

City of Brisbane

Planning Commission Agenda Report

TO: Planning Commission

For the Meeting of 12/13/12

FROM: Tim Tune, Special Assistant, via John Swiecki, Community Development Director

SUBJECT: Implementation of Housing Element Programs H.B.4.b and H.B.5.a Regarding Inclusionary Housing and Density Bonuses

INTRODUCTION. The 2007-2014 Housing Element contains the following programs to encourage the provision of housing affordable to moderate and lower income households in compliance with State law:

Program H.B.4.b: Update the inclusionary housing ordinance so as to comply with California Civil Code Sections 1954.51-535.

Program H.B.5.a: Amend the Affordable Housing Ordinance (BMC Chapter 17.31) to permit the City to grant a proportionately lower density bonus and/or incentives for affordable housing projects that do not qualify under Government Code Section 65915 due to their small size or other limitations, as well as to grant a density bonus and/or other incentives greater than required for projects that meet or exceed the qualifications for a density bonus (as provided by AB 2280), such as those that include units for extremely-low-income families and larger households.

Program H.B.4.b addresses a State appellate court decision that found that requiring that a percentage of units in rental projects be rented at affordable rates violated State law limiting rent control.

Program H.B.5.a takes advantage of exceptions provided in Government Code Section 65915(n) to the requirements for density bonuses and/or incentives for qualifying projects that voluntarily provide at least the minimum percentage of affordable units.

INCLUSIONARY HOUSING REQUIREMENTS FOR RENTAL PROJECTS. Inclusionary housing is the term used for local ordinances that require that a specified share of units in residential projects be made affordable at below market rates. It is not a requirement under State law, and the Department of Housing and Community Development does not specifically recognize the potential for such units to meet its regional housing needs allocation.

Current Municipal Code Requirements: BMC Section 17.31.030 (see attached) currently requires that a portion of single-family or multi-family residential projects (including condominium conversions) with 6 or more units be offered for sale or rent at below market rates. The intent of the chart included under this section of the Municipal Code is to require that roughly 15% of the total units proposed be affordable, while avoiding the confusion that could result from the fractional results of a mathematical formula; thus, the actual percentage varies from approximately 10 to 19% when fractional results are rounded up or down, depending upon the specific number of units proposed. The requirement is split between units affordable to low income and moderate income households for projects with units for sale. For rental projects, the requirement is split between units affordable to very-low and low income households, because typical rents in Brisbane in the past had been considered more affordable based upon County-wide median incomes, which are used to calculate income levels (moderate income is generally 81-120% of the area median income for San Mateo County, lower income is 51-80%, and very low income is 50% or less).

The Municipal Code allows inclusionary units to consist of different unit types than the market-rate units. For example, secondary dwelling units could be proposed as the inclusionary units in small single-family subdivisions, subject to recorded rent restrictions to assure that they remain affordable as required by the ordinance (unlike standard secondary dwelling units which are not subject to recorded rent restrictions). As rental units, they would have to be affordable to lower and very-low income households (as opposed to those of lower and moderate incomes for inclusionary for-sale units).

It should be noted that BMC Section 17.31.170 allows for waiver of the inclusionary housing requirements, if the applicant submits substantial evidence that compliance would be unreasonable or unconstitutional.

California Civil Code & Government Code: In 2009, a state appellate court found in the case of *Palmer v. City of Los Angeles* that applying inclusionary housing requirements to rental projects (including in-lieu fees) violated the Costa-Hawkins Rental Housing Act (California Civil Code Section 1954.50 et seq., attached), which gives landlords the right to set rental rates for units built after February 1, 1995, as well as for voluntarily vacated units.

The Costa-Hawkins Act includes an exception for projects where the owner has “agreed by contract with a public entity (to build affordable housing) in consideration for a direct financial contribution or any other forms of assistance specified in (the State Density Bonus law).” [Civil Code Section 1954.53(a)(2)]. Accordingly, rental units in projects that receive such financial assistance or density bonus incentives from the City are not affected by the court’s decision.

At the same time, Government Code Section 65589.8 states, “A local government which adopts a requirement in its housing element that a housing development contain a fixed percentage of

affordable housing units shall permit a developer to satisfy all or a portion of that requirement by constructing rental housing at affordable monthly rents, as determined by the local government. Nothing in this section shall be construed to expand or contract the authority of a local government to adopt an ordinance, charter amendment, or policy requiring that any housing development contain a fixed percentage of affordable housing units.”

Thus, the City should provide a rental housing option to comply with its inclusionary housing requirements, but these cannot require that developers provide affordable rental units without the City providing the developer direct financial assistance or density bonus incentives.

Government Code Section 65915(k) defines “incentive” as:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California 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 vehicular 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 project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable, financially sufficient, and actual cost reductions.

Government Code Section 65915(l) notes that:

Subdivision (k) does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

Legislation to resolve questions raised by the *Palmer* decision has yet to be adopted. Senate Bill SB 184 introduced by Senator Leno in 2011 was intended to accomplish this, but earlier this year it died before passage.

Options: With the dissolution of redevelopment agencies by the State, the City no longer has a significant source of revenue to offer “direct financial contributions” to rental housing developers. The City previously declined to include an in-lieu fee in its inclusionary housing program, preferring to require actual construction of affordable units; although, in-lieu fees from

for-sale projects could provide a source for “direct financial contributions” to leverage affordable units in rental projects (the *Palmer* decision prohibited collecting fees in lieu of requiring inclusionary rental units).

Some cities, such as Mountain View, San Francisco and San Carlos, have conducted extensive studies to establish a nexus between the development of market rate rental/for-sale housing and the demand for affordable housing, in order to justify adoption of an impact fee. Such studies must be designed to comply with the findings of the *Palmer* decision. Fees collected could then be used to support inclusionary units, as well as other forms of affordable housing. Note that impact fees differ from the in-lieu fees that some cities collect to exclude developers from requirements to actually build inclusionary units. The difficulty with the impact fee approach is that there is simply not enough statistical data currently available locally to support the City of Brisbane conducting such an analysis on its own. The various jurisdictions in San Mateo County have discussed a county-wide analysis, but one has yet to be begun.

The City of San Mateo has adopted a moratorium on most new rental development to provide the City time to figure out how its inclusionary housing ordinance, adopted per Measure P which passed in 2004, can be revised to comply.

An option staff suggests be studied further is revision of the affordable housing ordinance to further interweave the inclusionary housing requirements with the density bonus provisions to grant incentives in exchange for guaranteeing the affordability of a portion of the units in rental developments consistent with the City’s current inclusionary requirement (see below).

DENSITY BONUS & INCENTIVES BEYOND STATE MINIMUMS. A density bonus is an increase in the number of dwelling units above what would be permitted within the applicable zoning district. The density bonus is expressed as a percentage increase in the number of permitted units (as opposed to an increase in the ratio of units per land area). Projects which comply with specific standards of affordability or other State requirements are entitled to receive the increase in unit density, along with a number of “incentives or concessions” that modify or waive city development standards to make the project economically feasible, as specified in the State law.

Current Municipal Code Requirements: BMC Sections 17.31.050, 17.31.080 & 17.31.090 (see attached Ordinance No. 537) provide the required density bonus for housing developments that include minimum percentages of various types of affordable or special needs units or child care facilities as specified by State law (also see the attached “State Law Correlated to the Municipal Code” comparison chart). BMC Section 17.31.060 provides the incentives or concessions that are required to accompany the various density bonuses required by State law. The required density bonuses and incentives are summarized in the two tables under BMC Section 17.31.100.

The minimum size residential project that can qualify for a density bonus must contain 5 dwelling units and/or residential lots (BMC Section 17.31.020.X). The following table illustrates the density bonuses and incentives that such a project would be entitled to, if one of its units/lots (which would be 20% of the total) were affordable as follows:

1 Unit out of 5 (20%)			
Affordable to:		Qualifies for:	
		Density Bonus	Incentives/Concessions
Very low income household			
	Rental/For-Sale	35% = 2 more units	3
Lower income household			
	Rental/For-Sale	35% = 2 more units	2
	Condominium conversion	25% = 2 more units	2
Moderate income household			
	For-Sale only	25% = 2 more units	2
	Condominium conversion	N/A	N/A
Senior housing project		N/A	N/A

At the other end of the spectrum, the density bonuses max out when affordable units are provided at the following percentages:

Percent	Affordable to		Maximum Density Bonus	Maximum Incentives/Concessions
	Very low income household			
11%		Rental/For-Sale	35%	3
	Lower income household			
20%		Rental/For-Sale	35%	3
15%		Condominium conversion	25%	N/A*
	Moderate income household			
40%		For-Sale only	35%	3
33%		Condominium conversion	25%	N/A*
100%	Senior housing project		20%	N/A

*Density bonus may be exchanged for 1 incentive/concession

California Government Code: Assembly Bill AB 2280 (Saldana, 2008) amended Government Code Section 65915 to allow cities to grant a density bonus greater than required by the

Government Code or to grant a lower density bonus for projects that do not qualify under the Government Code via adopt a local enabling ordinance.

(n) If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

Options: The City could consider granting an increased density bonus for projects that include more than 11% of the units for rent or sale as affordable to very low income households, more than 20% of the units for rent or sale as affordable to lower income households or more than 40% of the units for sale as affordable to moderate income households. If so, the City may want to also consider placing a ceiling on all density bonuses, such as a cap on the number of units per sq. ft. of land permitted or a restriction limiting the unit density to no more than twice that permitted for the applicable zoning district. For example, under the current State maximum density bonus of 35%, the density of a project in the R-3 District would be increased from 1 unit per 1,500 sq. ft. to 1 unit per 1,111 sq. ft. To get a feel for what a higher density might look like, please consider the following examples of existing nonconforming high-density residential buildings:

<u>Address</u>	<u>Lot Size</u>	<u>Units</u>	<u>Density (Site Sq. Ft. per Unit)</u>
327-327A San Bruno Ave.	2,454 sq. ft.	2	1 unit/1,227 sq. ft.
448-448½ San Bruno Ave.	2,361 sq. ft.	2	1 unit/1,180.5 sq. ft.
10 Plumas St.	4,033 sq. ft.	4	1 unit/1,008.25 sq. ft.
300 Alvarado St.	4,727 sq. ft.	5	1 unit/945.4 sq. ft.
685 San Bruno Ave.	3,703 sq. ft.	4	1 unit/925.75 sq. ft.
176-184 Visitacion Ave.	1,650 sq. ft.	2	1 unit/825 sq. ft.
202 Visitacion Ave.	2,500 sq. ft.	4	1 unit /625 sq. ft.
665 San Bruno Ave.	4,768 sq. ft.	8	1 unit/596 sq. ft.
35 San Bruno Ave.	10,000 sq. ft.	20	1 unit/500 sq. ft.
34 Visitacion Ave.	10,000 sq. ft.	20	1 unit/500 sq. ft.

Should density bonuses also be given to projects that include affordable units, but not enough to qualify under the State standards? Should this apply to projects of less than 5 units, as well as to projects of 5 or more units with less than the required percentage of affordable units?

As an example, the Habitat for Humanity project at the corner of San Bruno Avenue and Glen Parkway provided 2 dwelling units that were 100% affordable to very low income households on sites totaling 5,396 sq. ft. within the R-1 District. Given the 1 unit per 5,000 sq. ft. maximum density in that district, this would be equivalent to a density bonus of 100%; instead, Variances

where granted to allow 2 building sites less than 5,000 sq. ft. in area and 100 ft. in depth. Variances were also granted to allow encroachments into the front and rear setbacks and to allow one house to exceed the 20 ft. height limit within the front 15 ft. of the site, and a Use Permit was granted to accept uncovered parking in lieu of required covered parking.

If the ordinance is amended to allow density bonuses beyond those required by State law, should the Planning Commission have approval authority, or should City Council approval be required, as it is currently for various financial incentives (BMC Section 17.31.060.B.3)?

To encourage affordable rental housing through density bonuses, in place of the inclusionary housing requirement, the City could consider reconfiguring the "rental project" portion of the chart in BMC Section 17.31.030.B.3 as a new classification of projects qualifying for a density bonus per Government Code Section 65915(n). Generally speaking, the current inclusionary housing requirement for rental projects is 5% of the total units being affordable to very low income households and 10% affordable to low income households. As shown in the tables in BMC Section 17.31.100, a project that provides either 5% of its total units affordable to very low income households or 10% of its total units affordable to lower income households is entitled to a 20% density bonus and 1 incentive/concession, but no additional density bonus or incentives/concessions are provided if a project provides units affordable to both very low and lower income households. The ordinance could instead, for example, give a 25% density bonus and 2 incentives/concessions to such projects.

Government Code Section 65915(n) does not specifically address incentives and concessions. Further study is needed to determine whether incentives could be granted above those provided in State law for qualifying projects and whether such incentives could be provided in lieu of an increased density bonus. Further study is also needed to determine whether proportionately lower incentives could be granted to affordable housing projects that do not meet the requirements of State law.

ATTACHMENTS:

Ordinance No. 537, Affordable Housing (BMC Chapter 17.31, Inclusionary Housing and Density Bonuses)
California Civil Code Sections 1954.50-53 (Costa-Hawkins Rental Housing Act)
State Law Correlated to the Municipal Code

ORDINANCE NO. 537

ORDINANCE OF THE CITY OF BRISBANE ADDING CHAPTER 17.31 TO THE MUNICIPAL CODE PERTAINING TO AFFORDABLE HOUSING

The City Council of the City of Brisbane hereby ordains as follows:

SECTION 1. Chapter 17.31 of the Brisbane Municipal Code is added to read as follows:

Chapter 17.31 Inclusionary Housing and Density Bonuses

- 17.31.010 Basis and purposes.
- 17.31.020 Definitions.
- 17.31.030 Basic inclusionary requirement.
- 17.31.040 Inclusionary housing incentives.
- 17.31.050 Density bonuses; calculation of bonus.
- 17.31.060 Development standards modified as density bonus incentive or concession.
- 17.31.070 Density bonus for land donation.
- 17.31.080 Density bonus for child care facilities.
- 17.31.090 Density bonus in condominium conversions.
- 17.31.100 Summary tables.
- 17.31.110 Time performance required for inclusionary and density bonus compliance.
- 17.31.120 Affordable housing plan submittal.
- 17.31.130 City review of affordable housing plan.
- 17.31.140 Developer affordable housing agreement.
- 17.31.150 Continued affordability and initial occupancy.
- 17.31.160 Implementation and enforcement.
- 17.31.170 Waivers of inclusionary housing requirement.

17.31.010 Basis and Purposes.

- A. Rental and owner-occupied housing in the city has become steadily more expensive. Housing costs have gone up faster than incomes for many groups in the community.
- B. Many persons who work in the city, who have grown up or have family ties in the city, who already live in the city but must move, or who wish to live in the city for other reasons, cannot afford housing in the city.
- C. Federal and state government programs do not provide nearly enough affordable housing or subsidies to satisfy the housing needs of moderate, lower or very low income households.
- D. Rising land prices have been a key factor in preventing development of new affordable housing. New housing construction in the city which does not include affordable units aggravates the existing shortage of affordable housing by absorbing the supply of available

residential land. This reduces the supply of land for affordable housing and increases the price of remaining residential land. Providing the affordable units required by this chapter will help to ensure that part of the city's remaining developable land is used to provide affordable housing.

E. The city wishes to retain an economically balanced community, with housing available to very low income, lower income and moderate income households. The city's general plan implements the established policy of the State of California that each community should foster an adequate supply of housing for persons at all economic levels.

F. An economically balanced community is only possible if part of the new housing built in the city is affordable to households with limited incomes. Requiring builders of new housing to include some housing affordable to households at a range of incomes is fair, not only because new development without affordable units contributes to the shortage of affordable housing, but also because zoning and other ordinances concerning new housing in the city should be consistent with the community's goal to foster an adequate supply of housing for persons at all economic levels.

G. In enacting this chapter it is also the intent of the City of Brisbane to implement the goals, objectives, and policies of the City's General Plan Housing Element, which includes a goal to encourage the provision of housing affordable to a variety of household income levels (Policy H1); the elderly and persons with disabilities (Policy H2); and identifies a density bonus policy and an inclusionary housing policy as methods to encourage the development of affordable housing (Goals H2f, H6a, H7a, and H11j).

H. This chapter is also intended to implement sections 65915, 65915.5, and 65917 of the California Government Code, governing density bonuses, by providing incentives required therein for the production of housing for very low, lower income, and senior households and for the production of housing for moderate income households residing in common interest developments.

17.31.020 Definitions.

A. Affordable ownership cost. Average monthly housing costs, during the first calendar year of a household's occupancy, including mortgage payments, property taxes, homeowners insurance, homeowners association dues, if any, and reasonable allowances for utilities and for maintenance and repair costs, which do not exceed the following.

1. for moderate income households: one hundred ten percent (110%) of area median income, adjusted for assumed household size based on unit size, multiplied by thirty-five percent (35%), and divided by twelve (12);
2. for lower income households: seventy percent (70%) of area median income, adjusted for assumed household size based on unit size, multiplied by thirty percent (30%) and divided by twelve (12);
3. for very low income households: fifty percent (50%) of area median income, adjusted for assumed household size based on unit size, multiplied by thirty percent (30%) and divided by twelve (12).

B. Affordable rent. Monthly rent, including utilities and all fees for housing services, including parking, which does not exceed the following:

1. for lower income households: sixty percent (60%) of area median income, adjusted for assumed household size based on unit size, multiplied by thirty percent (30%), and divided by twelve (12);

2. for very low income households: fifty percent (50%) of area median income, adjusted for assumed household size based on unit size, multiplied by thirty percent (30%), and divided by twelve (12).
- C. Affordable units. Inclusionary units or target units.
- D. Area median income. Area median income for San Mateo County as published by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, or successor provision.
- E. Assumed household size based on unit size. A household of one (1) person in a studio apartment, two (2) persons in a one bedroom unit, three (3) persons in a two bedroom unit and one (1) additional person for each additional bedroom thereafter.
- F. Child care center. Child care center has the same meaning as day care center, defined in section 17.02.190, as an establishment licensed by the state providing group day care services for seven (7) or more children other than those resident on the site. The term includes nurseries, nursery schools, preschools, play groups, and after school group care, but does not include large family day care homes operated in the provider's own home.
- G. Common interest development. Any of the following, as defined in Civil Code section 1351(c): a community apartment project; a condominium project; a planned development; or a stock cooperative.
- H. Density bonus. A density increase over the otherwise allowable maximum residential density, as described in section 17.31.050 of this chapter.
- I. Density bonus units. Those residential units granted pursuant to the provisions of this chapter which exceed the otherwise allowable maximum residential density for the development site.
- J. Developer affordable housing agreement. A recorded agreement between a developer and the city as described in section 17.31.140 of this chapter to ensure that the inclusionary housing and density bonus requirements of this chapter are satisfied.
- K. Development standard. Any site or construction condition that applies to a residential project pursuant to any ordinance, general plan, specific plan, or other local condition, law, policy, resolution, or regulation. As used in this paragraph, the term "site and construction conditions" means standards that specify the physical development of a site and buildings on the site in a residential project, but do not include any of the following: (i) the permitted uses of a site; (ii) any city fees, including dedication fees; (iii) affordable housing requirements; (iv) building standards approved by the California Building Standards Commission as provided in California Health and Safety Code Section 18901 *et seq.*; or (v) the requirements of Brisbane's Green Building Ordinance as set forth in Title 15, Chapter 15.80 of this Code.
- L. Dwelling unit. Shall have the meaning set forth in section 17.02.235.
- M. Eligible household. A household whose household income does not exceed the maximum specified in section 17.31.140 for a given affordable unit.
- N. First approval. The first of the following approvals to occur with respect to a residential project: subdivision approval, building permit or any permit or approval under the Zoning Ordinance.
- O. For-sale project. A residential project, or portion thereof, where the dwelling units are offered to the public for purchase.
- P. Household income. The combined adjusted gross income for all adult persons living in a dwelling unit as calculated for the purpose of the Section 8 Program under the United States Housing Act of 1937, as amended, or its successor.

Q. Incentives or concessions. Regulatory concessions as listed in section 17.31.060.
R. Inclusionary units. Dwelling units within a residential project which are consistent with the zoning district's density standard and which are required by section 17.31.030 of this chapter to be rented at affordable rents or sold at an affordable ownership cost to specified households.

S. Lower income household. A household whose income does not exceed the lower income limits applicable to San Mateo County, as published by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, or successor provision.

T. Maximum residential density. The maximum number of residential units permitted by the city's zoning ordinance on the date the application is deemed complete.

U. Moderate income household. A household whose income does not exceed the moderate income limits applicable to San Mateo County, as published by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, or successor provision.

V. Market-rate unit. Any unit within a residential project which is not an affordable unit.

W. Rental project. A residential project, or portion thereof, comprised of dwelling units which are intended to be rented, or are actually offered for rent, to tenants upon completion, whether or not a condominium or subdivision map is recorded as part of the residential project.

X. Residential project. Any parcel map, subdivision map, use permit, building permit, or other city approval which, for purposes of the inclusionary requirement set forth in 17.31.030, results in a net increase of at least six (6) or more dwelling units and/or residential lots or parcels or combination thereof, and for purposes of a density bonus as set forth in 17.31.050, results in a net increase of at least five (5) or more dwelling units and/or residential lots or parcels or combination thereof. A residential project may include, but is not limited to, new construction, conversion of existing dwelling units to condominium ownership, creation of residential lots, conversion of an existing nonresidential building to residential use, and the addition of dwelling units to an existing multifamily dwelling.

Y. Senior citizen housing development. A residential project of thirty-five (35) or more dwelling units as defined in California Civil Code Section 51.3, a mobile home park that limits residency to persons eligible to reside in a senior citizen housing development pursuant to California Civil Code Section 798.76 or 799.5, or a residential project of any number of dwelling units for senior citizens with disabilities provided such project complies with federal and state fair housing laws.

Z. Target units. Dwelling units affordable to moderate, low, or very low income households within a residential project that qualify the project for a density bonus if provided as required under section 17.31.050 of this chapter.

AA. Very low income household. A household whose income does not exceed the very low income limits applicable to San Mateo County, as published by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, or successor provision.

17.31.030 Basic Inclusionary Requirement.

A. This section shall apply to all residential projects with six (6) or more dwelling units, except for the following:

1. Residential projects which are developed pursuant to the terms of a development agreement executed prior to the effective date of this ordinance, provided that such residential projects shall comply with any

- affordable housing requirements included in the development agreement.
2. Residential projects if exempted by Government Code Section 66474.2 or 66498.1, provided that such residential projects shall comply with any predecessor ordinance in effect on the date the application for the development was deemed complete.

B. In a residential project with six (6) or more dwelling units, units shall be made available exclusively at affordable rents or affordable ownership cost for both rental and for-sale projects as prescribed in the chart in subparagraph (3) below.

1. For purposes of calculating the number of inclusionary units required by this section, any density bonus units authorized pursuant to this chapter shall not be counted as part of the residential project.
2. In order to prevent evasion of the provisions of this chapter, contemporaneous construction of six (6) or more dwelling units on a lot, or on contiguous lots for which there is evidence of common ownership or control, even though not covered by the same city land use approval, shall also be considered a single residential project. Construction shall be considered contemporaneous if any building permits are issued within five (5) years following the date of completion of any earlier construction.

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3. Chart Showing Inclusionary Requirements:

Total # of Units in Project	<u>For-Sale Project</u>		<u>Rental Project</u>	
	Units Required to be Affordable to Low-Income Households	Units Required to be Affordable to Moderate- Income Households	Units to be Affordable to Very-Low Income	Units to be Affordable to Low Income Households
0-5	0	0	0	0
6-10	0	1	0	1
11-15	1	1	1	1
16-20	1	2	1	2
21-25	1	3	1	3
26-30	2	3	2	3
31-40	2	4	2	4
41-50	2	5	2	5
51-60	3	6	3	6
61-70	3	7	3	7
71-80	4	8	4	8
81-90	4	9	4	9
91-100	5	10	5	10
101-110	5	11	5	11
111-120	6	12	6	12
121-130	6	13	6	13
131-140	7	14	7	14
141-150	7	15	7	15
151-160	8	16	8	16
161-170	8	17	8	17
171-180	9	18	9	18
181-190	9	19	9	19
191-200	10	20	10	20

Note: For projects of more than 200 units, the pattern set in the above chart shall be continued, with the numbers in the second and fourth columns being increased by 1 for each 20 additional units, and the numbers in the third and fifth columns being increased by 1 for each 10 additional units.

17.31.040 Inclusionary Housing Incentives.

A. The following incentives shall apply to all residential projects that provide one or more inclusionary units in accordance with the provisions of this chapter.

1. Single-family detached inclusionary units need not be constructed on lots the same size as the market-rate units in the same residential development, but the lots may be no smaller than the minimum standard for the applicable zoning district, except as provided by Section 17.31.060.B.1.
2. Inclusionary units may be smaller in size than market-rate units in the same residential development.
3. Inclusionary units may consist of different unit types than market-rate units in the same residential development. Secondary dwelling units proposed as inclusionary units shall be required to be rented at affordable rents per section 17.31.030(b)(3) of this chapter, as specified in a regulatory agreement, covenant, deed of trust, or other document approved by the City Council pursuant to section 17.31.150(b) of this chapter, in addition to being subject to the requirements of chapter 17.43 of this Title.
4. Inclusionary units may have different interior finishes and features than market-rate units in the same residential development, as long as the finishes and features are durable and of good quality.

17.31.050 Density Bonuses; Calculation of Bonus.

A. Very Low and Lower Income Housing and Senior Housing. A residential project is eligible for a twenty percent (20%) density bonus if the applicant seeks a density bonus and agrees to provide one of the following:

1. Ten percent (10%) of the total dwelling units of the residential project as target units affordable to lower income households; or
2. Five percent (5%) of the total dwelling units of the residential project as target units affordable to very low income households; or
3. A senior citizen housing development.

B. Moderate Income Housing. A residential project is eligible for a five percent (5%) density bonus if it meets all of the following criteria:

1. The applicant seeks a density bonus and agrees to provide at least ten percent (10%) of the total dwelling units as target units affordable to moderate income households;
2. The residential project is a common interest development as defined by Section 1351 of the California Civil Code; and
3. All of the dwelling units in the residential project are offered to the public for purchase.

C. Additional Density Bonus. The density bonus for which the residential project is eligible shall increase if the percentage of target units affordable to very low, lower, and moderate income households exceeds the base percentage established in subsections A and B above, as follows:

1. Very low income units - For each one percent (1%) increase above five percent (5%) in the percentage of target units affordable to very low income households, the density bonus shall be increased by two and one half percent (2.5%) up to a maximum of thirty-five percent (35%).

2. Lower income units - For each one percent (1%) increase above ten percent (10%) in the percentage of target units affordable to lower income households, the density bonus shall be increased by one and one half percent (1.5%) up to a maximum of thirty-five percent (35%).
3. Moderate income ownership units - For each one percent (1%) increase above ten percent (10%) of the percentage of target units reserved for sale at an ownership cost affordable to moderate income households, the density bonus shall be increased by one percent (1%) up to a maximum of thirty-five percent (35%).

D. When calculating the number of permitted density bonus units, any calculations resulting in fractional units shall be rounded to the next larger integer.

E. The density bonus units shall not be included when determining the number of target units required to qualify for a density bonus. When calculating the required number of target units, any calculations resulting in fractional units shall be rounded to the next larger integer.

F. The developer may request a lesser density bonus than the project is entitled to, but no reduction will be permitted in the number of required target units pursuant to subsection A above. Regardless of the number of target units, no residential project may be entitled to a density bonus of more than thirty-five percent (35%).

G. Inclusionary units will not be counted as target units. Target units qualifying a project for a density bonus must be provided in addition to required inclusionary units. Where a site has no maximum residential density, no density bonus need be granted.

H. Each residential project is entitled to only one density bonus, which may be selected based on the percentage of either target units affordable to very low income households, target units affordable to lower income households, or target units affordable to moderate income households, or the project's status as a senior citizen housing development. Density bonuses from more than one category may not be combined,

17.31.060 Development Standards Modified as Density Bonus Incentive or Concession.

A. Subject to the findings included in section 17.31.130, when a developer seeks a density bonus, the city shall grant incentives or concessions as follows:

1. One incentive or concession for projects that include any one of the following:
 - (a) at least ten percent (10%) of the total units as target units affordable to lower income households; or
 - (b) at least five percent (5%) of the total dwelling units as target units affordable to very low income households; or
 - (c) at least ten percent (10%) of the total dwelling units in a common interest development as target units affordable to moderate income households.
2. Two incentives or concessions for projects that include any one of the following:
 - (a) at least twenty percent (20%) of the total dwelling units as target units affordable to lower income households; or
 - (b) at least ten percent (10%) of the total dwelling units as target units affordable to very low income households; or

- (c) at least twenty percent (20%) of the total dwelling units in a common interest development as target units affordable to moderate income households.
 - 3. Three incentives or concessions for projects that include any one of the following:
 - (a) at least thirty percent (30%) of the total dwelling units as target units affordable to lower income households;
 - (b) at least fifteen percent (15%) of the total dwelling units as target units affordable to very low income households; or
 - (c) at least thirty percent (30%) of the total dwelling units in a common interest development as target units affordable to moderate income households
- B. Standards for Incentives and Concessions:
 - 1. For purposes of this chapter, concessions and incentives include reductions in site development standards, modifications of zoning code or architectural design requirements, and other incentives or concessions defined in Government Code Section 65915(l) that result in identifiable, financially sufficient, and actual cost reductions, as identified by a financial pro forma submitted by the applicant.
 - 2. Each proposed structure in a required yard setback shall count as one concession or incentive.
 - 3. The following concessions and incentives shall require approval by the City Council, even though the residential project may otherwise only require approval by the Planning Commission:
 - (a) Deferring collection of impact fees on market-rate units until issuance of certificate of occupancy;
 - (b) Any direct financial assistance, including that for purchasers of target units;
 - (c) Any regulatory incentives or concessions not related to the zoning ordinance's development standards or parking requirements, such as incentives involving infrastructure standards or mixed-use zoning.

C. Applicants may seek a waiver or modification of development standards that will have the effect of precluding the construction of a residential project meeting the criteria of sections 17.31.050 at the densities or with the incentives or concessions permitted by this section. The applicant shall show that the waiver or modification is necessary to make the residential project economically feasible based upon appropriate financial analysis and documentation as specified in section 17.31.120.

D. Nothing in this section requires the City to provide direct financial incentives for the residential project, including but not limited to the provision of publicly owned land or waiver of fees or dedication requirements.

17.31.070 Density Bonus for Land Donation.

A residential project that is eligible for a density bonus shall be eligible for an additional density bonus when an applicant for a residential project chooses to dedicate land to the City for

the construction of very low income housing that meets the requirements set forth in California Government Code §65915(h).

17.31.080 Density Bonus for Child Care Facilities.

A residential project that is eligible for a density bonus and includes a child care facility that will be located on the premises of, as part of, or adjacent to the residential project shall be eligible for an additional density bonus or an additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility if the requirements set forth in Government Code §65915(i) are met.

17.31.090 Density Bonus in Condominium Conversions.

A residential project for a conversion of existing rental apartments to condominiums shall be eligible for a density bonus or other incentives of equivalent financial value if the requirements in Government Code §65915.5 are met.

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Density Bonus Summary				
Types of Affordable Units Providing Eligibility for a Density Bonus	Minimum %	Bonus Granted	Additional Bonus for Each 1% Increase over the Minimum %	% Target Units Required for Maximum 35% Bonus
A density bonus may be selected from only one category, except that bonuses for land donation may be combined with others, up to a maximum of 35%, and an additional sq. ft. bonus may be granted for a child care center facility.				
Very low income	5%	20%	2.5%	11%
Lower-income	10%	20%	1.5%	20%
Moderate income (ownership units only)	10%	5%	1%	40%
Senior housing project	100% senior	20%	--	--
Land donation for very low income housing	10% of market-rate units	15%	1%	30% of market-rate units
Condominium conversion – moderate income	33%	25% ^(A)	--	--
Condominium conversion – lower income	15%	25% ^(A)	--	--
Child care center	--	Sq. ft. in child care center ^(A)	--	--
Notes: (A) Or an incentive of equal value, at the City's option.				

Incentives and Concessions Summary			
Target Units or Category	% of Target Units		
Pursuant to State Density Bonus			
Very low income	5%	10%	15%
Lower income	10%	20%	30%
Moderate income (ownership units only)	10%	20%	30%
Maximum Incentive(s)/Concession(s) (A)(B)(C)(D)	1	2	3
Notes: (A) A concession or incentive may be requested only if an application is also made for a density bonus. (B) Concessions or incentives may be selected from only one category (very low, lower, or moderate). (C) No concessions or incentives are available for land donation. (D) Condominium conversions and child care centers facilities may have one concession or a density bonus at the City's option, but not both.			

17.31.110 Time Performance Required For Inclusionary and Density Bonus Compliance.

A. No building permit shall be issued for any market-rate unit until the permittee has obtained permits for affordable units sufficient to meet the requirements of section 17.31.030 and, if a density bonus has been requested, section 17.31.050. No final inspection for occupancy for any market-rate unit shall be completed until the permittee has constructed the affordable units required by section 17.31.030 and section 17.31.050. The time requirements set forth in this subsection for issuance of building permits for market-rate units and for final inspections for occupancy for market-rate units may be modified to accommodate phasing schedules, model variations, or other factors in a residential project, if the City determines this will provide greater public benefit and a developer affordable housing agreement acceptable to the Community Development Director or the Community Development Director's designee pursuant to section 17.31.140 so provides.

B. Conditions to carry out the purposes of this chapter shall be imposed on the first approval for a residential project.

17.31.120 Affordable Housing Plan Submittal.

A. An affordable housing plan shall be submitted as part of the application for first approval of any residential project. The affordable housing plan shall include the following information:

1. For each construction phase, the affordable housing plan shall specify, at the same level of detail as the application for the residential project: the number, unit type, tenure, number of bedrooms and baths, approximate location, size, and design, construction and completion schedule of all affordable units, phasing of affordable units in relation to market-rate units, and marketing plan. The affordable housing plan shall specify the methods to be used to verify incomes of renters or purchasers, and specify a financing mechanism for the on-going administration and monitoring of the affordable units. The rent or sale price shall be calculated by the City.
2. Number and location of all inclusionary units and level of affordability.
3. Where any density bonuses, incentives, concessions, waivers or modifications of development standards, or modified parking standards are being requested, the affordable housing plan shall include the following:
 - (a) A description of any requested density bonuses, incentives, concessions, waivers or modifications of development standards, or modified parking standards.
 - (b) Identification of the base project without the density bonus, number and location of all target units qualifying the project for a density bonus, level of affordability of the target units, and identification of the bonus units.
 - (c) For all incentives and concessions except those listed in section 17.31.040, a pro forma demonstrating that the requested incentives and concessions result in identifiable, financially sufficient, and actual cost reductions.

- (d) For waivers or modifications of development standards: (i) a pro forma demonstrating that the waiver or modification is necessary to make the residential project economically feasible based upon appropriate financial analysis and documentation; and (ii) evidence that the development standards for which a waiver is requested will have the effect of precluding the construction of the residential project at the densities or with the incentives or concessions permitted by this chapter.
 - (e) The pro formas required in subparagraphs (c) and (d) shall also include: (i) the actual cost reduction achieved through the incentive, concession, waiver, or modification; and (ii) evidence that the cost reduction allows the developer to provide affordable rents or affordable sales prices. The cost of reviewing any required pro forma data submitted in support of a request for a concession, incentive, waiver or modification, including but not limited to the cost to the City of hiring a consultant to review the pro forma, shall be borne by the applicant.
 - (f) If a density bonus or concession is requested for a senior housing project, the application shall provide evidence that units in the residential project shall be occupied by a senior citizen or other person eligible to reside in a senior housing project.
 - (g) If a density bonus or concession is requested for a land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the findings in Government Code 65915(h) can be made.
 - (h) If a density bonus or concession is requested for a child care facility, the application shall show the location and square footage of the child care facility and provide evidence that the findings included in Government Code 65915(i) can be made.
 - (i) If a mixed use building or development is proposed, the application shall provide evidence that the required findings listed in section 17.31.130.C can be made.
4. If the applicant is proposing a modification of the requirement set forth in 17.31.110 that the target and/or inclusionary units be constructed concurrently with the market-rate units, the affordable housing plan shall describe the proposed phasing at the same level of detail as required in the application for the residential project, specify the security to be provided to the City to ensure that the target units and inclusionary units will be constructed, and explain how the proposed phasing would provide greater public benefit than providing the target units and/or inclusionary units concurrently with the market-rate units.

B. Upon submittal, the Community Development Director shall determine if the affordable housing plan conforms to the provisions of this chapter. No application for a first approval for a residential project subject to the inclusionary housing requirements or requesting a density bonus, incentives, concessions, or waivers may be deemed complete unless an affordable housing plan is submitted conforming to the provisions of this chapter.

17.31.130 City Review of Affordable Housing Plan.

A. An affordable housing plan shall be reviewed as part of the first approval of the residential project. Any decision regarding an affordable housing plan may be appealed in accordance with the applicable procedure set forth in Chapter 17.52 of this Title. For incentives and concessions requested under section 17.31.060(b)(3), the City Council shall be the approving authority for the affordable housing plan, even though the approving authority for the residential project might otherwise be the Planning Commission. In accordance with state law, neither the granting of a concession or incentive, nor the granting of a density bonus, shall be interpreted, in and of itself, to require a general plan amendment, zoning change, or other discretionary approval.

B. The plan for the inclusionary units shall be approved if it is in conformance with section 17.31.030 of this chapter.

C. Before approving a request for a density bonus, incentive, concession, waiver, or modification, the approving authority shall make the following findings:

1. The residential project is eligible for a density bonus and any concessions, incentives, waivers, modifications, or reduced parking standards requested; conforms to all standards for affordability included in this chapter; and includes a financing mechanism for all implementation and monitoring costs.
2. Any requested incentive or concession will result in identifiable, financially sufficient, and actual cost reductions based upon appropriate financial analysis and documentation.
3. If the density bonus is based all or in part on dedication of land, the approval body has made the findings included in Government Code 65915(h).
4. If the density bonus, incentive, or concession is based all or in part on the inclusion of a child care facility, the approval body has made the finding included in Government Code 65915(i).
5. If the incentive or concession includes mixed use buildings or developments, the approving authority has made the finding included in Government Code Section 65915(k)(2).
6. If a waiver or modification is requested, the waiver or modification is necessary to make the housing units economically feasible by providing appropriate financial analysis and documentation as described in section 17.31.120, and the development standards will have the effect of precluding the construction of the residential project at the densities or with the incentives or concessions permitted by this section.

D. The approving authority may deny a request for an incentive or concession for which the findings set forth in section 17.31.130.C can be made only if it makes a written finding, based upon substantial evidence, of either of the following:

1. The incentive or concession is not required to provide for affordable rents or affordable ownership costs; or
2. The incentive or concession would have a specific adverse impact upon public health or safety, or the physical environment, or on any real property that is listed in the California Register of Historic Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific

adverse impact without rendering the development unaffordable to lower, very low and moderate income households. For the purpose of this subsection, "specific adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions, as they existed on the date that the application was deemed complete.

E. The approving authority may deny a requested waiver or modification for which the findings set forth in section 17.31.130.C can be made only if it makes a written finding, based upon substantial evidence, of either of the following:

1. The modification would have a specific adverse impact upon health, safety, or the physical environment, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to lower, very low and moderate income households. For the purpose of this subsection, "specific adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application was deemed complete; or
2. The modification would have an adverse impact on any real property that is listed in the California Register of Historic Resources.

F. The approval body may deny a density bonus or concession that is based on the provision of child care facilities and for which the required findings can be made only if it makes a written finding, based on substantial evidence, that the City already has adequate child care facilities.

G. A request for a minor modification of an approved affordable housing plan may be granted by the Community Development Director or designee if the modification is substantially in compliance with the original affordable housing plan and conditions of approval. A minor modification is technical in nature, as opposed to substantive or material. Substantive or material changes to the affordable housing plan shall be processed in the same manner as the original plan.

17.31.140 Developer Affordable Housing Agreement.

A. Developers subject to the inclusionary housing requirements set forth in this chapter and developers requesting a density bonus, incentive, concession, waiver, modification, or revised parking standard pursuant to this chapter shall enter into a developer affordable housing agreement with the City. A developer affordable housing agreement shall be made a condition of the discretionary planning permits for all residential projects pursuant to this chapter and shall be recorded as a restriction on any parcels on which the target or inclusionary units will be constructed.

B. The developer affordable housing agreement shall be recorded prior to, or concurrently with, the final or parcel map, or, where the residential project does not include a map, prior to issuance of a building permit for any structure in the residential projects. The developer affordable housing agreement shall run with the land and bind all future owners and successors in interest.

C. The developer affordable housing agreement shall be in a form provided by the City and shall include, without limitation, the following:

1. The total number of units approved for the residential project, the number,

- location, and level of affordability of the target units and the inclusionary units.
2. Standards for determining affordable rent or affordable ownership cost for the target units and any inclusionary units.
 3. The location, unit size in square feet, and number of bedrooms of target units and any inclusionary units.
 4. Provisions to ensure initial and continuing affordability in accordance with the requirements of this chapter, including the execution and recordation of subsequent agreements ensuring continued affordability pursuant to section 17.31.150.
 5. If applicable, a schedule for completion and occupancy of target units and inclusionary units in relation to construction of market-rate units and specification of the security provided to the City to ensure that the target and/or inclusionary units will be constructed.
 6. A description of any incentives, concessions, waivers, or reductions being provided by the City.
 7. A description of remedies for breach of the agreement by either party. The City may identify tenants or qualified purchasers as third party beneficiaries under the agreement.
 8. Procedures for qualifying tenants and prospective purchasers of target units, including any preferences.
 9. Provisions requiring maintenance of records to demonstrate compliance with this chapter.
 10. Other provisions to ensure implementation and compliance with this chapter.
 11. In the case of senior citizen housing developments, the developer affordable housing agreement shall provide that units in the residential development shall be occupied by senior citizens or other persons eligible to reside in such a project.
 12. Developer affordable housing agreements for land dedication, child care facilities, and condominium conversion shall ensure continued compliance with all conditions included in sections 17.31.070, 17.31.080, and 17.31.090 respectively.

17.31.150 Continued Affordability and Initial Occupancy.

A. Definitions. The following definitions shall be applicable to such terms as used in this section 17.31.150:

1. Resale restriction agreement means an agreement, covenant, deed of trust, or other document, approved as to form by the City Council, which is executed by the property owner and recorded against each affordable unit to insure that such unit remains affordable for the applicable term. The City Manager is hereby granted the authority to execute the resale restriction agreement and any related documents following approval of form documents by the City Council.
2. Transfer means any sale, conveyance, assignment, or other change of ownership, whether voluntary or involuntary, of any legal or equitable

interest in an affordable unit. Where the affordable unit is owned by a corporation, limited liability company, general or limited partnership, or other form of business entity, a transfer of the unit shall be deemed to have occurred upon transfer of fifty percent (50%) or more of the ownership interest in such entity. Notwithstanding the foregoing, the following transfers shall be exempt from the requirement that the transferee qualify as an eligible household:

- (a) Any transfer to a spouse or domestic partner of the transferor, where the spouse or domestic partner becomes a co-owner of the affordable unit with the transferor;
- (b) Any transfer by devise or inheritance to a spouse or domestic partner of the transferor upon the transferor's death, where the spouse or domestic partner continues to occupy the unit as his or her principal place of residence;
- (c) Any transfer between spouses as part of a marriage dissolution proceeding;
- (d) Any transfer to an inter vivos revocable trust in which the transferor is the beneficiary;
- (e) The granting of the lien or other security interest in the unit as security for a loan and such loan complies with any applicable requirements of the resale restriction agreement.

The exemptions listed above shall apply only during the period in which the affordable unit is owned by the exempted person and shall not apply to any subsequent transfer by that person, which shall be subject to all of the terms and provisions of the resale restriction agreement.

3. Domestic partner means two persons who have filed a Declaration of Domestic Partnership with the California Secretary of State pursuant to Division 2.5, beginning with Section 297, of the California Family Code and such registration was in full force and effect at the time of the transfer or on the date of the transferor's death. A copy of the domestic partnership registration shall be provided to the City upon request.

B. Owner-occupied target units and inclusionary units. A resale restriction, agreement shall be recorded against each for-sale target unit and for-sale inclusionary unit to ensure that the unit remains affordable for a term of forty five (45) years. Upon any transfer of the unit (as defined in section 17.31.150.A.2) during the term of the resale restriction agreement, the transferee shall execute and record a new resale restriction agreement for a term of forty-five (45) years, commencing from the date of such transfer. If a unit is inherited and such transfer is not exempt under section 17.31.150.A.2, the beneficiaries may live in the unit and assume the obligations in the homeowner documents if he/she income qualifies; if he/she does not income qualify, he/she must sell the unit according to the resale restriction agreement, following a grace period not to exceed one year. Owner-occupied inclusionary units that are later rented shall be rented at a rent affordable to the corresponding income level as designated in section 17.31.030.C.

C. Rental target units and inclusionary units. A resale restriction agreement or regulatory agreement shall be recorded against each residential project containing rental target units and inclusionary rental units to ensure that the rental target units and inclusionary rental

units remain affordable for a minimum term of fifty five (55) years. Upon any transfer of the project (as defined in Section 17.31.150.A.2) during the term of the resale restriction agreement or regulatory agreement, the transferee shall execute and record a new resale restriction agreement or regulatory agreement for a term of fifty-five (55) years, commencing from the date of such transfer. A longer period of time may be specified if required by any construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Rental inclusionary units that are later sold shall be affordable upon sale to the corresponding income level as designated in section 17.31.030.C.

D. Eligibility requirements. No household shall be permitted to begin occupancy of a target or inclusionary unit unless the City or its designee has approved the household's eligibility, unless the household has been exempted under section 17.31.150.A.2. If the City or its designee maintains a list of, or otherwise identifies, eligible households, initial and subsequent occupants of target and inclusionary units shall be selected first from the list of identified households, to the maximum extent possible, in accordance with guidelines approved by the City Council or its designee.

17.31.160 Implementation and Enforcement.

A. The City Council may adopt guidelines, by resolution, to assist in the implementation of all aspects of this chapter.

B. No permit, license, subdivision map, or other approval or entitlement for a residential project shall be issued, including without limitation a final inspection for occupancy or certificate of occupancy, until all requirements applicable to the residential project at such time pursuant to this chapter have been satisfied.

C. The City Attorney shall be authorized to enforce the provisions of this chapter and all affordable housing agreements, regulatory agreements, resale controls, deeds of trust, or similar documents placed on target units, by civil action and any other proceeding or method permitted by law.

D. Failure of any official or agency to fulfill the requirements of this chapter shall not excuse any applicant or owner from the requirements of this chapter.

E. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

17.31.170 Waivers of Inclusionary Housing Requirement.

A. Notwithstanding any other provision of this chapter, the inclusionary housing requirements of section 17.31.030 of this chapter may be waived, adjusted, or reduced if an applicant shows, based on substantial evidence, that there is no reasonable relationship between the impact of a proposed residential development and the requirements of this chapter, or that applying the requirements of this chapter would take property in violation of the United States or California Constitutions, or that it would otherwise have an unconstitutional application to the property.

B. Any request for a waiver, adjustment, or reduction under this section shall be submitted concurrently with the affordable housing plan required by section 17.31.120. The request for a waiver, reduction, or adjustment shall set forth in detail the factual and legal basis for the claim.

C. The request for a waiver, adjustment, or reduction shall be reviewed and considered in the same manner and at the same time as the affordable housing plan. In making a

determination on an application for waiver, adjustment, or reduction, the applicant shall bear the burden of presenting substantial evidence to support the claim. The city may assume each of the following when applicable:

1. That the applicant will provide the most economical inclusionary units feasible meeting the requirements of this chapter.
2. That the applicant is likely to obtain housing subsidies when such funds are reasonably available.

D. The waiver, adjustment, or reduction may be approved only to the extent necessary to avoid an unconstitutional result, after adoption of written findings, based on substantial evidence, supporting the determinations required by this section.

CALIFORNIA CIVIL CODE SECTION 1954.50-1954.53
(Costa-Hawkins Rental Housing Act)

1954.50. This chapter shall be known and may be cited as the Costa-Hawkins Rental Housing Act.

1954.51. As used in this chapter, the following terms have the following meanings:

(a) "Comparable units" means rental units that have approximately the same living space, have the same number of bedrooms, are located in the same or similar neighborhoods, and feature the same, similar, or equal amenities and housing services.

(b) "Owner" includes any person, acting as principal or through an agent, having the right to offer residential real property for rent, and includes a predecessor in interest to the owner, except that this term does not include the owner or operator of a mobilehome park, or the owner of a mobilehome or his or her agent.

(c) "Prevailing market rent" means the rental rate that would be authorized pursuant to 42 U.S.C.A. 1437 (f), as calculated by the United States Department of Housing and Urban Development pursuant to Part 888 of Title 24 of the Code of Federal Regulations.

(d) "Public entity" has the same meaning as set forth in Section 811.2 of the Government Code.

(e) "Residential real property" includes any dwelling or unit that is intended for human habitation.

(f) "Tenancy" includes the lawful occupation of property and includes a lease or sublease.

1954.52. (a) Notwithstanding any other provision of law, an owner of residential real property may establish the initial and all subsequent rental rates for a dwelling or a unit about which any of the following is true:

(1) It has a certificate of occupancy issued after February 1, 1995.

(2) It has already been exempt from the residential rent control ordinance of a public entity on or before February 1, 1995, pursuant to a local exemption for newly constructed units.

(3) (A) It is alienable separate from the title to any other dwelling unit or is a subdivided interest in a subdivision, as specified in subdivision (b), (d), or (f) of Section 11004.5 of the Business and Professions Code.

(B) This paragraph does not apply to either of the following:

(i) A dwelling or unit where the preceding tenancy has been terminated by the owner by notice pursuant to Section 1946.1 or has been terminated upon a change in the terms of the tenancy noticed pursuant to Section 827.

(ii) A condominium dwelling or unit that has not been sold separately by the subdivider to a bona fide purchaser for value. The initial rent amount of the unit for purposes of this chapter shall be the lawful rent in effect on May 7, 2001, unless the rent amount is governed by a different provision of this chapter. However, if a condominium dwelling or unit meets the criteria of paragraph (1) or (2) of subdivision (a), or if all the dwellings or units except one have been sold separately by the subdivider to bona fide purchasers for value, and the subdivider has occupied that remaining unsold condominium dwelling or unit as his or her principal residence for at least one year after the subdivision occurred, then subparagraph (A) of paragraph (3) shall apply to that unsold condominium dwelling or unit.

(C) Where a dwelling or unit in which the initial or subsequent rental rates are controlled by an ordinance or charter provision in effect on January 1, 1995, the following shall apply:

(i) An owner of real property as described in this paragraph may establish the initial and all subsequent rental rates for all existing and new tenancies in effect on or after January 1, 1999, if the tenancy in effect on or after January 1, 1999, was created between January 1, 1996, and December 31, 1998.

(ii) Commencing on January 1, 1999, an owner of real property as described in this paragraph may establish the initial and all subsequent rental rates for all new tenancies if the previous tenancy was in effect on December 31, 1995.

(iii) The initial rental rate for a dwelling or unit as described in this paragraph in which the initial rental rate is controlled by an ordinance or charter provision in effect on January 1, 1995, may not, until January 1, 1999, exceed the amount calculated pursuant to subdivision (c) of Section 1954.53. An owner of residential real property as described in this paragraph may, until January 1, 1999, establish the initial rental rate for a dwelling or unit only where the tenant has voluntarily vacated, abandoned, or been evicted pursuant to paragraph (2) of Section 1161 of the Code of Civil Procedure.

(b) Subdivision (a) does not apply where the owner has otherwise agreed by contract with a public entity in consideration for a direct financial contribution or any other forms of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.

(c) Nothing in this section shall be construed to affect the authority of a public entity that may otherwise exist to regulate or monitor the basis for eviction.

(d) This section does not apply to any dwelling or unit that contains serious health, safety, fire, or building code violations, excluding those caused by disasters for which a citation has been issued by the appropriate governmental agency and which has remained unabated for six months or longer preceding the vacancy.

1954.53. (a) Notwithstanding any other provision of law, an owner of residential real property may establish the initial rental rate for a dwelling or unit, except where any of the following applies:

(1) The previous tenancy has been terminated by the owner by notice pursuant to Section 1946.1 or has been terminated upon a change in the terms of the tenancy noticed pursuant to Section 827, except a change permitted by law in the amount of rent or fees. For the purpose of this paragraph, the owner's termination or nonrenewal of a contract or recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant, shall be construed as a change in the terms of the tenancy pursuant to Section 827.

(A) In a jurisdiction that controls by ordinance or charter provision the rental rate for a dwelling or unit, an owner who terminates or fails to renew a contract or recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant may not set an initial rent for three years following the date of the termination or nonrenewal of the contract or agreement. For any new tenancy established during the three-year period, the rental rate for a new tenancy established in that vacated dwelling or unit shall be at the same rate as the rent under the terminated or nonrenewed contract or recorded agreement with a governmental agency that provided for a rent limitation to a qualified tenant, plus any increases authorized after the termination or cancellation of the contract or recorded agreement.

(B) Subparagraph (A) does not apply to any new tenancy of 12 months or more duration established after January 1, 2000, pursuant to the owner's contract or recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant, unless the prior

vacancy in that dwelling or unit was pursuant to a nonrenewed or canceled contract or recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant as set forth in that subparagraph.

(2) The owner has otherwise agreed by contract with a public entity in consideration for a direct financial contribution or any other forms of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.

(3) The initial rental rate for a dwelling or unit whose initial rental rate is controlled by an ordinance or charter provision in effect on January 1, 1995, may not until January 1, 1999, exceed the amount calculated pursuant to subdivision (c).

(b) Subdivision (a) applies to, and includes, renewal of the initial hiring by the same tenant, lessee, authorized subtenant, or authorized sublessee for the entire period of his or her occupancy at the rental rate established for the initial hiring.

(c) The rental rate of a dwelling or unit whose initial rental rate is controlled by ordinance or charter provision in effect on January 1, 1995, shall, until January 1, 1999, be established in accordance with this subdivision. Where the previous tenant has voluntarily vacated, abandoned, or been evicted pursuant to paragraph (2) of Section 1161 of Code of Civil Procedure, an owner of residential real property may, no more than twice, establish the initial rental rate for a dwelling or unit in an amount that is no greater than 15 percent more than the rental rate in effect for the immediately preceding tenancy or in an amount that is 70 percent of the prevailing market rent for comparable units, whichever amount is greater.

The initial rental rate established pursuant to this subdivision may not substitute for or replace increases in rental rates otherwise authorized pursuant to law.

(d) (1) Nothing in this section or any other provision of law shall be construed to preclude express establishment in a lease or rental agreement of the rental rates to be applicable in the event the rental unit subject thereto is sublet. Nothing in this section shall be construed to impair the obligations of contracts entered into prior to January 1, 1996.

(2) If the original occupant or occupants who took possession of the dwelling or unit pursuant to the rental agreement with the owner no longer permanently reside there, an owner may increase the rent by any amount allowed by this section to a lawful sublessee or assignee who did not reside at the dwelling or unit prior to January 1, 1996.

(3) This subdivision does not apply to partial changes in occupancy of a dwelling or unit where one or more of the occupants of the premises, pursuant to the agreement with the owner provided for above, remains an occupant in lawful possession of the dwelling or unit, or where a lawful sublessee or assignee who resided at the dwelling or unit prior to January 1, 1996, remains in possession of the dwelling or unit. Nothing contained in this section shall be construed to enlarge or diminish an owner's right to withhold consent to a sublease or assignment.

(4) Acceptance of rent by the owner does not operate as a waiver or otherwise prevent enforcement of a covenant prohibiting sublease or assignment or as a waiver of an owner's rights to establish the initial rental rate, unless the owner has received written notice from the tenant that is party to the agreement and thereafter accepted rent.

(e) Nothing in this section shall be construed to affect any authority of a public entity that may otherwise exist to regulate or monitor the grounds for eviction.

(f) This section does not apply to any dwelling or unit if all the following conditions are met:

(1) The dwelling or unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations, as defined by Section 17920.3 of the Health and Safety Code, excluding any violation caused by a disaster.

- (2) The citation was issued at least 60 days prior to the date of the vacancy.
- (3) The cited violation had not been abated when the prior tenant vacated and had remained unabated for 60 days or for a longer period of time. However, the 60-day time period may be extended by the appropriate governmental agency that issued the citation.

STATE LAW CORRELATED TO THE MUNICIPAL CODE

California Government Code Section*	Text	Brisbane Municipal Code Section
65915(a)	When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall provide the applicant incentives or concessions for the production of housing units and child care facilities as prescribed in this section. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented. Failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.	17.31.050-070
65915(b)(1)	A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f), and incentives or concessions, as described in subdivision (d), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:	17.31.050-070 17.31.100
65915(b)(1)(A)	Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.	17.31.050(a)(1)
Health & Safety Code Section 50079.5(a)	<i>"Lower income households" means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. The limits shall be published by the department in the California Code of Regulations as soon as possible after adoption by the Secretary of Housing and Urban Development. In the event the federal standards are discontinued, the department shall, by regulation, establish income limits for lower income households for all geographic areas of the state at 80 percent of area median income, adjusted for family size and revised annually.</i>	17.31.020(s)
65915(b)(1)(B)	Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.	17.31.050(a)(2)
Health & Safety Code Section 50105(a)	<i>"Very low income households" means persons and families whose incomes do not exceed the qualifying limits for very low income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. These qualifying limits shall be published by the department in the California Code of Regulations as soon as possible after adoption by the Secretary of Housing and Urban Development. In the event the federal standards are discontinued, the department shall, by regulation, establish income limits for very low income households for all geographic areas of the state at 50 percent of area</i>	17.31.020(bb)

	<i>median income, adjusted for family size and revised annually.</i>	
65915(b)(1)(C)	A senior citizen housing development as defined in Sections 51.3 and 51.12 of the 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 Civil Code.	17.31.050(a)(3)
Civil Code Section 51.3(b)	(1) "Qualifying resident" or "senior citizen" means a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development. (4) "Senior citizen housing development" means a residential development developed, substantially rehabilitated, or substantially renovated for, senior citizens that has at least 35 dwelling units. Any senior citizen housing development which is required to obtain a public report under Section 11010 of the Business and Professions Code and which submits its application for a public report after July 1, 2001, shall be required to have been issued a public report as a senior citizen housing development under Section 11010.05 of the Business and Professions Code. No housing development constructed prior to January 1, 1985, shall fail to qualify as a senior citizen housing development because it was not originally developed or put to use for occupancy by senior citizens.	17.31.020(z)
Civil Code Section 51.12	(c) This section shall only apply to the County of Riverside.	
Civil Code Section 798.76	The management may require that a prospective purchaser comply with any rule or regulation limiting residency based on age requirements for housing for older persons, provided that the rule or regulation complies with the federal Fair Housing Act, as amended by Public Law 104-76, and implementing regulations.	17.31.020(z)
Civil Code Section 799.5	The ownership or management may require that a purchaser of a mobilehome that will remain in the subdivision, cooperative, or condominium for mobilehomes, or resident-owned mobilehome park comply with any rule or regulation limiting residency based on age requirements for housing for older persons, provided that the rule or regulation complies with the provisions of the federal Fair Housing Act, as amended by Public Law 104-76, and implementing regulations.	17.31.020(z)
65915(b)(1)(D)	Ten percent of the total dwelling units in a common interest development as defined in Section 1351 of the Civil Code for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.	17.31.050(b)(1), (2) & (3)
Civil Code Section 1351	(c) "Common interest development" means any of the following: (1) A community apartment project. (2) A condominium project. (3) A planned development. (4) A stock cooperative.	17.31.020(g)

	<p>(d) "Community apartment project" means a development in which an undivided interest in land is coupled with the right of exclusive occupancy of any apartment located thereon.</p> <p>(f) A "condominium project" means a development consisting of condominiums. A condominium consists of an undivided interest in common in a portion of real property coupled with a separate interest in space called a unit, the boundaries of which are described on a recorded final map, parcel map, or condominium plan in sufficient detail to locate all boundaries thereof. The area within these boundaries may be filled with air, earth, or water, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support. The description of the unit may refer to (1) boundaries described in the recorded final map, parcel map, or condominium plan, (2) physical boundaries, either in existence, or to be constructed, such as walls, floors, and ceilings of a structure or any portion thereof, (3) an entire structure containing one or more units, or (4) any combination thereof. The portion or portions of the real property held in undivided interest may be all of the real property, except for the separate interests, or may include a particular three-dimensional portion thereof, the boundaries of which are described on a recorded final map, parcel map, or condominium plan. The area within these boundaries may be filled with air, earth, or water, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support. An individual condominium within a condominium project may include, in addition, a separate interest in other portions of the real property.</p> <p>(k) "Planned development" means a development (other than a community apartment project, a condominium project, or a stock cooperative) having either or both of the following features:</p> <p>(1) The common area is owned either by an association or in common by the owners of the separate interests who possess appurtenant rights to the beneficial use and enjoyment of the common area.</p> <p>(2) A power exists in the association to enforce an obligation of an owner of a separate interest with respect to the beneficial use and enjoyment of the common area by means of an assessment which may become a lien upon the separate interests in accordance with Section 1367 or 1367.1.</p> <p>(m) "Stock cooperative" means a development in which a corporation is formed or availed of, primarily for the purpose of holding title to, either in fee simple or for a term of years, improved real property, and all or substantially all of the shareholders of the corporation receive a right of exclusive occupancy in a portion of the real property, title to which is held by the corporation.</p>	
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	<i>The owners' interest in the corporation, whether evidenced by a share of stock, a certificate of membership, or otherwise, shall be deemed to be an interest in a common interest development and a real estate development for purposes of subdivision (f) of Section 25100 of the Corporations Code. A "stock cooperative" includes a limited equity housing cooperative which is a stock cooperative that meets the criteria of Section 33007.5 of the Health and Safety Code.</i>	
Health & Safety Code Section 50093	<p><i>"Persons and families of low or moderate income" means persons and families whose income does not exceed 120 percent of area median income, adjusted for family size by the department in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937. However, the agency and the department jointly, or either acting with the concurrence of the Secretary of the Business and Transportation Agency, may permit the agency to use higher income limitations in designated geographic areas of the state, upon a determination that 120 percent of the median income in the particular geographic area is too low to qualify a substantial number of persons and families of low or moderate income who can afford rental or home purchase of housing financed pursuant to Part 3 (commencing with Section 50900) without subsidy.</i></p> <p><i>"Persons and families of low or moderate income" includes very low income households, as defined in Section 50105, extremely low income households, as defined in Section 50106, and lower income households as defined in Section 50079.5, and includes persons and families of extremely low income, persons and families of very low income, persons and families of low income, persons and families of moderate income, and middle-income families. As used in this division:</i></p> <p><i>(a) "Persons and families of low income" or "persons of low income" means persons or families who are eligible for financial assistance specifically provided by a governmental agency for the benefit of occupants of housing financed pursuant to this division.</i></p> <p><i>(b) "Persons and families of moderate income" or "middle-income families" means persons and families of low or moderate income whose income exceeds the income limit for lower income households.</i></p>	17.31.020(s), (u) & (bb)
65915(b)(2)	For purposes of calculating the amount of the density bonus pursuant to subdivision (f), the applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), or (D) of paragraph (1).	17.31.120(a)(3)(B)
65915(b)(3)	For the purposes of this section, "total units" or "total dwelling units" does not include units added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.	

65915(c)(1)	An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all low- and very low income units that qualified the applicant for the award of the density bonus for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Rents for the lower income density bonus units shall be set at an affordable rent as defined in Section 50053 of the Health and Safety Code. Owner-occupied units shall be available at an affordable housing cost as defined in Section 50052.5 of the Health and Safety Code.	17.31.150(b) & (c) (55 years for rental units and 45 years for owner-occupied units)
Health & Safety Code Section 50053(b)	<p><i>For any rental housing development that receives assistance on or after January 1, 1991, and a condition of that assistance is compliance with this section, "affordable rent," including a reasonable utility allowance, shall not exceed:</i></p> <p><i>(1) For extremely low income households the product of 30 percent times 30 percent of the area median income adjusted for family size appropriate for the unit.</i></p> <p><i>(2) For very low income households, the product of 30 percent times 50 percent of the area median income adjusted for family size appropriate for the unit.</i></p> <p><i>(3) For lower income households whose gross incomes exceed the maximum income for very low income households, the product of 30 percent times 60 percent of the area median income adjusted for family size appropriate for the unit. In addition, for those lower income households with gross incomes that exceed 60 percent of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable rent be established at a level not to exceed 30 percent of gross income of the household.</i></p> <p><i>(4) For moderate-income households, the product of 30 percent times 110 percent of the area median income adjusted for family size appropriate for the unit. In addition, for those moderate-income households whose gross incomes exceed 110 percent of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable rent be established at a level not to exceed 30 percent of gross income of the household.</i></p>	17.31.020(b)
Health & Safety Code Section 50052.5	<p><i>(b) For any owner-occupied housing that receives assistance on or after January 1, 1991, and a condition of that assistance is compliance with this section, "affordable housing cost" may not exceed the following:</i></p> <p><i>(1) For extremely low households the product of 30 percent times 30 percent of the area median income adjusted for family size appropriate for the unit.</i></p> <p><i>(2) For very low income households the product of 30 percent times 50 percent of the area median income adjusted for family size appropriate for the unit.</i></p> <p><i>(3) For lower income households whose gross incomes exceed the maximum income for very low income</i></p>	17.31.020(a)

	<p>households and do not exceed 70 percent of the area median income adjusted for family size, the product of 30 percent times 70 percent of the area median income adjusted for family size appropriate for the unit. In addition, for any lower income household that has a gross income that equals or exceeds 70 percent of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable housing cost not exceed 30 percent of the gross income of the household.</p> <p>(4) For moderate-income households, affordable housing cost shall not be less than 28 percent of the gross income of the household, nor exceed the product of 35 percent times 110 percent of area median income adjusted for family size appropriate for the unit. In addition, for any moderate-income household that has a gross income that exceeds 110 percent of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable housing cost not exceed 35 percent of the gross income of the household.</p> <p>(h) For purposes of this section, and provided there are no pertinent federal statutes applicable to a project or program, "adjusted for family size appropriate to the unit" shall mean for a household of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.</p>	
65915(c)(2)	<p>An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of the moderate-income units that are directly related to the receipt of the density bonus in the common interest development, as defined in Section 1351 of the Civil Code, are persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code. The local government 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:</p>	17.31.150(d)
65915(c)(2)(A)	<p>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 local government shall recapture any initial subsidy, as defined in subparagraph (B), and its proportionate share of appreciation, as defined in subparagraph (C), which amount shall then be used within five years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote homeownership.</p>	17.31.150(b)
Health & Safety Code Section 33334.2(e)	<p>In carrying out the purposes of this section, the agency may exercise any or all of its powers for the construction,</p>	

	<p>rehabilitation, or preservation of affordable housing for extremely low, very low, low- and moderate-income persons or families, including the following:</p> <p>(1) Acquire real property or building sites subject to Section 33334.16.</p> <p>(2) (A) Improve real property or building sites with onsite or offsite improvements, but only if both (i) the improvements are part of the new construction or rehabilitation of affordable housing units for low- or moderate-income persons that are directly benefited by the improvements, and are a reasonable and fundamental component of the housing units, and (ii) the agency requires that the units remain available at affordable housing cost to, and occupied by, persons and families of extremely low, very low, low, or moderate income for the same time period and in the same manner as provided in subdivision (c) and paragraph (2) of subdivision (f) of Section 33334.3.</p> <p>(B) If the newly constructed or rehabilitated housing units are part of a larger project and the agency improves or pays for onsite or offsite improvements pursuant to the authority in this subdivision, the agency shall pay only a portion of the total cost of the onsite or offsite improvement. The maximum percentage of the total cost of the improvement paid for by the agency shall be determined by dividing the number of housing units that are affordable to low- or moderate-income persons by the total number of housing units, if the project is a housing project, or by dividing the cost of the affordable housing units by the total cost of the project, if the project is not a housing project.</p> <p>(3) Donate real property to private or public persons or entities.</p> <p>(4) Finance insurance premiums pursuant to Section 33136.</p> <p>(5) Construct buildings or structures.</p> <p>(6) Acquire buildings or structures.</p> <p>(7) Rehabilitate buildings or structures.</p> <p>(8) Provide subsidies to, or for the benefit of, extremely low income households, as defined by Section 50106, very low income households, as defined by Section 50105, lower income households, as defined by Section 50079.5, or persons and families of low or moderate income, as defined by Section 50093, to the extent those households cannot obtain housing at affordable costs on the open market. Housing units available on the open market are those units developed without direct government subsidies.</p> <p>(9) Develop plans, pay principal and interest on bonds, loans, advances, or other indebtedness, or pay financing or carrying charges.</p> <p>(10) Maintain the community's supply of mobilehomes.</p> <p>(11) Preserve the availability to lower income households of affordable housing units in housing developments that are assisted or subsidized by public</p>	
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	<i>entities and that are threatened with imminent conversion to market rates.</i>	
65915(c)(2)(B)	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.	
65915(c)(2)(C)	For purposes of this subdivision, the local government'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.	
65915(d)(1)	An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of either of the following:	17.31.060(a) & 17.31.100 17.31.130(d)
65915(d)(1)(A)	The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).	17.31.130(d)(1)
Health & Safety Code Section 50052.5(b)	<p><i>For any owner-occupied housing that receives assistance on or after January 1, 1991, and a condition of that assistance is compliance with this section, "affordable housing cost" may not exceed the following:</i></p> <p><i>(1) For extremely low households the product of 30 percent times 30 percent of the area median income adjusted for family size appropriate for the unit.</i></p> <p><i>(2) For very low income households the product of 30 percent times 50 percent of the area median income adjusted for family size appropriate for the unit.</i></p> <p><i>(3) For lower income households whose gross incomes exceed the maximum income for very low income households and do not exceed 70 percent of the area median income adjusted for family size, the product of 30 percent times 70 percent of the area median income adjusted for family size appropriate for the unit. In addition, for any lower income household that has a gross income that equals or exceeds 70 percent of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable housing cost not exceed 30 percent of the gross income of the household.</i></p> <p><i>(4) For moderate-income households, affordable housing cost shall not be less than 28 percent of the</i></p>	17.31.020(a)

	<i>gross income of the household, nor exceed the product of 35 percent times 110 percent of area median income adjusted for family size appropriate for the unit. In addition, for any moderate-income household that has a gross income that exceeds 110 percent of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable housing cost not exceed 35 percent of the gross income of the household.</i>	
65915(d)(1)(B)	The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of 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.	17.31.140(d)(2)
65589.5(d)(2)	<i>The development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.</i>	17.31.140(d)(2)
65915(d)(1)(C)	The concession or incentive would be contrary to state or federal law.	
65915(d)(2)	The applicant shall receive the following number of incentives or concessions:	17.31.060(a)
65915(d)(2)(A)	One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.	17.31.060(a)(1)
65915(d)(2)(B)	Two incentives or concessions for projects that include 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.	17.31.060(a)(2)
65915(d)(2)(C)	Three incentives or concessions for projects that include 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.	17.31.060(a)(3)

65915(d)(3)	The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of compliance with this section.	17.31.130(d) 17.31.060(b) 17.31.130(e)
65589.5(d)(2)	<i>The development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.</i>	17.31.140(d)(2)
65915(e)(1)	In no case may a city, county, or city and county apply any development standard that will have the effect of precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall	17.31.060(c) 17.31.130(e)

	be interpreted to require a local government to 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, or to grant any waiver or reduction that would be contrary to state or federal law.	
65589.5(d)(2)	<i>The development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.</i>	17.31.140(d)(2)
65915(e)(2)	A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).	
65915(f)	For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. The applicant may elect to accept a lesser percentage of density bonus. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).	17.31.020(h) 17.31.050(a) & (b) 17.31.050(f) 17.31.100
65915(f)(1)	For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows: Percentage Low- Percentage Density Bonus Income Units 10 20 11 21.5 12 23 13 24.5 14 26 15 27.5 17 30.5 18 32 19 33.5 20 35	17.31.050(a) 17.31.050(c)(2)
65915(f)(2)	For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the	17.31.050(a)(2) 17.31.050(c)(1)

	<p>density bonus shall be calculated as follows:</p> <table><tr><th>Percentage Very Low Income Units</th><th>Percentage Density Bonus</th></tr><tr><td>5</td><td>20</td></tr><tr><td>6</td><td>22.5</td></tr><tr><td>7</td><td>25</td></tr><tr><td>8</td><td>27.5</td></tr><tr><td>9</td><td>30</td></tr><tr><td>10</td><td>32.5</td></tr><tr><td>11</td><td>35</td></tr></table>	Percentage Very Low Income Units	Percentage Density Bonus	5	20	6	22.5	7	25	8	27.5	9	30	10	32.5	11	35																																																	
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65915(f)(3)	For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the senior housing units.	17.31.050(a)(3)																																																																
65915(f)(4)	<p>For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:</p> <table><tr><th>Percentage Moderate-Income Units</th><th>Percentage Density Bonus</th></tr><tr><td>10</td><td>5</td></tr><tr><td>11</td><td>6</td></tr><tr><td>12</td><td>7</td></tr><tr><td>13</td><td>8</td></tr><tr><td>14</td><td>9</td></tr><tr><td>15</td><td>10</td></tr><tr><td>16</td><td>11</td></tr><tr><td>17</td><td>12</td></tr><tr><td>18</td><td>13</td></tr><tr><td>19</td><td>14</td></tr><tr><td>20</td><td>15</td></tr><tr><td>21</td><td>16</td></tr><tr><td>22</td><td>17</td></tr><tr><td>23</td><td>18</td></tr><tr><td>24</td><td>19</td></tr><tr><td>25</td><td>20</td></tr><tr><td>26</td><td>21</td></tr><tr><td>27</td><td>22</td></tr><tr><td>28</td><td>23</td></tr><tr><td>29</td><td>24</td></tr><tr><td>30</td><td>25</td></tr><tr><td>31</td><td>26</td></tr><tr><td>32</td><td>27</td></tr><tr><td>33</td><td>28</td></tr><tr><td>34</td><td>29</td></tr><tr><td>35</td><td>30</td></tr><tr><td>36</td><td>31</td></tr><tr><td>37</td><td>32</td></tr><tr><td>38</td><td>33</td></tr><tr><td>39</td><td>34</td></tr><tr><td>40</td><td>35</td></tr></table>	Percentage Moderate-Income Units	Percentage Density Bonus	10	5	11	6	12	7	13	8	14	9	15	10	16	11	17	12	18	13	19	14	20	15	21	16	22	17	23	18	24	19	25	20	26	21	27	22	28	23	29	24	30	25	31	26	32	27	33	28	34	29	35	30	36	31	37	32	38	33	39	34	40	35	17.31.050(b) 17.31.050(c)(3)
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65915(f)(5)	All density calculations resulting in fractional units shall	17.31.050(d)																																																																

	be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. As used in subdivision (b), "total units" or "total dwelling units" does not include units permitted by a density bonus awarded pursuant to this section or any local law granting a greater density bonus. The density bonus provided by this section shall apply to housing developments consisting of five or more dwelling units.	17.31.050(e) 17.31.020(x)																																												
65915(g)(1)	<p>When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county in accordance with this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density for the entire development, under the applicable zoning ordinance and land use element of the general plan for the entire development, as follows:</p> <table><tr><td>Percentage Very Low Income</td><td>Percentage Density Bonus</td></tr><tr><td>10</td><td>15</td></tr><tr><td>11</td><td>16</td></tr><tr><td>12</td><td>17</td></tr><tr><td>13</td><td>18</td></tr><tr><td>14</td><td>19</td></tr><tr><td>15</td><td>20</td></tr><tr><td>16</td><td>21</td></tr><tr><td>17</td><td>22</td></tr><tr><td>18</td><td>23</td></tr><tr><td>19</td><td>24</td></tr><tr><td>20</td><td>25</td></tr><tr><td>21</td><td>26</td></tr><tr><td>22</td><td>27</td></tr><tr><td>23</td><td>28</td></tr><tr><td>24</td><td>29</td></tr><tr><td>25</td><td>30</td></tr><tr><td>26</td><td>31</td></tr><tr><td>27</td><td>32</td></tr><tr><td>28</td><td>33</td></tr><tr><td>29</td><td>34</td></tr><tr><td>30</td><td>35</td></tr></table>	Percentage Very Low Income	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	17.31.070 17.31.100
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65915(g)(2)	<p>This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks an increase pursuant to both this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following</p>	17.31.050(c) 17.31.050(d)																																												

	conditions are met:	
65915(g)(2)(A)	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.	17.31.070 17.31.130(c)(3)
65915(g)(2)(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 of the number of residential units of the proposed development.	17.31.070 17.31.130(c)(3)
65915(g)(2)(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 with appropriate development standards for development at the density described in paragraph 3 of subdivision (c) of section 65583.2, and is or will be served by adequate public facilities and infrastructure.	17.31.070 17.31.130(c)(3)
65915(g)(2)(D)	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, not later than the date of approval of the final subdivision map, parcel map, or residential development application, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government prior to the time of transfer.	
65583.2(i)	<i>For purposes of this section and Section 65583, the phrase "use by right" shall mean that the local government's review of the owner-occupied or multifamily residential use may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a "project" for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code. Any subdivision of the sites shall be subject to all laws, including, but not limited to, the local government ordinance implementing the Subdivision Map Act. A local ordinance may provide that "use by right" does not exempt the use from design review. However, that design review shall not constitute a "project" for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code. Use by right for all rental multifamily residential housing shall be provided in accordance with subdivision (f) of Section 65589.5.</i>	
65915(g)(2)(E)	The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of dedication.	17.31.070 17.31.140 17.31.130(c)(3)
65915(g)(2)(F)	The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.	17.31.070 17.31.130(c)(3)

65915(g)(2)(G)	The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.	17.31.070 17.31.130(c)(3)
65915(g)(2)(H)	A 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.	17.31.070 17.31.130(c)(3)
65915(h)(1)	When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:	17.31.080 17.31.100
65915(h)(1)(A)	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.	17.31.080 17.31.130(c)(4)
65915(h)(1)(B)	An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.	17.31.080 17.31.130(c)(4)
65915(h)(2)	The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:	17.31.080
65915(h)(2)(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 pursuant to subdivision (c).	17.31.080
65915(h)(2)(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 pursuant to subdivision (b).	17.31.080
65915(h)(3)	Notwithstanding any requirement of this subdivision, a city, county, or a city and county shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.	17.31.080 17.31.130(f)
65915(h)(4)	"Child care facility," as used in this section, 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 schoolage child care centers.	17.31.020(f)
65915(i)	"Housing development," as used in this section, means a development project for five or more residential units. For the purposes of this section, "housing development" also includes a subdivision or common interest development, as defined in Section 1351 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4,	17.31.020(x) "residential project"

	where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.	
<i>Civil Code Section 1351(c)</i>	<i>"Common interest development" means any of the following:</i> <i>(1) A community apartment project.</i> <i>(2) A condominium project.</i> <i>(3) A planned development.</i> <i>(4) A stock cooperative.</i>	17.31.020(g)
65863.4(d)	<i>For purposes of this section, "multifamily dwelling" means any structure designed for human habitation that has been divided into two or more legally created independent living quarters.</i>	
65915(j)	The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. This provision is declaratory of existing law.	17.31.130(a)
65915(k)	For the purposes of this chapter, concession or incentive means any of the following:	17.31.060(b)(1)
65915(k)(1)	A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California 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 vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.	17.31.060(b)(2) & (3)
<i>Health & Safety Code Section 18901(a)</i>	<i>This part shall be known and may be cited as the California Building Standards Law.</i>	
65915(k)(2)	Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.	17.31.060(b)(4) 17.31.130(c)(5)
65915(k)(3)	Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable, financially sufficient, and actual cost reductions.	17.31.060(b)(4), 17.31.060(c) 17.31.060(d)
65915(l)	Subdivision (k) does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or	17.31.060.D

	dedication requirements.	
65915(m)	Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code.	Not applicable to Brisbane
65915(n)	If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.	
65915(o)	For purposes of this section, the following definitions shall apply:	17.31.020
65915(o)(1)	"Development standard" includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation.	17.31.020(k)
65915(o)(2)	"Maximum allowable residential density" means the density allowed under the zoning ordinance and land use element of the general plan, or if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. Where the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.	17.31.020(t)
65915(p)(1)	Upon the request of the developer, no city, county, or city and county shall require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivision (b), that exceeds the following ratios: (A) Zero to one bedrooms: one onsite parking space. (B) Two to three bedrooms: two onsite parking spaces. (C) Four and more bedrooms: two and one-half parking spaces.	17.31.060(b)(2)(D) (This is no less than already required for multifamily units by BMC Sect. 17.34.010)
65915(p)(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. For purposes of this subdivision, a development may provide "onsite parking" through tandem parking or uncovered parking, but not through onstreet parking.	17.31.060(b)(2)(D)
65915(p)(3)	This subdivision shall apply to a development that meets the requirements of subdivision (b) but only at the request of the applicant. An applicant may request additional parking incentives or concessions beyond those provided in this section, subject to subdivision (d).	17.31.060(b)(2)(D)
65915.5(a)	When an applicant for approval to convert apartments to a condominium project agrees to provide at least 33 percent of the total units of the proposed condominium	17.31.090

	project to persons and families of low or moderate income as defined in Section 50093 of the Health and Safety Code, or 15 percent of the total units of the proposed condominium project to lower income households as defined in Section 50079.5 of the Health and Safety Code, and agrees to pay for the reasonably necessary administrative costs incurred by a city, county, or city and county pursuant to this section, the city, county, or city and county shall either (1) grant a density bonus or (2) provide other incentives of equivalent financial value. A city, county, or city and county may place such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value as it finds appropriate, including, but not limited to, conditions which assure continued affordability of units to subsequent purchasers who are persons and families of low and moderate income or lower income households.	
Health & Safety Code Section 50093	<p><i>"Persons and families of low or moderate income" means persons and families whose income does not exceed 120 percent of area median income, adjusted for family size by the department in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937. However, the agency and the department jointly, or either acting with the concurrence of the Secretary of the Business and Transportation Agency, may permit the agency to use higher income limitations in designated geographic areas of the state, upon a determination that 120 percent of the median income in the particular geographic area is too low to qualify a substantial number of persons and families of low or moderate income who can afford rental or home purchase of housing financed pursuant to Part 3 (commencing with Section 50900) without subsidy.</i></p> <p><i>"Persons and families of low or moderate income" includes very low income households, as defined in Section 50105, extremely low income households, as defined in Section 50106, and lower income households as defined in Section 50079.5, and includes persons and families of extremely low income, persons and families of very low income, persons and families of low income, persons and families of moderate income, and middle-income families. As used in this division:</i></p> <p><i>(a) "Persons and families of low income" or "persons of low income" means persons or families who are eligible for financial assistance specifically provided by a governmental agency for the benefit of occupants of housing financed pursuant to this division.</i></p> <p><i>(b) "Persons and families of moderate income" or "middle-income families" means persons and families of low or moderate income whose income exceeds the income limit for lower income households.</i></p>	17.31.020(s), (u) & (bb)
Health & Safety Code Section 50079.5(a)	<i>"Lower income households" means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from</i>	17.31.020(s)

	<i>time to time pursuant to Section 8 of the United States Housing Act of 1937. The limits shall be published by the department in the California Code of Regulations as soon as possible after adoption by the Secretary of Housing and Urban Development. In the event the federal standards are discontinued, the department shall, by regulation, establish income limits for lower income households for all geographic areas of the state at 80 percent of area median income, adjusted for family size and revised annually.</i>	
65915.5(b)	For purposes of this section, "density bonus" means an increase in units of 25 percent over the number of apartments, to be provided within the existing structure or structures proposed for conversion.	17.31.020(h) 17.31.090 17.31.100
65915.5(c)	For purposes of this section, "other incentives of equivalent financial value" shall not be construed to require a city, county, or city and county to provide cash transfer payments or other monetary compensation but may include the reduction or waiver of requirements which the city, county, or city and county might otherwise apply as conditions of conversion approval.	17.31.060(b)(1) 17.31.060(d) 17.31.090
65915.5(d)	An applicant for approval to convert apartments to a condominium project may submit to a city, county, or city and county a preliminary proposal pursuant to this section prior to the submittal of any formal requests for subdivision map approvals. The city, county, or city and county shall, within 90 days of receipt of a written proposal, notify the applicant in writing of the manner in which it will comply with this section. The city, county, or city and county shall establish procedures for carrying out this section, which shall include legislative body approval of the means of compliance with this section.	17.31.090 17.31.120
65915.5(e)	Nothing in this section shall be construed to require a city, county, or city and county to approve a proposal to convert apartments to condominiums.	17.31.090
65915.5(f)	An applicant shall be ineligible for a density bonus or other incentives under this section if the apartments proposed for conversion constitute a housing development for which a density bonus or other incentives were provided under Section 65915.	17.31.090
65916	Where there is a direct financial contribution to a housing development pursuant to Section 65915 through participation in cost of infrastructure, write-down of land costs, or subsidizing the cost of construction, the city, county, or city and county shall assure continued availability for low- and moderate-income units for 30 years. When appropriate, the agreement provided for in Section 65915 shall specify the mechanisms and procedures necessary to carry out this section.	17.31.150(b) & (c)
65917	In enacting this chapter it is the intent of the Legislature that the density bonus or other incentives offered by the city, county, or city and county pursuant to this chapter shall contribute significantly to the economic feasibility of lower income housing in proposed housing developments. In the absence of an agreement by a	17.31.140

	developer in accordance with Section 65915, a locality shall not offer a density bonus or any other incentive that would undermine the intent of this chapter.	
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*Or other State law as noted.