

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF FOSTER CITY MAKING TEXT AMENDMENTS TO TITLE 17, "ZONING" OF THE FOSTER CITY MUNICIPAL CODE CHAPTER 17.86, "DENSITY BONUSES", TO ENSURE COMPLIANCE WITH RECENT CHANGES IN STATE LAW AND FINDING THE AMENDMENTS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT – RZ2023-0007

CITY OF FOSTER CITY

WHEREAS, California Government Code Section 65915 ("State Density Bonus Law") requires all cities to adopt an ordinance that specifies how compliance with State Density Bonus Law will be implemented; and;

WHEREAS, in 2022, the Legislature adopted three (3) bills, Assembly Bills (AB) 2334, 1551, and 682, that make various amendments and clarifications to State Density Bonus Law, Government Code (GC) Section 65915; and

WHEREAS, on June 15, 2023, a Planning Commission Study Session was held to update the public and the Planning Commission on most recent State Laws affecting land uses, including additional revisions to the requirements density bonus law; and

WHEREAS, the proposed amendments are required to be adopted to comply with State Density Bonus Law, which would preempt inconsistent provisions of the Municipal Code if such amendments were not adopted, and therefore the Municipal Code amendments would not result in a direct or indirect foreseeable physical change to the environment and are exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines (14 CCR 15000 et seq.) Section 15061(b)(3), Common Sense Exemption; and

WHEREAS, on August 17, 2023, the Planning Commission conducted a duly and properly noticed public hearing to take public testimony and consider a Resolution regarding the amendments to Chapter 17.86, and after conducting the public hearing, adopted Resolution No. P-12-23 with the Planning Commission recommending City Council approval of the amendments to Chapter 17.86; and

WHEREAS, on September 6, 2023, a public hearing notice was published posted in three public places, and mailed pursuant to California Code Section 65090 for the City Council public hearing on September 18, 2023; and

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

Section 1. The City Council does hereby find and determine based upon the aforementioned Record as follows:

1. The foregoing Recitals are true and correct and are incorporated herein by this reference; and
2. The proposed amendments are internally consistent with all other provisions of the General Plan and do not conflict with any of the previously adopted goals, policies or programs of the General Plan.
3. The proposed amendments are necessary to implement the goals and policies of the General Plan through implementation of the Housing Element.
4. The proposed Zoning amendments comply with, and are required by, applicable State law, including Government Code Section 68915 – 65918, and the Health and Safety Code Section 17980.12.
5. The proposed amendments will not be detrimental to the public interest, convenience, and general welfare of the City.
6. The proposed amendments are exempt from CEQA under CEQA Guidelines Section 15061(b)(3).

Section 2. Amendment. Chapter 17.86 “Density Bonuses” within Title 17, “Zoning” of the Foster City Municipal Code are hereby amended by repealing the existing Chapters 17.86 in their entireties and replacing those Chapters to read as set forth in the attached Exhibits A, as listed below and attached hereto and incorporated herein by reference:

Section 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council does hereby declare that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 4. Taking Effect. This Ordinance shall take effect and be in force thirty (30) days from and after its adoption.

Section 5. Posting. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall have it posted in three (3) public places designated by the City Council.

This Ordinance was introduced and read on the 18th day of September, 2023,  
and passed and adopted on the \_\_\_\_ day of October, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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JON FROOMIN, MAYOR

ATTEST:

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PRISCILLA SCHAUS, CITY CLERK

## EXHIBIT A

### Chapter 17.86 Density Bonuses 2023 Updates

#### Chapter 17.86 DENSITY BONUSES

##### Sections:

- [17.86.010](#) Purpose.
- [17.86.020](#) Definitions.
- [17.86.030](#) Applicability.
- [17.86.040](#) Application requirements.
- [17.86.050](#) Density bonus.
- [17.86.060](#) Incentives.
- [17.86.070](#) Discretionary approval authority retained.
- [17.86.080](#) Waivers.
- [17.86.090](#) Affordable housing agreement.
- [17.86.100](#) Design and quality.

##### **17.86.010 Purpose.**

The purpose of this chapter is to comply with Government Code Section 65915 through 65918 (“State Density Bonus Law”) and implement the housing element of the Foster City General Plan in an effort to encourage the production of affordable housing units in developments proposed within the city. (Ord. 580 § 2 (part), 2013)

##### **17.86.020 Definitions.**

Unless otherwise specified in this chapter, the definitions found in State Density Bonus Law shall apply to the terms contained herein. (Ord. 580 § 2 (part), 2013)

##### **17.86.030 Applicability.**

A. This chapter and State Density Bonus Law shall apply to all zoning districts, where residential development, including mixed-use development, are allowed.

B. An applicant that proposes a housing development of five or more dwelling units is eligible to apply for a density bonus, incentives or concessions, waivers, and reduced parking standards if the applicant seeks and agrees to construct a housing development that includes at least one of the housing types specified in State Density Bonus Law in at least the quantity specified therein.

C. If any portion of this Chapter conflicts with State Density Bonus Law, State Density Bonus Law shall supersede this Chapter. Any ambiguities in this Chapter shall be interpreted to be consistent with State Density Bonus Law. (Ord. 580 § 2 (part), 2013)

##### **17.86.040 Application requirements.**

A. To apply for a State Density Bonus, incentive, concession, waiver, or parking modification, the applicant shall submit a letter of intent to the City along with the first application for approval of a

residential or mixed-use development project that demonstrates the project's eligibility for the requested State Density Bonus, incentive, concession, waiver, or parking modification.

B. The letter of intent shall specify the density permitted by the zoning and general plan, the affordability levels to be provided, tenure (for-sale or rental), number and location of affordable housing units or senior housing provided, description of all dwelling units existing on the site in the five-year period preceding the date of submittal, number of bonus units requested, number of concessions or incentives requested, and what specific incentives, concessions, waivers, or parking modifications would be sought.

C. The letter of intent shall include sufficient information for the review authority to determine whether the application conforms with the following requirements:

1. Replacement of Units. The development provides sufficient units to account for the replacement of units currently rented or rented to very low-, and low-income households in the past five (5) years, as required by State Density Bonus Law.
2. Concessions and Incentives. Provide evidence that any requested concession or incentive will reduce the cost of the housing development to provide for affordable housing costs or rents; except that, if a mixed-use development is requested, the application must instead meet all of the requirements of State Density Bonus Law.
3. Waiver. Evidence that the development standards for which a waiver is requested would have the effect of physically precluding the construction of a development at the densities or with the concessions or incentives permitted by State Density Bonus Law.
4. Parking Modification. If a parking modification is sought, evidence that the project is eligible for the parking reduction allowed by State Density Bonus Law.
5. Donation of Land. If the density bonus is based all or in part on donation of land, all of the requirements included in State Density Bonus Law have been met.
6. Child Care Facility. If the density bonus or incentive is based all or in part on the inclusion of a childcare facility, all of the requirements included in State Density Bonus Law have been met.
7. Condominium Conversion. If the density bonus or incentive is based all or in part on the inclusion of affordable units as part of a condominium conversion, all of the requirements included in State Density Bonus Law have been met.

D. The applicant shall be notified if the application is complete in a manner consistent with State Density Bonus Law.

E. (An application for a State Density Bonus, incentive, concession, waiver, or parking modification shall be considered and acted upon by the review authority with authority to review the residential or mixed-use development project concurrently with the action on the underlying project within the timelines prescribed by State Density Bonus Law et seq. (Ord. 580 § 2 (part), 2013)

#### **17.86.050 Density bonus.**

A. A density bonus for a housing development means a density increase over the otherwise maximum allowable residential density under the applicable zoning and land use designation on the date the application is deemed complete. The amount of the allowable density bonus shall be calculated as provided in State Density Bonus Law. The applicant may select from only one of the income categories identified in State Density Bonus Law and may not combine density bonuses from different income categories to achieve a larger density bonus.

B. The body with approval authority for the planning approval sought will approve, deny or modify the request for a density bonus, incentive, waiver or use of density bonus parking standards in accordance with State Density Bonus Law and this chapter. Additionally, nothing herein prevents the city from granting a greater density bonus and additional incentives or waivers than that provided for herein, or from providing a lesser density bonus and fewer incentives and waivers than that provided for herein, when the housing development does not meet the minimum thresholds. (Ord. 580 § 2 (part), 2013)

**17.86.060 Incentives.**

A. Incentives and concessions are those defined by State Density Bonus Law.

B. The number of incentives granted shall be based upon the number the applicant is entitled to pursuant to State Density Bonus Law.

C. A requested incentive may be denied only for those reasons provided in State Density Bonus Law. Denial of an incentive is a separate and distinct act from a decision to deny or approve the entirety of the project. (Ord. 580 § 2 (part), 2013)

**17.86.070 Discretionary approval authority retained.**

The granting of a density bonus or incentive(s) shall not be interpreted in and of itself to require a general plan amendment, zoning change or other discretionary approval. If a density bonus or an incentive would otherwise trigger one of these approvals, when it is granted as a density bonus or an incentive, no general plan amendment, zoning change or other discretionary approval is required. However, if the base project without the density bonus or incentive requires a general plan amendment, zoning change or other discretionary approval, the city retains discretion to make or not make the required findings for approval of the base project. (Ord. 580 § 2 (part), 2013)

**17.86.080 Waivers**

A waiver is a modification to a development standard that would otherwise physically preclude the construction of a housing project eligible for a density bonus at the densities or with the incentives or concessions permitted by State Density Bonus Law. Development standards include, but are not limited to, a height limitation, a setback requirement, minimum floor areas, an on-site open space requirement, or a parking ratio that applies to a residential development. There is no limit on the number of waivers. (Ord. 580 § 2 (part), 2013)

**17.86.090 Affordable housing agreement and senior housing agreement.**

A. Except when a density bonus, waiver, or parking reduction is awarded for a market-rate senior housing development, the applicant shall enter into an affordable housing agreement with the city to the satisfaction of the city attorney guaranteeing the affordability of the rental or ownership units for a minimum of 55 years, identifying the type, size and location of each affordable unit and containing requirements for administration, reporting and monitoring.

B. Where a density bonus, waiver, or parking reduction is provided for a market-rate senior housing development, the applicant shall enter into a restrictive covenant with the city to the satisfaction of the City Attorney to require that the housing development be operated as “housing for older persons” consistent with state and federal fair housing laws.

C. Such affordable housing agreement or senior housing agreement, as applicable, shall be recorded in the San Mateo County recorder’s office prior to issuance of the first building permit for the housing development. (Ord. 580 § 2 (part), 2013)

**17.86.100 Design and quality.**

A. Affordable units shall be constructed concurrently with market-rate units and shall be integrated into the project.

B. Affordable units shall be of equal design and quality as the market rate unit. Exteriors and interiors, including architecture, elevations, floor plans, interior finishes and amenities of the affordable units shall be substantially similar to the market rate units.

C. The number of bedrooms in the affordable units shall be consistent with the mix of market rate units.

D. Parking standards may be modified as allowable under the State Density Bonus Law and anything beyond those standards shall be considered a request for an incentive. (Ord. 580 § 2 (part), 2013)