

## CHAPTER 106.32 - AFFORDABLE HOUSING INCENTIVES

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### 106.32.010 - Purpose

As required by Government Code Section 65915, this Chapter offers density bonuses, and incentives or concessions for the development of housing that is affordable to the types of households and qualifying residents identified in Section 106.32.020 (Eligibility for Bonus, Incentives, or Concessions). This Chapter is intended to implement the requirements of Government Code Section 65915, et seq., and the Housing Element of the General Plan. If conflicts occur between requirements of this Chapter of the Zoning Code and Government Code Section 65915 through 65918, the requirements of Government Code Section 65915 through 65918 shall apply.

### 106.32.020 - Eligibility for Bonus, Incentives, or Concessions

In order to be eligible for a density bonus and other incentives or concessions as provided by this Chapter, a proposed housing development shall comply with the following requirements, and satisfy all other applicable provisions of this Zoning Code, except as provided by Section 106.32.040 (Allowed Incentives or Concessions).

- A. Resident requirements.** A housing development proposed to qualify for a density bonus shall be designed and constructed so that it includes at least any one of the following:
1. 10 percent of the total number of proposed units are for lower income households, as defined in Health and Safety Code Section 50079.5;
  2. Five percent of the total number of proposed units are for very low income households, as defined in Health and Safety Code Section 50105;
  3. The project is a senior citizen housing development as defined in Civil Code Sections 51.3 and 51.12, or is a mobile home park that limits residency based on age requirements for housing older persons in compliance with Civil Code Sections 798.76 or 799.5; or
  4. 10 percent of the total dwelling units ~~in a common interest development as defined in Civil Code Section 1351~~ are for persons and families of moderate income, as defined in Health and Safety Code Section 50093, provided that all units in the development are offered to the public for purchase.
  5. 10 percent of the total units of a housing development are for transitional foster youth, as defined in Section 66025.9 of the Education Code, disabled veterans, as defined in Section 18541 of the Government Code, or homeless

persons, as defined in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sect. 11301 et seq.) are for very low income households, as defined in Health and Safety Code Section 50105.

6. 20 percent of the total units for low income college students in housing dedicated for full-time students at accredited colleges meeting the requirements of Government Code 65915.

7. The project donates at least one acre of land to the city for very low income units, and the land has appropriate general plan designation, zoning, permits and approvals, and access to public facilities needed for such housing per Government Code Section 65915.

- B. Applicant selection of basis for bonus.** For purposes of calculating the amount of the density bonus in compliance with Section 106.32.030 (Allowed Density Bonuses), below, the applicant who requests a density bonus shall elect whether the bonus shall be awarded on the basis of Subsections A.1., 2., 3., 4., 5., ~~or 6.~~, or 7. above.
- C. Bonus units shall not qualify a project.** A density bonus granted in compliance with Section 106.32.030 (Allowed Density Bonuses), below, including "total units," "total dwelling units," or "total rental beds" shall not be included when determining the number of housing units that is equal to the percentages required by Subsection A.
- D. Minimum project size to qualify for density bonus.** The density bonus provided by this Chapter shall be available only to a housing development of five or more dwelling units.
- E. Condominium conversion projects.** A condominium conversion project for which a density bonus is requested shall comply with the eligibility and other requirements in Government Code Section 65915.5.

### 106.32.030 - Allowed Density Bonuses

The amount of a density bonus allowed in a housing development shall be determined by the Council in compliance with this Section. For the purposes of this Chapter, "density bonus" means a density increase over the otherwise maximum allowable residential density under the applicable zoning district and designation of the Land Use Element of the General Plan as of the date of application by the applicant to the City.

- A. Density bonus.** A housing project that complies with the eligibility requirements in Subparagraphs 106.32.020.A.1, ~~2., 3., or 4.~~, shall be entitled to density bonuses as follows, unless a lesser percentage is proposed by the applicant.
- 1. Bonus for units for ~~lower-low, very low, and moderate~~ income households, land donations, senior citizen developments, transitional foster youth housing, disabled veterans housing, homeless persons housing, or student housings.** A housing development that is eligible for a bonus in compliance with one of the criteria listed in Section 106.32.020.A.4 (~~10 percent of units for lower income households~~) shall be entitled to a density bonus calculated as follows:

<u>Affordable Unit Percentage**</u>	<u>Very Low Income Density Bonus</u>	<u>Low Income Density Bonus</u>	<u>Moderate Income Density Bonus***</u>	<u>Land Donation Density Bonus</u>	<u>Senior****</u>	<u>Foster Youth/Disabled Vets/Homeless</u>	<u>College Students</u>
5%	20%	--	--	--	20%	--	--
6%	22.5%*	--	--	--	20%	--	--
7%	25%	--	--	--	20%	--	--
8%	27.5%	--	--	--	20%	--	--
9%	30%	--	--	--	20%	--	--
10%	32.5%	20%	5%	15%	20%	20%	--
11%	35%	21.5%	6%	16%	20%	20%	--
12%	38.75%	23%	7%	17%	20%	20%	--
13%	42.5%	24.5%	8%	18%	20%	20%	--
14%	46.25%	26%	9%	19%	20%	20%	--
15%	50%	27.5%	10%	20%	20%	20%	--
16%	50%	29%	11%	21%	20%	20%	--
17%	50%	30.5%	12%	22%	20%	20%	--
18%	50%	32%	13%	23%	20%	20%	--
19%	50%	33.5%	14%	24%	20%	20%	--
20%	50%	35%	15%	25%	20%	20%	35%
21%	50%	38.75%	16%	26%	20%	20%	35%
22%	50%	42.5%	17%	27%	20%	20%	35%
23%	50%	46.25%	18%	28%	20%	20%	35%
24%	50%	50%	19%	29%	20%	20%	35%
25%	50%	50%	20%	30%	20%	20%	35%
26%	50%	50%	21%	31%	20%	20%	35%
27%	50%	50%	22%	32%	20%	20%	35%
28%	50%	50%	23%	33%	20%	20%	35%
29%	50%	50%	24%	34%	20%	20%	35%
30%	50%	50%	25%	35%	20%	20%	35%
31%	50%	50%	26%	35%	20%	20%	35%
32%	50%	50%	27%	35%	20%	20%	35%
33%	50%	50%	28%	35%	20%	20%	35%
34%	50%	50%	29%	35%	20%	20%	35%
35%	50%	50%	30%	35%	20%	20%	35%
36%	50%	50%	31%	35%	20%	20%	35%
37%	50%	50%	32%	35%	20%	20%	35%
38%	50%	50%	33%	35%	20%	20%	35%
39%	50%	50%	34%	35%	20%	20%	35%
40%	50%	50%	35%	35%	20%	20%	35%
41%	50%	50%	38.75%	35%	20%	20%	35%
42%	50%	50%	42.5%	35%	20%	20%	35%
43%	50%	50%	46.25%	35%	20%	20%	35%
44%	50%	50%	50%	35%	20%	20%	35%
100%****	80%	80%	80%	35%	20%	20%	35%

\*All density bonus calculations resulting in fractions are rounded up to the next whole number

\*\*Affordable unit percentage is calculated excluding units added by a density bonus

\*\*\*Moderate income density bonus applies to for sale units, not to rental units

\*\*\*\*No affordable units are required for senior units

\*\*\*\*\*Applies when 100% of the total units (other than manager's units) are restricted to very low, lower, and moderate income (maximum 20% moderate)

Percentage of Low-Income Units Proposed	Percentage of Density Bonus
40	20
41	21.5
42	23
43	24.5
44	26
45	27.5
47	30.5
48	32
49	33.5
20	35

~~2. — Bonus for units for very low income households. A housing development that is eligible for a bonus in compliance with the criteria in Section 106.32.020.A.2 (five percent of units for very low income households) shall be entitled to a density bonus calculated as follows.~~

Percentage of Very Low-Income Units Proposed	Percentage of Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

~~3. — Bonus for senior citizen development. A housing development that is eligible for a bonus in compliance with the criteria in Section 106.32.020.A.3 (senior citizen development or mobile home park) shall be entitled to a density bonus of 20 percent.~~

~~4. — Bonus for transitional foster youth, disabled veterans or homeless persons. A housing development that is eligible for a bonus in compliance with the criteria in Section 106.32.020.A.5 shall be entitled to a density bonus of 20 percent.~~

~~5. — Bonus for student housing. A housing development that is eligible for a bonus in compliance with the criteria in Section 106.32.020.A.6 shall be entitled to a density bonus of 35 percent.~~

**6. Bonus for moderate income units in common interest development.** A housing development that is eligible for a bonus in compliance with the criteria in Section 106.32.020.A.4 (10 percent of units in a common interest development for persons and families of moderate income) shall be entitled to a density bonus calculated as follows.

Percentage of Moderate-Income Units Proposed	Percentage of Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
Percentage of Moderate-Income Units Proposed	Percentage of Density Bonus
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
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~~7. **Density bonus for land donation.** When an applicant for a tentative map, parcel map, or other residential development approval donates land to the City in compliance with this Subsection, the applicant shall be entitled to a density bonus for the entire development, as follows; provided that nothing in this Subsection shall be construed to affect the authority of the City to require a developer to donate land as a condition of development.~~

~~a. **Basic bonus.** The applicant shall be entitled to a 15 percent increase above the otherwise maximum allowable residential density under the applicable General Plan Land Use Element designation and zoning for the entire development, and an additional increase as follows:~~

Percentage of Very Low-Income Units Proposed	Percentage of Density Bonus
10	15
11	16
12	17
13	18
Percentage of Very Low-Income Units Proposed	Percentage of Density Bonus
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

**ba. Increased bonus.** The increase in the table above shall be in addition to any increase in density required by Subsections A.1 through A.5, up to a maximum combined mandated density increase of 35 percent if an applicant seeks both the increase required in compliance with this Subsection A.5a land donation, as well as the bonuses provided by Subsections A.1 through A.4 any other qualifying category as described in Subsection A.1.

**eb. Eligibility for increased bonus.** An applicant shall be eligible for the increased density bonus provided by this Subsection if all of the following conditions are met.

- (1) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.
- (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 10 percent of the number of residential units of the proposed development.
- (3) The transferred land is at least one acre, 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.
- (4) No later than the date of approval of the final subdivision map, parcel map, or of the residential development, 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 Government Code Section 65583.2(l) if the design is not reviewed by the City before the time of transfer.
- (5) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with Section 106.32.070 (Continued Availability), below, which shall be recorded on the property at the time of dedication.
- (6) The land is transferred to the City or to a housing developer approved by the City. The City may require the applicant to identify and transfer the land to the approved housing developer.
- (7) The transferred land shall be within the boundary of the proposed development or, if the City agrees, within one-quarter mile of the boundary of the proposed development.
- (8) The proposed source of funding for the very low income units shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.

**B. Greater or lesser bonuses.** The City may choose to grant a density bonus greater than provided by this Section for a development that meets the requirements of this Section, or grant a proportionately lower density bonus than required by this Section for a development that does not comply with the requirements of this Section.

**C. Density bonus calculations.** The calculation of a density bonus in compliance with this Section that results in fractional units shall be rounded up to the next whole number, as required by State law. For the purpose of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels.

**D. Requirements for amendments or discretionary approval.** The granting of a density bonus shall not be interpreted, in and of itself, to require a General Plan amendment, Zoning Map amendment, or other discretionary approval.

- E. **Location of bonus units.** The developer may locate density bonus units in the housing project in other than the areas where the units for the lower income households are located.

**106.32.040 - Allowed Incentives or Concessions**

- A. **Applicant request and City approval.** An applicant for a density bonus in compliance with this Chapter may submit to the City a proposal for the specific incentives or concessions listed in Subsection C. (Type of incentives), below, that the applicant requests in compliance with this Section, and may request a meeting with the Director. The applicant may file their request either prior to an application for City approval of the proposed project, or concurrently with the application for project approval. The Council shall grant an incentive or concession request that complies with this Section unless the Council makes either of the following findings in writing, based upon substantial evidence:

1. The incentive or concession is not required to provide for affordable housing costs, as defined in Health and Safety Code Section 50052.5, or for rents for the targeted units to be set as specified in Section 106.32.070.B. (Unit cost requirements); or
2. The incentive or concession would have a specific adverse impact, as defined in Government Code Section 65589.5(d)(2), upon public health and safety ~~or the physical environment~~, or on any real property 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.
3. The concession or incentive would be contrary to state or federal law.

- B. **Number of incentives.** The applicant shall receive the following number of incentives or concessions.

<u>No. of Incentives/Concessions</u>	<u>Very Low Income %</u>	<u>Low Income %</u>	<u>Moderate Income %</u>
<u>1</u>	<u>5%</u>	<u>10%*</u>	<u>10%</u>
<u>2</u>	<u>10%</u>	<u>17%</u>	<u>20%</u>
<u>3</u>	<u>15%</u>	<u>24%</u>	<u>30%</u>
<u>4</u>	<u>100% Low/Very Low/Mod (20% Moderate Allowed)</u>	<u>100% Low/Very Low/Mod (20% Moderate Allowed)</u>	<u>100% Low/Very Low/Mod (20% Moderate Allowed)</u>

\*One incentive or concession is also required for projects that include at least 20 percent of the total units for lower income students in a student housing development.

- ~~1. **One incentive or concession.** One incentive or concession for a project that includes at least 10 percent of the total units for lower income households, at least five percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.~~
- ~~2. **Two incentives or concessions.** Two incentives or concessions for a project that includes at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.~~
- ~~3. **Three incentives or concessions.** Three incentives or concessions for a project that includes at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.~~

- C. **Type of incentives.** For the purposes of this Chapter, concession or incentive means any of the following:

1. A reduction in the site development standards of this Zoning Code (e.g., site coverage limitations, setbacks, reduced parcel sizes, and/or parking requirements (see also Section 106.32.050 [Parking Requirements in Density Bonus



Projects]), or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission in compliance with Health and Safety Code Section 18901 et seq., that would otherwise be required, that results in identifiable, financially sufficient, and actual cost reductions;

2. Approval of mixed-use zoning not otherwise allowed by this Zoning Code in conjunction with the housing development, if nonresidential land uses will reduce the cost of the housing development, and the nonresidential land uses are compatible with the housing project and the existing or planned development in the area where the project will be located;
3. Other regulatory incentives proposed by the applicant or the City that will result in identifiable, financially sufficient, and actual cost reductions; and/or
4. In its sole and absolute discretion, a direct financial contribution granted by the Council, including writing-down land costs, subsidizing the cost of construction, or participating in the cost of infrastructure.

**D. Effect of incentive or concession.** The granting of a concession or incentive shall not be interpreted, in and of itself, to require a General Plan amendment, Zoning Map amendment, or other discretionary approval.

**106.32.050 - Parking Requirements in Density Bonus Projects**

**A. Applicability.** This Section applies to a development that meets the requirements of Section 106.32.020 (Eligibility for Bonus, Incentives, or Concessions), above, but only at the request of the applicant. An applicant may request additional parking incentives or concessions beyond those provided in this Section in compliance with Section 106.32.040 (Allowed Incentives or Concessions), above.

**B. Number of parking spaces required.**

1. At the request of the applicant, the City shall apply the following vehicular parking ratios for a project that complies with the requirements of Section 106.32.020 (Eligibility for Bonus, Incentives, or Concessions), above, inclusive of handicapped and guest parking, pursuant to Government Code Section 65915(p)(1):

<u>Studio</u>	<u>1 space</u>
<u>1 Bedroom</u>	<u>1 space</u>
<u>2 Bedroom</u>	<u>1.5 spaces</u>
<u>3 Bedroom</u>	<u>1.5 spaces</u>
<u>4+ Bedrooms</u>	<u>2.5 spaces</u>

- ~~a. Zero to one bedrooms: One on-site parking space.~~
- ~~b. Two to three bedrooms: Two on-site parking spaces.~~
- ~~c. Four and more bedrooms: Two and one-half on-site parking spaces.~~
- da. Lower parking ratios apply to specified projects as follows:

<u>Rental/for sale projects with at least 11% very low income or 20% low income units, within ½ mile of accessible major transit stop</u>	<u>0.5 spaces per unit</u>
<u>Rental projects 100% affordable to low income, within ½ mile of accessible major transit stop</u>	<u>0 spaces per unit</u>
<u>Rental senior projects 100% affordable to low income, either with paratransit service or within ½ mile of accessible bus route (operating at least 8 times per day)</u>	<u>0 spaces per unit</u>

<u>Rental special needs project 100% affordable to low income households, either with paratransit service or within ½ mile of accessible bus route (operating at least 8 times per day)</u>	<u>0 spaces per unit</u>
<u>Rental supportive housing developments 100% affordable to low income households</u>	<u>0 spaces per unit</u>
<u>For sale projects with at least 40% moderate income units, within ½ mile of accessible major transit stop</u>	<u>0.5 spaces per bedroom</u>

~~(1) 0.5 spaces per bedroom, inclusive of handicapped and guest parking, for projects with at least 11 percent very low income or 20 percent lower income units and are within one-half mile of an accessible major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and have unobstructed access to the major transit stop from the development.~~

~~(2) A rental project that is 100 percent affordable to lower income, as provided in Section 50052.5 of the Health and Safety Code, the following ratios apply:~~

~~(a) 0.5 spaces per unit, inclusive of handicapped and guest parking, if the project is within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and there is unobstructed access to the major transit stop from the development.~~

~~(b) 0.5 spaces per unit, inclusive of handicapped and guest parking, if the project is for rent housing development for individual who are 62 years of age or older that complies with Sections 561.2 and 51.3 of the Civil Code. The 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.~~

~~(c) 0.3 spaces per unit, if the development is a special needs housing development, as defined in Section 51312 of the Health and Safety Code and the development has either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.~~

2. If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number.

**C. Location of parking.** For purposes of this Section, a development may provide on-site parking through tandem or uncovered parking, but not through on-street parking.

**106.32.060 - Bonus and Incentives for Housing with Child Care Facilities**

A housing development that complies with the resident and project size requirements of Subsections 106.32.020.A., and B., above, and also includes as part of that development a child care facility other than a large or small family day care home, that will be located on the site of, as part of, or adjacent to the development, shall be subject to the following additional bonus, incentives, and requirements.

**A. Additional bonus and incentives.** The City shall grant a housing development that includes a child care facility in compliance with this Section either of the following:

1. An additional density bonus that is an amount of floor area in square feet of residential space that is equal to or greater than the floor area of the child care facility; or
2. An additional incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

**B. Requirements to qualify for additional bonus and incentives.**

1. The City shall require, as a condition of approving the housing development, that:
  - a. 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 in compliance with Section 106.32.070 (Continued Availability), below; and
  - b. 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 in compliance with Subsection 106.32.020 A (Resident requirements), above.
2. The City shall not be required to provide a density bonus for a child care facility in compliance with this Section if it finds, based upon substantial evidence, that the community has adequate child care facilities.

**106.32.070 - Continued Availability**

The units that qualified the housing development for a density bonus and other incentives and concessions shall be continue to be available as affordable units in compliance with the following requirements, as required by Government Code Section 65915(c). See also Section 106.32.110 (Control of Resale).

- A. Duration of affordability.** The applicant shall agree to, and the City shall ensure the continued availability of the units that qualified the housing development for a density bonus and other incentives and concessions, as follows.
  1. **Low-, and very low-income units.** The continued affordability of all low- and very low income qualifying units shall be maintained for 55 years, or a longer time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.
  2. **Moderate income units in common interest development.** The continued availability of moderate income units in a common interest development shall be maintained for a minimum of 10 years.
- B. Unit cost requirements.** The rents and owner-occupied costs charged for the housing units in the development that qualify the project for a density bonus and other incentives and concessions, shall not exceed the following amounts during the period of continued availability required by this Section:
  1. **Lower income units.** Rents for the lower income density bonus units shall be set at an affordable rent as defined in Health and Safety Code Section 50053; and
  2. **Owner-occupied units.** Owner-occupied units shall be available at an affordable housing cost as defined in Health and Safety Code Section 50052.5.
- C. Occupancy and resale of moderate income common interest development units.** An applicant shall agree to, and the City shall ensure that the initial occupant of moderate income units that are directly related to the receipt of the density bonus in a common interest development as defined in Civil Code Section 1351, are persons and families of moderate income, as defined in Health and Safety Code Section 50093, and that the units are offered at an affordable housing cost, as defined in Health and Safety Code Section 50052.5. 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 requirements apply to the equity sharing agreement.
  1. Upon resale, the seller of the unit shall retain the value of any improvements, the down payment, and the seller's proportionate share of appreciation.

2. The City shall recapture any additional subsidy and its proportionate share of appreciation, which shall then be used within three years for any of the purposes described in Health and Safety Code Section 33334.2(e) that promote home ownership. For the purposes of this Section:
  - a. The City'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 down payment 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; and
  - b. 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.

### 106.32.080 - Location and Type of Designated Units

- A. **Location/dispersal of units.** As required by the Council in compliance with Section 106.32.090 (Processing of Bonus Requests), below, designated units shall be reasonably dispersed throughout the project where feasible, shall contain on average the same number of bedrooms as the non-designated units in the project, and shall be compatible with the design or use of remaining units in terms of appearance, materials, and finished quality.
- B. **Phasing.** If a project is to be phased, the density bonus units shall be phased in the same proportion as the non-density bonus units, or phased in another sequence acceptable to the City.

### 106.32.090 - Processing of Bonus Requests

- A. **Permit requirement.** A request for a density bonus and other incentives and concessions shall be submitted concurrently with the filing of the planning application for the first discretionary permit required for the housing or commercial development. The density bonus request shall be submitted in writing and shall be processed concurrently with the planning application. The applicant shall be informed whether the application is ~~complete~~ consistent with Government Code Section 65943.
- B. **Application Contents.** An application to request a density bonus shall be filed with the Department on a City application form together with all information required by the City's list of required application contents.
- C. **Application Review Process.** The review process for a density bonus project shall be the same as that required for associated discretionary permits. Discretionary actions on density bonus project shall be subject to the same appeal process applied to associated discretionary permits. The application and approval of a density bonus and any associated incentives or concessions shall not require a separate permit or approval process from that otherwise required for the same project without a density bonus request.
- D. **Findings for approval.** In addition to the findings required by any discretionary permits, the approval of a density bonus and other incentives and concessions shall require that the review authority first make all of the following additional findings:
  1. The residential development will be consistent with the General Plan, except as provided by this Chapter for density bonuses, and other incentives and concessions;
  2. The approved number of dwellings can be accommodated by existing and planned infrastructure capacities;
  3. Adequate evidence exists to indicate that the project will provide affordable housing in a manner consistent with the purpose and intent of this Chapter; and
  4. There are sufficient provisions to guarantee that the units will remain affordable for the required time period.

**106.32.100 - Density Bonus Agreement**

**A. Agreement required.** An applicant requesting a density bonus shall agree to enter into a density bonus agreement (referred to as the "agreement") with the City in the City's standard form of agreement.

**B. Agreement provisions.**

**1. Project information.** The agreement shall include at least the following information about the project:

- a. The total number of units approved for the housing development, including the number of designated dwelling units;
- b. A description of the household income group to be accommodated by the housing development, and the standards and methodology for determining the corresponding affordable rent or affordable sales price and housing cost consistent with HUD Guidelines;
- c. The marketing plan for the affordable units;
- d. The location, unit sizes (square feet), and number of bedrooms of the designated dwelling units;
- e. Tenure of the use restrictions for designated dwelling units of the time periods required by Section 106.32.070 (Continued Availability);
- f. A schedule for completion and occupancy of the designated dwelling units;
- g. A description of the additional incentives being provided by the City;
- h. A description of the remedies for breach of the agreement by the owners, developers, and/or successors-in-interest of the project; and
- i. Other provisions to ensure successful implementation and compliance with this Chapter.

**2. Minimum requirements.** The agreement shall provide, at minimum, that:

- a. The developer shall give the City the continuing right-of-first-refusal to lease or purchase any or all of the designated dwelling units at the appraised value;
- b. The deeds to the designated dwelling units shall contain a covenant stating that the developer or successors-in-interest shall not assign, lease, rent, sell, sublet, or otherwise transfer any interests for designated units without the written approval of the City;
- c. When providing the written approval, the City shall confirm that the price (rent or sale) of the designated dwelling unit is consistent with the limits established for low and very low income households, as published by HUD;
- d. The City shall have the authority to enter into other agreements with the developer, or purchasers of the designated dwelling units, to ensure that the required dwelling units are continuously occupied by eligible households;
- e. Applicable deed restrictions, in a form satisfactory to the City Attorney, shall contain provisions for the enforcement of owner or developer compliance. Any default or failure to comply may result in foreclosure, specific performance, or withdrawal of the Certificate of Occupancy;

- f. In any action taken to enforce compliance with the deed restrictions, the City Attorney shall, if compliance is ordered by a court of competent jurisdiction, take all action that may be allowed by law to recover all of the City's costs of action including legal services; and
  - g. Compliance with the agreement will be monitored and enforced in compliance with the measures included in the agreement.
- 3. For-sale housing conditions.** In the case of for-sale housing developments, the agreement shall provide for the following conditions governing the initial sale and use of designated dwelling units during the applicable restriction period:
- a. Designated dwelling units shall be owner-occupied by eligible households, or by qualified residents in the case of senior housing; and
  - b. The initial purchaser of each designated dwelling unit shall execute an instrument or agreement approved by the City which:
    - (1) Restricts the sale of the unit in compliance with this Chapter during the applicable use restriction period;
    - (2) Contains provisions as the City may require to ensure continued compliance with this Chapter and State law; and
    - (3) Shall be recorded against the parcel containing the designated dwelling unit.
  - c. The housing units are purchased by a qualified nonprofit housing corporation pursuant to a recorded contract that satisfies all of the requirements specified in paragraph (10) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code and that complies with all requirements as described in Government Code Section 65915.
- 4. Rental housing conditions.** In the case of a rental housing development, the agreement shall provide for the following conditions governing the use of designated dwelling units during the use restriction period:
- a. The rules and procedures for qualifying tenants, establishing affordable rent, filling vacancies, and maintaining the designated dwelling units for qualified tenants;
  - b. Provisions requiring owners to annually verify tenant incomes and maintain books and records to demonstrate compliance with this Chapter;
  - c. Provisions requiring owners to submit an annual report to the City, which includes the name, address, and income of each person occupying the designated dwelling units, and which identifies the bedroom size and monthly rent or cost of each unit; and
  - d. The applicable use restriction period shall comply with the time limits for continued availability in Section 106.32.070 (Continued Availability), above.
- C. Execution of agreement.**
- 1. Following Council approval of the agreement, and execution of the agreement by all parties, the City shall record the completed agreement on the parcels designated for the construction of designated dwelling units, at the County Recorder's Office.

2. The approval and recordation shall take place at the same time as the final map or, where a map is not being processed, before issuance of Building Permits for the designated dwelling units.
3. The agreement shall be binding on all future owners, developers, and/or successors-in-interest.

### 106.32.110 - Control of Resale

In order to maintain the availability of for-sale affordable housing units constructed in compliance with this Chapter, the following resale conditions shall apply.

- A. **Limits on resale price.** The price received by the seller of an affordable unit shall be limited to the purchase price plus an increase based on the Sacramento metropolitan area consumer price index, an amount consistent with the increase in the median income since the date of purchase, or the fair market value, whichever is less. Before offering an affordable housing unit for sale, the seller shall provide written notice to the City of their intent to sell. The notice shall be provided by certified mail to the Director.
- B. **Units to be offered to the City.** Home ownership affordable units constructed, offered for sale, or sold under the requirements of this Section shall be offered to the City or its assignee for a period of at least 90 days from the date of the notice of intent to sell is delivered to the City by the first purchaser or subsequent purchasers. Home ownership affordable units shall be sold and resold from the date of the original sale only to households as determined to be eligible for affordable units by the City in compliance with this Section. The seller shall not levy or charge any additional fees nor shall any "finders fee" or other monetary consideration be allowed other than customary real estate commissions and closing costs.
- C. **Declaration of restrictions.** The owners of any affordable unit shall attach and legally reference in the grant deed conveying title of the affordable ownership unit a declaration of restrictions provided by the City, stating the restrictions imposed in compliance with this Section. The grant deed shall afford the grantor and the City the right to enforce the declaration of restrictions. The declaration of restrictions shall include all applicable resale controls, occupancy restrictions, and prohibitions required by this Section.
- D. **City to monitor resale of units.** The City shall monitor the resale of ownership affordable units. The City or its designee shall have a 90-day option to commence purchase of ownership affordable units after the owner gives notification of intent to sell. Any abuse in the resale provisions shall be referred to the City for appropriate action.

### 106.32.120 - Judicial Relief, Waiver of Standards

- A. **Judicial relief.** As provided by Government Code Section 65915(d)(3), the applicant may initiate judicial proceedings if the City refuses to grant a requested density bonus, incentive, or concession.
- B. **Waiver of standards preventing the use of bonuses, incentives, or concessions.**
  1. As required by Government Code Section 65915(e), the City will not apply a development standard that will have the effect of precluding the construction of a development meeting the criteria of Subsection 106.32.020 A (Resident requirements), above, at the densities or with the concessions or incentives allowed by this Chapter.
  2. An applicant may submit to the City a proposal for the waiver or reduction of development and zoning standards that would otherwise inhibit the utilization of a density bonus on a specific site, including minimum parcel size, side setbacks, and placement of public works improvements.
  3. The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible.

- C. City exemption.** Notwithstanding the provisions of Subsections A. and B., above, nothing in this Section shall be interpreted to require the City to:
1. Grant a density bonus, incentive, or concession, or waive or reduce development standards, if the bonus, incentive, concession, waiver, or reduction, would have a specific, adverse impact, as defined in Government Code Section 65589.5(d)(2), upon health, ~~or safety, or the physical environment,~~ and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact; or
  2. Grant a density bonus, incentive or concession, or waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.