



# affordable housing

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fall & winter 2013

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# Affordable Housing

city and regional planning senior project

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fall & winter 2013

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This report is a senior project for the City and Regional Planning Department at California Polytechnic State University, San Luis Obispo. It consist a proposal for an update to the City of San Luis Obispo's Affordable Housing Incentive zoning code and a research on affordable housing. The research is an overview of advocacy for affordable housing on a federal (United States of America), state, (California) and local (City of San Luis Obispo) level; each of these levels have programs to support and provide more affordable housing.

The current zoning code, Chapter 17.90, was in need of an update in order to stay in compliance with the State Density Bonus Law, Government Code 65915-65918. I accepted this project originally at the City of San Luis Obispo as a Housing Intern for Tyler Corey, Housing Programs Manager, where I oriented it as my senior project. This project started in Summer 2012 by comparing the current zoning regulation with the Density Bonus Law. By Winter 2012 I completed a draft that was reviewed internally in the Community Development Department at the City of San Luis Obispo. The draft is anticipated to go to the Planning Commission in Spring 2013, possibly in the month of April.

I chose this as my senior project because I've always had an interest in housing, especially affordable housing. Many Americans, everyday struggle with housing affordability to balance with the necessities of life. Even with affordable housing programs there are still many who still are not able to maintain housing. Affordable housing incentives is one of many ways that provide opportunity for cities to work with developers build more affordable housing for very-low,, low, and moderate income and senior housing.

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## Background

My focus for my senior project was to update the City of San Luis Obispo's Affordable Housing Incentive Zoning Regulation with State Law's Density Bonus, Government Code Section 65915-65918. It is important that the City is in compliance with the Government Code because this regulation can help provide affordable housing for the City overall by giving an incentive to developers. These incentives include residential density bonus, fee reduction or waivers, city installations on off-site improvements, direct city financial assistance, subdivision, zoning or other exceptions to city standards, and other incentives can be negotiated between the city and developers.

Through these incentives it will facilitate and encourage development of housing affordable to a broad range of households with varying incomes levels within the city: very-low, low, moderate income and qualifying senior citizens. The affordable housing types ranges from single-family, multi-family, mixed-use developments, and senior citizen housing.

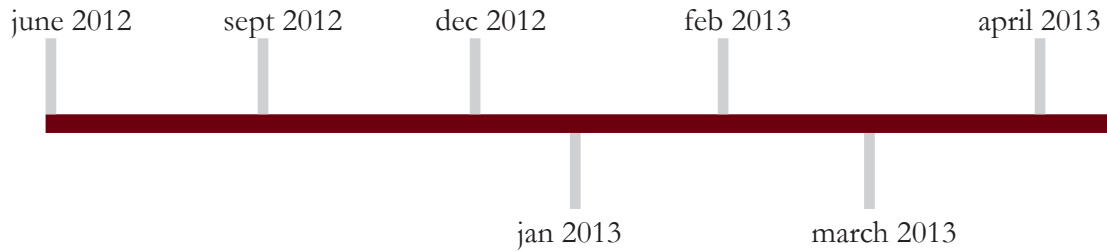
The City's Affordable Housing Incentives were last updated in 1995 and State Law related to affordable housing production has substantially changed. Some highlights of the changes include additional definitions, greater percentage of density bonus allowed and additional options for alternative incentives and concessions. This amendment is particularly timely since the City will be updating the Housing Element this coming year and jurisdictions must have updated density bonus ordinances.

## Density Bonus Law Interpretation Case

The density bonus law has been taken to the courts for correct interpretation through the "Friends of Lagoon Valley vs. City of Vacaville" case. The project that brought forth this case was the development of moderate-income and senior housing, both are entitled to a density bonus. The City of Vacaville granted the project a 40 percent density bonus. There were two main issues concerning with the Government Code 65915 which includes whether there was consistency with the General Plan and if the density increase violated the code.

Plaintiffs argued that the 40 percent density bonus granted to the project was miscalculated and not permitted according to the Government Code. In the code, subdivision (g) states that the max density mandated is 35 percent. Overall the main argument was the city could not legally exceed the barrier of 35 percent density bonus. In conclusion the courts disagreed state that the focus and intent was on developing more affordable housing. Reviewing the history and the language of the statute the courts believed that the purpose of Government Code 65915 and SB 1818 is to "encourage developers to build affordable housing by requiring local government to provide incentives to do so" (Badgley & Abbott).

# timeline



## Senior Project

1. Understanding, reading, and comparing the Government Code with the SLO zoning regulation

2. Finished updating the zoning regulation, gave to Tyler Corey and Brian Leveille for review

3. Internal review with city staff

4. Review comments.

5. Finalize zoning ordinance for Planning Commission meeting on April 24, 2013

Understanding the changes in ordinance: “Underline” are changes that have been updated; “~~strikethrough~~” are changes that have been deleted; comments on the right-hand side are detailed changes and correlation to Government Code 65915.

This ordinance was taken to the San Luis Obispo’s Planning Commission on April 24, 2013 for review. Comments that were brought up during the meeting was if all of the changes made to the ordinance state law, if there was any outreach to other housing organization about the update, and some wording changes to have more clarity. A suggestion that was brought up by the commissioners was to include a more clear definition of “density”. Overall the meeting seemed successful the Planning Commission will recommend the update to City Council.

## Chapter 17.90: Affordable Housing Incentives

### Sections:

- 17.90.010 Purpose.
- 17.90.020 Definitions.
- 17.90.030 Application process for incentives
- 17.90.03040 Standard incentives for housing projects.
- 17.90.04050 Standard incentives for conversion of apartments to condominium projects.
- 17.90.05060 Alternative or additional incentives.
- 17.90.06070 Relationship to other city procedures.
- 17.90.070-80 Agreements for affordable housing.
- 17.90.080-90 Fees.
- 17.90.090100 Affordability standards.
- 17.90.100110 Occupant screening.

### 17.90.010 Purpose.

The purpose and intent of this chapter is to encourage housing projects which incorporate units affordable to very-low, lower, and moderate income households, and qualifying seniors or the donation of land for affordable housing within the city, and which conform to city development policies and standards, by providing density bonuses, or other equivalent incentives, as required by California Government Code Section 65915, et seq. (Ord. 1282 § 2, 1995; Ord. 1035 § 1 (part), 1985) This chapter is a summary of California Government Code Section 65915-65918. Where there is a conflict between the State density bonus law and the zoning regulations, the State density bonus law shall prevail.

Comment [m1]: New section

Comment [m2]: To be included by the government code

Comment [m3]: This sentence was included so if there was any other questions, referring to the Government Code for the answer

### 17.90.020 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meaning set forth below:

- A. "Affordable" shall mean residential rent costs or sales prices which conform to the standards issued by the director and updated periodically to reflect state and/or federal housing cost indices. (Ord. 1282 § 2, 1995; Ord. 1035 § 1 (part), 1985)
- B. "Common interest development" means any of the following: a community apartment project, a condominium project, a planned development, a stock cooperative set forth in Civil Code Section 1351.
- C. "Density" means residential density as defined in Section 17.16.010 of this code. As an example, a two-bedroom dwelling = 1.00 density units.
- D. "Density bonus" means a density increase over the maximum density otherwise allowable under the Zoning Regulations and Land Use Element of the General Plan.
- E. "Director" means the community development director or his or her authorized representative.
- F. "Housing development" means a development project for five (5) or more residential units, also includes a subdivision or common interest development.

Comment [m4]: This example was included after Planning Commission Meeting for more clarity

- G. "Lower income households" shall have the meaning set forth in California Health and Safety Code, Section 50079.5; provided the income of such persons and families whose incomes exceed fifty (50) percent but are less than or equal to eighty (80) percent of the median income within the county.
- H. "Maximum allowable residential density" means the maximum density allowed under the Zoning Regulations and Land Use Element of the General Plan.
- I. "Moderate income households" shall have the meaning set for in California Health and Safety Code Section 50093; provided the income of such persons and families whose incomes exceed eighty (80) percent but are less than or equal to one hundred twenty (120) percent of the median income within the county.
- J. "Senior citizen housing development" means a residential development developed, substantially rehabilitated, or substantially renovated for senior citizens (55 years or older) that has at least thirty-five (35) dwelling units.
- K. "Very-low income households" shall have the meaning set forth in California Health and Safety Code, Section 50105; provided the income of such persons and families whose incomes exceed thirty (30) percent but are less than or equal to fifty (50) percent of the median income within the county.

**Comment [m5]:** New term that need defining within the chapter

#### **17.90.030 Application process for incentive**

- A. The developer may submit a preliminary proposal for the development of affordable housing prior to the submittal of any formal requests for general plan amendments, zoning amendments or subdivision map approvals. The city council shall, within ninety days of receiving a written preliminary proposal, notify the housing developer in writing of the procedures under which the city will comply with this chapter.
- B. Any request for a density bonus or other incentives shall be in writing, and shall include the following information, as well as any additional information required by the director:
1. The name of the developer;
  2. The location of the proposed project;
  3. The density allowed under the zoning regulations, as well as the proposed density;
  4. The number and type (bedroom count) of dwellings and identification of those dwellings which are to be affordable to each household income category;
  5. Whether the dwellings will be offered for sale or for rent;
  6. The proposed sales price, financing terms, rental rates or other factors which will make the dwellings affordable to very-low, lower and moderate income households. (Ord. 1282 § 2, 1995; Ord. 1035 § 1 (part), 1985)

**Comment [tac6]:** This is not a new section it has been moved verbatim from another location in the chapter.

#### **17.90.03040 Standard incentives for housing projects.**

- A. This section shall apply only to housing projects consisting of five (5) or more dwelling units. Per state law, projects that provide affordable housing are allowed up to a 35% density bonus based on the tables outlined below for the respective affordability levels. In addition, the City Council may approve a density bonus in excess of 35% at the request of the developer as well as other concessions and incentives outlined in sections 17.90.060.

**Comment [m7]:** This was included so applicants know that they can request a density bonus in excess of 35%

- B. All density calculations resulting in fractional units shall be rounded up to the next whole number.

**Comment [m8]:** Government Code 65915 (f) (5)

- C. For the purpose of this section, "total units" or "total dwelling units" does not include units added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

**Comment [m9]:** Government Code 65915 (b) (3)

- D. **Ten Percent Low Income Dedication.** When a developer agrees to construct ~~at least twenty ten~~ (10) percent of the ~~total units of a housing development otherwise allowable under the zoning regulations~~ for persons or families of lower ~~or moderate~~ income, the director shall grant the developer, upon the developer's request, a density bonus ~~equivalent to an increase in density of at least twenty five percent over the density otherwise allowed by the zoning regulations; and the developer shall be eligible to receive at least one of the development incentives described in Section 17.90.050.~~ the density bonus shall be calculated as follows:

**Comment [m10]:** This dedication was updated to be consistent with Government Code 65915 (b) (1) (A)

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
17	30.5
18	32
19	33.5
20	35

- E. **Five Percent Very-Low Income Dedication.** When a developer agrees to construct ~~at least ten five~~ (5) percent of the ~~total units of a housing development otherwise allowable under the zoning regulations~~ for very-low income households, the director shall grant the developer, upon the developer's request, a density bonus ~~equivalent to an increase in density of at least twenty five percent over the density otherwise allowed by the zoning regulations; and the developer shall be eligible for at least one of the development incentives described in Section 17.90.050.~~ the density bonus shall be calculated as follows:

**Comment [m11]:** This dedication was updated to be consistent with Government Code 65915 (b) (1) (B)

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

- F. **Twenty Percent Senior Citizen Housing Development Dedication.** When a developer agrees to construct a ~~at least fifty percent of the total dwelling units in a residential project for qualifying senior citizen housing development, residents, or mobile home park that limits residency based on age requirements for housing for older persons,~~ the director shall grant the developer, upon the developer's request, a density bonus ~~equivalent to an increase in density of at least twenty five percent over the density otherwise allowed by the zoning regulations; and the developer shall be eligible to receive at least one of the incentives described in Section 17.90.050.~~ the density bonus shall be twenty (20) percent of the number of senior housing units.

**Comment [m12]:** This dedication was updated to be consistent with Government Code 65915 (b) (1) (C)

- G. **Ten Percent Common Interest Development for Moderate Income Dedication.** If a developer agrees to construct ten (10) percent of the total dwelling units in a common interest development for persons or families of moderate income, provided that all units in the development are offered to the public for purchase, the director shall grant the developer, upon the developer's request, a density bonus, 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

**Comment [m13]:** This dedication was added to be consistent with Government Code 65915 (b) (1) (D)

- H. **Land Donation Dedication.** If a developer for a tentative subdivision map, parcel map, or other residential development approval donates land to the city in accordance with this chapter, the applicant shall be entitled to a fifteen (15) percent increase above the otherwise maximum allowable residential density for the entire development, the director shall grant the applicant, upon the applicant's request, a density bonus, the density bonus shall be calculated as follows:

Percentage Very Low-Income Units	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19

**Comment [m14]:** This dedication was added to be consistent with Government Code 65915 (g) (1)

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

I. ~~If a developer agrees to construct housing for two or more of the categories listed in Section 17.90.030.(B), (C), and (D) above, the developer shall be entitled to a density bonus of at least twenty five percent and shall be eligible to receive at least one of the development incentives described in Section 17.90.060. The city may, upon the developer's request, negotiate additional incentives in exchange for the increased provision for affordable housing.~~

**Comment [m15]:** This was deleted because it is no longer part of the Government Code

J. An applicant may elect to accept a lesser percentage of density bonus.

**Comment [m16]:** This was added to be consistent with Government Code 65915 (f)

K. **Parking Requirements.** Upon the request of the developer, , parking ratios of a development meeting the criteria of this section, inclusive of handicapped and guest parking, shall be as follows :

1. Studio to one bedroom: one onsite parking space.

2. Two to three bedrooms: two onsite parking spaces.

3. Four or more bedrooms: two and one-half parking spaces.

a. 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.

b. For purposes of this section, a development may provide onsite parking through tandem or uncovered parking, but not through onstreet parking.

c. An applicant may request additional parking incentives or concessions beyond those provided in this section, subject to section 17.90.060.

**Comment [m17]:** This was added to be consistent with Government Code 65915 (p)

MOVED TO 17.90.030 APPLICATION PROCESS FOR INCENTIVE

K. ~~The developer may submit a preliminary proposal for the development of affordable housing prior to the submittal of any formal requests for general plan amendments, zoning amendments or subdivision map approvals. The city council shall, within ninety days of receiving a written preliminary proposal, notify the housing developer in writing of the procedures under which the city will comply with this chapter.~~



~~L. Any request for a density bonus or other incentives shall be in writing, and shall include the following information, as well as any additional information required by the director:~~

- ~~1. The name of the developer;~~
- ~~2. The location of the proposed project;~~
- ~~3. The density allowed under the zoning regulations, as well as the proposed density;~~
- ~~4. The number and type (bedroom count) of dwellings and identification of those dwellings which are to be affordable to each household income category;~~
- ~~5. Whether the dwellings will be offered for sale or for rent;~~
- ~~6. The proposed sales price, financing terms, rental rates or other factors which will make the dwellings affordable to very low, lower and moderate income households. (Ord. 1282 § 2, 1995; Ord. 1035 § 1 (part), 1985)~~

#### **17.90.04050 Standard incentives for conversion of apartments to condominium projects.**

- A. ~~For the purposes of this section, "other incentives of equivalent financial value" shall not be construed to require the city to provide cash transfer payments or other monetary compensations but may include the reduction or waiver of requirements which the city might otherwise apply as conditions of conversion approval.~~
- B. ~~For purposes of this section, "density bonus" means an increase in units of twenty-five (25) percent over the number of apartments, to be provided within the existing structure or structures proposed for conversion.~~
- C. ~~When an applicant for approval to convert apartments to condominium units agrees to provide at least thirty-three (33) percent of the total units of the proposed condominium project to persons and families of low or moderate income households of lower or moderate income, or fifteen percent of the total units of the proposed condominium project to very low lower income households, and agrees to pay for the reasonable, necessary administrative costs incurred by the city pursuant to this section, the director shall grant a density bonus or provide other incentives of equivalent financial value as it finds appropriate, equivalent to an increase in the units of twenty-five percent over the number of apartments, to be provided within the existing structure or structures proposed for conversion; provided, the director may place such reasonable conditions on the granting of the density bonus as he or she finds appropriate including, but not limited to, conditions which assure continued affordability of units to the targeted income groups or qualifying seniors.~~
- D. Nothing in this section shall be construed to require the city to approve a proposal to convert apartments to condominiums.
- E. An applicant shall not be eligible for a density bonus under this section if the apartments proposed for conversion constitute a housing development for which a density bonus or other incentives were provided under Sections 17.90.03040 or 17.90.05060 of this chapter.
- D. The city shall grant the developer's request for development incentive(s) unless the city council makes written findings of fact that the additional incentive(s) are not required to achieve affordable housing objectives as defined in Section 50062.5 of the Health and Safety Code, or to ensure that

**Comment [m18]:** Deleted because it was moved to 17.90.030 Application Process for incentive

**Comment [m19]:** This was added to be consistent with Government Code 65915.5 (c)

**Comment [m20]:** This was added to be consistent with Government Code 65915.5 (b)

**Comment [m21]:** This was updated to be consistent with Government Code 65915.5 (a)

sales prices for the targeted dwelling units will be set and maintained in conformance with city affordable housing standards. (Ord. 1282 § 2, 1995; Ord. 1035 § 1 (part), 1985)

#### **17.90.05960 Alternative or additional incentives.**

- A. ~~When a developer agrees to construct housing for households of very low, lower or moderate income households, or for qualifying senior households, and desires an incentive other than a density bonus as provided in Section 17.90.03040 of this chapter, or when an applicant for approval to convert apartments to a condominium project agrees to provide housing for households of very low, lower, or moderate income, or for qualifying senior households, and desires an incentive other than a density bonus as provided in Section 17.90.04050, the developer or the applicant shall submit a proposal for consideration by the council. .~~

When a developer agrees to construct housing for households of very low, lower or moderate income households, or for qualifying senior households, and desires an incentive other than a density bonus as provided in Section 17.90.040 of this chapter, or when an applicant for approval to convert apartments to a condominium project agrees to provide housing for households of very low, lower, or moderate income, or for qualifying senior households, the developer shall receive the following number of incentives or concessions:

1. One incentive or concession for housing developments that include at least ten (10) percent of the total units for lower income households or at least ten (10) percent for persons and families of moderate income in a common interest development.

2. Two incentives or concessions for housing developments that include at least twenty (20) percent of the total units for lower income households, at least ten (10) percent for very low income households, or at least twenty (20) percent for persons and families of moderate income in a common interest development.

3. Three incentives or concessions for housing developments that include at least thirty (30) percent of the total units for lower income households, at least fifteen (15) for very low income households, or at least thirty (30) percent for persons and families of moderate income in a common interest development.

- B. Alternative incentive proposals shall include information set forth in Section 17.90.030 (B) as well as a description of the requested incentive, an estimate of the incentive's financial value in comparison with the financial value of the density bonus allowed in Section 17.90.03040, as well as the basis for the comparison estimate. Alternative incentive proposals may include but are not limited to one or more of the following:

1. A reduction in site development standards or modification of zoning code requirements or architectural design requirements that exceeds 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, financially sufficient, and actual cost reductions.

2. Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land use 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. Density bonus in excess of that provided in Section 17.90.03040;

**Comment [m22]:** This paragraph was deleted because it is no longer consistent

**Comment [m23]:** This takes place of the paragraph above.

**Comment [m24]:** This was added to be consistent with Government Code 65915 (d) (2) (A)

**Comment [m25]:** This was added to be consistent with Government Code 65915 (d) (2) (B)

**Comment [m26]:** This was added to be consistent with Government Code 65915 (d) (2) (C)

**Comment [m27]:** This was added to be consistent with Government Code 65915 (k) (1)

**Comment [m28]:** This was added to be consistent with Government Code 65915 (k) (2)

4. Waiver of application and processing fees;
5. Waiver of utility connection or park land in-lieu fees or park land dedication requirement;
6. City funded installation of off-site improvements which may be required for the project, such as streets or utility lines;
7. Write-down of land costs;
8. Direct subsidy of construction costs or construction financing costs;
9. Other regulatory incentives or concessions proposed by the developer or the city that result in identifiable, financially sufficient, and actual cost reductions shall also include provisions for assuring continued availability of designated units at affordable rents or sales prices for a period of not less than thirty (30) years, or as otherwise required by state law.

**Comment [m29]:** This was added to be consistent with Government Code 65915 (k) (3)

- ~~D. Approval of exceptions to subdivision or zoning property development standards, but only to the extent that such exceptions would be authorized by relevant provisions of this code; provided, that any proposal for an incentive which requires a direct financial contribution from the city shall also include provisions for assuring continued availability of designated units at affordable rents or sales prices for a period of not less than thirty (30) years, or as otherwise required by state law.~~

**Comment [m30]:** This was deleted because it is no longer consistent with the Government Code

- C. Proposals for approval to convert apartments to a condominium project shall include those relevant items set forth in Section 17.90.03940 (G), plus the requested incentive, an estimate if the incentive's financial value in comparison with the financial value of the density bonus as set forth in Section 17.90.04050, and the basis for the comparison estimate. Nothing in this section shall be construed to require the city to provide cash transfer payments or other monetary compensation. The city may reduce or waive requirements which the city might otherwise apply as conditions of conversion approval.
- D. Nothing in this section shall be construed to require the council to approve any alternate incentive. The developer or applicant has the standard incentive of a density bonus under Sections 17.90.03940 and 17.90.04050 if the council fails to approve an alternative incentive.
- E. The council action on any alternative incentive proposal shall be by resolution. Any such resolution shall include findings relating to the information required in subpart B or D of this section.
- ~~F. The council shall respond to a proposal within ninety days after submittal of a complete proposal. The city clerk shall notify the developer or the applicant of the council's response. Should the council fail to approve a proposal for alternative incentives within ninety days after submittal of a complete proposal, the proposal shall be deemed denied, and the city clerk shall so advise the developer or applicant in writing. (Ord. 1282 § 2, 1995; Ord. 1035 § 1 (part), 1985)~~

**Comment [m31]:** This was deleted because of redundancy.

#### **17.90.06070 Relationship to other city procedures.**

- A. Projects incorporating affordable housing and receiving density bonuses, incentives, or alternative incentives as provided in this chapter shall receive high priority processing, to the extent allowed by law. Operation of Sections 17.90.03940 or 17.90.04050, or approval of alternative incentives as provided in Section 17.90.05060 shall not be construed as a waiver of standard development review procedures or an exemption of the project from city development standards other than those explicitly listed in the approving resolution. Should a project fail to receive any required city approval, the density bonus or alternative incentive granted under this chapter shall be null and void.

- B. Applications of Sections 17.90.03940 and 17.90.04050 to projects shall be ministerial acts for purposes of environmental review. Environmental documents need not be filed solely for recordation of agreements concerning the density bonus and provision of affordable housing. Normal environmental review procedures shall apply to the project applications.
- C. If the council approves an alternative incentive as provided in Section 17.90.05060, such approval shall be subject to and conditioned upon an environmental determination being made for the project in the usual manner. The community development department shall outline for the council any probable, significant environmental effects which would result from the proposed incentive. (Ord. 1282 § 2, 1995; Ord. 1035 § 1 (part), 1985)

#### **17.90.07080 Agreements for affordable housing.**

Prior to the issuance of construction permits for any project incorporating a density bonus or other incentive as provided in this chapter, the city and the project owner(s) shall enter into an agreement in a form acceptable to the city attorney, to be recorded in the office of the county recorder. The agreement shall specify mechanisms or procedures to assure the continued affordability and availability of the specified number of dwelling units to very-low, lower, and moderate income households and/or qualifying seniors. The agreement shall also set forth those items required by Section 17.90.03040 (G) of this chapter or any alternative incentives granted pursuant to Section 17.90.05060 of this chapter. The agreement shall run with the land and shall be binding upon all heirs, successors or assigns of the project or property owner, and shall ensure affordability for a period of not less than thirty years, or as otherwise required by state law. (Ord. 1282 § 2, 1995; Ord. 1035 § 1 (part), 1985)

#### **17.90.08090 Fees.**

- A. No fee in addition to normal project application fees shall be charged for a request for a density bonus pursuant to the provisions of Sections 17.90.03040 or 17.90.04050, except for reasonable, necessary administrative costs incurred by the city pursuant to Section 17.90.04050.
- B. A fee not to exceed the amount charge for "pre-application concept review" may be charged for proposals submitted pursuant to the provisions of Section 17.90.05060. (Ord. 1282 § 2, 1995; Ord. 1035 § 1 (part), 1985)

#### **17.90.090100 Affordability standards.**

- A. The community development department shall publish and revise as needed a schedule of rental rates and sales prices for dwellings which will be affordable to households with incomes as provided in this chapter. The schedule shall substantially conform with the affordability standards as established by state or federal law.
- B. The maximum rental rates and sales prices as revised, generally on an annual basis, shall remain in effect for projects receiving density bonuses or additional incentives under this chapter as provided in the affordable housing agreement, but in no case less than the minimum term required by state law. (Ord. 1282 § 2, 1995; Ord. 1035 § 1 (part), 1985)

#### **17.90.400110 Occupant screening.**

- A. The affordable dwellings developed pursuant to this chapter shall be available to qualified occupants without regard to race, religion, national origin, sex, occupation or other affiliation. Occupants may be screened on the basis of age only to qualify those occupants seeking housing designed for the elderly.

- B. The city housing authority or other third party acceptable to the Community Development Director shall screen prospective occupants so that dwellings developed pursuant to this chapter shall be occupied by households with the appropriate qualifying incomes or ages. Owners of projects shall enter into agreements with the housing authority for such screening services.
- C. Preference in occupant screening shall be given to those employed within or residing within the city or the immediately surrounding area, to the extent that this provision does not conflict with state or federally funded housing assistance programs which may apply to a particular project, or other applicable law. This section is to insure that those households having the greatest difficulty obtaining housing at market rates within the city shall be able to occupy affordable housing made available pursuant to this chapter. (Ord. 1282 § 2, 1995; Ord. 1035 § 1 (part), 1985).

# definition



Belovida at Newbury Park, affordable rental apartments for senior citizen, developed by The Core Companies in San Jose, CA.



Midpen Housing affordable housing development in Foster City, CA.

*“Affordable housing is not deemed to be an end in itself, but a way to serve another purpose.”*

Charles L. Edson



San Antonio Place, affordable townhomes, developed by The Core Companies in San Jose, CA.

## What is affordable housing?

There is no real definition of affordable housing because living costs and income varies from place to place. Most use a formula to define affordability by taking a household's total income and spending no more than thirty (30) percent on housing costs, this includes utilities ([housingpolicy.org](http://housingpolicy.org)). This definition becomes problematic for as many as thirteen (13) million families in the United States who spend half of their income on housing costs (Lipman, 7). Individuals living in “social housing owned by the government and/or non-profit organizations” are not included in affordable housing ([ziprealty.com](http://ziprealty.com)).

The federal government has subsidies programs to provide some financial relief for struggling families. These subsidies include rental units, mortgage interest tax deduction, and other housing subsidy programs ([ziprealty.com](http://ziprealty.com)). Even at the local levels there are programs, such as incentives that work in favor of developers and owners of affordable housing units.



**Struggling Families and Housing.**

Families struggling with affordable housing are not only minimum wage workers, but also service workers such as teachers, police officers, and firefighters (Lipman, 10). Many families that do not live in affordable housing make compromises between housing and other living necessities that include food, healthcare, and/or clothing. These items are most likely compromised for families because housing cost is typically consistent where other necessity costs are flexible (Lipman, 7). If eligible some families qualify for financial assistance through other programs, an example is the City of San Luis Obispo's Utilities Assistance Program for low-income residents. A survey was conducted on some of the United States fastest growing counties concluding many of the new homes that were being developed were for households whose incomes ranged from middle to upper class (Lipman, 11).

Affordable housing must also include family size. An example is for one person their monthly income might be \$1,832 and they pay half for housing costs, leaving \$916 for other costs. That might not be horrible, but what if the family size of three relied on that same income, the \$916 then splits three-ways. Major family decisions are made that alters a way an individual lives (Lipman, 12-13).

Some families opt to pay more for housing because they understand the "pros and cons of living in a 'bad' neighborhood versus a 'good' neighborhood (Lipman, 14). Compromises families have made in order to deal with the high costs of housing include crowding in homes and an extensive commute to work (Lipman, 15). Lipman's research also noted that there has been an increase in household debt. Families have increased their debt by paying more on housing and using credit to make ends meet for other costs (Lipman, 19).

**Working Families, Children, and Affordable Housing.**

Lipman constructed an "impacts studies" which was a research on how working families and children live when dealing with high housing costs. Working families for this study is defined by "households whose total annual earnings exceed the full-time minimum wage equivalent to \$10,712, with earnings that comprise at least half of the household income, and where incomes are less than one hundred twenty (120) percent of local area median income (AMI)" (Lipman, 15).

### The Fight Against Affordable Housing

Affordable housing gets a bad connotation among homeowners', mostly by 'Not In My Backyard' (NIMBY), because there's a fear that they will lose property value by being in close proximity to "this" type of development. In reality there was a report by the California Planning Roundtable that found no significant negative effect to property values.

When asked how would affordable housing decrease an individual's property value the response usually involves the aesthetics and quality of the building. The result of decreased property value is heightened when

- (1) "the quality, design, and management of the affordable housing is poor;
- (2) affordable housing is located in dilapidated neighborhoods that contain disadvantaged populations (i.e. usually low income and predominantly minority); and
- (3) when affordable housing residents are clustered" and located in disadvantaged neighborhoods (Nguyen, 23).

Even with these negative effects the outcome of diminished property values are minimum when other factors are considered. The solution to decrease the chances of losing property value by being in proximity to affordable housing; no negative effects to property values were seen when

- (1) housing were located in a healthy and lively neighborhood,
- (2) the structure has no effect that will "change the quality or character of the neighborhoods",
- (3) management is responsive to problems and concerns,
- (4) affordable housing is detached and dispersed (Nguyen, 23).



## Chico, California

The City of Chico had a great downturn during the recession with an unemployment rate of 11.2. Recognizing the problem the City of Chico decided to invest in a new affordable housing community, Bidwell Park Apartments: Affordable Green Housing. For this development to occur it took a six-year collaboration with the City and many other agencies such as: Stone Building Corporation and Pacific West Communities as co-developers, the Central Valley Coalition for Affordable Housing, and the former Chico Redevelopment Agency. Originally the designation of the project was a 1.15-acre low density residential, but with approval by Chico City Council, in 2008, it was rezoned to medium-high density residential (HUD USER).

Financing was a key constraint for the City the total cost for the project was \$7.8 million. The City was able to successfully complete the project with help from several sources. The Federal low-income housing tax credits financed \$4 million of the project, the Chico Redevelopment Agency provided a \$3.5 million low-interest loan, and another \$300,000 was contributed through private finances (HUD USER). Bidwell Park included an on-site playground for the development, there's also a 3,670-acre public park nearby the apartments. Affordable housing is desired and highly impacted for cities all over the United States. Bidwell Park Apartments Within three months of opening most of the units were filled or were pending for income verification, currently there's a long waiting list for units in the apartment. Income verification is used to check whether the applicant income falls between 30 and 60 percent of Butte County's area median income (HUD USER)

*“Your customer is the community and the city, and they are also your partner. You are there to implement their community development objectives and address their affordable housing needs.”*

Gregg Stone, owner and director of development at Stone Building Corporation



Bidwell Park Apartments developed in Chico, CA.

There are a total of 38-units, 11 three-bedroom, 11 two-bedroom, and 15 one-bedroom, that includes “dishwashers, garbage disposals, stoves, refrigerators, maple cabinetry, granite countertops, and patios or balconies” (HUD USER). This apartment development is unique because the complex was built thoughtfully through environmentally sustainable construction methods and materials, such as “lowered utility bills for the residents and lowered operational costs for the property owner”. The development achieved GreenPoint Rated status by using water conservation equipment, sustainable construction material like green flooring and carpet materials, and energy-efficient heating and cooling systems, insulation, roofs and window. Another great thing the developers did during construction was separating all recyclable waste and debris was diverted away from landfills (HUD USER).

Overall this project was positive even though the development moved about 15 households living in a mobile home park. Consistent with the California Relocation Assistance Law, the households that were on site received financial and relocation assistance, whom all successfully moved before construction. Mayor Schwab of Chico was very proud of the development stating, “[Bidwell Park Apartments is] a very well designed project that is of great benefit to our community, providing much needed low-income housing and eliminating a very dilapidated trailer park, which was a health and safety hazard at the entrance to our city” (HUD USER). Mayor Schwab indicating that it created 70 construction jobs for the community.

### **Davis, California**

Davis completed its first affordable housing project called New Harmony developed by Mutual Housing California, a Sacramento-based non-profit group (Anderson). Construction for the project was completed by Chico-based Sunseri Construction Inc. designs were developed by Kuchman Architects of Sacramento (The Davis Enterprise). Rachael Iskow, Mutual Housing’s executive director believes, “At New Harmony, Davis families will soon have the option of moving to a green, healthy home” (The Davis Enterprise).

There were nearly 200 pre-applications for the 69-unit apartment complex, but preference was given to those who live or work in Davis and families



*“Construction projects like this help keep the economy going”*

Donny Lieberman, president of Sunseri Construction Inc.



earning 30-60 percent of the area median income (Anderson).

The apartment complex has a mix of one, two, and three bedroom apartments that includes: a private patio, energy-efficient appliances, environmentally friendly building materials, wheelchair-accessibility, and free internet access. Mutual Housing has also supported a computer lab for the New Harmony community, like many of their other projects (The Davis Enterprise).

New Harmony took five years to be completed; the first two years were spent getting approvals and gathering the financing for the development. This project was financed by many organizations Bank of America, NeighborWorks America, the Federal Home Loan Bank of Atlanta, Merritt Community Capital Corp., the California Tax Credit Allocation Committee and the Home Depot Foundation. Similar to the Bidwell Park Apartments in Chico, California, New Harmony was also financed by the city's redevelopment agency, when it still existed (Anderson).

Part of New Harmony's development supporting the completion of the adjacent greenbelt bike path network. This bike path was put on hold for twenty-three (23) years until the city was able to create housing development, connecting to more than fifty-three (53) miles of off-street bike paths in the city, as well as fifty-two (52) miles of on-street bike lanes (Sakash). Having the bike path connect to other communities nearby, such as Owendale, provides access to a shared open space that includes a children's playground, a basketball court and a community garden (The Davis Enterprise).

# federal government

## **Federal Government and affordable housing.**

The US Department of Housing and Urban Development has three different programs that orient towards affordable housing: Home Investment Partnership, Self-Help Homeownership (SHOP), and Homeownership Zone. These programs are designed to help “income-eligible households for purchasing, rehabilitating, or renting safe and decent housing” (hud.gov). Homeownership zone is a program designed using federal resources and providing it for the state and local governments. These resources are used to support development, rehabilitation, and purchasing affordable housing units. Home program are grants given to the state and local government to help fund affordable housing for low and very-low income families. These grants are called participating jurisdiction (PJs) and funded to help renters, new homebuyers, or existing homeowners that meet the income requirement. SHOP are funding provided to non-profit organizations to assist in purchasing home sites, as well as developing or improving infrastructure for low-income families. Homeownership zones is different from the other programs, these funds are only given when communities adopt a homeownership zone. These communities must include new urbanist design principles, which promote a pedestrian-friendly area with a mix of income and access to other modes of transportation. Within this zone communities are allowed to “reclaim vacant and blighted properties, increase homeownership, and promote economic revitalization by creating an entire neighborhood of new single family homes (hud.gov).

The Federal Government also includes programs to subsidize rental units through tenant-based subsidies, project-based subsidies, and public housing. Tenant-based subsidies are provided to private households through Section 8 Program. Project-based subsidies allow owners to rent homes to lower-income families and public housings are government operated housing that is managed by a private agency (ziprealty.com).

## **What is Section 8?**

The Section 8 program is when tenants pay thirty (30) percent of their income and the remaining balance of the rent is paid using federal money. Section 8 can be split into two different programs the tenant-based vouchers and the project-based vouchers. Tenant-based vouchers are intended for qualified individuals and families with a certification or voucher to afford housing by paying a reasonable amount of rent, based off a certain percentage of the individual’s rent. The local housing authority would pay the owner the difference of the rent, “which is capped by the fair market rent” (US Legal). The housing authority would also establish the rent

# united states of america

that the individual or family pays and the US Department of Housing and Urban Development determine the fair market rent (US Legal).



## California Department of Housing and Community Development

Affordable housing at the state level for California occurs at the California Department of Housing and Community Development (HCD). Their mission is to “provide leadership, policies and programs to preserve and expand safe and affordable housing opportunities and promote strong communities for all Californians” (Department of Housing and Community Development). To accomplish the mission HCD provides resources such as establishing state income limits, utility energy efficiency and solar programs for housing, foreclosure avoidance for owner occupied properties, home affordable programs in accordance with the Department of Treasury, affordable housing preservation, and credit counseling services (Department of Housing and Community Development).

### California Income Limits

HCD establishes the official state income limits. Housing standards for the State are updated and published annually. Affordable housing applies to extremely-low, very-low, low, or moderate income households. “The upper income limit for ‘extremely-low income’ households is thirty (30) percent of the median County income; the upper income limit for ‘very-low income’ households is fifty (50) percent of the median County income; the upper limit for ‘lower income’ households is eighty (80) percent of the median County income; and the upper limit for ‘moderate-income’ households is one hundred twenty (120) percent of the median County income (City of SLO, standards). These standards are determined by the HCD and expected to be applied by the local government.

Below is the 2012 Annual Income Limits, for households with eight (8) or more persons the calculation includes an additional 8% of the first person income limit to the eight-person income limit and round the sum to the nearest \$50. Example of a nine (9) person household at very-low income limit would be calculated as follows:

$$.08 * 37,700 = 3,016$$

$$3,016 + 49,800 = 52,816$$

$$\text{\$52,800}$$

Income Group	Number of Persons in Households							
	1	2	3	4	5	6	7	8
<b>Extremely-Low</b>	15,850	18,100	20,350	22,600	24,450	26,250	28,050	29,850
<b>Very-Low</b>	26,400	30,200	33,950	37,700	40,750	43,750	46,750	49,800
<b>Lower</b>	42,250	48,250	54,300	60,300	65,150	69,950	74,800	79,600
<b>Median</b>	52,800	60,300	67,850	75,400	81,450	87,450	93,500	99,550
<b>Moderate</b>	63,350	72,400	81,450	90,500	97,750	105,000	112,200	119,450

Figure.....2012 Annual Income Limits

### **City of San Luis Obispo Affordable Housing Standards**

These affordable housing standards apply to all development projects within the city, typically used by developers, citizens, housing groups, city staff and commission, and housing agencies. The standards are used to set maximum rent costs or sales prices according to income level and dwelling size. Affordable housing applies to extremely-low, very-low, low, or moderate income households. The affordable housing standards are updated and published annually by the State Department of Housing and Community Development.

For the City of San Luis Obispo affordable housing projects are started linked to new residential or commercial development (inclusionary), paying “in-lieu fees”, or contributing land or dwelling units to be used as affordable housing (City of SLO, standards). To support more affordable housing development the City adopted the Affordable Housing Incentives as part of the Municipal Code Chapter 17.90. The purpose for this code gives incentives, such as density bonuses and other incentives, to developer who agrees to construct affordable housing.

### **City of San Luis Obispo Affordable Housing Incentives.**

Developers that wish to develop within the City of San Luis Obispo have incentive options that include: “residential density bonus, fee reductions or waivers, city installations of off-site improvements, direct city financial assistance, subdivision, zoning or other exceptions to city standards and other incentives that may be negotiated between the city and developer” (City of SLO, incentives).

The funds for developing affordable housing projects are available to anyone who may request it. The City Council determines these requests by evaluating eligibility, suitability, urgency, and readiness. These criteria are important because it helps makes the process efficient: eligibility is determining whether the funds requested will increase or promote affordable housing, suitability is deciding whether the project is appropriate for the land use and design, urgency is determining whether there is a need for the type of housing, and readiness is referred to the project and if it has all the proper approvals to proceed (City of SLO, incentives).

Other incentives that are provided for the City of San Luis Obispo include:

1. Waiver of development review and meter installation fees for affordable housing projects – this incentive relieves very low and low income housing development from all planning, building, or engineering development review fees and also water meter and sewer installation fees. This is beneficial

# san luis obispo, ca



for projects on a tight budget to be exempt from development review and meter installation fees (City of SLO, incentives).

2. Waiver of citywide development impact fee for affordable units – citywide development impact fees include traffic, water, and wastewater are waived on new dwellings that either “exceed the minimum number of affordable units required by the city’s inclusionary housing requirement” or are “built, owned and managed by the San Luis Obispo City Housing Authority, Government agencies, or not-for-profit housing agencies”. This waiver reduces cost substantially by about \$11,000 for affordable detached, single family housing (City of SLO, incentives).

3. Parking standards for affordable housing – housing specifically occupied by very low or low income households require one car and one bicycle space per dwelling unit (City of SLO, incentives).

4. Utilities assistance program for low-income residents – this program provides financial assistance on utilities cost for low income residents it includes several options:

- a. Rate assistance: qualified low income residents could be receive a 15% reduction of the standard rate for water and sewer
- b. Payment assistance: this program is administered through the Economic Opportunity Commission who have one billing payment paid for. A customer of this program is only eligible once every two years and depends on the amount of funding available for the program.
- c. Water efficiency assistance – is a service for residents who are receiving either the rate or the payment assistance “with free information and water audit services to help control the cost of their water bill” (City of SLO, incentives).

### **City of San Luis Obispo Inclusionary Housing Program**

The inclusionary housing program is part of the city’s municipal code; it is designed to expand the number and types of dwellings of affordable housing. The program is used to support affordable housing by requiring newly developed residential and commercial developments to contribute by “constructing affordable housing with the project or by paying an ‘in-lieu’ fee to the city’s affordable housing fund”(City of San Luis Obispo, incentives).

**Section 8 and HASLO.**

HASLO is the Housing Authority for San Luis Obispo, California. This public corporation is used to help lower income individuals find, secure, and maintain housing for long-term. The Section 8 program is intended to support “rental assistant to families and individuals who find themselves at or below the fifty (50) percent of the county median income for their family size” (Housing Authority SLO). Homes that are provided for the renters are done through a private market because the individuals or families pay their share of monthly rent to the property owners and HASLO pays the balance left in the rent. Individuals that qualify for the Section 8 program are families with children, the elderly, disabled individuals, and/or families who have members who are disabled (Housing Authority SLO).

There is an inspection process for all properties that would like to be part of the Section 8 program, this is to insure that the properties for rent are “decent, safe and adequate housing” (Housing Authority SLO). The individuals that apply for the program also go through a screening process in order determine that the individuals do not have any background in violence or drug activities (Housing Authority SLO).

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Midpen housing on page 1: [http://www.housingfinance.com/Images/tmp12.tmp\\_tcm58-1482957.jpg](http://www.housingfinance.com/Images/tmp12.tmp_tcm58-1482957.jpg)

San Antonio Place on page 1: <http://www.thecorecompanies.com/homes/images/core-builders/sanantonio.jpg>

Belovida at Newbury Park on page 1: <http://image-center.com/architecture/wp-content/uploads/2012/03/120106-03.jpg>

Bidwell Park Apartments on page 3: [http://www.24-7pressrelease.com/attachments/030/press\\_release\\_distribution\\_0302887\\_58309.jpg](http://www.24-7pressrelease.com/attachments/030/press_release_distribution_0302887_58309.jpg)

New Harmony Development on page # : <http://www.mutualhousing.com/wp-content/uploads/2012/04/New-Harmony-street-view.jpg>

Greenbelt path on page # : <http://www.davisenterprise.com/wp-content/uploads/2013/02/bike1W-1024x686.jpg>

## GOVERNMENT CODE SECTION 65915-65918

65915. (a) 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 provide the applicant incentives or concessions for the production of housing units and child care facilities as prescribed in this section. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented.

(b) A city, county, or city and county shall grant a density bonus and incentives or concessions described in subdivision (d) when the applicant for the housing development seeks and agrees to construct at least any one of the following:

(1) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(2) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(3) A senior citizen housing development as defined in Sections 51.3 and 51.12 of the Civil Code.

(4) Ten percent of the total dwelling units in a condominium project as defined in subdivision (f) of, or in a planned development as defined in subdivision (k) of, Section 1351 of the Civil Code, for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code.

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all lower income density bonus units for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Those units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 60 percent of area median income. Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 50 percent of area median income.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of the moderate-income units that are directly related to the receipt of the density bonus in the condominium project as defined in subdivision (f) of, or in the planned unit development as defined in subdivision (k) of, Section 1351 of the Civil Code, are persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code. Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The local government shall recapture its proportionate share of appreciation, which shall then be used within three years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote homeownership. For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the percentage by which the initial sale price to the moderate-income

household was less than the fair market value of the home at the time of initial sale.

(d) (1) An applicant 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 either of the following:

(A) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

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

(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 condominium or planned development.

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

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

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of compliance with this section. The city, county, or city and county shall also establish procedures for waiving or modifying development and zoning standards that would otherwise inhibit the utilization of the density bonus on specific

sites. These procedures shall include, but not be limited to, such items as minimum lot size, side yard setbacks, and placement of public works improvements.

(e) In no case may a city, county, or city and county apply any development standard that will have the effect of 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. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

(f) The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible.

(g) (1) For the purposes of this chapter, except as provided in paragraph (2), "density bonus" means a density increase of at least 20 percent, unless a lesser percentage is elected by the applicant, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. The amount of density bonus 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). For each 1 percent increase above 10 percent in the percentage of units affordable to lower income households, the density bonus shall be increased by 1.5 percent up to a maximum of 35 percent. For each 1 percent increase above 5 percent in the percentage of units affordable to very low income households, the density bonus shall be increased by 2.5 percent up to a maximum of 35 percent. All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. The density bonus shall not be included when determining the number of housing units that is equal to 5 or 10 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(2) For the purposes of this chapter, if a development does not meet the requirements of paragraph (1), (2), or (3) of subdivision (b), but the applicant agrees or proposes to construct a condominium project as defined in subdivision (f) of, or a planned development as defined in subdivision (k) of, Section 1351 of the Civil Code, in which at least 10 percent of the total dwelling units are reserved for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, a "density bonus" of at least 5 percent shall be granted, unless a lesser percentage is elected by the applicant, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of



the general plan as of the date of application by the applicant to the city, county, or city and county. For each 1 percent increase above 10 percent of the percentage of units affordable to moderate-income households, the density bonus shall be increased by 1 percent up to a maximum of 35 percent. All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. The density bonus shall not be included when determining the number of housing units that is equal to 10 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(h) 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 as provided for in this subdivision, the applicant shall be entitled to a 15 percent increase above the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for the entire development. For each 1 percent increase above the minimum 10 percent land donation described in paragraph (2) of this subdivision, the density bonus shall be increased by 1 percent, up to a maximum of 35 percent. This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks both the increase required pursuant to 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:

(1) 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.

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

(3) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned for development as affordable housing, and is or will be served by adequate public facilities and infrastructure. The land shall have appropriate zoning and development standards to make the development of the affordable units feasible. No later than the date of approval of the final subdivision map, parcel map, or of the residential development, 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, 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 prior to the time of transfer.

(4) 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 dedication.

(5) 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.

(6) 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.

(i) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a child care 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 child care facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care 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 child care 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 child care 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 a city and county shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

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

(j) "Housing development," as used in this section, means one or more groups of projects for residential units constructed in the planned development of a city, county, or city and county. For the purposes of this section, "housing development" also includes a subdivision or a planned unit development or condominium project, as defined in Section 1351 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 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.

(k) The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary

approval. This provision is declaratory of existing law.

(1) 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, financially sufficient, and actual cost reductions.

(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, financially sufficient, and actual cost reductions.

This subdivision 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) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).

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

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

(1) "Development standard" includes site or construction conditions that apply to a residential development pursuant to any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation.

(2) "Maximum allowable residential density" means the density allowed under the zoning ordinance, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project.

(p) (1) Upon the request of the developer, no city, county, or city and county shall require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivision (b), that exceeds the following ratios:

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

(B) Two to three bedrooms: two onsite parking spaces.

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

(2) If the total number of parking spaces required for a 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.

(3) This subdivision shall apply to a development that meets the requirements of subdivision (b) but only at the request of the applicant. An applicant may request additional parking incentives or

concessions beyond those provided in this section, subject to subdivision (d).

65915.5. (a) When an applicant for approval to convert apartments to a condominium project agrees to provide at least 33 percent of the total units of the proposed condominium project to persons and families of low or moderate income as defined in Section 50093 of the Health and Safety Code, or 15 percent of the total units of the proposed condominium project to lower income households as defined in Section 50079.5 of the Health and Safety Code, and agrees to pay for the reasonably necessary administrative costs incurred by a city, county, or city and county pursuant to this section, the city, county, or city and county shall either (1) grant a density bonus or (2) provide other incentives of equivalent financial value. A city, county, or city and county may place such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value as it finds appropriate, including, but not limited to, conditions which assure continued affordability of units to subsequent purchasers who are persons and families of low and moderate income or lower income households.

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

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

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

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

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

65916. Where there is a direct financial contribution to a housing development pursuant to Section 65915 through participation in cost of infrastructure, write-down of land costs, or subsidizing the cost of construction, the city, county, or city and county shall assure continued availability for low- and moderate-income units for 30 years. When appropriate, the agreement provided for in Section 65915 shall specify the mechanisms and procedures necessary to carry out this section.

65917. In enacting this chapter it is the intent of the Legislature that the density bonus or other incentives offered by the city, county, or city and county pursuant to this chapter shall contribute significantly to the economic feasibility of lower income housing in proposed housing developments. In the absence of an agreement by a developer in accordance with Section 65915, a locality shall not offer a density bonus or any other incentive that would undermine the intent of this chapter.

65917.5. (a) As used in this section, the following terms shall have the following meanings:

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

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

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

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

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

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

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

(b) A city council, including a charter city council, city and county board of supervisors, or county board of supervisors may establish a procedure by ordinance to grant a developer of a commercial or industrial project, containing at least 50,000 square feet of floor area, a density bonus when that developer has set aside at least 2,000 square feet of floor area and 3,000 outdoor square feet to be used for a child care facility. The granting of a bonus shall not preclude a city council, including a charter city council, city and county board of supervisors, or county board of supervisors from imposing necessary conditions on the project or on the additional square footage. Projects constructed under this section

shall conform to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other health, safety, and zoning requirements generally applicable to construction in the zone in which the property is located. A consortium with more than one developer may be permitted to achieve the threshold amount for the available density bonus with each developer's density bonus equal to the percentage participation of the developer. This facility may be located on the project site or may be located offsite as agreed upon by the developer and local agency. If the child care facility is not located on the site of the project, the local agency shall determine whether the location of the child care facility is appropriate and whether it conforms with the intent of this section. The child care facility shall be of a size to comply with all state licensing requirements in order to accommodate at least 40 children.

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

(d) If the developer uses space allocated for child care facility purposes, in accordance with subdivision (b), for any purposes other than for a child care facility, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. If the developer fails to have the space allocated for the child care facility within three years, from the date upon which the first temporary certificate of occupancy is granted, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors in accordance with procedures to be developed by the legislative body of the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. Any penalty levied against a consortium of developers shall be charged to each developer in an amount equal to the developer's percentage square feet participation. Funds collected pursuant to this subdivision shall be deposited by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors into a special account to be used for childcare services or child care facilities.

(e) Once the child care facility has been established, prior to the closure, change in use, or reduction in the physical size of, the facility, the city, city council, including a charter city council, city and county board of supervisors, or county board of supervisors shall be required to make a finding that the need for child care is no longer present, or is not present to the same degree as it was at the time the facility was established.

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

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

65918. The provisions of this chapter shall apply to charter cities.

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