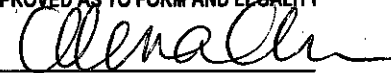


2014 MAR 13 PM 12: 04
INTRODUCED BY COUNCILMEMBER _____

APPROVED AS TO FORM AND LEGALITY


Office of the City Attorney

OAKLAND CITY COUNCIL
ORDINANCE NO. 13224 C.M.S.

**AN ORDINANCE, AS RECOMMENDED BY THE CITY
PLANNING COMMISSION, AMENDING THE
OAKLAND PLANNING CODE TO UPDATE
CHAPTER 17.107 DENSITY BONUS AND INCENTIVE
PROCEDURE**

WHEREAS, a density bonus is a permitted increase in density over the maximum otherwise allowed by the City. Density bonuses are intended to provide an incentive to developers to construct affordable housing or provide other amenities desired by the City; and

WHEREAS, California law (Government Code Section 65915) requires cities and counties to grant density bonuses to developers who propose to construct a specified percentage of housing affordable to very low- or low-income households or senior housing; and

WHEREAS, the City of Oakland's 1999-2006 Housing Element included an action item to develop and adopt a Density Bonus Ordinance to provide density bonuses for projects serving low income residents. This ordinance was adopted in 2001; however, the law has since changed and the Planning Code needs to be updated to comply with new statutory requirements; and

WHEREAS, adoption of an updated Density Bonus Ordinance is a requirement of the City of Oakland's 2007-2014 Housing Element. The Housing Element is one of seven mandated elements of the Oakland General Plan; State law requires every jurisdiction to update its Housing Element every eight years. Preparation of the 2015-2023 Housing Element is underway, and the Density Bonus Ordinance must be adopted prior to adopting the next Housing Element update. Without an approved update of the Housing Element, the City may lose access to certain types of grant funding which the State has set aside for jurisdictions with adopted Housing Elements; and

WHEREAS, on January 22, 2014, at a duly noticed public hearing, the City Planning Commission's Zoning Update Committee recommended approval of the proposed Planning Code amendments; and

WHEREAS, on February 19, 2014, at a duly noticed public hearing, the City Planning Commission recommended approval of the proposed Planning Code amendments; and

WHEREAS, after a duly noticed public meeting on March 25, 2014, the Community and

Economic Development Committee voted to recommend the proposal to the City Council; and

WHEREAS, the City Council held a duly noticed public hearing on April 1, 2014 to consider the proposal; and

WHEREAS, the proposed density bonus amendments to the Planning Code rely on the previously certified 2007-2014 Housing Element Final EIR (2010), which provides analysis of the environmental impacts of the proposed amendments and supports all levels of approval necessary to implement the Planning Code amendments; and

WHEREAS, the proposed amendments to the Planning Code would not result in any significant effect that has not already been analyzed in the Oakland Housing Element EIR, and there will be no significant environmental effects caused by the change that have not already been analyzed in the EIR; and

WHEREAS, the City Council hereby finds and determines on the basis of substantial evidence in the record that none of the circumstances necessitating preparation of additional environmental review, as specified in CEQA and the CEQA Guidelines, including, without limitation, Public Resources Code section 21166 and CEQA Guidelines sections 15162 or 15163 are present in that (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no "new information of substantial importance," as defined in CEQA Guidelines section 15162(a)(3); and

WHEREAS, each as a separate and independent basis, this action is exempt from CEQA pursuant to CEQA Guidelines sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (no significant effect on the environment); now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this Ordinance.

Section 2. The Environmental Review Officer shall file a Notice of Exemption/Notice of Determination, and an Environmental Declaration under the California Fish and Game Code (Section 711.4) with the County of Alameda.

Section 3. Title 17 of the Oakland Planning Code is hereby amended pursuant to **Exhibit A** attached hereto and hereby incorporated by reference. Additions to Title 17 of the Planning Code are shown in Exhibit A as underline and omissions are shown as ~~strikethrough~~.

Section 4. This Ordinance shall be effective 30 days from the date of final passage by the City Council, but shall not apply to (a) building/construction related permits already issued and not yet expired; (b) to zoning applications approved by the City and not yet expired; or to (c) zoning

applications deemed complete by the City as of the date of final passage. However, zoning applications deemed complete by the City prior to the date of final passage of this Ordinance may be processed under provisions of these Planning Code amendments if the applicant chooses to do so.

Section 5. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

Section 6. If any section, subsection, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of the remaining portions which shall remain in full effect.

Section 7. The City Council finds and determines that the proposed Planning Code amendments will implement the provisions of California State Law.

IN COUNCIL, OAKLAND, CALIFORNIA, - APR 22 2014

PASSED BY THE FOLLOWING VOTE:


AYES- BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF, and PRESIDENT KERNIGHAN - 8

NOES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST:



LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION:

4/29/14

Introduction Date APR 01 2014

NOTICE AND DIGEST

AN ORDINANCE, AS RECOMMENDED BY THE CITY PLANNING COMMISSION, AMENDING THE OAKLAND PLANNING CODE TO UPDATE CHAPTER 17.107 DENSITY BONUS AND INCENTIVE PROCEDURE

This ordinance updates the city's existing density bonus regulations to comply with recent changes to California State Law. Density bonuses are intended to provide an incentive to developers to construct affordable housing or provide other amenities desired by the City. California law (Government Code Section 65915) requires cities and counties to grant density bonuses to developers who propose to construct a specified percentage of housing affordable to very low- or low-income households or senior housing.

Chapter 17.107
DENSITY BONUS AND INCENTIVE PROCEDURE

Sections:

- 17.107.010 Title, purpose, and applicability.**
- 17.107.020 Definitions.**
- 17.107.030 Application.**
- 17.107.040 ~~Findings required.~~ Density Bonus.**
- 17.107.045 ~~050~~ Land Donation.**
- 17.107.060 Child Care Facilities.**
- 17.107.070 Condominium Conversions**
- 17.107.080 Density incentives or concessions.**
- 17.107.090 Permitted number of density incentives or concessions.**
- 17.107.095 Waiver of Development Standards**
- 17.107.100 City's findings for denial of incentives or concessions.**
- 17.107.110 Condition required for continued affordability.**
- 17.107.050 ~~111~~ Eligibility requirements.**
- 17.107.060 ~~112~~ Density bonus resale agreement.**
- 17.107.070 ~~113~~ Management and monitoring.**
- 17.107.080 ~~114~~ Administrative fee for target living units.**
- 17.107.090 ~~City's~~ 115 City's right to deny a project.**
- 17.107.120 Parking ratio reductions mandated by California Government Code**

17.107.010 Title, purpose, and applicability.

The provisions of this ~~chapter~~Chapter shall be known as the ~~density bonus~~Density Bonus and incentive procedure for affordable housing.Incentive Procedure regulations. The purpose of these provisions is to ~~prescribe the procedure for the granting of a density bonus and incentive(s), under specified conditions, to encourage the construction of affordable housing, senior housing, the provision of affordable housing, child care facilities, and other incentives and concessions, following California Government Code, Sections 65915-65918 (formerly known as the "density bonus");~~

The ~~density bonus ordinance codified in this chapter~~Density Bonus and Incentive Procedure is intended to comply with ~~provisions of the State Density Bonus Law,~~California Government Code Section 65915-65918 (inclusive), which provides that a local government shall grant a density bonus and an ~~additional concession~~concessions, or financially equivalent incentive(s), to a developer of a housing development ~~agreeing to construct~~constructing a specified percentage of housing for low income households, very low income households ~~or~~, senior citizens, ~~or providing child care facilities.~~ This procedure shall apply to all proposals, citywide, to create five (5) or more living units in which the developer is requesting the density bonus. Any provision in California Government Code Section 65915-65918 (inclusive), but not included in this Chapter is considered by the City of Oakland to be valid and applicable

(Ord. No. 13064, § 2(Exh. A), 3-15-2011; Ord. 12872 § 4 (part), 2008; Ord. 12331 § 2 (part), 2001)

17.107.020 Definitions.

A. Affordable Housing. "Affordable housing" shall mean that the relevant housing is available on terms such that the housing costs are less than a specified percentage of the gross income of households within a particular income category (adjusted for household size, depending on the number of bedrooms in the living unit) as determined for the Oakland Primary Metropolitan Statistical Area (PMSA). For a rental unit, housing costs include rent and a reasonable allowance for utilities. For a for-

sale unit, housing costs include loan principal, loan interest, property and mortgage insurance, property taxes, home owners' association dues and a reasonable allowance for utilities.

B. Affordable Housing Cost shall mean the allowable percentage of gross household income a household spends on housing costs for a given income group, as defined below.

1. Where units are targeted as being affordable to low income households, housing costs for rental units must be equal to or less than thirty percent (30%) of the gross monthly income, adjusted for household size, of sixty percent (60%) of the median income for the Oakland PMSA. Housing costs for for-sale units must be equal to or less than thirty percent (30%) of the gross monthly income, adjusted for household size, of seventy percent (70%) of the median income.

2. Where units are targeted as being affordable to very low income households, housing costs for rental units and for for-sale units must be equal to or less than thirty percent (30%) of the gross monthly income; adjusted for household size, of fifty percent (50%) of the median income for the Oakland PMSA.

3. Where units are targeted as being affordable to moderate income households, housing costs for rental units must be equal to or less than thirty percent (30%) of the gross monthly income, adjusted for household size, of one hundred twenty percent (120%) of the median income for the Oakland PMSA. Housing costs for for-sale units must be equal to or less than thirty-five percent (35%) of the gross monthly income, adjusted for household size, of one hundred twenty percent (120%) of the median income.

C. Child Care Facility, for the purposes of this Chapter only, the following definitions in California Government Code Sections 65915 (h) (4) and 65917.5 (a) (1) shall apply:

"Child care facility," (65915 (h) (4)) 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.

"Child care facility" (65917.5 (a) (1)) 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.

D. BConcession or Incentive, includes the standards of California Government Code Section 65915(k), and shall mean a reduction in site development standards, or a modification to a requirement of the Oakland Planning Code, or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission, that would otherwise be required, which result in identifiable, financially sufficient, and actual cost reductions (as demonstrated by the developer).

E. Density Bonus. A "density bonus" is a shall mean a maximum thirty-five percent (35%) density increase over the otherwise maximum permitted allowable residential density. ~~For purposes of this chapter, the~~ under the applicable zoning ordinance and/or Oakland General Plan, or specific plan, and shall follow the definition in the California Government Code Section 65915 (f). The density bonus shall not be included when determining the number of target units that must be affordable to the relevant income group. ~~When awarding multiple density bonuses, such as for senior citizens housing, the amount of each density bonus shall be determined based on the allowable base density, exclusive of any bonuses. In no event may the City grant a density bonus which would result in the project exceeding the general plan density maximum unless the project proposes to~~

~~provide at least: (1) twenty percent (20%) of the total units of a housing development for lower income households, or (2) ten percent (10%) of the total units of a housing development for very low income households, or (3) fifty percent (50%) of the total living units of a housing development for qualifying residents; (seniors), or (4) at least twenty percent (20%) of the total units of a residential condominium housing development for moderate income households. When calculating the final unit count allowed with~~

F. Developer shall mean ~~the density bonus, any fractional remainders shall be rounded up to owner or other person, including a lessee, having the nearest whole number. right under the Oakland zoning ordinance, to make an application for development approvals for the development, or redevelopment, of a commercial or industrial project.~~

~~C. Density Incentive. A "density incentive" is a benefit offered by the City to facilitate construction of eligible projects as defined by the provisions of this chapter and is limited to the relaxation of one of the following standards in order to allow utilization of a density bonus:~~

- ~~1. Required off-street parking;~~
- ~~2. Required setbacks;~~
- ~~3. Maximum building height;~~
- ~~4. Required open space;~~
- ~~5. Maximum floor area ratio;~~
- ~~6. Minimum lot area.~~

G. Development standard shall mean 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.

H.

~~D. "Economically feasible" means~~ **Feasible** shall mean that a housing development can be built with a reasonable rate of return. The housing developer's ~~developer's~~ financial ability to build the project shall not be a factor.

E

I. Maximum allowable residential density shall mean the density allowed under the zoning ordinance, and the Land Use and Transportation Element of the Oakland General Plan; or, if a range of density is permitted, means the maximum allowable density for the specific zoning range and the range in the Land Use and Transportation Element of the Oakland General Plan applicable to the project. Where the density allowed under the zoning ordinance is inconsistent with the density allowed under the Land Use Element of the Oakland General Plan, the general plan density shall prevail.

J. Moderate, Low and Very Low Income Households. ~~"Moderate, low and very low income households" means shall mean~~ those households whose income matches levels determined periodically by the U.S. Department of Housing and Urban Development, based on the Oakland Primary Metropolitan Statistical Area (PMSA) median income levels by family size, under which:

1. "Moderate income" is defined as greater than eighty percent (80%) to one hundred twenty percent (120%) of median income; (see Section 50093 of the California Health and Safety Code);

2. "Low income" is defined as greater than fifty percent (50%) to eighty percent (80%) of median income; (see Section 50079.5 of the California Health and Safety Code);

3. "Very low income" is defined as less than fifty percent (50%) of median income; (see Section 50105 of the California Health and Safety Code).

K. Residential Housing Development shall mean, for the purposes of this chapter, a project involving the construction of five (5) or more residential dwelling units, excluding any units permitted by the density bonus awarded pursuant to this Chapter. Further, a "housing development" is as defined in California Government Code Section 65915(i). (~~Ord. 12501 § 74, 2003; Ord. 12331 § 2 (part), 2001~~)

F.

L. Senior Citizen Housing Development shall mean the development, substantial rehabilitation, or substantial renovation of at least thirty-five (35) dwelling units reserved for senior citizens, where each unit houses at least one person fifty-five (55) years of age or older, and/or a qualified permanent resident, as described in Section 51.3 of the California Civil Code; further, it shall also mean a mobile home park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the California Civil Code.

M. Target Living Unit. ~~A "target living unit" is~~ shall mean a living unit that will be offered for rent or sale exclusively to and which ~~and which~~ shall be affordable to the designated income group or senior citizens.

G. Housing Development. A "housing development" is as defined in California Government Code Section 65915(g).

~~(Ord. No. 13172, § 3 (Exh. A), 7-2-2013; Ord. No. 13064, § 2 (Exh. A), 3-15-2011; Ord. 12872 § 4 (part), 2008; Ord. 12501 § 74, 2003; Ord. 12331 § 2 (part), 2001)~~

17.107.030 Application.

~~A developer may submit to the Director of City Planning a preliminary proposal for the development of housing and utilization of the density bonus procedure pursuant to this chapter prior to the submittal of any formal application. The City shall, within thirty (30) days of receipt of a written proposal, notify the housing developer in writing of its local density procedures. The housing developer shall show that any requested incentives are necessary to make the affordable units economically feasible.~~

A formal requestAn application shall be filed with the Oakland Planning and Zoning Division for a Density Bonus and/or Incentive(s), Concession(s) and Waiver(s); the application shall be made by the owner of the affected property, or his or her authorized agent. The application shall be accompanied by such information including, but not limited to, site and building plans, drawings and elevations, and operational data, as may be required to permit the review of the proposal in the context of the required findings, and by the fee prescribed in the City's Master Fee schedule, and any additional information deemed necessary by the City Planning Department.

An application for a ~~density bonus~~Density Bonus and related incentive(s) or concession(s) shall be included in the application for design review for a housing development and shall be processed and considered as part of same. The application for a density bonus and related incentive(s) shall include:

A. A written statement specifying the desired density increase, incentive requested and the type, location, size and construction scheduling of all living units;

B. A project financial report (pro forma), as required ~~to justify~~justifying the granting of any incentive(s) and / or concession(s) in addition to the density bonus;

C.

C. Information demonstrating that any requested incentive(s), concession(s) and/or waiver(s) are necessary to make the units affordable, or available to seniors. Information could include: calculations of affordability, evidence that incentives and concessions provide "identifiable, financially sufficient, and actual cost reductions," and economic analyses to show that any waivers are required to make the project economically feasible;

D. Any other such information as may be required to permit the review of the proposal in the context of the required findings, as requested by the Director of City Planning.
~~D.~~ The following density bonus requests shall also require a Major Conditional Use Permit and shall not be eligible for a density incentive:

- ~~1.~~ Application for a density bonus of greater than twenty five percent (25%);
- ~~2.~~ Application for a density bonus of twenty five percent (25%) or less if the project would provide moderate and low income housing as described in Section 17.107.040A(2)(d).
(Ord. No. 13064, § 2(Exh. A), 3-15-2011; Ord. 12872 § 4 (part), 2008; Ord. 12331 § 2 (part), 2001)

17.107.040 Findings required.

A. Density Bonus.

Whenever action is taken on an application for design review of a housing development of at least five units which also seeks approval of a density bonus, the city shall grant the applicant a density bonus and, unless findings justifying the denial of an incentive are adopted, one density incentive, as set forth in Section 17.107.020(C), if the applicant proposes to build one of the following. Nothing in this section shall preclude the requirement for design review as provided for in the individual zone regulations:

- ~~1.~~ Where the request is for a density bonus of twenty five percent (25%), or less if requested by the applicant, and the applicant proposes that:
 - ~~a.~~ Twenty percent (20%) of the total housing units shall be affordable to low income households; or
 - ~~b.~~ A. The City shall grant a Density Bonus not exceeding thirty-five percent (35%), and incentive(s) or concession(s) described in Section 17.107.080, when an applicant for a Residential Housing Development or a Senior Housing Development seeks, and agrees to construct, at least any one of the following categories:
 - ~~1.~~ Ten percent (10%) of the total housing units shall be affordable to very low income households Dwelling Units of a Residential Housing Development for Lower Income Households; or
 - ~~2.~~ Five percent (5%) of the total Dwelling Units of a Residential Housing Development for Very Low Income Households; or
 - ~~e.~~ Fifty
 - ~~3.~~ A Senior Citizen Housing Development; or
 - ~~4.~~ Ten percent (5010%) of the total housing units shall be affordable to qualifying residents as Dwelling Units in a common interest development as defined in Section 54.31351 of the California Civil Code (senior citizens); or
 - ~~d.~~ Fifty percent (50%) of the total housing units are affordable to moderate income households and an additional ten percent of the total housing units are affordable to low income households and the proposal conforms to the general use permit criteria set forth in the conditional use permit procedure in Chapter 17.134 except that the density bonus cannot exceed the maximum density in the General Plan.
- ~~2.~~ Where the request is for a density bonus of ten percent (10%), or less if requested by the applicant, and the project is a residential condominium, for persons and families of Moderate Income, provided that all units in the development, and twenty percent (20%) of the total housing units are and will continue to be affordable to moderate income households are offered to the public for purchase.
- ~~3.~~ Where the request is for a density bonus of greater than twenty five percent (25%), but not more than one hundred percent (100%), the reviewing body shall find that the proposal conforms to the general use permit criteria set forth in the conditional use permit procedure in Chapter 17.134 and that the proposal provides additional housing units that are affordable to very low income, low income or moderate income households, beyond the

minimum requirements described above, proportional to the additional density bonus. Proposals for senior citizen housing projects that conform to the requirements of Section 17.106.060 may request a total density bonus, over the allowable base density, of up to one hundred percent (100%).

B. For residential housing

~~B. Density Incentive. Housing developments with affordable units which meet at least one of the requirements set forth in Section 17.107.040A (1) (a), (b), or (c), or Section 17.107.040A(2), are entitled to one density incentive of the applicant's choosing, unless a written finding, based on substantial evidence is made pursuant to meeting category 1 above, the density bonus shall be calculated as indicated in Table 17.107.01:~~

Table 17.107.01: Density Bonus for providing units for Low Income Households

<u>Percentage Low-income units</u>	<u>Percentage Density Bonus</u>
<u>10</u>	<u>20</u>
<u>11</u>	<u>21.5</u>
<u>12</u>	<u>23</u>
<u>13</u>	<u>24.5</u>
<u>14</u>	<u>26</u>
<u>15</u>	<u>27.5</u>
<u>17</u>	<u>30.5</u>
<u>18</u>	<u>32</u>
<u>19</u>	<u>33.5</u>
<u>20</u>	<u>35</u>

~~Source: California Government Code, Section 65915(b) that an incentive is not required in order to provide for affordable (f)(1)~~

~~C. For residential housing costs as defined developments meeting category 2 in Section 50052.5 of the Health and Safety 17.107.040(A) above the density bonus shall be calculated as indicated in Table 17.107.02:~~

Table 17.107.02: Density Bonus for providing units for Very Low Income Households

<u>Percentage Very Low income units</u>	<u>Percentage Density Bonus</u>
<u>5</u>	<u>20</u>
<u>6</u>	<u>22.5</u>
<u>7</u>	<u>25</u>
<u>8</u>	<u>27.5</u>
<u>9</u>	<u>30</u>
<u>10</u>	<u>32.5</u>
<u>11</u>	<u>35</u>

~~Source: California Government Code, or for rents for the targeted units to be set as specified in this Section. Where the applicant has requested a meeting to discuss the requested incentive 65915(f)(2)~~

~~D. For Senior Citizen Housing Developments meeting category 3 in Section 17.107.040(A) above, the density bonus shall be twenty percent (20%) of the number of senior housing units. This California Government Code Senior Housing Density Bonus shall be separate from, and not combined with, the City of Oakland Senior Housing Density Bonus which, if a Conditional Use Permit is approved, permits an increase of seventy-five percent (75%) more senior housing units than are permitted by Zoning, as described in 17.106.060.~~

~~E. For common interest developments meeting the category 4 in Section 17.107.040(A) above, the density bonus shall be calculated as indicated in Table 17.107.03.~~

Table 17.107.03: Density Bonus for common-interest developments

Percentage Moderate-income units	Percentage Density Bonus
<u>10</u>	<u>5</u>
<u>11</u>	<u>6</u>
<u>12</u>	<u>7</u>
<u>13</u>	<u>8</u>
<u>14</u>	<u>9</u>
<u>15</u>	<u>10</u>
<u>16</u>	<u>11</u>
<u>17</u>	<u>12</u>
<u>18</u>	<u>13</u>
<u>19</u>	<u>14</u>
<u>20</u>	<u>15</u>
<u>21</u>	<u>16</u>
<u>22</u>	<u>17</u>
<u>23</u>	<u>18</u>
<u>24</u>	<u>19</u>
<u>25</u>	<u>20</u>
<u>26</u>	<u>21</u>
<u>27</u>	<u>22</u>
<u>28</u>	<u>23</u>
<u>29</u>	<u>24</u>
<u>30</u>	<u>25</u>
<u>31</u>	<u>26</u>
<u>32</u>	<u>27</u>
<u>33</u>	<u>28</u>
<u>34</u>	<u>29</u>
<u>35</u>	<u>30</u>
<u>36</u>	<u>31</u>
<u>37</u>	<u>32</u>
<u>38</u>	<u>33</u>
<u>39</u>	<u>34</u>
<u>40</u>	<u>35</u>

Source: California Government Code, Section 65915 (f) (4)

F. The applicant shall elect whether the Density Bonus shall be awarded on the basis of category 1, 2, 3, or 4 in Section 17.107.040(A) above. The applicant may elect to accept a lesser percentage of density bonus. 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, Zoning change, or other discretionary approval. The density bonus shall not be included when determining the number of target units that must be affordable to the relevant income group.

G. The maximum Density Bonus available in Oakland is thirty-five percent (35%).

17.107.050 Land Donation

A. Eligibility. A project involving a land donation to the City shall be eligible for the increased Density Bonus described in this section if all of the following conditions are met:

1. The applicant donates and transfers the land to the City no later than the date of approval by the City of the final subdivision map, parcel map, or residential development application of the Residential Development Project seeking the Density Bonus.

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 ten percent (10%) of the number of residential units of the proposed Residential Development Project seeking the Density Bonus.

3. The transferred land is characterized by the following:

(a) It is at least one acre in size, or of sufficient size to permit development of at least forty (40) units; and

(b) It has the appropriate General Plan designation and is appropriately zoned for affordable housing; and

(c) It is or will be served by adequate public facilities and infrastructure; and

(d) It shall have appropriate zoning and development standards to make the development of the Affordable Housing Units feasible; and

(e) No later than the date of approval of the final subdivision map, parcel map, or of the Residential Development Project seeking the Density Bonus, 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 City may subject the proposed Residential Development Project to subsequent design review, if the design is not reviewed by the City prior to the time of transfer.

4. The transferred land and the Affordable Housing Units shall be subject to a deed restriction, which shall be recorded on the property at the time of dedication, ensuring continued affordability of the units for a term of at least thirty (30) years.

5. The land is transferred to the City or to another housing developer approved by the City.

6. The transferred land shall be within the boundary of the proposed Residential Development Project or, if the City agrees, within one-quarter mile of the boundary of the proposed Residential Development Project.

B. When an applicant donates land to the City, the applicant shall be entitled to a fifteen percent (15%) increase above the otherwise maximum allowable residential density under the applicable Zoning ordinance and Land Use and Transportation Element of the Oakland General Plan for the entire Residential Development Project, as indicated in Table 17.107.04.

Table 17.107.04: Land Donation

<u>Percentage Very Low income units</u>	<u>Percentage Density Bonus</u>
<u>10</u>	<u>15</u>
<u>11</u>	<u>16</u>
<u>12</u>	<u>17</u>
<u>13</u>	<u>18</u>
<u>14</u>	<u>19</u>
<u>15</u>	<u>20</u>
<u>16</u>	<u>21</u>
<u>17</u>	<u>22</u>
<u>18</u>	<u>23</u>
<u>19</u>	<u>24</u>
<u>20</u>	<u>25</u>
<u>21</u>	<u>26</u>
<u>22</u>	<u>27</u>
<u>23</u>	<u>28</u>
<u>24</u>	<u>29</u>
<u>25</u>	<u>30</u>
<u>26</u>	<u>31</u>
<u>27</u>	<u>32</u>
<u>28</u>	<u>33</u>
<u>29</u>	<u>34</u>
<u>30</u>	<u>35</u>

Source: California Government Code, Section 65915 (g) (1)

C. This Density Bonus shall be in addition to any Density Bonus mandated by Section 17.107.040; up to a maximum combined density increase of thirty-five percent (35%), if the applicant seeks both the increase required under this Section and the increase under Section 17.107.040.

17.107.060 Child Care Facilities

A. **Residential development.** When an applicant proposes to construct a Residential Development Project that conforms to the requirements of Section 17.107.040 (i.e. a Density Bonus), and includes a Child Care Facility that will be located on the premises of, as part of, or adjacent to, the Residential Development Project, the City shall grant either of the following:

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

~~2. shall deny that incentive only~~ An additional concession or incentive designated by the City that would contribute significantly to the economic feasibility of the construction of the Child Care Facility.

B. **Requirements.** The City shall require, as a condition of approving the Residential Development Project, that the following occur:

1. 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 Affordable Housing Units are required to remain affordable pursuant to this Article; and

2. Of the children who attend the Child Care Facility, the children of Very Low Income Households, Lower Income Households, Moderate Income Households shall equal a percentage that is equal to, or greater than, the percentage of Dwelling Units that are made affordable to Very Low Income Households, Lower Income Households, or families of Moderate Income Households pursuant to Section 17.107.040.

C. Commercial or industrial development. California Government Code (section 65917.5) permits a Density Bonus when a child care facility is installed, operated and maintained in a commercial or industrial project, over the otherwise maximum allowable density permitted under the applicable Zoning ordinance and land use element of the Oakland General Plan. The bonus shall be calculated as follows:

1. A maximum of five (5) square feet of floor area for each one square foot of floor area contained in the child care facility for existing structures.

2. A maximum of ten (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.

D. Notwithstanding any requirement of this Section, the City shall not be required to provide a Density Bonus or concession for a Child Care Facility if it finds, based upon substantial evidence, that the community has adequate child care facilities. Further, the provisions of California Government Code Section 65917.5 (subsections c-e) shall apply in Oakland.

17.117.070 Condominium Conversions

A. Residential Development Project involving the conversion of existing apartments into condominiums, pursuant to Title 16 Oakland Subdivision Regulations, that includes at least thirty-three percent (33%) of its total units restricted to moderate income households for thirty (30) years, or fifteen percent (15%) of its total units affordable to Lower Income households for thirty (30) years, and agrees to pay for the administrative costs incurred by the City related to process the application and monitor the future status of the Affordable Housing Units, the City shall either:

(i) grant a Density Bonus, increasing the number of residential units by twenty-five percent (25%) over the number of apartments, to be provided within the existing structure or structures proposed for conversion; or

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

B. An applicant for approval to convert apartments to a condominium project may submit to the City a preliminary proposal ("Pre-Application") pursuant to this section prior to the submittal of any formal requests for subdivision map approvals. The City shall, within ninety (90) days of receipt of a written proposal, notify the applicant in writing, ~~that~~ of the manner in which it will comply with this section.

C. An applicant shall be ineligible for a Condominium Conversion Density Bonus or other incentives under this Section if the apartments proposed for conversion constitute a Residential Development Project for which a Density Bonus or other incentives were previously granted under this Chapter.

17.107.080 Density Incentives or Concessions

A density incentive or concession is a benefit offered by the city that results in direct cost reductions and facilitates construction of eligible projects as defined by the provisions of this Chapter and shall mean any of the following:

A. The reduction in development standards in order to allow utilization of a density bonus, including but not limited to:

1. Required off-street parking;
2. Required setbacks;
3. Maximum building height;
4. Required open space;
5. Maximum floor-area ratio;
6. Minimum lot area.
7. Minimum courtyards.

B. Approval of a mix of allowed uses 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.

C. Other regulatory incentives or concessions proposed by the developer, or the City, that would result in identifiable, financially sufficient, and actual cost reductions, as demonstrated by the developer.

17.107.090 Permitted Number of Density Incentives or Concessions

A. Number of Incentives or Concessions. Except as otherwise provided by Section 17.107.100, when an applicant proposes to construct a Residential Development Project that conforms to the requirements of Section 17.107.040, the applicant shall receive the following number of incentives or concessions, as summarized in Table 17.107.05 below:

1. One incentive or concession for projects that include at least ten percent (10%) of the total units for lower income households, at least five percent (5%) for very low income households, or at least ten percent (10%) for persons and families of moderate income in a common interest development.

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

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

Table 17.107.05: Number of Incentives or Concessions

	<u>Required Percentage of Units Restricted for Very Low Income Households</u>	<u>Required Percentage of Units Restricted for Low Income Households</u>	<u>Required Percentage of Units Restricted for Moderate Income Households (for sale)</u>	<u>Notes</u>
<u>One Incentive</u>	<u>5</u>	<u>10</u>	<u>10</u>	<u>1</u>
<u>Two Incentives</u>	<u>10</u>	<u>20</u>	<u>20</u>	<u>1</u>
<u>Three Incentives</u>	<u>15</u>	<u>30</u>	<u>30</u>	<u>1</u>

Source: California Government Code Section 65915 (d) (2) (A)

Notes:

1. Excludes density bonus units

17.107.095 Waiver of Development Standards.

A. Per California Government Code 65915 (e) (1), in no case may a city apply any development standard that will have the effect of physically precluding the construction of a development meeting the category criteria in Section 17.107.040(A) at the densities or with the concessions or incentives permitted by this Chapter. An applicant may submit a proposal for the waiver or reduction of any development standard that will have the effect of physically precluding the construction of a development meeting the category criteria in Section 17.107.040(A) at the densities, or with the concessions or incentives permitted under this Chapter. Nothing in this Section shall be interpreted to require the City to waive or reduce development standards if the waiver or reduction results in any of the following:

1. a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of California Government Code Section 65589.5, upon public health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact;

2. an adverse impact on any real property that is listed in the California Register of Historical Resources and/or;

3. the waiver or reduction that would be contrary to state or federal law.

B. The granting of an incentive or concession shall not be interpreted, in and of itself, to require a General Plan amendment, Zoning change or other discretionary approval. A proposal for the waiver or reduction of development standards pursuant to this Section shall neither reduce, nor increase, the number of incentives or concessions to which the applicant is entitled.

17.107.100 Findings for denial of Incentives and Concessions.

An applicant for a density bonus may submit to the City a proposal for the specific incentives or concessions that the applicant requests; the City shall grant the concession or incentive requested by the applicant, unless the City makes a written finding, based upon substantial evidence, such as financial data, any 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 California Health and Safety Code, or for rents for the targeted units to be set as specified in Section 17.107.110.

B. The concession or incentive would have a specific adverse impact (as defined in Section 65589.5 (d) (2) of the California Government Code), 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.

C. The concession or that the applicant has received financial assistance from the city or other entity that would offset the need for an incentive, would be contrary to state or federal law.

(Ord. No. 13172, § 3(Exh. A), 7-2-2013; Ord. 12501 § 75, 2003; Ord. 12331 § 2 (part), 2001)

17.107.045110 Condition required for continued affordability.

All approvals for any affordable housing applications that include a density bonus and/or density incentive(s) or concession(s) shall be conditioned to ensure the continued affordability of the specified units for a period of not less than thirty (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, and to restrict occupancy only to residents who satisfy the affordability requirement for the specified unit(s). 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. Owner-occupied units shall be available at an affordable housing cost as defined in Section 50052.5 of the Health and Safety Code. Prior to issuance of a building permit for the affordable housing project, the applicant shall record as a deed restriction in the Alameda County Recorder's Recorder's Office, notice of this requirement, in a form prescribed by the Director of City Planning.

(Ord. 12501 § 76, 2003)

17.107.050111 Eligibility requirements.

Only those households meeting the standards for very low income, low income, moderate income or senior citizens shall be eligible to occupy target living units.

(Ord. 12872 § 4 (part), 2008; Ord. 12331 § 2 (part), 2001)

17.107.060112 Density bonus resale agreement.

All buyers of for-sale target living units shall enter into a density bonus resale agreement with the city prior to purchasing the unit or property. The resale agreement shall specify that the title to the subject property or unit may not be transferred without prior approval of the city.

(Ord. 12872 § 4 (part), 2008; Ord. 12331 § 2 (part), 2001)

17.107.070113 Management and monitoring.

Rental target living units shall be managed/operated by the developer or agent. Each developer of rental target living units shall submit an annual report to the city identifying which units are target living units, the monthly rent, vacancy information, monthly income for tenants of each target rental living unit throughout the prior year, and other information required by the city, while ensuring the privacy of the tenant.

(Ord. 12872 § 4 (part), 2008; Ord. 12331 § 2 (part), 2001)

17.107.080114 Administrative fee for target living units.

The city shall establish an administrative fee for city monitoring of target living units, the amount to be established by the City Council, for target living units, to be paid prior to the issuance of building permit(s).

(Ord. 12872 § 4 (part), 2008; Ord. 12331 § 2 (part), 2001)

17.107.090 City's right to deny a project.

Nothing in this ~~chapter~~ Chapter shall limit the ~~city's~~ city's right to deny an affordable housing or senior citizen housing project if, based on substantial evidence, the decision-making body can make any one of the findings set forth in Government Code Section 65589.5(d) presented below:

- (1) (Ord. 12331 § 2 (part), 2004) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the project. The share of the regional housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to Section 65400. In the case of an emergency shelter, the jurisdiction shall have met or exceeded the need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.
- (2) The development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.
- (3) The denial of the project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible.
- (4) The development project or emergency shelter is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.
- (5) The development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article.

17.107.120 Parking ratio reductions mandated by California Government Code

A. Per California Government Code, upon the request of the developer, no city shall require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the category criteria in Section 17.107.040(A) that exceeds the following ratios:

1. Zero to one bedroom: **one onsite parking space.**

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

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

B. 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 Section, a development may provide "onsite parking" through tandem parking or uncovered parking, but not through on street parking.

C. This provision shall apply to a development that meets the requirements of Section 17.107.040, but only at the request of the applicant. An applicant may request parking incentives or concessions beyond those provided in Section 17.107.120, pursuant to Section 17.107.080.

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