating Standards.

a. On-Site Management. The facility shall maintain a management plan. The management plan must document that management and staffing is sufficient for adequate control of the facility. The management plan shall include descriptions of:

- i. On-site management.
- ii. Staffing levels and qualifications.
- iii. Client services offered and case management.
- iv. Behavior guidelines including no drug or alcohol use.
- v. Facility maintenance.
- vi. Emergency plan.
- vii. Security plan.

b. Vehicle Parking. The number of off-street parking spaces shall be calculated based on the square footage of office space at the facility plus one parking space per 10 beds. The square footage of office space shall be used to determine the number of spaces per the standards specified in Chapter 17.52 SBMC (Parking and Loading Regulations).

c. Length of Stay. Temporary shelter shall be available to residents for a maximum of six months.

d. Hours of Operation. The facility shall only accept clients between the hours of 7:00 a.m. and 8:00 p.m.

Section 16. Section 17.66.050 Reasonable accommodation findings and decision (HE Program 4C & 4F) shall be amended to read as follows:

#### 7.66.050 Reasonable accommodation findings and decision.

A. The requested accommodation may be approved or granted with modifications if the following findings can be made:

1. The housing which is the subject of the request will be used by one or more individuals with a disability protected under the Acts;
2. The accommodation requested is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling;
3. The requested reasonable accommodation will not impose an undue financial or administrative burden on the city; and
4. The requested reasonable accommodation will not require a fundamental alteration in the nature of a city program or law, including but not limited to the general plan, zoning ordinance, and building laws.

B. The community development director may impose any conditions of approval needed to ensure that the project complies with the required findings in subsection A of this section. Conditions may include, but are not limited to, ensuring that any removable structures or physical design features that are constructed or installed in association with a reasonable accommodation are capable of being removed once those structures or physical design features are no longer necessary to provide access to the dwelling unit for the current occupants.

C. If an application for reasonable accommodation is approved, the request shall be granted to an individual and shall not run with the land unless it is determined that: (1) the modification is physically integrated into the residential structure and cannot easily be removed or altered to comply with the code, or (2) the accommodation is to be used by another individual with a disability, and the finding in subsection (A)(1) of this section can be made.

Section 17. The City Council finds that there is no possibility that the activity may have a significant effect on the environment and therefore, pursuant to Section 15061(b)(3) of the CEQA Guidelines, the Ordinance is exempt from the provisions of CEQA.

Section 18. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter, or its application to any person or circumstance, 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 Chapter, or its application to any other person or circumstance. The City Council 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 sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

**EFFECTIVE DATE:** This Ordinance shall be effective thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of Solana Beach shall cause this Ordinance to be published pursuant to the provisions of Government Code Section 36933.

**INTRODUCED AND FIRST READ** at a regular meeting of the City Council of the City of Solana Beach, California, on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_; and

**THEREAFTER ADOPTED** at a regular meeting of the City Council of the City of Solana Beach, California, on the \_\_\_ day of \_\_\_\_\_, 202\_\_\_, by the following vote:

AYES: Councilmembers –  
NOES: Councilmembers –  
ABSTAIN: Councilmembers –  
ABSENT: Councilmembers –

\_\_\_\_\_  
LESA HEEBNER, Mayor

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
JOHANNA N. CANLAS, City Attorney

\_\_\_\_\_  
ANGELA IVEY, City Clerk



# STAFF REPORT CITY OF SOLANA BEACH

**TO:** Honorable Mayor and City Councilmembers  
**FROM:** Alyssa Muto, City Manager  
**MEETING DATE:** November 20, 2024  
**ORIGINATING DEPT:** Community Development Department – Joseph Lim, Community Development Director  
**SUBJECT:** **Density Bonus Ordinance Update Repealing and Replacing Section 17.20.050 of the Solana Beach Municipal Code and Adopting Government Code Sections 65915-65918 by Reference – Introduction of Ordinance 536**

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## **BACKGROUND:**

Section 17.20.050 of the Solana Beach Municipal Code regulates and implements the California State Density Bonus Law (SDBL). Local regulations closely mirror the SDBL; however, the City’s Density Bonus ordinance has not been amended since January 2009. Annual legislation has resulted in numerous changes and refinements to the SDBL. Various bills have simply amending the existing legislation, while other bills have altered substantially the definitions, scope and/or process by which SDBL is implemented.

The item is before the City Council to discuss and consider repealing and replacing Section 17.20.050 of the Solana Beach Municipal Code and adopting by reference California State Government Code Sections 65915-65918 which addresses SDBL.

## **DISCUSSION:**

### *State Density Bonus Law (California Government Code Sections 65915–65918)*

The SDBL was adopted in 1976 to address California’s affordable housing needs. The SDBL required local agencies to allow increased density, reduced development standards, and development incentives based on the number and type of affordable housing units proposed. Over time, the law has been expanded to include housing for households at a wider range of income levels and with specialized needs (e.g., seniors, students, foster youth, formerly homeless persons, or disabled veterans).

COUNCIL ACTION:

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The SDBL applies to housing projects, including mixed-use developments, new subdivisions, or common-interest developments. Density bonuses and associated incentives and concessions are intended to offset the financial burden of constructing affordable units. Many development projects in infill areas, like the Solana Beach commercial corridor, utilize density bonus provisions to construct affordable units. The density bonus and associated concessions are based on the amount and type of affordable units provided and include the following:

- **Density Bonus:** An increase above the maximum allowed density permitted in the General Plan Land Use Element or Zoning Code. The amount of the bonus is set on a sliding scale based on the percentage of affordable units at each income level or the provision of specialized housing types, i.e., housing for seniors, regardless of affordability.
- **Incentives/Concessions:** Modifications to City regulatory or development standards that result in actual and identifiable cost reductions to provide for affordable housing costs or rents. The number of required incentives is based on the percentage of affordable units provided in the qualifying project up to a maximum of 4 incentives/concessions. For example, developers may ask for increased height above that allowed by the zoning regulations.
- **Reductions/Waivers:** Modification to City development standards that would physically prevent the construction of a housing development at the density permitted with a bonus and any concessions, except where the waiver would cause a public health or safety concern, harm historical property, or would be contrary to the law. There is no limit to the number of reductions/waivers that may be requested. For example, applicants may request decreased setbacks and/or increased floor area ratio and/or waiver of on-site open space requirements.
- **Reduced Parking Ratios:** Parking ratios are defined based on unit size. Maximum parking requirements for mixed-income projects are listed below, and parking limits may be lower for certain senior or affordable housing types:
  - Zero to one bedroom: one onsite parking space per unit
  - Two to three bedrooms: one and one-half onsite parking spaces per unit
  - Four or more bedrooms: two and one-half parking spaces per unit.

To comply with the continuous changes in State Density Bonus law, Staff recommends the City's local ordinance referred to the existing State law in effect to ensure that the Solana Beach municipal regulations remain consistent with State law.

#### *Existing Local Density Bonus Ordinance*

Section 17.20.050 of the Solana Beach Municipal Code largely replicates and codifies the SDBL requirements. However, the City last updated its local ordinance in January 2009, with Ordinance No. 392. The SDBL has been updated by the Legislature several times since 2009. As it stands, Solana Beach's adopted ordinance does not comply with the current State Density Bonus Law; however, because the State law would pre-emp the

local regulations when in conflict, the City would defer to any updated SDBL requirements as amended annually.

Specific examples of where the City's municipal code conflicts with SDBL, the City does not currently include student housing or housing for transitional foster youth, disabled veterans, or homeless persons as qualifying projects. It also does not allow for the larger density bonus percentages enacted by the Legislature. In addition, cities and counties are required to grant up to five incentives or concessions for density bonus projects that include 100 percent of units to low- or very low-income households.

Assembly Bill (AB) 682, adopted in 2023, establishes "shared housing" as a new category of housing eligible for a density bonus and the other benefits of the Density Bonus Law. "Shared housing" is defined in the legislation as a residential or mixed use structure containing five or more private units that share common areas such as a kitchen or dining area. The separate units within the shared housing development are treated the same as traditional self-contained housing units for purposes of the density bonus law. The new legislation broadens the application of density bonus law to a wider range of housing options such as group homes.

AB 1551, also passed in 2023, readopts legislation that sunset at the end of 2021 requiring that cities and counties provide a "development bonus" to commercial developers who partner with affordable housing developers for the construction of affordable housing on the commercial project site, or offsite within the jurisdiction located near schools, employment, and a major transit stop. The commercial developer may participate through the donation of land or funds for affordable housing, or direct construction of the housing units. To be eligible for the development bonus, at least 30 percent of the housing units must be restricted to lower-income residents or 15 percent of the housing units must be restricted to very low-income residents. Unlike the primary Density Bonus Law, there is no fixed amount of increased density awarded to the developer. Instead, the development bonus can be any mutually agreeable incentive, including up to a 20 percent increase in development intensity, floor area ratio, or height limits; up to a 20 percent reduction in parking requirements; use of a limited use elevator; or an exception to a zoning ordinance or land use requirement.

The new regulations would adopt the SDBL by reference and identify when the regulations apply. The draft ordinance also contains requirements related to waivers and parking reductions, outlines application requirements, and specifies the approval process for projects. The proposed ordinance also acknowledges future State law amendments may occur. With the recommended change, in future years, as the legislature continues to amend and/or refine the SDBL, the Solana Beach Municipal Code would remain consistent with State law; zoning updates for density bonuses would not be necessary. In addition, by referencing State law, City Staff will find it easier to process applications and communicate relevant regulations to applicants, the public, and appointed/elected officials.

## **GENERAL PLAN CONFORMANCE:**

Repealing and replacing the density bonus regulations to reference State law would be consistent with the General Plan, including the following policies:

- Housing Goal #1: A range of housing strategies to accommodate Solana Beach's share across all income levels.
  - Housing Policy 1.5: Encourage development of local housing opportunities to serve the needs of the local workforce and their families.
- Housing Goal #3: Reduce or eliminate constraints to the development, improvement, preservation, and maintenance of housing.
  - Housing Policy 3.3: Explore incentives, bonuses, and flexibility in standards and requirements that could benefit affordable housing development, such as flexible development standards, reduced permit fees, and streamlined permit processing.
- Housing Policy 4.2: Establish policies, programs and incentives to promote the development of housing for very low-, low-, and moderate-income persons, and especially those within Solana Beach's special needs populations.

## **FISCAL IMPACT:**

There are no direct fiscal impacts related to this item.

## **CEQA COMPLIANCE STATEMENT:**

The proposed City Council action is not subject to the California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, Sections: 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment); 15060(c)(3) (the activity is not a project as defined in Section 15378); and 15061(b)(3), because the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Here, adoption of the Ordinance merely codifies existing requirements of state law, which apply to City regardless of conflicting local ordinance provisions. The Ordinance reflects administrative procedures for reviewing and acting on projects that include an application for a density bonus, but it does not increase or otherwise change any land use designations or permitted development intensity. Therefore, adoption of the Ordinance would not have physical effects triggering CEQA review. Because there is no possibility that the Ordinance may have a significant adverse effect on the environment, the action is exempt from CEQA.

## **STAFF RECOMMENDATION:**

Open and conduct the public hearing and introduce Ordinance 536 repealing and replacing Section 17.20.050 of the Municipal Code and adopting the State Density Bonus Law by reference, finding the action exempt from CEQA pursuant to CEQA Guidelines Sections 15060(c)(2), 15060(c)(3), 15061(b)(3).



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Alyssa Muto, City Manager

Attachment:

1. Ordinance 536
2. SCAG SDBL Fact Sheet
3. California Government Code Section 65915

## ORDINANCE 536

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SOLANA BEACH, CALIFORNIA, REPEALING SECTION 17.20.050 OF THE SOLANA BEACH MUNICIPAL CODE AND REPLACING WITH SECTION 17.20.050 REFERENCING STATE LAW TO COMPLY WITH THE STATE DENSITY BONUS LAW

**WHEREAS**, California's Density Bonus Law (Government Code Section 65915 et seq.) encourages developers to build affordable housing (e.g., very low-, low- and moderate-income units) by requiring cities to grant a density bonus, concessions, incentives, and waivers of developments standards for projects that commit certain percentages of their units to affordable housing; and

**WHEREAS**, California Government Code Section 65915(a) requires that local governments adopt an ordinance that specifies how compliance with State Density Bonus law will be implemented; and

**WHEREAS**, Section 17.20.050 of the Solana Beach Municipal Code contains regulations implementing the State Density Bonus Law; and

**WHEREAS**, Section 17.20.050 of the Solana Beach Municipal Code was last amended via Ordinance No. 392, adopted on January 14, 2009; and

**WHEREAS**, this ordinance ("Ordinance") repeals Solana Beach Municipal Code Section 17.20.050 and replaces the contents thereof to adopt the State Density Bonus Law by reference. As amended by this Ordinance, Section 17.20.050 will provide that density bonuses and other affordable housing incentives required by State law, Government Code Section 65915 et seq., will be available to applicants on the terms and conditions specified in State law; and

**WHEREAS**, on November 13, 2024, the City Council held a duly noticed public hearing to consider the proposed Ordinance related to density bonus, received the staff report and staff presentation, received comments from the public and interested parties and discussed the matter.

**NOW, THEREFORE**, the City Council of the City of Solana Beach hereby ordains as follows:

Section 1. All of the above statements are true; and

Section 2. The City Council finds that adoption of this Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15060(c)(2), 15060(c)(3), 15061(b)(3) – Common Sense Exemption in that the proposed ordinance would only establish and clarify administrative processes and would not facilitate new construction or other groundbreaking activities. There is no potential to result in either a direct physical change to the environment or a reasonably foreseeable indirect physical change to the environment. None of the circumstances described in CEQA Guidelines Section 15300.2 apply. No unusual circumstances are present. This determination reflects the City's independent judgment and analysis.

Section 3. The City Council finds that the proposed amendments are consistent with Chapter 17.76 of the Solana Beach Municipal Code (Amendments) as it implements programs

required by the City's General Plan Housing Element. The proposed amendment does not change the use or intensity of any designations as it simply clarifies the procedures for review and administration of development applications to facilitate housing production and therefore further consistent with the City's Land Use Element. Therefore, it would not be detrimental to the public interest, health, safety, convenience, or welfare because it implements existing Housing Element policies to facilitate creation of housing determined to be necessary and beneficial to the community.

Section 4. The City Council has reviewed, considered, and evaluated all of the information prior to acting upon the Ordinance.

Section 5. The City of Solana Beach Municipal Code Section 17.20.050 shall be revised as follows:

17.20.050 Density Bonus.

A. Purpose and Intent. The purpose of this section is to implement the State Density Bonus Law (California Government Code Section 65915 et seq., as may be amended from time to time) and specify the regulatory framework for providing density bonuses and incentives, waivers, and reductions in development standards for qualifying residential housing developments that propose affordable housing as those costs are provided for in California Health and Safety Code Section 50052.5. The intent is to encourage and facilitate the development of affordable housing consistent with the State Density Bonus Law and to implement the goals, objectives, and policies of the City's General Plan, including the current Housing Element.

B. Definitions. The definitions found in the State Density Bonus Law shall apply to the terms contained in this Chapter.

C. Qualifying Developments. State Government Code Section 65915 provide a list of housing development types that are eligible for a density bonus and other regulatory incentives when the applicant seeks and agrees to provide dwelling units for very-low, low- or moderate income households, transitional foster youth, disable veterans, homeless persons, lower income students, senior housing and residential care facilities for the elderly in threshold amounts specified by State Density Bonus Law.

D. Application Procedure.

1. An application requesting a density bonus, concession or incentive, waiver or reduction of development standards, adjusted parking ratios, or any combination thereof, shall be filed with the City in writing, on a form approved by the Planning and Community Development Director (Director).

2. The application shall be submitted to the City concurrently with the filing of any other entitlements required for the proposed housing development and the required application fee(s) established by City Council Resolution to recover the City's administrative costs of processing the application.

3. The application shall contain information sufficient to allow the City to fully evaluate the request under the requirements of this Chapter and State Density Bonus Law, including, without limitation, the following minimum information:

a. Requested Density Bonus.

- i. Summary table showing the maximum number of dwelling units permitted by the zoning and Del Mar Community Plan (excluding any density bonus units), number of proposed affordable units by income level, proposed bonus percentage, number of density bonus units proposed, total number of dwelling units proposed on the site, and resulting density in units per acre.
  - ii. A tentative map or preliminary site plan (drawn to scale) showing the number and location of all proposed units and designating the location of proposed affordable units and density bonus units.
  - iii. The zoning and General Plan designations and Assessor's Parcel Number(s) of the housing development site.
  - iv. A description of all dwelling units existing on the site in the five-year period preceding the date of submittal of the application and identification of any units rented in the five-year period and whether they were rented as affordable units.
    - a. If dwelling units on the site are currently rented, identify the income and household size of all residents of currently occupied units, if known.
    - b. If any dwelling units on the site were rented in the five-year period but are not currently rented, identify the income and household size of residents occupying the dwelling units when the site contained the maximum number of dwelling units, if known.
  - v. Description of any recorded covenant, ordinance, or law applicable to the site that restricted rents to levels affordable to very low-income or low-income households in the five-year period preceding the date of submittal of the application.
  - vi. Any other information the Director reasonably determines necessary to process and evaluate the application consistent with State Density Bonus Law.
- b. Requested Concessions or Incentives. If concessions or incentives are requested pursuant to State Density Bonus Law, the application shall include the following minimum information for each concession or incentive requested, shown on a site plan (if appropriate):



- i. The applicable development standards of the base zone and overlay zones (base development standards) and the requested concession or regulatory incentive for each development standard where requested.
  - ii. Except where mixed-use zoning is proposed as a concession or incentive, reasonable documentation to show why any requested concession or incentive will reduce affordable housing costs or rents.
  - iii. If approval of mixed-use zoning is proposed, reasonable documentation that nonresidential land uses will reduce the costs of the housing development, that the nonresidential land uses are compatible with the housing development and the existing or planned development in the area where the proposed housing development will be located, and that mixed-use zoning will provide for affordable housing costs and rents.
  - iv. If relief from a requirement for mixed-use zoning is proposed, reasonable documentation that residential use without a commercial component is compatible with the existing and planned development in the area where the proposed housing development will be located, and that not including a proposed commercial development will provide for affordable housing costs and rents.
- c. Requested Waivers or Reductions of Development Standards. If waivers or reductions of development standards are requested pursuant to State Density Bonus Law, the application shall include the following minimum information for each waiver requested, shown on a site plan (if appropriate):
- i. The applicable development standards of the base zone and overlay zones (base development standards) and the requested waiver or reduction of standards for each base development standard where requested.
  - ii. Reasonable documentation that the development standards for which a waiver or reduction of a development standard is requested will have the effect of physically precluding the construction of a development at the densities or with the concessions or incentives permitted by California Government Code Section 65915.
- d. Requested Adjusted Parking Ratios. If adjusted parking ratios are requested pursuant to State Density Bonus Law, the application shall include a table showing parking proposed under State Density Bonus Law in compliance with Government Code Section 65915(p), and reasonable documentation that the project is eligible for the requested parking reduction.

E. Density Bonus Calculation. Density bonus calculations shall be in conformance with Government Code Section 65915.

1. In determining the total number of units to be granted, 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.

2. When calculating the number of affordable units needed for a given density bonus, any fractions of affordable dwelling units shall be rounded up to the next whole number.

3. Each housing development is entitled to only one density bonus for the life of that development. If a housing development qualifies for a density bonus under more than one category, the applicant shall identify the single category under which the density bonus is requested to be granted or whether the applicant proposes an additional bonus pursuant to the provisions of subdivision (v) of Government Code Section 65915 or any successor provision thereto.

4. The density bonus units shall not be included when determining the number of affordable units required to qualify a housing development for a density bonus pursuant to State Density Bonus Law.

5. The applicant may elect to accept a lesser percentage of density bonus than the housing development is entitled, or no density bonus, but no reduction will be permitted in the percentages of required affordable units contained in Government Code Section 65915, subdivisions (b), (c), and (f). Regardless of the number of affordable units, no housing development shall be entitled to a density bonus higher than what is authorized under State Density Bonus Law.

#### F. Waivers, Incentives and Concessions.

1. Incentives and concessions are those defined by State Density Bonus Law. The number of incentives concessions that may be requested shall be based upon the number the applicant is entitled to pursuant to State Density Bonus Law.

2. The City shall approve proposed incentives and concessions unless it makes a written finding that any of the following apply:

a. The concession or incentive does not result in identifiable and actual cost reductions to provide for affordable housing costs or for rents for the targeted units to be set as specified in the State Density Bonus Law.

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

c. The concession or incentive would be contrary to state or federal law.

3. Waivers are those defined by State Density Bonus Law. The proposal of a waiver or reduction in development standards shall not affect the number of incentives or concessions a project is eligible to receive under the State Density Bonus Law.

4. The City shall approve proposed waivers unless it makes a written finding that any of the following apply:

a. The application of development standards proposed to be waived or reduced would not have the effect of physically precluding the construction of a development meeting the criteria of State Density Bonus Law at the densities or with the concessions or incentives permitted under this section.

b. The waiver or reduction of development standards would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5 of the Government Code, upon health or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

c. The waiver or reduction of development standards would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

d. The waiver or reduction of development standards would be contrary to state or federal law.

Section 6. This Ordinance shall be codified thirty (30) days following passage and adoption and become effective and enforceable immediately thereafter

Section 7. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter, or its application to any person or circumstance, 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 Chapter, or its application to any other person or circumstance. The City Council 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 sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

**EFFECTIVE DATE:** This Ordinance shall be effective thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of Solana Beach shall cause this Ordinance to be published pursuant to the provisions of Government Code Section 36933.

**INTRODUCED AND FIRST READ** at a regular meeting of the City Council of the City of Solana Beach, California, on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_; and

**THEREAFTER ADOPTED** at a regular meeting of the City Council of the City of Solana Beach, California, on the \_\_\_ day of \_\_\_\_\_, 202\_\_, by the following vote:

AYES: Councilmembers –  
NOES: Councilmembers –  
ABSTAIN: Councilmembers –  
ABSENT: Councilmembers –

\_\_\_\_\_  
Lesa Heebner, Mayor

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
JOHANNA N. CANLAS, City Attorney

\_\_\_\_\_  
ANGELA IVEY, City Clerk

# DENSITY BONUS LAW

## *What Are Incentives/ Concessions and Waivers?*



### Background on Density Bonus Law (DBL)

Originally enacted in 1979, California's Density Bonus Law (Gov. Code §§65915 - 65918) allows a developer to increase density on a property above the maximum set under a jurisdiction's General Plan land use plan. In exchange for the increased density, a certain number of the new affordable dwelling units must be reserved at below market rate (BMR) rents. Qualifying applicants can also receive reductions in required development standards. Greater benefits are available for projects that reach higher percentages of affordability (with unlimited density available for certain transit-adjacent, 100-percent BMR projects).

Besides granting rights to housing and mixed-used developments to increase density, the law provides three provisions that require local governments to grant qualifying projects: 1) incentives (or concessions)<sup>1</sup> that provide cost reductions; 2) waivers of development standards that would physically preclude the development of a project at the density permitted and with the incentives granted, and; 3) reductions in parking requirements.

### Project Eligibility and Location

Any housing development that proposes five or more units and incorporates at least one of the requirements below is eligible for a density bonus:

- ▶ 5% units restricted to "Very Low Income"
- ▶ 10% units restricted to "Low Income" rental units or 10% "Moderate Income" for sale units
- ▶ 100% affordable units (excluding manager's units) with a maximum of 20% moderate units
- ▶ 10% "Very Low Income" units restricted for transitional foster youth, disabled veterans, or homeless
- ▶ 20% "Low Income" units for student housing at accredited colleges
- ▶ A senior housing development (no affordable units are required)<sup>2</sup>
- ▶ An age-restricted mobile home park (no affordable units required)<sup>3</sup>
- ▶ The project donates at least one acre of land to the jurisdiction for very low-income units, the land has the appropriate permits and approvals, and has access to needed public facilities
- ▶ Projects which include a child care facility

Units must be restricted to their level of affordability for at least 55 years by a recorded document. Eligibility is established by state law. A jurisdiction may not enact or impose local laws that conflict with State law or prohibit what the legislature intends to authorize. In addition, the project can be located anywhere in the jurisdiction. [Gov. Code §65915(b)(1) and §65915(i)]

<sup>1</sup>The law uses both "concession" and "incentive" as coterminous terms.

<sup>2</sup>As defined in Sections 51.3 and 51.12 of the Civil Code

<sup>3</sup>As defined in Section 798.76 or 799.5 of the Civil Code

## What Is the Density Bonus Amount?

The amount of additional units allowed under State law is set on a sliding scale, based upon two factors:

- ▶ The percentage of units in the project that will be set aside as affordable; and
- ▶ The household income category of those affordable units (very low, low, or moderate household income).

## What Is an Incentive/Concession?

Usually, a development project must be modified and/or reduced to comply with established objective design standards and other development regulations such as limits on building height, setback, parking, and on-site open space requirements, etc. Concessions and incentives, as defined under State law, allow a developer to deviate from those design standards and/or development regulations when such regulations potentially make the project economically infeasible for the developer to build. Incentives/concessions include “[a] reduction in site development standards or a modification of zoning code requirements or architectural design requirements ... that result in identifiable and actual cost reductions, to provide for affordable housing costs.”

*[Gov. Code §65915(d)(1) and §65915(k)]*

## How Many Incentives/Concessions Can Be Requested?

An applicant may apply for one or more “incentives” for density bonus projects, between one and four, depending upon the number of affordable units in the project – to reduce affordable housing costs. Included here is a table of incentives that can be requested.

In addition to this table of incentives, the DBL allows the granting of one incentive/concession for projects that include at least 20% of the units for lower income students in a student housing development.

*[Government Code §65915(d)(2)(E)]*

| Income Category                            | % of Reserved Units |          |          |           |
|--|---------------------|----------|----------|-----------|
| Very Low                                   | 5%                  | 10%      | 15%      | Up to 80% |
| Low  | 10%                 | 17%      | 24%      | Up to 80% |
| Moderate                                   | 10%                 | 20%      | 30%      | Up to 80% |
| Senior                                     | N/A                 | N/A      | 100%     | N/A       |
| <b>Maximum # of Incentives/Concessions</b> | <b>1</b>            | <b>2</b> | <b>3</b> | <b>4*</b> |

\* To qualify for 4 incentives/concessions, a project must reserve at least 80% of the units to lower income households (very low, low, or combination thereof). The remaining 20% may be reserved for moderate income households. Government Code §65915(d)(2)(D).



## How Do You Determine Economic Infeasibility?

An appellate court ruled in 2021 (*Schreiber v. City of Los Angeles*) that local agencies cannot require density bonus applicants to submit pro formas or other documentation to prove that requested incentives/concessions are necessary to make the housing development financially feasible. As the court explained, “[b]y requiring the city to grant incentives unless it makes particular findings, the statute places the burden of proof on the city to overcome the presumption that incentives will result in cost reductions.”<sup>3,4</sup> Thus, incentives are presumed to result in cost reductions, and local governments may either accept this presumption and grant the incentives or overcome this presumption with a showing of substantial evidence to the contrary. A developer is not required to demonstrate on the front end that any requested incentive will result in actual cost reductions. However, is it still a good practice for applicants to reasonably document why the requested incentives will reduce affordable housing development costs. A local government’s other options to deny an incentive are to find on the basis of substantial evidence that the incentive would be contrary to state or federal law, or would have a specific, adverse and unavoidable impact on public health, safety or on a listed historic property.

[Gov. Code § 65589.5(d)(1)]

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## What Are Waivers?

Waivers are yet another form of assistance under State law, separate from incentives/concessions. A waiver is a reduction or modification of any “**development standards**” and other regulations when those requirements potentially make the construction of the project **physically infeasible**, if not approved. The developer must provide written documentation to justify why the waiver(s) is needed to construct the project. Unlike concessions and incentives, there is no limit in the number of waivers an applicant can request and applicants are entitled to a waiver of any and all development standards that would physically preclude the development at the density permitted and with the incentive(s) granted. [Gov. Code §65915(e)(1) and §65915(e)(2)]

“**Development standards**” 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. [Gov. Code §65915(o)(1)]

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<sup>3</sup>*Schreiber*, 69 Cal. App. 5th at 556.

<sup>4</sup>Gov. Code § 65915, subd. (d)(4) ([t]he city ... shall bear the burden of proof for the denial of a requested concession or incentive.”).



## How Do You Determine Physical Infeasibility?

Waiver requests must be accompanied by sufficient documentation to demonstrate that the usual development standards would physically preclude development of the project with a density bonus. Furthermore, while the developer must justify the need for a waiver, a pro-forma (or other similar analysis) is not required. An example of sufficient documentation is a written explanation of the requested waiver(s) and a waiver exhibit showing the developable envelope remaining once all development standards are met.

*[Gov. Code §65915(a)(2)]*

## Can the Agency Deny a Concession/Incentive or Waiver?

**Yes.** Nothing in the DBL requires a local government to grant an incentive or waiver that will potentially result in a specific, adverse impact upon public health, safety, the environment or on any property listed in the California Register of Historic Resources.

*[Gov. Code §65915(d)(1) and §65915(e)(1)]*



## Projects in the Coastal Zone

When a density bonus project is proposed in the coastal zone, legislation that went into effect in 2019 struck a balance between the state goals of promoting housing and protecting the coast. Density bonuses, incentives, waivers, and parking reductions are to be permitted so that they are consistent with both density bonus law and the California Coastal Act. Granting of a density bonus or an incentive does not require a general plan, zoning, or local coastal plan amendment.

*The purpose of this material is to provide guidance, which agencies and other entities may use at their discretion. This guidance does not alter lead agency discretion in decision-making, independent judgment and analysis, and preparing environmental documents for project or governmental action subject to CEQA requirements. This material is for general information only and should not be construed as legal advice or legal opinion.*



**State of California**

**GOVERNMENT CODE**

**Section 65915**

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65915. (a) (1) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall comply with this section. A city, county, or city and county shall adopt an ordinance that specifies how compliance with this section will be implemented. Except as otherwise provided in subdivision (s), failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.

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

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

pursuant to this section based on any changes to the project during the course of development.

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

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

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

(C) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code. For purposes of this subparagraph, "development" includes a shared housing building development.

(D) Ten percent of the total dwelling units of a housing development are sold to persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(E) Ten percent of the total units of a housing development for transitional foster youth, as defined in Section 66025.9 of the Education Code, disabled veterans, as defined in Section 18541, or homeless persons, as defined in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.). The units described in this subparagraph are 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 shall 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 insufficient students enrolled in an institution of higher education to fill all units in the student housing development.

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

(III) The rent provided in the applicable units of the development for lower income students shall be calculated at 30 percent of 65 percent of the area median income for a single-room occupancy unit type.

(IV) The development shall provide priority for the applicable affordable units for lower income students experiencing homelessness. A homeless service provider, as defined in paragraph (3) of subdivision (e) of Section 103577 of the Health and Safety Code, or institution of higher education that has knowledge of a person's homeless status may verify a person's status as homeless for purposes of this subclause.

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

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

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

(c) (1) (A) An applicant shall agree to, and the city, county, or city and county shall ensure, the continued affordability of all very low and low-income rental units that qualified the applicant for the award of the density bonus for 55 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

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

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

(I) The rent for at least 20 percent of the units in the development shall be set at an affordable rent, as defined in Section 50053 of the Health and Safety Code.

(II) The rent for the remaining units in the development shall be set at an amount consistent with the maximum rent levels for lower income households, as those rents and incomes are determined by the California Tax Credit Allocation Committee.

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

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

(ii) If the unit is not purchased by an income-qualified person or family within 180 days after the issuance of the certificate of occupancy, the unit is purchased by a qualified nonprofit housing corporation that meets all of the following requirements pursuant to a recorded contract that satisfies all of the requirements specified in paragraph (10) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code:

(I) The nonprofit corporation has a determination letter from the Internal Revenue Service affirming its tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code and is not a private foundation as that term is defined in Section 509 of the Internal Revenue Code.

(II) The nonprofit corporation is based in California.

(III) All of the board members of the nonprofit corporation have their primary residence in California.

(IV) The primary activity of the nonprofit corporation is the development and preservation of affordable home ownership housing in California that incorporates within their contracts for initial purchase a repurchase option that requires a subsequent purchaser of the property that desires to resell or convey the property to offer the qualified nonprofit corporation the right to repurchase the property prior to selling or conveying that property to any other purchaser pursuant to an equity sharing agreement or affordability restrictions on the sale and conveyance of the property that ensure that the property will be preserved for lower income housing for at least 45 years for owner-occupied housing units and will be sold or resold only to persons or families of very low, low, or moderate income, as defined in Section 50052.5 of the Health and Safety Code.

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

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

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

(ii) Except as provided in clause (v), the local government shall recapture any initial subsidy, as defined in clause (iii), and its proportionate share of appreciation,

as defined in clause (iv), which amount shall be used within five years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote homeownership.

(iii) For purposes of this subdivision, the local government's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

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

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

(3) (A) An applicant shall be ineligible for a density bonus or any other incentives or concessions under this section if the housing development is proposed on any property that includes a parcel or parcels on which rental dwelling units are located or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low income households, unless the proposed housing development replaces those units, and either of the following applies:

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

(ii) Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.

(B) For the purposes of this paragraph, "replace" shall mean either of the following:

(i) If any dwelling units described in subparagraph (A) are occupied on the date of application, the proposed housing development shall provide at least the same number of units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy. If the income category of the household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most

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

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

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

(i) Require that the replacement units be made available at affordable rent or affordable housing cost to, and occupied by, low-income persons or families. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

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

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

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

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

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

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

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

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

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

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

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

(D) Five incentives or concessions for a project meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b). If the project is located within one-half mile of a major transit stop or is located in a very low vehicle travel area in a designated

county, the applicant shall also receive a height increase of up to three additional stories, or 33 feet.

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

(F) Four incentives or concessions for projects that include at least 16 percent of the units for very low income households or at least 45 percent for persons and families of moderate income in a development in which the units are for sale.

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

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

(e) (1) In no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. Subject to paragraph (3), an applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. This subdivision shall not be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. This subdivision shall not be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.



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

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

(f) For the purposes of this chapter, “density bonus” means a density increase over the otherwise maximum allowable gross residential density as of the date of application by the applicant to the city, county, or city and county, or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density. The amount of density increase to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

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

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

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

| Percentage Very Low Income Units | Percentage Density Bonus |
|----------------------------------|--------------------------|
| 5                                | 20                       |
| 6                                | 22.5                     |
| 7                                | 25                       |

|    |       |
|----|-------|
| 8  | 27.5  |
| 9  | 30    |
| 10 | 32.5  |
| 11 | 35    |
| 12 | 38.75 |
| 13 | 42.5  |
| 14 | 46.25 |
| 15 | 50    |

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

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

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

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

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

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

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

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

| 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    |
| 41 | 38.75 |
| 42 | 42.5  |
| 43 | 46.25 |
| 44 | 50    |

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

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

| Percentage Very Low Income | Percentage Density Bonus |
|----------------------------|--------------------------|
| 10                         | 15                       |
| 11                         | 16                       |
| 12                         | 17                       |
| 13                         | 18                       |
| 14                         | 19                       |
| 15                         | 20                       |
| 16                         | 21                       |
| 17                         | 22                       |
| 18                         | 23                       |

|    |    |
|----|----|
| 19 | 24 |
| 20 | 25 |
| 21 | 26 |
| 22 | 27 |
| 23 | 28 |
| 24 | 29 |
| 25 | 30 |
| 26 | 31 |
| 27 | 32 |
| 28 | 33 |
| 29 | 34 |
| 30 | 35 |

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

(A) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned with appropriate development standards for development at the density described in paragraph (3) of subdivision (c) of Section 65583.2, and is or will be served by adequate public facilities and infrastructure.

(D) The transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, not later than the date of approval of the final subdivision map, parcel map, or residential development application, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government before the time of transfer.

(E) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of the transfer.

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

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

(H) A proposed source of funding for the very low income units shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.

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

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the childcare facility.

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

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

(A) The childcare facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the childcare facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or city and county shall not be required to provide a density bonus or concession for a childcare facility if it finds, based upon substantial evidence, that the community has adequate childcare facilities.

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

(i) "Housing development," as used in this section, means a development project for five or more residential units, including mixed-use developments. For the purposes of this section, "housing development" also includes a subdivision or common interest development, as defined in Section 4100 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject

of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

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

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

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

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

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

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

(l) Subdivision (k) does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

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

is consistent with this section and Division 20 (commencing with Section 30000) of the Public Resources Code.

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

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

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

(2) "Development standard" includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, a minimum lot area per unit requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation that is adopted by the local government or that is enacted by the local government's electorate exercising its local initiative or referendum power, whether that power is derived from the California Constitution, statute, or the charter or ordinances of the local government.

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

(4) "Lower income student" means a student who has a household income and asset level that does not exceed the level for Cal Grant A or Cal Grant B award recipients as set forth in paragraph (1) of subdivision (k) of Section 69432.7 of the Education Code. The eligibility of a student to occupy a unit for lower income students under this section shall be verified by an affidavit, award letter, or letter of eligibility provided by the institution of higher education in which the student is enrolled or by the California Student Aid Commission that the student receives or is eligible for financial aid, including an institutional grant or fee waiver from the college or university, the California Student Aid Commission, or the federal government.

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

(6) "Maximum allowable residential density" or "base density" means the greatest number of units allowed under the zoning ordinance, specific plan, or land use element of the general plan, or, if a range of density is permitted, means the greatest number of units allowed by the specific zoning range, specific plan, or land use element of the general plan applicable to the project. Density shall be determined using dwelling

units per acre. However, if the applicable zoning ordinance, specific plan, or land use element of the general plan does not provide a dwelling-units-per-acre standard for density, then the local agency shall calculate the number of units by:

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

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

(7) (A) (i) “Shared housing building” means a residential or mixed-use structure, with five or more shared housing units and one or more common kitchens and dining areas designed for permanent residence of more than 30 days by its tenants. The kitchens and dining areas within the shared housing building shall be able to adequately accommodate all residents. If a local ordinance further restricts the attributes of a shared housing building beyond the requirements established in this section, the local definition shall apply to the extent that it does not conflict with the requirements of this section.

(ii) A “shared housing building” may include other dwelling units that are not shared housing units, provided that those dwelling units do not occupy more than 25 percent of the floor area of the shared housing building. A shared housing building may include 100 percent shared housing units.

(B) “Shared housing unit” means one or more habitable rooms, not within another dwelling unit, that includes a bathroom, sink, refrigerator, and microwave, is used for permanent residence, that meets the “minimum room area” specified in Section R304 of the California Residential Code (Part 2.5 of Title 24 of the California Code of Regulations), and complies with the definition of “guestroom” in Section R202 of the California Residential Code. If a local ordinance further restricts the attributes of a shared housing building beyond the requirements established in this section, the local definition shall apply to the extent that it does not conflict with the requirements of this section.

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

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

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



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

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

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

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

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

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

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

(B) For purposes of this subdivision, “unobstructed access to the major transit stop” means a resident is able to access the major transit stop without encountering natural or constructed impediments. For purposes of this subparagraph, “natural or constructed impediments” includes, but is not limited to, freeways, rivers, mountains, and bodies of water, but does not include residential structures, shopping centers, parking lots, or rails used for transit.

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

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

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

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

(4) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide onsite parking through tandem parking or uncovered parking, but not through onstreet parking.

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

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

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

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

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

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

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

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

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

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

(v) (1) Provided that the resulting housing development would not restrict more than 50 percent of the total units to moderate-income, lower income, or very low income households, a city, county, or city and county shall grant an additional density bonus calculated pursuant to paragraph (2) when an applicant proposes to construct a housing development that conforms to the requirements of paragraph (1) of subdivision (b), agrees to include additional rental or for-sale units affordable to very

low income households or moderate income households, and meets any of the following requirements:

(A) The housing development conforms to the requirements of subparagraph (A) of paragraph (1) of subdivision (b) and provides 24 percent of the total units to lower income households.

(B) The housing development conforms to the requirements of subparagraph (B) of paragraph (1) of subdivision (b) and provides 15 percent of the total units to very low income households.

(C) The housing development conforms to the requirements of subparagraph (D) of paragraph (1) of subdivision (b) and provides 44 percent of the total units to moderate-income households.

(2) A city, county, or city and county shall grant an additional density bonus for a housing development that meets the requirements of paragraph (1), calculated as follows:

| Percentage Very Low Income Units | Percentage Density Bonus |
|----------------------------------|--------------------------|
| 5                                | 20                       |
| 6                                | 23.75                    |
| 7                                | 27.5                     |
| 8                                | 31.25                    |
| 9                                | 35                       |
| 10                               | 38.75                    |

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

(3) The increase required by paragraphs (1) and (2) shall be in addition to any increase in density granted by subdivision (b).

(4) The additional density bonus required under this subdivision shall be calculated using the number of units excluding any density bonus awarded by this section.

(Amended by Stats. 2023, Ch. 784, Sec. 1.3. (SB 713) Effective January 1, 2024.)