

  
CITY ATTORNEY'S OFFICE

# OAKLAND CITY COUNCIL

**ORDINANCE NO. \_\_\_\_\_ C.M.S.**

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**AN ORDINANCE, AS RECOMMENDED BY THE 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, which 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-, low-, or moderate-income households, or who propose to construct senior housing or housing available for transitional foster youth, disabled veterans, homeless persons, or lower income students; and

**WHEREAS**, on April 22, 2014, the Oakland City Council adopted Ordinance No. 13224 C.M.S., amending the City's Planning Code to update Chapter 17.107 Density Bonus and Incentive Procedure in order to: (1) comply with new statutory requirements at the time; and (2) to fulfill the requirement of the City's 2007 – 2014 Housing Element to update the Density Bonus Ordinance before the current 2015 – 2023 Housing Element was adopted on December 9, 2014; and

**WHEREAS**, on January 1, 2021, Assembly Bill (AB) 2345 went into effect with several changes to the State Density Bonus Law, including a number of density bonus standards and limitations; and several other changes to the State Density Bonus Law have been enacted as of last adoption in 2014; and

**WHEREAS**, the proposed code amendments will align the City's Planning Code with State Law pursuant to Government Code Section 65915(a); and

**WHEREAS**, on June 16, 2021, at a duly noticed public hearing, the Planning Commission recommended that the City Council adopt amendments to the Planning Code to update Chapter 17.107, Density Bonus and Incentive Procedure; and

**WHEREAS**, the City Council held a duly noticed public hearing on November 2, 2021, to consider the proposal; and

**WHEREAS**, the proposed code amendments rely on the previous set of applicable California Environmental Quality Act (CEQA) documents including the certified Environmental Impact Report (EIR) for the 2007 – 2014 Housing Element (2010) and the CEQA Addendum prepared for the 2015 – 2023 Oakland Housing Element (2014) (“Previous CEQA Documents”) and would not result in any significant effect that has not already been analyzed in the Previous CEQA Documents; and

**WHEREAS**, 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); and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** The City Council (“Council”) finds and determines the foregoing recitals to be true and correct and an integral part of the Council’s decision, and hereby adopts such recitals as findings.

**SECTION 2. Planning Code Amendments.** Title 17 of the Oakland Municipal Code is hereby amended pursuant to *Exhibit A* attached hereto, which is incorporated by reference herein. Additions to Title 17 of the Oakland Municipal Code are shown as underline and omissions are shown as ~~strikethrough~~.

**SECTION 3. California Environmental Quality Act.** The Council finds and determines the adoption of this Ordinance complies with CEQA and relies on the Previous CEQA Documents. No further environmental review is required under Public Resources Code section 21166 and CEQA Guidelines sections 15162 or 15163. Further, the Council finds the adoption of this

Ordinance is exempt, pursuant to CEQA Guidelines sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (general rule, no significant effect on the environment). Each of these provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance.

**SECTION 4. Direction to Environmental Review Officer to File NOD.** 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 5. Effective Date.** This Ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

**SECTION 6. No Conflict with State and Federal Law.** Nothing in this Ordinance shall be interpreted or applied to create any requirement, power, or duty in conflict with any federal or state law.

**SECTION 7. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

**SECTION 8. Preservation of Public, Health, Safety and Welfare.** This Ordinance serves the public interest and is necessary to protect the health, safety and/or general welfare of the citizens of Oakland, and is enacted pursuant to the City of Oakland's general police powers, Section 106 of the Charter of the City of Oakland, and Article XI, Sections 5 and 7 of the California Constitution.

**SECTION 9. City Administrator Authorization to Make Non-Substantive Changes.**

The Council hereby authorizes the City Administrator or designee to make non-substantive, technical conforming changes (essentially correction of typographical and clerical errors), prior to formal publication of the amendments in the Oakland Planning Code.

3112724v2

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND  
PRESIDENT FORTUNATO BAS

NOES –  
ABSENT –  
ABSTENTION –

ATTEST: \_\_\_\_\_  
ASHA REED  
City Clerk and Clerk of the Council of the  
City of Oakland, California

Date of Attestation: \_\_\_\_\_

# EXHIBIT A: PROPOSED AMENDMENTS TO THE PLANNING CODE

Oakland, California, Planning Code

## PROPOSED PLANNING CODE AMENDMENTS

*The following are the Planning Code amendments proposed by staff. Deletions are in ~~strike out~~ and additions are underlined.*

### Chapter 17.107

## DENSITY BONUS AND INCENTIVE PROCEDURE AND REGULATIONS

### Sections:

17.107.010 Title, purpose, and applicability.

17.107.020 Definitions.

17.107.030 Application.

17.107.040 - Density bonus.

17.107.045 – Replacement units.

17.107.050 - 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 - Findings for denial of incentives ~~and concessions~~.

17.107.105 – Quality of target living units.

17.107.110 - ~~Condition required for continued affordability~~ Continued affordability requirements.

17.107.111 - Eligibility requirements.

17.107.112 - Density bonus ~~resale~~ equity share agreement.

17.107.113 - Management and monitoring.

17.107.114 - Administrative fee for target living units.

17.107.115 - 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 shall be known as the Density Bonus and Incentive Procedure and Regulations. The purpose of these provisions is to encourage the construction of affordable housing, senior housing, and the provision of child care facilities, ~~and other incentives and concessions~~, following California Government Code, Sections 65915-65918 (formerly known as the "density bonus") ("Density Bonuses and Other Incentives").

The Density Bonus and Incentive Procedure and ~~is~~ Regulations are intended to comply with provisions of the California Government Code ~~Section~~ Sections 65915-65918 (inclusive), which provides that a local government shall grant a density bonus ~~and~~, incentives or concessions, ~~or~~

~~financially equivalent incentive(s), waivers or reductions of development standards, and/or reduced parking ratios,~~ to a developer of a residential housing development constructing a specified percentage of housing for moderate income households, low income households, very low income households, senior citizens, transitional foster youth, disabled veterans, homeless persons, or lower income students; or providing child care facilities. ~~This procedure~~ These procedures and regulations shall apply to all proposals, citywide, to create five (5) or more living units, including in a mixed-use development, 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. 13357, § 3(Exh. A), 2-16-2016; Ord. No. 13224, § 3(Exh. A), 4-22-2014)

### 17.107.020 - Definitions.

- A. — Affordable Housing. "Affordable housing" shall mean that the relevant housing is available ~~on terms such that the~~ and restricted to occupancy at an affordable housing costs are less than a specified percentage of the gross cost or an affordable rent to moderate income of households within a particular, low 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, households, or very low income households.
- B. Affordable Housing Cost. "Affordable housing costs include rent and a reasonable allowance for utilities. For a for-sale unit, cost" shall have the same meaning as provided in Section 50052.5 of the California Health and Safety Code and its implementing regulations. Affordable housing costs include cost includes loan principal, loan interest, property and mortgage insurance, property taxes, home owners' association dues and a reasonable allowance for utilities.
- ~~B. — C. —~~ Affordable Housing Cost. "Rent. "Affordable housing cost"rent" shall ~~mean~~ have the allowable percentage of gross household income a household spends on housing costs for a given income group, ~~same meaning~~ 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%) provided in Section 50053 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 California Health and Safety Code and its implementing regulations. Affordable rent includes rent and a reasonable allowance for utilities.
  - ~~D. —~~ 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. "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~~Chapter, shall mean a child day care facility other than a family day care home, including but not limited to, infant centers, preschools, extended day care facilities, and school-age child care centers.

~~"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.—Concession or Incentive. "Concession" 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.—E. Concession. "Concession" shall have the same meaning as Incentive, as defined below.~~

~~F. Density Bonus. "Density bonus" shall mean a maximum thirty five percent (35%) has the same meaning as provided in California Government Code Section 65915 and shall mean a density increase over the otherwise maximum allowable residential density 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) as of the date a density bonus application is received, or, if elected by the developer, a lesser percentage of density increase, including, but not limited to, no increase in density. The density bonus units shall not be included when determining the number of target living units that must be affordable to the relevant income group. For purposes of this definition, unless otherwise specified in the specific plan or its implementing zoning regulations, where a specific plan includes a separate provision that allows for a density bonus, including through a Conditional Use Permit, a developer cannot receive a density bonus under both this Chapter and under the specific plan.~~

~~F.—G. Developer. "Developer" shall mean the owner or owner's authorized agent, or other person, including a lessee, having the right under the Oakland zoning ordinance, to make an application for development approvals for the development, or redevelopment, of a commercial or industrial housing development project.~~

~~G.H. Development Standard. "Development standard" shall mean a site or construction condition, including, but not limited to, a height or story 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. ~~Economically Feasible. "Economically feasible" shall mean that a housing development can be built with a reasonable rate of return. The housing developer's financial ability to build the project shall not be a factor.~~
- I. I. Incentive. "Incentive" has the same meaning as provided in California Government Code Section 65915 and shall mean a reduction in site development standards or a modification to a requirement of the Oakland Planning Code so long as the requested reduction or modification both exceeds the minimum building standards approved by the California Building Standards Commission that would otherwise be required and results in identifiable and actual cost reductions to provide for affordable rent or affordable housing costs. Incentives do not include the provision of direct financial incentives for the housing development, including the provision of City-owned land or the waiver of fees or dedication requirements, the modification of any City of Oakland Standard Conditions of Approval, or modification of any mitigation measures required by the California Environmental Quality Act.
- J. Major Transit Stop. "Major transit stop" shall have the same meaning as defined in subdivision (b) of Section 21155 of the California Public Resources Code.
- K. Maximum Allowable Residential Density. "Maximum allowable residential density" has the same meaning as provided in California Government Code Section 65915 and shall mean the maximum density allowed in the zoning district applicable to the site proposed for the residential housing development as specified under the zoning ordinance, and the Land Use Oakland Planning Code; or, if a range of density is permitted, the maximum allowable density allowed in the zoning district applicable to the site proposed for the residential housing development as specified under the Oakland Planning Code. If the density allowed in the applicable zoning district is inconsistent with the density allowed in the applicable land use designation under 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.
- JL. Moderate, Low and Very Low Income Households. "Moderate, low and very low income households" 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 as defined as greater than eighty percent (80%) to one hundred twenty percent (120%) of median income (see in Section 50093 of the California Health and Safety Code); and its implementing regulations;
  2. "Low income" is defined as greater than fifty percent (50%) to eighty percent (80%) of median income; (see as defined in Section 50079.5 of the California Health and Safety Code); and its implementing regulations;
  3. "Very low income" is as defined as less than fifty percent (50%) of median income (see in Section 50105 of the California Health and Safety Code). and its implementing regulations.



~~K.~~ M. Residential Housing Development. "Residential housing development" ~~shall mean,~~ for the purposes of this Chapter, has the same meaning as "housing development" as provided in California Government Code Section 65915 and shall mean a project involving the construction of five (5) or more residential dwelling units, including mixed-use developments, 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).

~~L.~~ N. Senior Citizen Housing Development. "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.~~ O. Target Living Unit. "Target living unit" shall mean a ~~living unit~~ dwelling unit within a residential housing development that will be offered for rent or sale exclusively to and which shall be affordable to the designated income group or senior citizens-other category listed in Section 17.107.040 and which shall be available at an affordable rent or affordable housing cost.

P. Total Base Dwelling Units. "Total base dwelling units" shall mean the total number of residential units proposed by the developer, including target living units but not including any dwelling units added by a density bonus, which shall not exceed the maximum allowable residential density.

(Ord. No. 13357, § 3(Exh. A), 2-16-2016; Ord. No. 13224, § 3(Exh. A), 4-22-2014)

### **17.107.030 – Application.**

~~AA.~~ A developer seeking a density bonus shall file an application shall be filed with the Oakland Planning and Zoning Division Bureau for a density bonus and/or incentive(s), concession(s) and waiver(s);, using the application shall be made form prescribed by the owner Director of Planning. An application for a density bonus and/or related incentive(s) and waiver(s) shall be submitted concurrently with the affected property, or his or her authorized agent. application for a planning entitlement for a housing development and shall be processed and considered as part of the same.

B. The density bonus 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 Director of Planning Department to permit the review of the proposal in the context of the required findings.

~~An application for a 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:~~

~~AC. No density bonus application shall be determined to be complete until the following have been provided:~~

~~1. A written statement specifying the total base dwelling units, target living units, desired density increase bonus, incentive(s) and/or waiver(s) requested, and the type, location, size and construction scheduling of all living units;~~

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

~~C. Information demonstrating that any 2. Payment of all fees for the application as set forth in the Master Fee Schedule;~~

~~3. If an incentive is requested incentive(s), concession(s) and/or waiver(s) are necessary to make a narrative explanation as to the units affordable, or available to seniors. Information could include: calculations of affordability, evidence that incentives and concessions provide "actual cost reduction achieved, stated in a dollar amount, and how the cost reduction would result in identifiable, financially sufficient, and actual cost reductions," and economic to provide for affordable rent or affordable housing costs for the target living units;~~

~~4. If a waiver is requested, a narrative and diagrammatic explanation demonstrating that the application of any development standard for which a waiver is requested would have the effect of physically precluding the construction of the development at the density and with the incentives permitted by this Chapter. Information should include narrative descriptions, analyses, and architectural diagrams that clearly articulate how many units would be lost due to show that any the application of the specific development standard(s). Where more than one waiver is sought, the application should clearly demonstrate why the waivers are required to make the project economically feasible; cumulatively necessary to prevent a development standard from physically precluding the construction of the development.~~

~~D. 5. If an incentive or waiver is requested, submittal of information sufficient to allow the City to assess whether any of the requested incentive(s) or waiver(s) will have a specific adverse impact on any real property that is listed in the California Register of Historical Resources, or if there is such an impact, an analysis of potential methods to satisfactorily mitigate or avoid the specific adverse impact without rendering the residential housing development unaffordable to moderate-, low-, and very low-income households, and the feasibility of such methods.~~

~~6. If the application is for approval of mixed use where the mix of uses would not otherwise be allowed, evidence that the proposed non-residential use will reduce the cost of the residential housing development and that the non-residential use is compatible with the proposed residential housing development and other existing or planned development in the area where the proposed residential housing development will be located.~~

~~7. Information determined necessary to demonstrate compliance with the replacement unit provisions described in section 17.107.045 and Government Code section 65915(c)(3), including a narrative description of any prior residential use of the property and supporting documentation.~~

8. 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.

(Ord. No. 13224, § 3(Exh. A), 4-22-2014)

#### **17.107.040 - Density bonus.**

- A. ~~The City shall grant a one density bonus, the amount of which shall not exceeding thirty-five percent (35%), and incentive(s) or concession(s) described exceed the amounts specified in the tables below, and, if requested, incentives in accordance with Section 17.107.080, waivers in accordance with Section 17.107.095, and parking ratio reductions in accordance with Section 17.107.120, when an applicant for a developer agrees to construct a residential housing development or a senior housing development seeks, and agrees to construct, with~~ at least any one of the following categories:
1. Category 1 - Ten percent (10%) of the total base dwelling units of a residential housing development for lower income households are made available as affordable housing for low income households; or
  2. Category 2 - Five percent (5%) of the total base dwelling units of a residential housing development are made available as affordable housing for very low income households; or
  3. Category 3 - A senior citizen housing development; or
  4. Category 4 - Ten percent (10%) of the total base dwelling units in a common interest development as defined in Section 1351 of the California Civil Code, for of a residential housing development are sold at affordable housing cost to persons and families of a low or moderate income, provided that all units in the development are offered to the public for purchase- and not as rental units; or
  5. Category 5 - Ten percent (10%) of the total base dwelling units of a residential housing development are made available as affordable housing for transitional foster use, as defined in Section 66025.9 of the California Education Code, disabled veterans, as defined in Section 18541 of the California Government Code, or homeless persons, as defined in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.). The units described in this subparagraph shall be provided at the same affordability level as very low income units; or
  6. Category 6 - Twenty percent (20%) of the total base dwelling units are made available as affordable housing for lower income students in a student housing development that meets all of the requirements contained in subdivision (b)(1)(F) of California Government Code Section 65915; or
  7. Category 7 - One hundred percent (100%) of all dwelling units, including total base dwelling units and density bonus units but exclusive of a manager's unit or units, of a residential housing development are made available as affordable housing for lower income households, except that up to twenty percent (20%) of the dwelling units, including total based dwelling units and density bonus units may be made available for moderate income households.

- B. For residential housing ~~developments meeting category~~ 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

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
<u>16</u>	<u>29</u>
17	30.5
18	32
19	33.5
20	35
<u>21</u>	<u>38.75</u>
<u>22</u>	<u>42.5</u>
<u>23</u>	<u>46.75</u>
<u>24</u>	<u>50</u>

Source: California Government Code, Section 65915(f)(1).

- C. For residential housing ~~developments meeting category~~ Category 2 in Subsection 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

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
<u>12</u>	<u>38.75</u>
<u>13</u>	<u>42.5</u>
<u>14</u>	<u>46.25</u>
<u>15</u>	<u>50</u>

Source: California Government Code, Section 65915(f)(2).

- D. For senior citizen housing developments meeting ~~category~~ Category 3 in Subsection 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~~ Any density bonus granted under this Chapter 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 Section 17.106.060.
- E. For ~~common interest~~ residential housing developments meeting ~~the category~~ Category 4 in Subsection A. above, the density bonus shall be calculated as indicated in Table 17.107.03.

Table 17.107.03: Density Bonus for ~~Common Interest~~ Moderate-Income For-Sale Developments

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
<u>41</u>	<u>38.75</u>
<u>42</u>	<u>42.5</u>
<u>43</u>	<u>46.25</u>
<u>44</u>	<u>50</u>

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

- F. — For transitional housing developments meeting Category 5 in Subsection A. above, the density bonus shall be twenty percent (20%) of the number of units of the type giving rise to a density bonus under Category 5.
- G. For student housing developments meeting Category 6 in Subsection A. above, the density bonus shall be thirty-five percent (35%) of the number of total student housing units.
- H. For housing developments meeting Category 7 in Subsection A. above, the following shall apply:
1. Except as otherwise provided in Subsection H.2. below, the density bonus shall be eighty percent (80%) of the number of units for lower income households.

2. If the residential housing development is located within one-half mile of a major transit stop, the developer may seek a waiver requesting that no maximum controls on density apply and shall also receive a height increase of up to three additional stories or 33 feet. A qualifying residential housing development seeking a waiver from any maximum controls on density shall not be eligible for, and shall not receive, any additional waivers.

3. Rents for all dwelling units in housing developments meeting Category 7, including the density bonus units, shall be set such that the rent for at least twenty percent (20%) of the dwelling units are set at an affordable rent, as defined in Section 50053 of the Health and Safety Code, and the rent for the remaining units in the housing development are set at an amount consistent with the maximum rent levels for a housing development that receives an allocation of state or federal low-income housing tax credits from the California Tax Credit Allocation Committee.

I. The applicant/developer shall elect whether the density bonus shall be awarded on the basis of Category 1, 2, 3, 4, 5, 6, or 7 in Subsection A. above. The applicant/developer may elect to accept a lesser percentage of density bonus, including no increase in density. 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 living units that must be affordable to the relevant income group.

~~G. The maximum density bonus available in Oakland is thirty five percent (35%).~~

J. Determination of the number of target living units required to be included in an eligible residential housing development and the number of density bonus units shall be calculated as follows:

1. Prior to submission of a density bonus application, the developer shall review the applicable zoning standards in the Oakland Planning Code and the instructions included on the supplemental application for density bonus to determine the maximum allowable residential density for the site proposed for the residential housing development.

2. The developer shall then provide information on the proposed total base dwelling units and the category in Subsection A. above under which the developer proposes for the density bonus to be awarded. The developer shall state how many of the proposed total base dwelling units will meet the requirements of the category selected.

3. The developer shall then provide information regarding any dwelling units currently existing at the site proposed for the residential housing development as determined by staff as necessary to ensure no replacement units must be included prior to eligibility for a density bonus and related incentive(s) and waiver(s), as described further in Section 17.107.045.

4. The developer shall then calculate the density bonus for which its proposed residential housing development is eligible by multiplying the percentage of bonus units as described in Subsections B, C, D, E, G, and H above by the proposed total base dwelling units, rounding up the product. For Category 5, the percentage of bonus units shall be multiplied by the number of the type of units giving rise to the density bonus only, as described in Subsection F.

5. The developer shall then state whether it elects to include a lesser number of density bonus units in the proposed residential housing development, including the possibility of no density bonus units.

(Ord. No. 13224, § 3(Exh. A), 4-22-2014)

**17.107.045 – Replacement units.**

A. A developer shall be ineligible for a density bonus or any other incentives or waivers if the residential housing development is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control; or occupied by lower or very low income households.

B. Notwithstanding Subsection A. above, a developer shall remain eligible for a density bonus and related incentive(s) and waiver(s) if the conditions described in Subsection A. apply, the proposed residential housing development replaces those units, and either of the following applies:

1. The proposed residential housing development, inclusive of the units replaced pursuant to this section, contains affordable units at the percentages set forth in Section 17.107.040.
2. Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.

C. For purposes of this section, “replace” shall mean either of the following:

1. If any dwelling units described in Subsection A. are occupied on the date of application, the proposed residential housing development shall provide at least the same number of units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy. If the income category of the household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied the units in the same proportion of lower income renter households to all renter households within the City of Oakland as determined by the most recently available data from the United States Department of Housing and Urban Development's (“HUD's”) Comprehensive Housing Affordability Strategy database. For unoccupied dwelling units described in Subsection A. in a development with occupied units, the proposed residential housing development shall provide units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as the last household in occupancy. If the income category of the last household in occupancy is not known, it shall rebuttable presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction as determined by the most recently available data from HUD's Comprehensive Housing Affordability Strategy database.



2. If all dwelling units described in Subsection A. have been vacated or demolished within the five-year period preceding the date of application, the proposed residential housing development shall provide at least the same number of units of equivalent size as existed at the highpoint of those units in the five-year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time. If the income category of the household in occupancy at the highpoint is not known, it shall be rebuttably presumed that low-income and very low income renter households occupied the units in the same proportion of low-income and very low income renter households to all renter households within the City of Oakland as determined by the most recently available data from HUD's Comprehensive Housing Affordability Strategy database.

3. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for 55 years. If the proposed development is for-sale units, the units replaced shall be subject to the provisions of paragraph (2) of subsection (c) of Government Code Section 65915.

4. For purposes of this Section, "equivalent size" means that the replacement units contain at least the same total number of bedrooms and bathrooms as the units being replaced.

D. For any dwelling unit described in Subsection A that the developer proposes to replace, the developer shall comply with all applicable requirements of Chapter 8.22, Residential Rent Adjustments and Evictions, including but not limited to relocation assistance.

#### **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~~ developer 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 housing 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 housing 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 residential development application of the residential housing 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 housing development project to subsequent design review, if the design is not reviewed by the City ~~prior to~~before 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)~~fifty-five (55) 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 housing development project or, if the City agrees, within one-quarter mile of the boundary of the proposed residential housing development project.
  7. A proposed source of funding for the construction of units affordable to very low income households shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.
- B. When ~~an applicant~~a developer donates land to the City, the ~~applicant~~developer shall be entitled to a ~~fifteen percent (15%)~~an 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~~for the entire Residential Development Project residential housing development, as indicated in Table 17.107.04.

Table 17.107.04: Land Donation

Percentage Very Low Income Units	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25

21	26
22	27
23	28
24	29
25	30
26	31
27	32
28	33
29	34
30	35

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~~ developer seeks both the increase required under this section and the increase under Section 17.107.040.

(Ord. No. 13357, § 3(Exh. A), 2-16-2016; Ord. No. 13224, § 3(Exh. A), 4-22-2014)

#### **17.107.060 - Child care facilities.**

- A. Residential Development. When an ~~applicant~~ developer proposes to construct a residential housing 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 housing 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. An additional ~~concession or incentive~~ designated approved 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 housing 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~~ density bonus when a child care facility is installed, operated and maintained in a commercial or industrial project, over the otherwise maximum allowable density or floor area ratio permitted under ~~the applicable Zoning ordinance and land use element of the Oakland General Plan. The~~ Oakland Planning Code and Land Use and Transportation Element of the Oakland General Plan. For purposes of this section only, “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. The density 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 or floor area 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~~ density or floor area bonus or ~~concession~~ incentive for a ~~Child Care Facility~~ 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.

(Ord. No. 13357, § 3(Exh. A), 2-16-2016; Ord. No. 13224, § 3(Exh. A), 4-22-2014)

#### **17.107.070 - 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:
1. 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
  2. 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 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.

(Ord. No. 13357, § 3(Exh. A), 2-16-2016; Ord. No. 13224, § 3(Exh. A), 4-22-2014)

### **17.107.080 - Density incentives ~~or concessions~~.**

A density incentive ~~or concession~~ is a benefit ~~offered~~ granted by the City that results in direct identifiable and actual cost reductions ~~and facilitates construction of eligible projects as defined by the provisions of this Chapter~~ necessary to provide for the reduced rents or sales prices for the target living units, and shall mean any of the following:

- A. The reduction in development standards ~~in order to allow utilization of a density bonus~~ that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 of Division 13 of the Health and Safety Code, including but not limited to:
1. Required off-street parking;
  2. Required setbacks;
  3. Maximum building height; and/or stories;
  4. Required open space;
  5. Maximum Floor-Area Ratio (FAR);
  6. Minimum lot area;
  7. Minimum courtyards.
- B. Approval of a mix of allowed uses in conjunction with the residential housing project development 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 residential housing project development and the existing or planned development in the area where the proposed residential housing project development 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 to provide for affordable rent or affordable housing cost, as demonstrated by the developer, but which shall not include any proposals for modification to the City's uniformly applied development standards imposed as Standard Conditions of Approval.

(Ord. No. 13357, § 3(Exh. A), 2-16-2016; Ord. No. 13224, § 3(Exh. A), 4-22-2014)

**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~~ a developer proposes to construct a residential housing development ~~project~~ that conforms to the requirements of Section 17.107.040, the ~~applicant~~ developer shall receive the following number of incentives ~~or concessions~~, as summarized in ~~Table 17.107.05~~ below:
1. One (1) 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.~~ development in which the units are for sale, or at least twenty percent (20%) of the total units for lower income students in a student housing development.
  2. Two (2) 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~~ in which the units are for sale.
  3. Three (3) incentives ~~or concessions~~ for projects that include at least thirty percent (30%) of the total units for lower income households, at least fifty 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~~ in which the units are for sale.

Table 17.107.05: Number of Incentives ~~or Concessions~~

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

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

**Notes:**

~~1. Excludes density bonus units.~~

4. Four (4) incentives for projects that meet the criteria of Category 7 in subsection A of Section 17.107.040.

(Ord. No. 13224, § 3(Exh. A), 4-22-2014)

### 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 Subsection 17.107.040.A. at the densities or with the ~~concessions or incentives~~ permitted by this ~~chapter~~. An applicant Chapter.
- B. A developer 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 Subsection 17.107.040.A. at the densities, or with the ~~concessions or incentives permitted under this chapter~~. incentives permitted, under this Chapter. The developer must include in their proposal an explanation of how that development standard has the effect of physically precluding the construction of the development, including schematics or drawings that illustrate the impact of the development standard taking into consideration the incentives already requested. Where more than one waiver is sought, the developer must clearly demonstrate why the waivers are cumulatively necessary to prevent a development standard from physically precluding the construction of the development. Nothing in this section shall be interpreted to require the City to waive or reduce development standards if the Director of Planning determines that the waiver or reduction does not physically preclude the construction of the development or 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, and 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; or
  3. The waiver or reduction that would be contrary to State or Federal law.
- B. The granting of ~~an incentive or concession~~ a waiver 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~~ developer is entitled.

(Ord. No. 13224, § 3(Exh. A), 4-22-2014)

### 17.107.100 - Findings for denial of incentives ~~and concessions~~.

~~An applicant for~~ A developer seeking a density bonus may submit to the City a proposal for the specific incentives ~~or concessions~~ that the ~~applicant~~ developer requests; the City shall grant the ~~concession or incentive~~ requested by the ~~applicant~~ developer, unless the City makes a written finding, based upon substantial evidence, ~~such as financial data,~~ of any of the following:

- A. The ~~concession or incentive~~ is ~~does not required~~ result in order identifiable and actual cost reductions to provide for ~~affordable housing costs, as defined in Section 50052.5 of~~

~~the California Health and Safety Code, or for reduced rents or sales prices for the targeted target living 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~~ incentive would be contrary to State or Federal law.

(Ord. No. 13224, § 3(Exh. A), 4-22-2014)

**17.107.105 – Quality of target living units.**

A. The floor area, number of bedrooms, and amenities (such as bathrooms, fixtures, appliances, location, and utilities) of the targeted living units shall be substantially equal in size and quality to those of the market-rate units.

B. Tenant households in the targeted living units shall have the same level of access to the residential housing development’s services and facilities as tenant households in the market-rate units of the residential housing development.

C. The targeted living units shall be evenly distributed throughout the residential housing development.

D. The targeted living units shall be constructed concurrent with or prior to the construction of market-rate units in each phase of the residential housing development. The City shall not issue final certificates of occupancy for more than fifty percent (50%) of the market-rate units in any phase of development until final certificates of occupancy are issued for all of the targeted living units in that phase of development.

**17.107.110 - ~~Condition required for continued affordability~~Continued affordability requirements.**

~~AA.~~ Where a developer proposes to provide target living units as rental units, 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 target living units that are part of the approvals for a period of not less than thirty (30) ~~thirty~~ fifty-five (55) years, or a longer period of time if required by the construction or mortgage financing assistance program mortgage insurance program, or rental subsidy program, 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 Office, notice of this requirement, in a form prescribed by



the Director of City Planning-), and their occupancy shall be restricted only to residents who satisfy the affordability requirements for the target living units. Prior to submittal of a construction-related permit, the developer shall enter into a regulatory agreement with the City, the terms of which shall be consistent with the City's model documents, as may be amended from time to time, and shall be reviewed and revised as appropriate by the Housing and Community Development Department (Housing Development Services Division). The regulatory agreement shall contain restrictive covenants to ensure the continued affordability of rental target dwelling units at the specified rent level for a period of not less than fifty-five (55) years and shall restrict the occupancy of those units only to residents who satisfy eligibility standards and the affordability requirements as approved for the approved residential housing development. The regulatory agreement shall be recorded with the Alameda County Recorder's Office as an encumbrance against the property, and a copy of the recorded agreement shall be provided to and retained by the City. The regulatory agreement shall not be subordinated in priority to any other lien interest in the property.

B. Where a developer proposes to provide target living units as ownership units, all approvals for any affordable housing applications that include a density bonus and/or incentive(s) shall be conditioned to ensure that the restricted target living units comply with the City of Oakland Affordable Homeownership Development Program Guidelines. Developer shall pay a one-time fee to determine the eligibility of each initial homebuyer. The developer shall provide for initial homebuyer education to apprise buyers of the long-term affordability restrictions applicable to the targeted dwelling units, and shall submit information regarding the initial homebuyer's income, household size, and other funding sources to the City of Oakland Housing and Community Development Department for review and approval. If a potential initial homebuyer does not meet the City of Oakland's underwriting requirements, then the proposed homebuyer will not be allowed to purchase the home, and the developer will be required to find a qualified substitute buyer. The developer shall also be required to submit to the City evidence that all initial homebuyers of for-sale target dwelling units have entered into a density bonus equity share agreement prior to purchasing the unit or property, and the grant deed conveying title to the unit to the initial homebuyer shall reference the equity share agreement. Prior to submittal of a construction-related permit, the developer shall enter into an affordability agreement with the City, the terms of which shall be consistent with the City's model documents, as may be amended from time to time, and shall be reviewed and revised as appropriate by the Housing and Community Development Department (Housing Development Services Division). The affordability agreement shall contain restrictive covenants to provide that target living units are offered at an affordable housing cost and that only households that meet the eligibility standards for the target living units and agree to execute an equity share agreement with the City are eligible to occupy the target living units. The affordability agreement shall be recorded with the Alameda County Recorder's Office as an encumbrance against the property, and a copy of the recorded agreement shall be provided to and retained by the City. The affordability agreement shall not be subordinated in priority to any other lien interest in the property.

C. The regulatory agreement or affordability agreement, as applicable, shall include at a minimum all of the following:

1. The total number of dwelling units approved for the residential housing development;
  2. The total number of target living units approved for the residential housing development;
  3. A description of the household income group to be accommodated by the restricted affordable units and the standard for determining the corresponding affordable rent or affordable housing cost;
- D. If the site proposed for the residential housing development has an approved condominium map and the developer chooses to rent the target living units at initial occupancy, the target living units cannot convert to ownership during the term of the regulatory agreement, even if the market-rate units in the residential housing development convert to ownership.

(Ord. No. 13224, § 3(Exh. A), 4-22-2014)

#### **17.107.111 - Eligibility requirements.**

Only those households meeting the standards for very low income, low income, moderate income or ~~senior citizens~~ other category listed in Section 17.107.040, as applicable to the proposed residential housing development, shall be eligible to occupy target living units.

(Ord. No. 13224, § 3(Exh. A), 4-22-2014)

#### **17.107.112 - Density bonus ~~resale~~ equity share agreement.**

All buyers of for-sale target living units shall enter into a density bonus ~~resale~~ equity share agreement with the City prior to purchasing the unit or property. The ~~resale~~ equity share agreement shall specify that the title to the subject property or unit may not be transferred without prior approval of the City. The owner of the for-sale target living unit may not rent out the unit, and the unit must remain owner occupied. Following City approval, the developer shall record the equity share agreement against the parcel containing the target dwelling unit, as well as a Deed of Trust and Request for Notice in the event of default, sale, or refinancing, with the Alameda County Recorder's Office, and shall provide a copy of the recorded equity share agreement to the City.

(Ord. No. 13224, § 3(Exh. A), 4-22-2014)

#### **17.107.113 - Management and monitoring.**

Rental target living units shall be managed/operated by the developer or developer's agent or successor. Each developer of rental target living units shall submit for review and approval by the Housing and Community Development Department and any other relevant City departments 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. No. 13224, § 3(Exh. A), 4-22-2014)

**17.107.114 - Administrative fee for target living units.**

The ~~City~~ developer shall ~~establish~~ pay to the Housing and Community Development Department an administrative fee annual monitoring fee pursuant to the Master Fee Schedule, as updated annually, for City monitoring of rental target living units, ~~the amount to be established by the City Council, for target living units, to.~~ The first payment of the monitoring fee shall be paid prior to the issuance of building permit(s).

(Ord. No. 13224, § 3(Exh. A), 4-22-2014)

**17.107.115 - City's right to deny a project.**

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

1. 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 housing 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~~ Oakland Planning Code or General Plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

3. The denial of the housing development 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 housing development project or emergency shelter is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two (2) 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 housing development project or emergency shelter is inconsistent with both the ~~jurisdiction's zoning ordinance~~ Oakland Planning Code 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.

(Ord. No. 13224, § 3(Exh. A), 4-22-2014)

### **17.107.120 - Parking ratio reductions mandated by California Government Code.**

A. — Per California Government Code, upon the request of the developer, ~~no city~~ the City shall not require a vehicular parking ratio, inclusive of ~~handicapped and guest~~ parking for persons with disability and guests, of a residential housing development meeting the category criteria in Subsection 17.107.040.A. that exceeds the following ratios:

1. Zero (0) to one bedroom: One (1) onsite parking space.
2. Two (2) to three (3) bedrooms: ~~Two (2)~~ One and one half (1 ½) onsite parking spaces.
3. Four (4) and more bedrooms: Two and one-half (2½) parking spaces.

~~B. If the total number of parking spaces required for a~~ B. If a residential housing development includes at least forty percent (40%) moderate income units, at least twenty percent (20%) low-income units, or at least eleven percent (11%) very low income units, and is located within one-half mile of a major transit stop, and there is unobstructed access to the major transit stop from the residential housing development, then, upon the request of the developer, the City shall not impose a vehicular parking ratio, inclusive of parking for persons with disability and guests, that exceeds 0.5 spaces per unit.

C. If a residential housing development consists solely of rental units, exclusive of a manager's unit or units, with an affordable rent to lower income families, then, upon the request of the developer, the City shall not impose a vehicular parking ratio, inclusive of parking for persons with disability and guests, that exceeds the following ratio:

1. If the residential housing development is located within one-half mile of a major transit stop, and there is unobstructed access to the major transit stop from the development, the City shall not impose vehicular parking standards.

2. If the development is a for-rent housing development for individuals who are 62 years of age or older that complies with Sections 51.2 and 51.3 of the Civil Code and has either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day, the City shall not impose vehicular parking standards.

3. If the development is a special needs housing development, as defined in Section 51312 of the California Health and Safety Code, or a supportive housing development, as defined in Section 50675.14 of the California Health and Safety Code, the City shall not impose vehicular parking standards. A development that is a special needs housing development shall

have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

D. If the total number of parking spaces required for a residential housing 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.

E. 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~~ developer. A developer may request parking incentives or concessions beyond those provided in Section 17.107.120, pursuant to Section 17.107.080. A request pursuant to this section shall neither reduce nor increase the number of incentives to which the developer is entitled.

(Ord. No. 13357, § 3(Exh. A), 2-16-2016; Ord. No. 13224, § 3(Exh. A), 4-22-2014)

## **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.