

Chapter 17.86 DENSITY BONUSES

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17.86.010 Purpose.

The purpose of this chapter is to ~~adopt an ordinance that specifies how compliance~~ comply with Government Code Section ~~65915-65915 through 65918~~ (“State Density Bonus Law”) ~~will be implemented 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 zoning districts, where residential developments development, are allowed.~~

B. ~~An applicant that proposes a housing development of five or more dwelling units are proposed and where is eligible to apply for a density bonus, incentives or concessions, waivers, and reduced parking standards if the applicant seeks and agrees to provide low, very low or moderate income or senior construct a housing units in development that includes at least one of the threshold amounts housing types specified in State Density Bonus Law such that in at least the resulting density is beyond that which is permitted by the applicable zoning. This chapter and quantity specified therein.~~

C. ~~If any portion of this Chapter conflicts with State Density Bonus Law, State Density Bonus Law shall apply only to the residential component of a mixed-use project and supersede this Chapter. Any ambiguities in this Chapter shall not operate be interpreted to increase the allowable density of the nonresidential component of any proposed project. 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. A.—Any Applicant Requesting a Density Bonus, Incentive(s), Waiver(s) and/or Use of Density Bonus Parking Standards. The proposal shall be submitted prior to or concurrently with the filing of the planning application for the housing development and shall be processed in conjunction with the underlying application.

B.—The proposal for a density bonus, incentive(s) and/or waiver(s) pursuant to State Density Bonus Law shall include the following information:

- 1.—Requested Density Bonus. The specific requested density bonus proposal shall include evidence that the project meets the thresholds for State Density Bonus Law. The proposal shall also include calculations showing the maximum base density, the number/percentage of affordable units and identification of the income level at which such units will be restricted, additional market rate units resulting from the density bonus allowable under State Density Bonus Law and the resulting unit per acre density. The density bonus units shall not be included in determining the percentage of base units that qualify a project for a density bonus pursuant to State Density Bonus Law.
- 2.—Requested Incentive(s). The request for particular incentive(s) shall include a pro forma or other report evidencing that the requested incentive(s) results in identifiable, financially sufficient and actual cost reductions that are necessary to make the housing units economically feasible. The report shall be sufficiently detailed to allow the city to verify its conclusions. If the city requires the services of specialized financial consultants to review and corroborate the analysis, the applicant will be responsible for all costs incurred in reviewing the documentation.
- 3.—Requested Waiver(s). The written proposal shall include an explanation of the waiver(s) of development standards requested and why they are necessary to make the construction of the project physically possible. Any requested waiver(s) shall not exceed the limitations provided by Section 17.86.080 and to the extent such limitations are exceeded will be considered as a request for an incentive pursuant to Section 17.86.060.
- 4.—Fee. Payment of the fee in an amount set by resolution of the city council to reimburse the city for staff time spent reviewing and processing the State Density Bonus Law application submitted pursuant to this chapter. 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.

~~B. An incentive includes a reduction in site development standards or a modification of zoning code requirements or architectural requirements that result in identifiable, financially sufficient and actual cost reductions. An incentive may be the approval of mixed use zoning (e.g., commercial) in conjunction with a housing project if the mixed use will reduce the cost of the housing development and is compatible with the housing project. An incentive may, but need not be, the provision of a direct financial incentive, such as the waiver of fees.~~

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 ~~such that construction at the increased density would be physically possible 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. ~~An applicant may request a waiver of any development standard to make the project physically possible to construct at the increased density. To be entitled to the requested waiver, the applicant must show that without the waiver, the project would be physically impossible to construct.~~ There is no limit on the number of waivers. (Ord. 580 § 2 (part), 2013)

17.86.090 Affordable housing agreement and senior housing agreement.

~~Prior to issuance of a building permit~~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 ~~thirty~~55 years, identifying the type, size and location of each affordable unit and containing requirements for administration, reporting and monitoring. ~~Such affordable housing agreement shall be recorded in the San Mateo County recorder's office. (Ord. 580 § 2 (part), 2013)~~

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 ~~must~~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. ~~This section may be waived or modified on a case by case basis for affordable housing units developed for special groups, including housing for special needs or seniors.~~

BD. 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)