

ORDINANCE NO. 922 N.S.

AN ORDINANCE OF THE CITY OF EL PASO DE ROBLES
AMENDING TITLE 21 (ZONING) OF THE MUNICIPAL CODE
TO AMEND REGULATIONS FOR DENSITY BONUSES AND OTHER
INCENTIVES
(CODE AMENDMENT 05-001)

WHEREAS, California Government Code section 65915 et seq. requires local governments to grant density bonuses and “other incentives” for certain housing projects that are affordable to moderate-, low- and very low-income households; and

WHEREAS, Government Code section 65915 requires local governments to adopt an ordinance to implement state law; and

WHEREAS, in 2004 and 2005, the State Legislature adopted Senate Bills 1818 and 435, respectively, to amend Section 65915; and

WHEREAS, at its meeting of June 27, 2006, the Planning Commission took the following actions regarding this ordinance:

- a. Considered the facts and analysis, as presented in the staff report prepared for this ordinance;
- b. Conducted a public hearing to obtain public testimony on the proposed ordinance;
- c. Recommended that the City Council adopt the proposed ordinance; and

WHEREAS, at its meetings of July 18 and August 15, 2006, the City Council took the following actions regarding this ordinance:

- a. Considered the facts and analysis, as presented in the staff report prepared for this ordinance;
- b. Considered the recommendation of the Planning Commission regarding this ordinance;
- c. Conducted a public hearing to obtain public testimony on the proposed ordinance;
- d. Based on the information contained in the Initial Study, the City Council found that there would not be a significant impact on the environment as a result of the adoption of the ordinance and adopted a Negative Declaration in accordance with the California Environmental Quality Act;

NOW, THEREFORE, BE IT KNOWN that the Paso Robles City Council, based upon the substantial evidence presented at the above referenced public hearing, including oral and written staff reports, hereby finds as follows:

1. The above stated facts of this ordinance are true and correct.
2. As indicated in the staff report for Code Amendment 05-001, the ordinance is consistent with the City's General Plan.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Chapter 21.16L of the El Paso de Robles Municipal Code, which sets forth regulations for approval of density bonuses and other incentives is amended in its entirety to read as shown in Exhibit A of this Ordinance and incorporated herein by this reference.

SECTION 2: Publication. The City Clerk shall cause this ordinance to be published once within fifteen (15) days after its passage in a newspaper of general circulation, printed, published and circulated in the City in accordance with section 36933 of the Government Code.

SECTION 3. Severability. If any section, subsection, sentence, clause, or phrase of the Ordinance is, for any reason, found to be invalid or unconstitutional, such finding shall not affect the remaining portions of this Ordinance.

The City Council hereby declares that it would have passed this ordinance by section, subsection, sentence, clause, or phrase irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases are declared unconstitutional.

SECTION 4. Inconsistency. To the extent that the terms of provisions of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior City ordinance(s), motion, resolution, rule, or regulation governing the same subject matter thereof and such inconsistent and conflicting provisions of prior ordinances, motions, resolutions, rules, and regulations are hereby repealed.

SECTION 5. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the 31st day after its passage.

Introduced at regular meetings of the City Council held on July 18 and August 15, 2006, and passed and adopted by the City Council of the City of El Paso de Robles on the 29th day of August 2006 by the following roll call vote, to wit:

AYES: Nemeth, Picanco, Strong, and Mecham
NOES:
ABSTAIN:
ABSENT: Heggarty

Mayor Frank R. Mecham

ATTEST:

Deborah D. Robinson, Deputy City Clerk

Exhibit A

Chapter 21.16L

DENSITY BONUSES

Sections:

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21.16L.010 Purpose

Density bonuses and “incentives or concessions” set forth in this Chapter are intended to meet the following objectives:

- A. To implement policies and programs of the Housing Element of the City’s General Plan, which encourage the provision of affordable housing in the City by granting density bonuses and incentives or concessions to developers of residential projects that construct or otherwise provide for dwelling units that will be available for purchase or rent by moderate income, lower income, and very low income persons and households and by senior citizens.
- B. To implement the mandates for density bonuses and incentives or concessions set forth in California Government Code section 65915 et seq. (the “Density Bonus Law”).
- C. As specified in Section 65915 of the California Government Code, the granting of a density bonus and incentives or concessions shall not be interpreted, in and of itself, to require a general plan amendment, zoning change, or other discretionary approval.
- D. As specified in Section 65917 of the California Government Code, the City shall not offer a density bonus or any other incentive in the absence of an agreement by an applicant in accordance with Section 65915 of the California Government Code that would undermine the intent of the Density Bonus Law.
- E. This Chapter is intended to apply to residential projects consisting of five or more dwelling units. However, on a case-by-case basis, with a development plan application, multi-family properties on which the maximum allowable residential yield is two to four dwelling units may add one additional dwelling unit to meet the needs of one of the household groups defined in Section 21.16L.030, if the Planning Commission or City Council find that the additional unit will meet zoning requirements for setbacks, lot coverage, grading limitations, and oak tree preservation. In such cases, incentives or concessions consisting of modifications of zoning standards shall be limited to such standards as building separations, open space, laundry rooms, storage space, and off-street parking.

21.16L.020 Definitions

Whenever the following terms are used in this Chapter, unless otherwise apparent from the context or unless inconsistent with a definition provided under state law in which case the definition under state law shall apply, they shall have the meanings established by this section:

“Applicant” refers to the person(s) and/or parties requesting a density bonus and includes the developers of “housing developments.”

“Area median income” shall mean the median income of San Luis Obispo County as published and periodically updated by the State Department of Housing and Community Development.

“Affordable housing” shall mean housing meeting the requirements set forth in state law and, where applicable, federal law, for “very low-income,” “low-income,” “lower-income,” or “moderate-income households.”

“Allowable housing expense” shall mean the total monthly or annual recurring expenses required of a household to obtain shelter. For a for-sale unit, allowable housing expenses include loan principal, loan interest, property and mortgage insurance, property taxes, homeowners association dues, and a reasonable allowance for utilities (sewer, water, gas, trash and electricity). For a rental unit, allowable housing expenses include rent and a reasonable allowance for utilities.

“Child care facility” 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 school age child care centers.

“Common interest development” shall have the same meaning as that set forth in Section 1351 of the California Civil Code.

“Condominium project” shall have the same meaning as that set forth in subdivision (f) of Section 1351 of the California Civil Code.

“Condominium conversion” shall mean the change of occupancy of a dwelling unit from rental to owner-occupied.

“Density bonus (condominium conversions)” shall mean an increase in the number of dwelling units in an existing apartment building or complex of buildings.

“Density bonus (new housing)” shall mean a density increase over the otherwise maximum allowable residential density under the zoning ordinance and land use element of the general plan, at the time of application for a density bonus.

“Density bonus application” shall mean an application, in conjunction with the development plan submitted pursuant to Section 23.23B for a housing development, requesting from the City a density bonus and incentives or concessions.

“Density bonus dwelling units” shall mean those residential units granted pursuant to the provisions of this Chapter which exceed the otherwise maximum allowable residential yield of the project site.

“Density bonus housing agreement” shall mean an agreement between an applicant and the City guaranteeing the affordability of rental or ownership units in accordance with the provisions of this Chapter. The density bonus housing agreement shall establish the number of target dwelling units and density bonus dwelling units, the unit sizes, location, affordability tenure, terms and conditions of affordability, and unit production schedule.

“Financial incentive” shall mean any incentive offered by the City that consists entirely of financial or monetary assistance.

“Housing development” shall mean projects: (a) to create five or more new residential lots and/or dwelling units, via applications for subdivision maps, parcel maps, and/or development plans, and/or (b) to convert existing residential development consisting of five or more dwelling units from rental units to condominiums.

“Incentive or Concession” shall have the meaning set forth in Section 65915 of the California Government Code, to include, but not be limited to, the reduction of site development standards or zoning code requirements, approval of mixed use zoning in conjunction with the housing development, or any other regulatory incentive which would result in identifiable cost reductions to enable the provision of affordable housing or housing for qualifying (senior) residents.

“Low-income household” shall mean that segment of lower-income households that excludes very low-income households, that is, whose gross income is greater than fifty percent (50%), but does not exceed eighty percent (80%) of the area median income pursuant to section 50079.5 of the California Health and Safety Code.

“Lower-income household” shall mean a household with an income that does not exceed eighty percent (80%) of the area median income pursuant to section 50079.5 of the California Health and Safety Code.

“Market-rate unit” shall mean a dwelling unit whose rental rate or sales price is not restricted either by this Chapter or by any other requirement imposed through other local, state, or federal affordable housing programs.

“Moderate-income household” shall mean a household whose income exceeds eighty percent (80%) but does not exceed one hundred and twenty percent (120%) of the area median income pursuant to section 50093 of the California Health and Safety Code.

“Monthly gross income” shall mean moneys derived from all sources except gifts to any household member, and income of minors.

“Other incentive of equivalent financial value” is a term that only applies to condominium conversions and shall mean an incentive offered by the City such as reduction or waiver of requirements that the City might otherwise apply as condition of condominium conversion, that is offered in-lieu of a density bonus. This term shall not be construed to require the City to provide cash transfer payments or other monetary compensation.

“Planned development” shall have the same meaning as that set forth in subdivision (k) of section 1351 of the California Civil Code.

“Qualifying (senior) resident” shall mean a senior citizen or other person eligible to reside in a senior citizen housing development as defined in sections 51.3 and 51.12 of the California Civil Code.

“Target dwelling unit” shall mean a dwelling unit that will be offered for rent or sale exclusively to and which shall be affordable to the designated income group or qualifying (senior) resident, as required by this Chapter.

“Target income level” shall mean the income standards for very low-, low-, lower- and moderate-income levels within San Luis Obispo County as determined annually by the U.S. Department of Housing and Urban Development, and adjusted for household size.

“Very low income household” shall mean a household with an income that does not exceed fifty percent (50%) of the area median income pursuant to section 50105 of the California Health and Safety Code.

21.16L.030 Qualifying projects - new housing

To an applicant for a housing development who files a density bonus application, or who proposes to donate land for target dwelling units, and who agrees or proposes to construct new target dwelling units, or donate land sufficient to accommodate target dwelling units for the target income levels or qualifying residents set forth below, the City shall grant a density bonus and incentives or concessions, as set forth in Sections 21.16L.040 and 21.16L.070.

- A. A minimum of ten percent (10%) of the total units of a housing development for lower-income households; or
- B. A minimum of five percent (5%) of the total units of a housing development for very low-income households; or
- C. A senior citizen housing development as defined in Section 51.3 of the California Civil Code or mobilehome 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.
- D. A minimum of ten percent (10%) of the total units of new construction in a common interest development for moderate-income households, provided that all units in the development are offered to the public for purchase.

For any proposed residential development project, a density bonus shall be granted on the basis of only one of the above conditions. The applicant who requests a density bonus shall, in writing, elect whether the bonus shall be awarded on the basis of subsections A, B, C, or D, above. For example, if the general plan would permit development of 40 units on a property, and an applicant proposes to provide 10% of the units affordable to low income households and 5% of the units affordable to very-low income households, the applicant would be limited to a density bonus for only one of the qualifying income groups, but not both. That is, a density bonus of 8 units (20% of 40 units allowable under the general plan) could be awarded on the basis of either the 10% of units reserved for low income households or the 5% of units reserved for very-low income households.

21.16L.040 Density bonuses - new housing

- A. The number of density bonus dwelling units to be granted for a new housing development shall be determined as follows:
 - 1. For those projects described by Subsections A and B of Section 21.16L.030: The minimum density bonus shall be twenty percent (20%) of the maximum number of dwelling units permitted on a property under the Land Use Element of the General Plan. For projects described by Subsections A and B that propose greater percentages of dwelling units for low and very low income households,

the density bonuses shall be increased as shown in the table below. Any resulting decimal fraction shall be rounded to the next larger integer.

Percent of units affordable to low income households	Minimum density bonus	Percent of units affordable to very low income households	Minimum density bonus
10%	20.0%	5%	20.0%
11%	21.5%	6%	22.5%
12%	23.0%	7%	25.0%
13%	24.5%	8%	27.5%
14%	26.0%	9%	30.0%
15%	27.5%	10%	32.5%
16%	29.0%	11% and above	35.0%
17%	30.5%		
18%	32.0%		
19%	33.5%		
20% and above	35.0%		

The density bonus shall not be included when determining the number of dwelling units that equal to the percentages of the units in the first and third columns above. For example, if the general plan would permit development of 40 units on a property, and an applicant proposes to provide 10% of the units affordable to low income households, the applicant would be granted a density bonus of 8 units (20% of 40 units allowable under the general plan). The housing project would, therefore, consist of 48 units, of which 4 (10% of 40 units) must be made to be affordable to low income households.

2. For those projects listed in subsection C of Section 21.16L.030: The density bonus for any project that sets aside a minimum number of thirty-five (35) dwelling units for use by qualified senior citizens, as that term is defined in Civil Code section 51.3(b)(1) shall be entitled to a twenty percent (20%) density bonus unless a lesser percentage is elected by the applicant/developer.
3. For those projects listed in subsection D of Section 21.16L.030: The minimum density bonus shall be calculated as follows:

Percentage Low-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

Any resulting decimal fraction shall be rounded to the next larger integer.

The density bonus shall not be included when determining the number of dwelling units that equal to the percentages of the units affordable to moderate income households between ten and thirty-five percent.

- B. An applicant may, in writing, elect to accept a density increase less than the percentages specified in Subsections A.1, A.2, and A.3 of this Section. In such a case, the City may grant such a lesser density bonus provided that the same proportion of target dwelling units is maintained. For example, if the general plan would permit development of 40 units on a property, and an applicant proposes to provide 10% of the units affordable to low income households, should the applicant request only a 10% density bonus (instead of the 20% allowed), the City could approve a 44 unit project (instead of 48 units) with 2 target dwelling units (instead of 4 target dwelling units).
- C. If an applicant requests a density bonus of more than the percentages specified in Subsections A.1 through A.3 of this Section, the requested density increase shall be considered an additional density bonus. The City Council may, at its discretion, grant an additional density bonus if a written finding is made by the City Council that the additional density bonus is required in order for allowable housing expenses for the proposed housing development to be set as affordable. In granting an additional density bonus, the City may require some portion of the additional density bonus to be designated as target dwelling units.
- D. A density bonus housing agreement shall be a condition of discretionary permits (i.e., tentative maps, parcel maps, and development plans) for all applicants who request a density bonus and incentives or concessions. The relevant terms and conditions of the density bonus housing agreement shall be filed and recorded as a deed restriction on those individual lots or units of a housing development which are designated for the location of target dwelling units. The density bonus housing agreement shall be consistent with Section 21.16L.130.

21.16L.050 Qualifying projects - condominium conversions

To an applicant proposing to convert apartments to condominiums, who files a density bonus application, and who agrees or proposes to provide dwelling units for any of the target income levels or qualifying residents set forth below, the City shall either grant a density bonus of twenty-five percent (25%) or provide another incentive of equivalent financial value, as set forth in Section 21.16L.070.

- A. A minimum of thirty-three percent (33%) of the total units of the proposed condominium project for low-income or moderate-income households; or
- B. A minimum of fifteen percent (15%) of the total units of the proposed condominium project for lower-income households.

21.16L.060 Density bonuses - condominium conversions

- A. The minimum number of density bonus dwelling units to be granted for a condominium conversion shall be twenty-five percent (25%) of the number of existing dwelling units within the structure or structures proposed for conversion. The density bonus shall not be included when determining the number of housing units which is equal to thirty-three percent (33%) or fifteen percent (15%) of the total units. Any resulting decimal fraction shall be rounded to the next larger integer.
- B. An applicant proposing to convert apartments to condominiums shall be ineligible for a density bonus or other incentive of equivalent financial value under this Section if the apartments proposed for conversion constitute a housing development for which a density bonus was previously provided under the provisions of this Chapter.
- C. If an applicant requests a density increase of less than twenty-five percent (25%), the granting of such requests shall not reduce the number of target dwelling units required.
- D. The City may grant a density bonus greater than what is described above for a condominium conversion that meets the requirements of this section or it may grant a proportionately lower density bonus than what is described above for a condominium conversion that proposes to provide lesser percentages of target dwelling units than those specified in Subsections A and B of Section 21.16L.040.
- E. A density bonus housing agreement shall be made a condition of the discretionary permits (tentative maps, parcel maps, and development plans) for all condominium conversion proposals that request a density bonus or other incentive of equivalent financial value. The relevant terms and conditions of the density bonus housing agreement shall be filed and recorded as a deed restriction on those individual lots

or units of a housing development that are designated for the location of target dwelling units. The density bonus housing agreement shall be consistent with the terms of Section 21.16L.130.

21.16L.070 Incentives and concessions

- A. Incentives and concessions may include, but are not limited to, the following:
1. A reduction in site development standards or a modification of zoning code requirements or architectural design requirements which exceed the minimum building standards approved by the State Building Standards Commission as provided in Part 2.5 (commencing with section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicle parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions;
 2. Approval of mixed-use zoning in conjunction with the housing development if mixed-use zoning will reduce the cost of the housing development and if the mixed-use zoning is compatible with the housing development and the existing or planned development in the area where the proposed housing development will be located; or
 3. Other regulatory incentives or concessions proposed by the applicant or the City which result in identifiable, financially sufficient, and actual cost reductions;
 4. Additional density bonus above the minimum percentages set forth in Section 21.16L.040;
 5. Direct financial aid including, but not limited to: Redevelopment Low and Moderate Income Housing funding, Community Development Block Grant funding, Home Investment Partnership Act (HOME) funding, or subsidizing infrastructure, land cost or construction costs, planning application, plan check, building permit, or development impact fees; or other incentives of equivalent financial value based upon the land costs per dwelling unit.
- B. The value of each incentive will vary from project to project. Therefore, each incentive or concession shall be determined on a case-by-case basis.
- C. Except as provided in Subsection E of this Section, to those applications meeting the requirements set forth in Section 21.16L.030 for a new housing development, a density bonus and incentives or concessions shall be granted to qualified lower-income, very low-income, qualifying (senior) resident, and condominium project housing developments in accordance with the following schedule.
1. One incentive or concession for projects that include at least 10 percent (10%) of the total units for lower income households, at least 5 percent (5%) for very low income households, or at least 10 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 20 percent (20%) of the total units for lower income households, at least 10 percent (10%) for very low income households, or at least 20 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 30 percent (30%) of the total units for lower income households, at least 15 percent (15%) for very low income households, or at least 30 percent (30%) for persons and families of moderate income in a common interest development.
- D. Except as provided in Subsection E of this Section, to those applications meeting the requirements set forth in Section 21.16L.040 for a condominium conversion, either (i) a density bonus or (ii) another incentive of equivalent financial value shall be granted to qualified lower-income, low-income, and moderate-income housing developments.
- E. Exceptions.
1. Pursuant to California Government Code Section 65915, the City is not required to approve an incentive or concession if it makes a written finding, based on substantial evidence, of either of the following:
 - a. The incentive or concession 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;
 - b. The incentive or concession would have 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 or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily

mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

2. Pursuant to California Government Code Section 65915.5, the City is not required to approve a proposal to convert apartments to condominiums.

21.16L.080 Density bonus application

- A. All applicants for a density bonus shall submit a density bonus application in conjunction with a development plan application pursuant to Chapter 21.23B, which may be processed simultaneously with other applications for general plan amendments, rezones, and/or subdivision (tract or parcel) maps. Target dwelling units shall be designated on the project plans. All applicants shall be provided with a copy of this Chapter and all required application forms.
- B. Preliminary Application. An applicant proposing a density bonus for a housing development may, prior to the submittal of any formal requests for approvals of such housing development, submit a preliminary application to the Community Development Director. The preliminary application shall include the following information:
 1. A brief description of the proposal including the number of target dwelling units and density bonus dwelling units proposed;
 2. The zoning, general plan designations and assessors parcel number(s) of the project site;
 3. A site plan, drawn to scale, which includes: building footprints, driveway and parking layout, building elevations, existing contours and proposed grading;
 4. A letter identifying what specific incentive(s) or concession(s) (i.e., standards modifications, density bonus, or fee subsidies) are being requested of the City; and
 5. In the case of a request for any incentives or concessions, a pro forma for the proposed housing development.

Within ninety (90) days of receipt of the preliminary application, the Community Development Director shall provide to an applicant a letter that identifies: (i) issues of concern; (ii) the density bonus and/or incentives or concessions that the Community Development Director may recommend to the Planning Commission or City Council; and (iii) the procedures for compliance with this Chapter.

- C. Density Bonus Application Submittal. In addition to the information required by Section 21.23B.130, the completed density bonus application submitted as part of the applicant's development plan application(s), shall include the following information:
 1. A legal description of the total site proposed for development of the target dwelling units including a statement of present ownership and present and proposed zoning;
 2. A letter signed by the applicant stating what incentive(s) or concession(s), if any, is/are being requested from the City;
 3. Site plans, designating the total number of units proposed on the site, identifying the number and locations of target dwelling units, and supporting plans per the application submittal requirements; and
 4. In the case of a condominium conversion request, a report documenting the following information for each unit proposed to be converted: the monthly gross income of tenants of each unit throughout the prior year, the monthly rent for each unit throughout the prior year, and vacancy information for each unit throughout the prior year.

Any applicant applying for incentives or concessions shall submit supporting financial documents with the density bonus application. Such financial documents shall support or establish that the incentives or concessions are necessary to provide for affordable housing costs.

21.16L.090 Review and approval of density bonus application

- A. Planning Commission Review. Except for those density bonus applications that request a financial incentive, the Planning Commission shall have the authority to review and act upon an application for a density bonus and incentives or concessions. A final decision by the Planning Commission shall be appealable to the City Council pursuant to Sections 21.23A.100 and 21.23A.110.

- B. City Council Review. If the density bonus application involves a request to the City for financial incentives, then the Planning Commission shall make a recommendation to the City Council, which shall take final action on the density bonus application.
- C. A density bonus application shall be evaluated for conformance with the density bonus housing standards set forth in Section 21.16L.120.

21.16L.100 Density bonuses for donations of land

When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to the City as provided for in this Section, the applicant shall be entitled to a 15 percent (15%) increase above the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for the entire development, as follows:

Percentage 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

This increase shall be in addition to any increase in density mandated by Subsection B of Section 21.16L.030, up to a maximum combined mandated density increase of 35 percent (35%) if an applicant seeks both the increase required pursuant to this Section and Subsection B of Section 21.16L.030. All density calculations resulting in fractional units shall be rounded up to the next whole number.

Nothing in this Section shall be construed to enlarge or diminish the authority of the City to require an applicant to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this Section if all of the following conditions are met:

- A. The applicant donates and transfers the land no later than the date of approval of the final subdivision map or parcel map, or, for multiple family residential housing, the date of approval of a development plan application.
- B. The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent (10%) of the number of residential units of the proposed development.
- C. The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned for development as affordable housing, and is or will be served by adequate public facilities and infrastructure. The land shall have appropriate zoning and development standards to make the development of the affordable units feasible. No later than the date of approval of the final subdivision map or parcel map, or, for multiple family residential housing, the date of approval of a development plan application, 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 development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 of the Government Code if the design is not reviewed by the City prior to the time of transfer.

- D. The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with Subsections B and D of Section 21.16L.120, which shall be recorded on the property at the time of dedication.
- E. The land is transferred to the City or its Redevelopment Agency or to a housing developer approved by the City or its Redevelopment Agency. The City or its Redevelopment Agency may require the applicant to identify and transfer the land to the approved housing developer.
- F. The transferred land shall be within the boundary of the proposed development or, if the City or its Redevelopment Agency agrees, within one-quarter mile of the boundary of the proposed development.

21.16L.110 Density bonuses for child care facilities

- A. When an applicant proposes to construct a housing development that conforms to the requirements of Section 21.16L.030 and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the 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.
 - 2. An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.
- B. The City shall require, as a condition of approving the housing development, 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 density bonus units are required to remain affordable pursuant to Subsections B and D of Section 21.16L.120.
 - 2. Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to Section 21.16L.030.
- C. Notwithstanding any requirement of this Section, the City shall not be required to provide a density bonus and incentives or concessions for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

21.16L.120 Density bonus housing standards

- A. Required target dwelling units shall be constructed concurrent with market-rate dwelling units unless both the City and the applicant agree within the density bonus housing agreement to an alternative schedule for development.
- B. Target dwelling units for low and very low income households shall remain restricted and affordable for a period of at least thirty (30) years, or a longer period of time may be required if the project includes government financial assistance.
- C. Rents for lower income target units shall be set at an affordable rent as defined in Section 50053 of the California Health and Safety Code. Owner-occupied target units shall be available at an affordable housing cost as defined in Section 50052.5 of the California Health and Safety Code.
- D. For a common interest development, target dwelling units shall remain restricted and affordable to the designated group for a period of at least ten (10) years for any target unit for moderate-income households, except that a longer period of time may be required if the project includes government financial assistance.

The initial occupant of the moderate-income target units in the common interest development are persons and families of moderate income, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the California Health and Safety Code. The City shall enforce an equity-sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following apply to the equity-sharing agreement:

- (1) Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The City shall recapture any initial subsidy and its proportionate share of appreciation, which shall then be used within three years for any of the purposes described in subdivision (e) of Section 33334.2 of the California Health and Safety Code that promote homeownership.

- (2) For purposes of this subdivision, the local government's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.
- (3) For purposes of this subdivision, the City's proportionate share of appreciation shall be equal to the ratio of the initial subsidy to the fair market value of the home at the time of initial sale.
- E. Except for housing developments with donations of land, as provided in Section 21.16L100., target dwelling units and density bonus dwelling units shall be built within the housing development.
- F. All housing developments shall comply with all applicable development standards, except those which may be modified as an additional incentive or concession as provided herein. In addition, all target dwelling units must conform to the requirements of the applicable building and housing codes.
- G. Compatibility. Target dwelling units shall be of similar design and similar quality as the market-rate units. Exteriors and floor plans of target dwelling units shall be similar to the market-rate units; interior features such as luxury flooring, appliances, and lighting fixtures need not be the same.
- H. No target dwelling unit shall be rented or sold except in accordance with this Chapter.
- I. California Government Code Section 65915(e) prohibits the City from applying any development standard that will have the effect of precluding the construction of a development meeting the criteria of California Government Code Section 65915(b) at the densities or with the concessions or incentives permitted by California Government Code Section 65915.
- J. Applicants receiving a density bonus and incentives or concessions for a housing development shall use their best efforts to market and provide such housing to persons already residing and/or working in the City.
- K. 1. Upon the written request of the applicant, the following off-street parking space requirements shall supercede those set forth in Subsection A of Section 21.22.040, inclusive of handicapped and visitor parking, of a housing development meeting the criteria of Subsection B of Section 21.16L.030, that exceeds the following ratios:
 - a. Studio apartments to one bedrooms: one off-street parking space.
 - b. Two to three bedrooms: two off-street parking spaces.
 - c. Four and more bedrooms: two and one-half off-street parking spaces.
- 2. If the total number of parking spaces required for a housing development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subsection, a development may provide off-street parking through tandem parking or uncovered parking, but not through on-street parking.
- 3. This subsection shall apply to a housing development that meets the requirements of Subsection B of Section 21.16L.030, but only at the written request of the applicant. An applicant may request additional parking incentives or concessions beyond those provided in this section, subject to subsection D of Section 21.16L.060.

21.16L.130 Density bonus housing agreement as a condition of development

- A. Any applicant requesting a density bonus, additional incentive, or in-lieu incentive pursuant to this Chapter shall execute a density bonus agreement in a form approved by the City Attorney. The density bonus agreement shall be approved by the City Council and shall run with the land and shall be binding on the applicants, their heirs, transferees, assigns, successors, administrators, executors and other representatives and recorded on the deed for the requisite time period.
- B. A density bonus housing agreement processed pursuant to this Chapter shall include the following:
 - 1. The number of density bonus dwelling units granted;
 - 2. Incentives, concessions, and/or financial assistance provided by the city;
 - 3. The number of moderate-income, lower-income, low-income, and/or qualifying (senior) resident dwelling units proposed;
 - 4. The unit size(s) (square footage) of target dwelling units and the number of bedrooms per target dwelling unit;
 - 5. The proposed location of the moderate-income, lower-income, low-income, and/or qualifying (senior) resident target dwelling units;

6. Tenure of restrictions for target dwelling units (of at least ten or thirty years);
 7. Schedule for production of target dwelling units;
 8. The standards for maximum qualifying incomes for affordable units;
 9. The standards for maximum rents or sales prices for affordable units;
 10. The process to be used to certify tenant/homeowner incomes;
 11. The arrangements with a third party approved by the City for monitoring of the affordable units;
 12. A description of how vacancies will be marketed and filled;
 13. Restrictions and enforcement mechanisms binding on property upon sale or transfer;
 14. Penalties and enforcement mechanisms in event of failure to maintain affordability provisions; and
 15. Any other provisions deemed necessary by the City to fulfill the requirements of this Chapter.
- C. Following the approval and the signing by all parties, the completed density bonus housing agreement shall be recorded with the County Recorder's Office and the relevant terms and conditions therefrom filed and recorded as a deed restriction on those individual lots or units of a property which are designated for the location of target dwelling units. The approval and recordation shall take place prior to final map approval, or, where a subdivision or parcel map is not being processed, prior to issuance of building permits for such lots or units.

21.16L.140 Eligibility requirements

Only households meeting the standards for moderate-income households, lower-income households, low-income households, and qualifying (senior) residents as defined in Section 21.16L.020 shall be eligible to occupy target dwelling units.

21.16L.150 Management and monitoring

Rental target dwelling units shall be managed by the applicant, his or her agent, or their successors and assigns. Each owner of rental target dwelling units, upon request by the City, shall submit an annual report to the City identifying which units are target dwelling units, the monthly rent, vacancy information for each target rental dwelling unit for the prior year, monthly gross income for tenants of each target rental dwelling unit throughout the prior year, and other information as required by the City, while ensuring the privacy of the tenant.

21.16L.160 Administrative fee for target dwelling units

During the density bonus application period and throughout the term of the affordability covenants for the target dwelling units, the City will either directly or, via one or more third parties, provide a number of recurring services associated with the administration and monitoring of such units. Although the provision of some of these services will be within the normal purview of existing City activities, others will involve new costs to the City for which there are no existing funding sources. Therefore, the City Council hereby establishes an administrative fee for target dwelling units, the amount to be established by City Council resolution and paid prior to the issuance of building permit(s). In no event shall such administrative fee exceed the actual cost of providing services pursuant to this Chapter 21.16L.