Good Neighbors
San Diego
Housing Commission

REPORT

DATE ISSUED: March 30, 2005 **ITEM 106**

REPORT NO.: HCR05-28
For the Agenda of April 8, 2005

SUBJECT: Density Bonus and Procedures Manual

SUMMARY

Issue: Should the San Diego Housing Commission Board recommend to the City Council revisions to the City's affordable housing density bonus program to conform with state law and create local incentives for affordable housing and senior housing development?

Recommendation: That the San Diego Housing Commission Board support amendments to the Affordable Housing Density Bonus Regulations (San Diego Municipal Code Chapter 14, Article 3, Division 7) and Inclusionary Housing Regulations (Chapter 14, Article 2, Division 13), and adoption of the Density Bonus Procedures Manual, as described herein.

Environmental Impact: A tentative determination has been made by the Environmental Analysis staff that an addendum to the Land Development Code EIR No. 96-0333 will be required and completed prior to Planning Commission and City Council consideration.

Housing Impact: The intent of these revisions is to provide incentives to increase the supply of housing affordable to very-low and low-income renters, seniors and moderate income condominium owners in accordance with state law.

DISCUSSION

Significant state Density Bonus law changes went into effect in January 2003 and January 2005. The City's existing Density Bonus regulations are no longer consistent with the revised state law. Draft modifications to the City's Municipal Code have been drafted to bring the regulations into conformance with state law and to encourage use of Density Bonus as a tool to help alleviate the shortage of affordable housing in San Diego.

On February 2, 2005, the Land Use and Housing Committee discussed these revisions to the City's Density Bonus regulations and recommended the issue be referred to the Community Planners Committee (CPC), Technical Advisory Committee (TAC), San Diego Housing Commission and Planning Commission for discussion and input before returning to the Land Use and Housing Committee on April 20, 2005.

Please refer to Manager's Report No. 05-028 (see Attachment 1), which was prepared for the February 2, 2005, Land Use and Housing Committee meeting and contains background, discussion and recommendations on this issue. Attached to that report are draft revisions to the City's Density Bonus and Inclusionary Housing regulations. Also attached to this Report is the San Diego Housing Commission's Report to the Land Use and Housing Committee regarding the Density Bonus Procedures Manual. The intent of the revisions and the Procedures Manual is to provide incentives to increase the supply of housing affordable to very-low and low-income renters, seniors and moderate income condominium owners in accordance with state Density Bonus Law as well as describe the inter-relationship with other affordable housing programs.

On February 23, 2005, the Community Planners Committee voted 11-1 not to support the staff recommendation and that the City's Density Bonus regulations should not vary from or exceed the requirements of the state required Density Bonus Program. This recommendation specifically targets the for-sale density bonus proposal.

This issue has been scheduled for discussion at the Land Use and Housing Committee on April 20, 2005. A supplemental EIR to Land Development Code EIR NO. 96-033 is being prepared and will be completed following the April 20, 2005 Land Use and Housing discussion. This item will be scheduled for a Planning Commission hearing following the Land Use and Housing Committee meeting and completion of the supplemental EIR report, and then the matter will be forwarded to the City Council for consideration and adoption.

Respectfully submitted,

Signature on File
With Original Document

D. Todd Philips
Policy Advisor to the President and CEO

Approved by,

Elizabeth C. Morris
President and Chief Executive Officer

Attachments:

1. Manager's Report No. 05-028 (incl. Attachments)
2. San Diego Housing Commission Report LUH05-001 (incl. Attachment)

HCR05-028
Attachment 1

THE CITY OF SAN DIEGO
MANAGER'S REPORT

DATE ISSUED: January 26, 2005 REPORT NO. 05-028

ATTENTION: Land Use and Housing Committee
Agenda of February 2, 2005

SUBJECT: Density Bonus Regulations

REFERENCE: Manager's Report Nos. 03-237 and 04-127

SUMMARY

Issues- Should the Land Use and Housing Committee recommend revisions to the City's Affordable Housing Density Bonus Regulations (San Diego Municipal Code Chapter 14, Article 3 Division 7) and Inclusionary Housing Regulations (Chapter 14, Article 2, Division 13)?

Manager's Recommendation- Recommend that the proposed revisions be forwarded to the Community Planners Committee, Housing Commission and Planning Commission for input/recommendations and then to the City Council for adoption.

Fiscal Impact- None anticipated.

Environmental Impact- A tentative determination has been made by the Environmental Analysis staff that an addendum to the Land Development Code EIR No. 96-0333 will be required.

Housing Impact- The intent of these revisions is to provide incentives to increase the supply of housing affordable to very-low and low-income renters, seniors and moderate income condominium owners in accordance with state law.

BACKGROUND

State law requires cities in California to grant density bonuses to residential projects when the developers of those projects agree to restrict the price of a portion of the units at specified affordability levels. San Diego's Municipal Code includes local regulations intended to fulfill this state requirement. These regulations have been amended periodically as the state law has changed.

In October 2002 Governor Davis signed Assembly Bill (AB) 1866. This bill, which took effect on January 1, 2003, revised state density bonus law and was intended to increase use of the state density bonus program and increase the supply of affordable housing in the state. Passage of this bill resulted in San Diego's density bonus regulations becoming outdated and partially out of compliance with state law. Therefore, on December 3, 2003, the City Council's Land Use and Housing Committee directed the Planning Department and the City Attorney to make necessary revisions to the City's affordable housing density bonus regulations and forward them to the Community Planners Committee, Housing Commission and Planning Commission for input and recommendations and then to the City Council for adoption.

A draft ordinance was prepared. However, this effort was temporarily delayed when it became apparent that the state density bonus regulations were likely to again be significantly modified. In October, 2004 Governor Schwarzenegger signed Senate Bill (SB) 1818 into law. This bill, which was the second major revision to state density bonus law in two years, took effect on January 1, 2005. The intent of this bill, as with AB 1866, is to encourage more use of the state density bonus programs. (SB 1818 incorporated and revised the regulatory changes included in AB 1866.) The following is a summary of significant changes to state density bonus law that have been enacted during the past two years:

1. A new density bonus category has been added for moderate income for sale condominiums and planned unit developments. Previously, the density bonus program was limited to projects with specified percentages of low and very low-income residents and seniors.

2. A new density bonus category has also been added for projects that donate land to the City and make at least ten percent of units affordable to very low-income families.

3. The maximum basic state density bonus was increased from 25 percent to 35 percent. A sliding scale of density bonus was established from five percent to 35 percent depending on the proportion of units that will be affordable and at what affordability level they will be provided.

4. Rental projects that receive a density bonus must retain a specified number of units at specified affordability levels for 30 years. Previously, only rental projects that received a second incentive had to meet this requirement and others were only required to maintain affordable units for ten years. For sale condominiums are not subject to the 30-year affordability requirement. Instead, upon resale, the City may recapture the increased value of the property.

5. The City must offer up to three incentives or benefits to all qualifying projects that request incentives. The number of incentives a project is eligible for depends on the number of affordable units being provided and the income group being targeted. Previously, the City was only obligated to offer incentives to projects that preserve

affordable units for 30 years whereas those that only preserve affordability for ten years were not guaranteed an incentive.

6. The City must offer an additional incentive to qualifying projects that include on-site day care facilities meeting specified conditions.

7. Incentives or benefits that must be offered to qualifying density bonus projects have been defined as being regulatory in nature. Applicants may choose what regulation(s) they seek to deviate from. The City must grant the regulatory incentive requested unless specific findings are made that granting the request is not necessary to provide the affordable units or will have adverse impacts on health and safety. Previously, the definition of incentives or benefits was less clear and the City interpreted it to include additional density bonuses beyond those required by the state.

8. The revised state law contains language making it easier for applicants to initiate judicial proceedings against a city if the City refuses to grant a requested density bonus or additional incentive to qualifying projects.

9. The revised state law limits parking standards that a city can place on projects seeking a density bonus. No more than one space may be required for one bedroom and studio units and no more than two spaces may be required for two and three bedroom units. San Diego's existing parking regulations conform to these state requirements.

10. The revised state law clarifies that the regulatory incentives or benefits that are required to be provided to augment the basic density bonus include parking, height, floor area ratio, and setbacks.

11. Density bonus provisions now apply to condominium conversion projects as well as new construction in certain instances.

A copy of the most recent state legislation on density bonus (SB 1818) and a more detailed description of that legislation prepared by the California Housing Law Project are attached to this report (see Attachments 1 and 2).

DISCUSSION

The primary purpose of these revised draft local density bonus regulations (see Attachment 3) is to bring the City's regulations into conformance with state density bonus law and to incorporate suggestions previously made by the Land Use and Housing Committee.

On June 9, 2004, the Land Use and Housing Committee recommended adding a new City category of projects eligible for a density bonus. This ten percent ministerial bonus would be for projects that agree to build required inclusionary housing units on-site rather than paying an in-lieu fee. This type of bonus, which is proposed to be called an on-site building bonus, would be a local development incentive which is not required by the state density bonus law.

An applicant could apply for both the state density bonus and the on-site building bonus. The affordability and other requirements of the two programs differ and each would have to be met for the affordable units that an applicant intends to provide in accordance with these two programs. However, a maximum of 35 percent bonus from all density bonus programs (including the on-site building bonus) is allowed per state law without processing a plan amendment.

The state density bonus program requires that the basic density bonus that an applicant is eligible for be granted by right but the City is permitted to require discretionary review of the incentives or benefits that an applicant is eligible for. Despite the discretionary review process, the incentive(s) must be granted unless a finding of health and safety threat can be made. The Land Use and Housing Committee also recommended that the local review process for the density bonus incentives or benefits mandated by state law be increased from Process Three to Process Four to allow the possibility of appeal to City Council. This change has been made in the draft regulations although staff recommends retaining Process Three because a lesser process would help facilitate more use of the density bonus program.

The Housing Commission and Planning Department believe that the density bonus provided for moderate income ownership units in the state legislation is too limited to be used in a high cost location like San Diego. The bonus offered would not offset the cost of providing affordable units. Since cities do have the option of offering a more generous density bonus ratio than that required by the state, it is recommended that in San Diego, the basic density bonus for projects that provide ten percent moderate income income units be 20 percent rather than the five percent minimum provided for in the state legislation. This density bonus would increase by one percent for each additional one percent of moderate income units provided up to a maximum bonus of 35 percent.

The Housing Commission enters into agreements with density bonus applicants that stipulate the density bonus and affordability restrictions that will be placed on the property. Due to the new categories of density bonus and more complex regulations, the Housing Commission will prepare a procedures manual that will be designed to help applicants understand the process. The manual will contain information regarding application procedures, agreements, restrictions, affordability requirements, development incentives, allowable rents and for sale prices, the interaction/relationship between the proposed on site building bonus and state density bonus provisions and Housing Commission fees for administering the program. A draft of this manual will accompany the draft ordinances that will be brought forward to the Housing Commission, Planning Commission and City Council for adoption.

The ordinances and accompanying manual will be designed to allow implementation in areas of the City outside the Coastal Zone 30 days after the second reading at City Council, while implementation in areas within the Coastal Zone will require approval of the measures by the Coastal Commission.

Respectfully submitted,

S. Gail Goldberg AICP
Planning Director

Approved: Patricia Frazier
Deputy City Manager

Betsy Morris
San Diego Housing Commission
President and CEO

GOLDBERG/ WML/je

Attachments:
1. State Density Bonus Law (SB 1818)
2. Description of SB 1818 from California Housing Law Project
3. Draft Revised City Density Bonus Ordinance
4. Draft Revised City Density Bonus Ordinance (Strike out/underline version)
5. Draft Revised City Inclusionary Housing Ordinance (Strike out/underline version)
6. Moderate-Income Condominium Comparison Chart

California
Housing Law Project

SB 1818 - Density Bonus

SB 1818 (Hollingsworth) (Chapter 928, Statutes of 2004) amends density bonus law (Gov. Code Section 65915) in a number of important ways. Effective January 1, 2005, applicants are eligible for a range of density bonuses up to 35%, based on the percentage of affordable units in a development. Applicants are also eligible for an innovative new land donation density bonus. Localities are required to offer at least 1-3 incentives (reductions in parking, for example) rather than one, based on the percentage of affordable units in a development. SB 1818 also limits parking requirements that localities may impose. (Also see our summary of changes to density bonus law made in 2002 by AB 1866 (Wright) in our Second Units/Density Bonus Fact Sheet).

What SB 1818 Does:

- Creates a range of density bonuses by decreasing the percentage of affordable units needed to obtain a reduced density bonus, and by increasing the maximum density bonus to 35%. Existing law requires localities to grant a flat density bonus of 25% for developments with 20% lower income units, 10% very low, or 50% for seniors, and a flat 10% density bonus for condominiums with 20% moderate income units.

  Under SB 1818, instead of having to provide 20% low-income units, 10% very-low, or 20% moderate, an applicant can obtain a density bonus by providing 10% low, 5% very-low, or 10% moderate. The applicant receives a reduced density bonus for this reduced level of targeting: a 20% density bonus for the reduced level of low- and very-low income units, and a 5% density bonus for this level of moderate income units. This permits an applicant to obtain a lower-income density bonus of 20-35%, a very low-income density bonus of 20-35%, and (in a condo/PUD) a moderate income density bonus of 5-35%.

  Within the ranges, the density bonus increases as the percentage of affordable units increases. The low income density bonus increases by 1.5% for each 1% increase in low-income units above 10%, up to the maximum of 35%; the very low-income density bonus increases by 2.5% for each 1% increase in very low-income units above 5%, up to the maximum 35%; and the moderate income (condo/PUD) density bonus increases by 1% for each 1% increase in moderate income units above 10%, up to a maximum of 35%.
- Requires localities to offer 1-3 incentives (reductions in parking, setbacks, open space, etc.), rather than one as under current law, based on the percentage of targeted units; and requires any incentive to "result in identifiable, financially sufficient and actual cost reductions". Under existing law the applicant is entitled to the incentives they request and must waive or reduce other standards that make it impossible to build at the established density, unless the locality makes specific findings.
- Applies the moderate income density bonus to PUDs (planned unit developments) not just condo developments as in current law; requires the first occupant to be moderate income rather than requiring a 10-year term of affordability; and requires equity sharing on resale.
- Gives a flat 20% density bonus for all senior housing rather than a 25% bonus for housing with 50% seniors as under current law.
- Creates a land donation density bonus for applicants who donate land for very low-income housing to a local government or a developer approved by the locality if the land meets requirements related to by-right zoning, location, size, etc. An applicant must donate land

sufficient to provide at least 10% of the units in the development for very low-income house-holds (the zoning of the donated land determines the number of units that can be built). For a 10% land donation an applicant receives a 15% density bonus above the maximum allowable density for the entire development. The density bonus increases by 1% for each 1% increase in very-low income units that can be built on the donated land, up to a maximum of 35%. For example, an applicant for a 1,000 unit development gets a 15% density bonus for donating 5 acres of land (if it was zoned for 100 units), permitting the applicant to build 150 additional units on the undonated land. By comparison, a donation of land for 300 units entitles the applicant to a 35% density bonus, or 350 units. The land donation density bonus and general density bonus can also be used together, up to a combined maximum of 35%.

- Intent language in SB 1818 clarifies the bill's impact on certain local land use ordinances. In particular, the Assembly floor analysis made it clear that local inclusionary ordinances are not affected by SB 1818. For example, even though SB 1818 provides a density bonus for developments with 10% low income units that does not mean that the bill creates a right to build that preempts a 15% local inclusionary requirement.
- Limits parking standards that localities can impose on density bonus developments, reflecting changes made in AB 2348 (Mullin).

BILL NUMBER: SB 1818 CHAPTERED
BILL TEXT

CHAPTER 928
FILED WITH SECRETARY OF STATE SEPTEMBER 30, 2004
APPROVED BY GOVERNOR SEPTEMBER 29, 2004
PASSED THE SENATE AUGUST 26, 2004
PASSED THE ASSEMBLY AUGUST 24, 2004
AMENDED IN ASSEMBLY AUGUST 23, 2004
AMENDED IN ASSEMBLY JULY 28, 2004
AMENDED IN ASSEMBLY JUNE 29, 2004
AMENDED IN ASSEMBLY JUNE 15, 2004
AMENDED IN SENATE MAY 12, 2004
AMENDED IN SENATE APRIL 26, 2004
AMENDED IN SENATE APRIL 1, 2004

INTRODUCED BY Senator Hollingsworth
(Principal coauthor: Senator Ducheny)

FEBRUARY 20, 2004

An act to amend Section 65915 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1818, Hollingsworth. Density bonuses.

The Planning and Zoning Law requires, when a developer of housing proposes a housing development within the jurisdiction of the local government, that the city, county, or city and county provide the developer with a density bonus or other incentives or concessions for the production of lower income housing units within the development if the developer meets certain requirements, including a requirement that the applicant agree or propose to construct a specified percentage of the total units for specified income households or qualifying residents. Existing law also requires an additional density bonus or additional concession or incentive to be granted to a developer of housing that meets those requirements and includes a child care facility, as defined, subject to specified conditions. Existing law prohibits the legislative body from establishing fees to support the work of the planning agency that exceed the reasonable cost of providing the service for which the fee is charged.

This bill would revise the above-described provision to, among other things, require, when a developer seeks a density bonus for a housing development within, or for the donation of land within, the jurisdiction of the local government, that the local government provide a density bonus or other incentives or concessions for the production of housing units and child care facilities, as specified. By increasing the duties of local officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 65915 of the Government Code is amended to read:

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.

(b) A city, county, or city and county shall grant a density bonus and incentives or concessions described in subdivision (d) when the applicant for the housing development seeks and agrees to construct at least any one of the following:

(1) 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.

(2) 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.

(3) A senior citizen housing development as defined in Sections 51.3 and 51.12 of the Civil Code.

(4) Ten percent of the total dwelling units in a condominium project as defined in subdivision (f) of, or in a planned development as defined in subdivision (k) of, Section 1351 of the Civil Code, for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code.

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all lower income density bonus units 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. Those units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 60 percent of area median income. Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 50 percent of area median income.

(2) 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 condominium project as defined in subdivision (f) of, or in the planned unit development as defined in subdivision (k) of, Section 1351 of the Civil Code, are persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code. Upon resale, the seller of the unit shall retain the value of any improvements, the down payment, and the seller's proportionate share of appreciation. The local government shall recapture its proportionate share of appreciation, which shall then be used within

three years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote homeownership. For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the percentage by which the initial sale price to the moderate-income household was less than the fair market value of the home at the time of initial sale.

(d) (1) An applicant 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:

(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).

(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.

(2) The applicant shall receive the following number of incentives or concessions:

(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 condominium or planned development.

(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 condominium or planned development.

(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 condominium or planned development.

(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. The city, county, or city and county shall also establish procedures for waiving or modifying development and zoning standards that would otherwise inhibit the utilization of the density bonus on specific sites. These procedures shall include, but not be limited to, such items as minimum lot size, side yard setbacks, and placement of public works improvements.

(e) 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 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.

(f) The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible.

(g) (1) For the purposes of this chapter, except as provided in paragraph (2), "density bonus" means a density increase of at least 20 percent, unless a lesser percentage is elected by the applicant, 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 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). For each 1 percent increase above 10 percent in the percentage of units affordable to lower income households, the density bonus shall be increased by 1.5 percent up to a maximum of 35 percent. For each 1 percent increase above 5 percent in the percentage of units affordable to very low income households, the density bonus shall be increased by 2.5 percent up to a maximum of 35 percent. All density calculations resulting in fractional units shall 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. The density bonus shall not be included when determining the number of housing units that is equal to 5 or 10 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(2) For the purposes of this chapter, if a development does not meet the requirements of paragraph (1), (2), or (3) of subdivision (b), but the applicant agrees or proposes to construct a condominium project as defined in subdivision (f) of, or a planned development as defined in subdivision (k) of, Section 1351 of the Civil Code, in which at least 10 percent of the total dwelling units are reserved for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, a "density bonus" of at least 5 percent shall be granted, unless a lesser percentage is elected by the applicant, 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. For each 1 percent increase above 10 percent of the percentage of units affordable to moderate-income households, the density bonus shall be increased by 1 percent up to a maximum of 35 percent. All density calculations resulting in fractional units shall 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. The density bonus shall not be included when determining the number of housing units that is equal to 10 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(h) 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 as provided for in this subdivision, the applicant shall be entitled to a 15 percent increase above the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for the entire development. For each 1 percent increase above the minimum 10 percent land donation described in paragraph (2) of this subdivision, the density bonus shall be increased by 1 percent, up to a maximum of 35 percent. 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 both the increase required pursuant to 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 conditions are met:

(1) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(2) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(3) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned for development as affordable housing, and is or will be served by adequate public facilities and infrastructure. The land shall have

appropriate zoning and development standards to make the development of the affordable units feasible. No later than the date of approval of the final subdivision map, parcel map, or of the residential development, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, except that the 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.

(4) 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.

(5) 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.

(6) 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.

(i) (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:

(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.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(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).

(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).

(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.

(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 school age child care centers.

(j) "Housing development," as used in this section, means one or more groups of projects for residential units constructed in the planned development of a city, county, or city and county. For the purposes of this section, "housing development" also includes a subdivision or a planned unit development or condominium project, 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, 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 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.

(k) 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.

(l) For the purposes of this chapter, concession or incentive means any of the following:

(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.

This subdivision 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.

(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).

(n) 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.

(o) For purposes of this section, the following definitions shall apply:

(1) "Development standard" includes site or construction conditions that apply to a residential development pursuant to any ordinance, general plan element, specific plan, charter amendment, or

other local condition, law, policy, resolution, or regulation.

(2) "Maximum allowable residential density" means the density allowed under the zoning ordinance, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project.

(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.

(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 on-street parking.

(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).

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

DRAFT #4 (3/21/05)

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~
NEW LANGUAGE: Underline

(O-2004-48)

ORDINANCE NUMBER O-__________________ (New Series)

ADOPTED ON __________________

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 14, ARTICLE 2, DIVISION 13, OF THE SAN DIEGO MUNICIPAL CODE BY ADDING SECTION 142.1320, ENTITLED "AFFORDABLE HOUSING ON-SITE BUILDING BONUS;" AND AMENDING CHAPTER 14, ARTICLE 3, DIVISION 7, BY AMENDING SECTIONS 143.0710, 143.0715, 143.0720, 143.0730, AND 143.0740; REPEALING SECTIONS 143.0750 AND 143.0760; AND BY ADDING NEW SECTIONS 143.0718,143.0735, 143.0750, 143.0760, 143.0770 AND 143.0780, ALL RELATING TO AFFORDABLE HOUSING DENSITY BONUS REGULATIONS.

§ 142.1320 Affordable Housing On-Site Building Bonus

(a) Outside the Coastal Overlay Zone:

Residential *development* in accordance with Section 142.1306(b)(1), shall be permitted an on-site building bonus subject to Sections 143.0718 and 143.0735.

(b) Outside the Coastal Overlay Zone:

Residential *development* in accordance with Section 142.1306(b)(1), shall be permitted an on-site building bonus subject to Sections 143.0718 and 143.0735.

§ 143.0710 Purpose of Affordable Housing Density Bonus Regulations

The purpose of these regulations is to provide increased residential densities to developers who guarantee that a portion of their residential *development* will be available to *low income*, *very low-income*, or senior households to *moderate income condominium* or planned *development* owners, as *condominium* and planned *development* are defined in Civil Code section 1351(k). The regulations are intended to materially assist the housing industry in providing adequate and affordable shelter for all economic segments of the community and to provide a balance of housing opportunities for *low income*, *very low-income*, ~~and~~ senior households, and *moderate income* owners of *condominium* or planned *development*s as defined in Civil Code section 1351(k), throughout the City of San Diego. It is intended that the affordable housing *density* bonus and any additional *development* incentive be available for use in all residential *developments*~~, using criteria and standards provided in the Progress Guide and General Plan, as defined by the San Diego Housing Commission~~ of a size that allows for actual construction of the respective percentage of affordable units described in Section 143.0720(b). It is also intended that these regulations implement the provisions of California Government Code sections 65915 through 65918. It is further intended that these regulations will allow for an increase to residential units where, in accordance with the inclusionary zoning regulations, developers construct affordable housing within the same *development* site as the market rate housing; however, in no event shall the number of residential units constructed exceed 135 percent of the *density* permitted by the applicable zone.

§ 143.0715 When Affordable Housing Density Bonus Regulations Applies

(a) Outside the Coastal Overlay Zone:

~~(a)~~(1) This ~~d~~Division applies to any residential *development* of five or more *dwelling* units, where an *applicant* proposes *density* beyond that permitted by the applicable zone in exchange for a portion of the total *dwelling units* in the *development* being reserved for *low* or *very low-income* households ~~or for~~, *senior citizens*, or ~~qualified residents through a written agreement.~~ *moderate income condominium*, or planned *development* as defined in Civil Code section 1351(k) owners.

~~(b)~~(2) An *applicant* proposing *development* as provided in Section 143.0715(a) shall be entitled to a *density* bonus as provided in Sections 143.0720 and 143.0730 and ~~may~~ shall be granted ~~an additional~~ a *development* incentive as provided in ~~Section 143.0740.~~Sections 143.0740 and 143.0750.

(b) Within the Coastal Overlay Zone:

~~This division applies to any residential *development* where *density* beyond that permitted by the applicable zone is proposed in exchange for a portion of the total *dwelling units* being reserved through a formal agreement for persons or *families* of *low income* or *moderate income*.~~

(1) This Division applies to any residential *development* of five or more *dwelling* units, where an *applicant* proposes *density* beyond that permitted by the applicable zone in exchange for a portion of

the total *dwelling units* in the *development* being reserved for *low* or *very low-income* households, *senior citizens*, or *moderate income condominium*, or planned *development* as defined in Civil Code section 1351(k) owners.

(2) An *applicant* proposing *development* as provided in Section 143.0715(a) shall be entitled to a *density* bonus as provided in Sections 143.0720 and 143.0730 and shall be granted a *development* incentive as provided in Sections 143.0740 and 143.0750.

§ 143.0718 When Onsite Building Bonus Regulations Apply

(a) Outside the Coastal Overlay Zone:

Section 143.0735 applies to any residential *development* that contains affordable housing as required by Chapter 14, Article 2, Division 13 and is constructed on the same site as the proposed project site.

(b) Inside the Coastal Overlay Zone:

Section 143.0735 applies to any residential *development* that contains affordable housing as required by Chapter 14, Article 2, Division 13 and is constructed on the same site as the proposed project site.

§143.0720 Affordable Housing Density Bonus Agreement

(a) Outside the Coastal Overlay Zone:

~~(a)~~(1) An *applicant* shall be entitled to a *density* bonus for any residential *development* for which an agreement is entered into by the *applicant* and the ~~Chief Executive Officer of the~~ San Diego Housing Commission as provided in Section 143.0720(a)(2).

~~(b)~~(2) The *density* bonus agreement shall include the following provisions:

~~(1)~~(A) ~~With respect to rental housing~~ Number of affordable units provided and Level of Affordability:

~~(A)~~(i) At least 10 percent of the pre-bonus units in the *development* will be affordable, including an allowance for utilities, to *low-income* households at a rent that does not exceed 30 percent of 60 percent of area median income, as adjusted for assumed household size; or

~~(B)~~(ii) At least ~~10~~ 5 percent of the pre-bonus units in the *development* will be affordable, including an allowance for utilities, to *very low-income* households at a rent that does not exceed 30 percent of 50 percent of the area median income, as adjusted for assumed household size; or

~~(C)~~(iii)~~At least 50 percent of the total units will be available to *senior citizens* or qualifying residents as defined under California Civil Code Section 51.3~~.A *senior citizen* housing *development* as defined in Civil Code sections 51.3 and 51.12; or

(iv) At least 10 percent of the pre-bonus units in a *condominium project* will be available for sale to *moderate income* households.

~~(2)~~(B) ~~With respect to "for sale" housing affordability shall be determined based on prevailing underwriting standards of mortgage financing available for the *development*, which shall include a forgivable second, silent mortgage, as administered by the Housing Commission. At least 20 percent of the pre-bonus units in the development shall be available to *low-income* purchasers or 10 percent of the pre-bonus units shall be available to *very low-income* purchasers or at least 50 percent of the pre-bonus units in the *development* shall be available to *senior citizens* or qualifying residents as defined under California Civil Code Section 51.3.~~ In lieu of complying with Section 143.0720(a)(1) and (2), an *applicant* for a tentative map, parcel map, or *development permit* may donate land to the San Diego Housing Commission in accordance with the following requirements:

(i) The *applicant* donates and transfers the land no later than the date of approval of the final map, parcel map, or residential *development permit* application.

(ii) 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*.

(iii) The transferred land is at least 1 acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned for *development* as affordable housing, and is or will be served by adequate public facilities and infrastructure. The land shall have appropriate zoning and *development* standards to make the development of the affordable units feasible. No later than the date of approval of the final map, parcel map, or of the residential *development permit*, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the *very low income* housing units on the transferred land, except that the City of San Diego may subject the proposed *development* to subsequent design review to the extent authorized by California Government Code section 65583.2(i) if the design is not reviewed by the City of San Diego prior to the time of transfer.

(iv) The transferred land and the affordable units shall be subject to a deed restriction, approved by the San Diego Housing Commission ensuring continued affordability of the units in accordance with Sections 143.0720(a)(2)(D) or 143.0720(a)(2)(E) and shall be recorded on the property at the time of dedication.

(v) The land is transferred to the San Diego Housing Commission or to a housing developer approved by the San Diego Housing Commission. The San Diego Housing Commission may require the *applicant* to identify and transfer the land to the developer.

(vi) The transferred land shall be within the boundary of the proposed *development* or, if the City of San Diego agrees, within one-quarter mile of the boundary of the proposed *development*.

~~(3)~~(C) ~~The affordable units will remain available and affordable as provided in Section 143.0720 for a period of at least 30 years if an additional development incentive is granted to~~

~~the *applicant* as provided in Section 143.0740 or 10 years if an additional development incentive is not granted. If an *applicant* does not request an additional development incentive, the *applicant* shall submit a pro forma analysis for the Chief Executive Officer of the Housing Commission to document project feasibility.~~ With respect to "for sale" housing:

(i) Affordability for the *moderate income condominium* or planned development units shall be comprised of both initial occupancy restrictions on the purchasers as well as initial restricted sales prices. Initial *moderate income density* bonus units shall be initially sold to and occupied by persons and *families* of *moderate income*. The initial *moderate income* restricted sales price shall be established at a maximum sales price that does not exceed a price that generates a monthly housing cost as defined in Health and Safety Code section 50052.5, for *moderate income* purchasers, assuming a down payment of 5 percent of the restricted sales price and utilizing standard underwriting criteria at the date of initial sale and assuming prevailing interest rates for the *moderate income* restricted *density* bonus units.

(ii) *Density* bonus units shall be owner occupied by the initial purchaser of the units at all times until the resale of the *density* bonus unit(s) by the initial *moderate income* purchaser.

(iii) *Upon* the resale of the *moderate income* restricted *density* bonus unit by the initial *moderate income* purchaser, the San Diego Housing Commission shall be entitled to its share of appreciation and payoff of its note. Resale for the purposes of Section 143.0720 shall mean the sale, transfer, conveyance, hypothecation, pledging, refinancing with cash out (refinancing without cash out to reduce interest rates shall not be deemed a resale), further encumbrance, leasing of the property, failure to occupy the property as a primary place of residence, or other similar action or disposition of the *moderate income* restricted *density* bonus unit, or any portion thereof, without the express, advance written consent of the San Diego Housing Commission. Fair market values and restricted market values, if and when required to calculate and determine shares of appreciation, shall be determined by state certified real estate appraisals selected by the San Diego Housing Commission, in their sole discretion.

(D) The *density* bonus units affordable to *low income*, *very low income* residents, or *senior citizen*s shall remain available and affordable as provided in Section 143.0720(a)(2)(A)(i) – (iii) for a period of thirty years, or longer if required by a construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy programs.

(E) The *density* bonus units affordable to *moderate income condominium* or planned *development* owners shall be sold initially to and occupied by a person or *families* meeting the income requirements of subsection 143.0720 (a)(2)(C)(i). Upon the resale of the *density* bonus units affordable to *moderate income condominium* or planned development unit owners, as resale is defined in Section 143.0720(a)(2)(C)(iii), the initial seller shall retain the value of any down payments, any San Diego Housing Commission approved improvements to the property, and the initial seller's proportionate share of the appreciation. The San Diego

Housing Commission shall recapture its proportionate share of appreciation, which shall be used by the San Diego Housing Commission within three years of the resale for any of the purposes described within Health and Safety Code section 33334.2(e) that promote homeownership.

(i) For purposes of Section 143.0720(a)(2)(E), the City of San Diego's proportionate share of appreciation shall be equal to the percentage by which the initial sale price to the *moderate-income* household was less than the fair market value of the unit at the time of initial sale.

(ii) For purposes of Section 143.0720(a)(2)(E), appreciation shall mean the amount of increase, if any, in the fair market unrestricted value of the *density* bonus unit on the date of the resale of the *density* bonus unit less the initial fair market unrestricted value of the *density* bonus unit at the time of the initial sale, less the value of any San Diego Housing Commission approved permanent improvements in the *density* bonus unit. In addition to the share in the appreciation to be received by the San Diego Housing Commission, the San Diego Housing Commission shall be entitled to retain the sum of money which is equal to the difference in the initial *moderate income* restricted sales price and the initial fair market sales price at the time of the initial sale, which difference shall be evidence by a note, secured by a deed of trust, in favor of the San Diego Housing Commission at the time of the initial sale.

(iii) For purposes of Section 143.0720(a)(2)(E), value shall mean the actual written documented cost of such permanent improvements, but only when the owner of the *density* bonus unit has given advance written notice of the improvements to the San Diego Housing Commission of said owner's intention of making a permanent improvement in the *density* bonus unit and, provided, further, that such permanent improvement(s) have been approved by the San Diego Housing Commission in advance of such improvement.

~~(4)~~(F) The affordable density bonus units shall be designated units which are comparable in size, bedroom mix and amenities, location, and other similar characteristics, to the market-rate units in the *development* and are dispersed throughout the *development*.

~~(5)~~(G) Provision shall be made for certification of eligible tenants and purchasers, annual certification of property owner compliance by the San Diego Housing Commission, and payment of a monitoring fee, as adjusted from time to time, for monitoring of affordable unit requirements by the San Diego Housing Commission.

(H) Where the *applicant* seeks a *density* bonus as provided in Section 143.0750:

(i) 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 this Division; and

(ii) Of the children who attend the child care facility, the children of *very low income* households, *low income* households, or *families* of *moderate income* shall equal a percentage that is equal to or greater than the percentage that is equal to or greater than the percentage of *dwelling units* that are required for *very low income* households, *low income* households, or *families* of *moderate income*.

(I) Any other term necessary to implement the provisions and intent of this Division and State law.

(3) The *applicant* shall submit a pro forma analysis to the San Diego Housing Commission that documents project feasibility on a form acceptable to the San Diego Housing Commission, which shall be approved in the reasonable discretion of the San Diego Housing Commission. The analysis also shall include information explaining why the concession or incentive is necessary to meet recognized affordability standards.

(b) Inside the Coastal Overlay Zone :

***(NOTE TO THE CLERK**: The strikeout portion of this section was applicable Inside the coastal Zone pursuant to Ordinance No. O-18451, which was not shown in the codified version of the Municipal Code.)*

~~(a) The affordable housing *density* bonus shall be extended to all *development* for which an agreement has been entered into by the *applicant* and the Executive Director of the San Diego Housing Commission.~~

~~(b) The affordable housing *density* bonus agreement shall include the following provisions:~~

~~(1) At least 20 percent of the total units in the *development* will be affordable by persons and *families* of *low income* or *moderate incomes*;~~

~~(2) The affordable units will remain available to and affordable by persons and *families* of *low income* or *moderate income* for a period of at least 20 years; and~~

~~(3) The units affordable by persons and *families* of *low income* or *moderate income* shall be identified and described~~.

(1) An *applicant* shall be entitled to a *density* bonus for any residential *development* for which an agreement is entered into by the *applicant* and the San Diego Housing Commission as provided in Section 143.0720(b)(2).

(2) The *density* bonus agreement shall include the following provisions:

(A) Number of affordable units provided and Level of Affordability:

(i) Percent of the pre-bonus units in the *development* will be affordable, including an allowance for utilities, to *low-income* households at a rent that does not exceed 30 percent of 60 percent of area median income, as adjusted for assumed household size; or

(ii) At least 5 percent of the pre-bonus units in the *development* will be affordable, including an allowance for utilities, to *very low-income* households at a rent that does not exceed 30 percent of 50 percent of the area median income, as adjusted for assumed household size; or

(iii) A *senior citizen* housing *development* as defined in Civil Code sections 51.3 and 51.12; or

(iv) At least 10 percent of the pre-bonus units in a *condominium project* will be available for sale to *moderate income* households, or

(B) In lieu of complying with Section 143.0720(b)(1) and (2), an *applicant* for a tentative map, parcel map, or *development permit* may donate land to the San Diego Housing Commission in accordance with the following requirements:

(i) The *applicant* donates and transfers the land no later than the date of approval of the final map, parcel map, or residential *development permit* application.

(ii) 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*.

(iii) The transferred land is at least 1 acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned for *development* as affordable housing, and is or will be served by adequate public facilities and infrastructure. The land shall have appropriate zoning and *development* standards to make the *development* of the affordable units feasible. No later than the date of approval of the final map, parcel map, or of the residential *development permit*, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the *development* of the *very low income* housing units on the transferred land, except that the City of San Diego may subject the proposed *development* to subsequent design review to the extent authorized by California Government Code section 65583.2(i) if the design is not reviewed by the City of San Diego prior to the time of transfer.

(iv) The transferred land and the affordable units shall be subject to a deed restriction, approved by the San Diego Housing Commission ensuring continued affordability of the units in accordance with Sections 143.0720(b)(2)(D) or 143.0720(b)(2)(E) and shall be recorded on the property at the time of dedication.

(v) The land is transferred to the San Diego Housing Commission or to a housing developer approved by the San Diego Housing Commission. The San Diego Housing Commission may require the applicant to identify and transfer the land to the developer.

(vi) The transferred land shall be within the boundary of the proposed *development* or, if the City of San Diego agrees, within one-quarter mile of the boundary of the proposed *development*.

(C) With respect to “for sale” housing:

(i) Affordability for the *moderate income condominium* or planned development units shall be comprised of both initial occupancy restrictions on the purchasers as well as initial restricted sales prices. Initial *moderate income density* bonus units shall be initially sold to and occupied by persons and *families* of *moderate income*. The initial moderate income restricted sales price shall be established at a maximum sales prices that does not exceed a price that generates a monthly housing cost as defined in Section 50052.5 of the Health and Safety Code, for moderate income purchasers, assuming a down payment of 5 percent of the restricted sales price and utilizing standard underwriting criteria at the date of initial sale and assuming prevailing interest rates for the *moderate income* restricted density bonus units.

(ii) *Density* bonus units shall be owner occupied by the initial purchaser of the units at all times until the resale of the *density* bonus unit(s) by the initial *moderate income* purchaser.

(iii) *Upon* the resale of the *moderate income* restricted *density* bonus unit by the initial *moderate income* purchaser, the San Diego Housing Commission shall be entitled to its share of appreciation and payoff of its note. Resale for the purposes of Section 143.0720 shall mean the sale, transfer, conveyance, hypothecation, pledging, refinancing with cash out (refinancing without cash out to reduce interest rates shall not be deemed a resale), further encumbrance, leasing of the property, failure to occupy the property as a primary place of residence, or other similar action or disposition of the *moderate income* restricted *density* bonus unit, or any portion thereof, without the express, advance written consent of the San Diego Housing Commission. Fair market values and restricted market values, if and when required to calculate and determine shares of appreciation, shall be determined by state certified real estate appraisals selected by the San Diego Housing Commission, in their sole discretion.

(D) The *density* bonus units affordable to *low income*, *very low income* residents, or *senior citizens* shall remain available and affordable as provided in Section 143.0720(b)(2)(A)(i) – (iii) for a period of thirty years, or longer if required by a construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy programs.

(E) The *density* bonus units affordable to *moderate income condominium* or planned *development* owners shall be sold initially to and occupied by a person or *families* meeting the income requirements of subsection 143.0720(b)(2)(C)(i). Upon the resale of the *density* bonus units affordable to *moderate income condominium* or planned development unit owners, as resale is defined in Section 143.0720(b)(2)(C)(iii), the initial seller shall retain the value of any down payments, any San Diego Housing

Commission approved improvements to the property, and the initial seller's proportionate share of the appreciation. The San Diego Housing Commission shall recapture its proportionate share of appreciation, which shall be used by the San Diego Housing Commission within three (3) years of the resale for any of the purposes described within Health and Safety Code section 33334.2(e) that promote homeownership.

(i) For purposes of Section 143.0720(b)(2)(E), the City of San Diego's proportionate share of appreciation shall be equal to the percentage by which the initial sale price to the moderate-income household was less than the fair market value of the unit at the time of initial sale.

(ii) For purposes of Section 143.0720(b)(2)(E), appreciation shall mean the amount of increase, if any, in the fair market unrestricted value of the *density* bonus unit on the date of the resale of the *density* bonus unit less the initial fair market unrestricted value of the *density* bonus unit at the time of the initial sale, less the value of any San Diego Housing Commission approved permanent improvements in the *density* bonus unit.

In addition to the share in the appreciation to be received by the San Diego Housing Commission, the San Diego Housing Commission shall be entitled to retain the sum of money which is equal to the difference in the initial *moderate income* restricted sales price and the initial fair market sales price at the time of the initial sale, which difference shall be evidence by a note, secured by a deed of trust, in favor of the San Diego Housing Commission at the time of the initial sale.

(iii) For purposes of Section 143.0720(b)(2)(E), value shall mean the actual written documented cost of such permanent improvements, but only when the owner of the *density* bonus unit has given advance written notice of the improvements to the San Diego Housing Commission of said owner's intention of making a permanent improvement in the *density* bonus unit and, provided, further, that such permanent improvement(s) have been approved by the San Diego Housing Commission in advance of such improvement.

(F) The affordable *density* bonus units shall be designated units which are comparable in size, bedroom mix and amenities, location, and other similar characteristics, to the market-rate units in the *development.*

(G) Provision shall be made for certification of eligible tenants and purchasers, annual certification of property owner compliance by the San Diego Housing Commission, and payment of a monitoring fee, as adjusted from time to time, for monitoring of affordable unit requirements by the San Diego Housing Commission.

(H) Where the *applicant* seeks a *density* bonus as provided in Section 143.0750:

(i) 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 this Division; and

(ii) Of the children who attend the child care facility, the children of *very low income* households, *low income* households, or *families* of *moderate income* shall equal a percentage that is equal to or greater than the percentage that is equal to or greater than the percentage of *dwelling units* that are required for *very low income* households, *low income* households, or *families* of *moderate income.*

(I) Any other term necessary to implement the provisions and intent of this Division and State law.

(3) The *applicant* shall submit a pro forma analysis to the San Diego Housing Commission that documents project feasibility on a form acceptable to the San Diego Housing Commission, which shall be approved in the reasonable discretion of the San Diego Housing Commission. The analysis also shall include information explaining why the concession or incentive is necessary to meet recognized affordability standards.

§143.0730 Density Bonus Provisions

(a) Outside the Coastal Overlay Zone, ~~A~~ a residential *development* proposal requesting an affordable housing *density* bonus in accordance with Section 143.0715 is subject to the following:

~~(a)~~(1) Except as described herein, ~~The~~ the *development* shall be permitted a *density* bonus ~~of~~ equal to the ~~amount~~ number of units requested by the *applicant*, up to a total project *dwelling unit* count of ~~125~~120 percent of the units permitted by the *density* regulations of the applicable base zone~~.~~ on the date the *development application* is deemed complete, for those projects subject to Section 143.0720(a)(2)(A)(i) - (iii). For each 1 percent increase above 10 percent in the percentage of units affordable to *lower income* households, the *density* bonus shall be increased by 1.5 percent up to a maximum of 35 percent. For each 1 percent increase above 5 percent in the percentage of units affordable *to very low income* households, the *density* bonus shall be increased by 2.5 percent up to a maximum of 35 percent. This increase shall be in addition to any increase in *density* mandated or allowed under this Division, up to a maximum combined *density* increase of 35 percent.

(2) The *development* shall be permitted a *density* bonus of the amount of units requested by the *applicant*, up to a total project *dwelling unit* count of 120 percent of the units permitted by the *density* regulations of the applicable base zone, for those projects subject to Section 143.0720(a)(2)(A(iv). For each 1 percent increase above the minimum 10 percent land donation described in Section 143.0720(a)(2)(B), the *density* bonus shall be increased by 1 percent, up to a maximum of 35 percent. This increase shall be in addition to any increase in *density* mandated or allowed under this Division, up to a maximum combined *density* increase of 35 percent.

(3) The *development* shall be permitted a *density* bonus of the amount of units requested by the *applicant*, up to a total project dwelling unit count of 115 percent of the units permitted by the *density* regulations of the applicable base zone, for those projects subject to Section 143.0720(a)(2)(B). For each 1 percent increase above the minimum 10 percent land donation described in

Section 143.0720(a)(2)(B), the *density* bonus shall be increased by 1 percent, up to a maximum of 35 percent. This increase shall be in addition to any increase in *density* mandated or allowed under this Division, up to a maximum combined *density* increase of 35 percent.

~~(b)~~(4) Where the applicable zone requires that each *lot* be occupied by no more than one *dwelling unit*, the *development* requires a Site Development Permit. If any deviation from the *development* regulations of the applicable zone is proposed, a Planned Development Permit is required.

~~(c)~~(5) If the ~~*premises*~~ *development* is located in two or more zones, the number of *dwelling units* permitted in the *development* is the sum of the *dwelling units* permitted in each of the zones. Within the *development*, the permitted number of *dwelling units* may be distributed without regard to the zone boundaries.

~~(d)~~(6) Where the *development* consists of two or more specifically identified parcels, whether contiguous or noncontiguous, the maximum number of *dwelling units* permitted on each parcel ~~property~~ is calculated based on the area of that ~~property. Within the *development*, if any portion of the *density* is to be transferred between two or more separate parcels, the regulations of Section 143.0750 apply~~ parcel.

~~(e)~~(7) Where the *development* consists of two or more noncontiguous parcels lying within two or more community planning areas, the *dwelling units* reserved at levels affordable by *low-income* households, ~~or,~~ *very low-income* households, or *moderate income condominium* owners shall be distributed among community planning areas in the same proportion as the total number of *dwelling units* constructed within the *development*.

(8) All *density* calculations resulting in fractional units shall be rounded up to the next number.

(9) All *density* calculations shall be based on the pre-bonus number of units

(b) Inside Coastal Overlay Zone, ~~A~~ a residential *development* proposal requesting an affordable housing density bonus in accordance with Section 143.0715 ~~shall be~~ is subject to the following:

~~(a)~~(1) Except as described herein, ~~The~~ the ~~affordable housing *density* bonus~~ *development* shall ~~permit a total project dwelling~~ be permitted a *density* bonus equal to the number of units requested by the *applicant*, up to a total project *dwelling unit* count of ~~up to 125~~ 120 percent of the units permitted by the *density* regulations of the applicable base zone~~.~~ on the date the *development application* is deemed complete, for those projects subject to Section 143.0720(b)(2)(A)(i)) – (iii). For each 1 percent increase above 10 percent in the percentage of units affordable to *lower* *income* households, the *density* bonus shall be increased by 1.5 percent up to a maximum of 35 percent. For each 1 percent increase above 5 percent in the percentage of units affordable *to very low income* households, the *density* bonus shall be increased by 2.5 percent up to a maximum of 35 percent. This increase shall be in addition to any increase in *density* mandated or allowed under this Division, up to a maximum combined *density* increase of 35 percent.

(2) The *development* shall be permitted a *density* bonus of the amount of units requested by the *applicant*, up to a total project dwelling unit count of 120 percent of the units permitted by the *density* regulations of the applicable base zone, for those projects subject to Section 143.0720(b)(2)(A)(iv). For each 1 percent increase above the minimum 10 percent land donation described in Section 143.0720(b)(2)(B), the *density* bonus shall be increased by 1 percent , up to a maximum of 35 percent. This increase shall be in addition to any increase in *density* mandated or allowed under this Division, up to a maximum combined *density* increase of 35 percent.

(3) The *development* shall be permitted a *density* bonus of the amount of units requested by the *applicant*, up to a total project dwelling unit count of 115 percent of the units permitted by the *density* regulations of the applicable base zone, for those projects subject

to Section 143.0720(b)(2)(B). For each 1 percent increase above the minimum 10 percent land donation described in Section 143.0720(b)(2)(B), the *density* bonus shall be increased by 1 percent, up to a maximum of 35 percent. This increase shall be in addition to any increase in *density* mandated or allowed under this Division, up to a maximum combined *density* increase of 35 percent.

~~(b)~~(4) Where the applicable zone requires that each *lot* be occupied by no more than one dwelling unit, the *development* requires a Site Development Permit. If any deviation from the *development* regulations of the applicable zone is proposed, a Planned Development Permit is required.

~~(c)~~(5) If the ~~*premises*~~ *development* is located in two or more zones, the number of *dwelling units* permitted in the *development* is the sum of the *dwelling units* permitted in each of the zones. Within the *development*, the permitted number of *dwelling units* may be distributed without regard to the zone boundaries.

~~(d)~~(6) Where the *development* consists of two or more specifically identified parcels, whether contiguous or noncontiguous, the maximum number of *dwelling units* permitted on each parcel ~~property~~ is calculated based on the area of that ~~property. Within the *development*, if any portion of the *density* is to be transferred~~

~~between two or more separate parcels, the regulations of Section 143.0750 apply~~ parcel.

(7) Where the *development* consists of two or more noncontiguous parcels lying within two or more community planning areas, the *dwelling units* reserved at levels affordable by *low-income* households, *very low-income* households, or *moderate income condominium* owners shall be distributed among community planning areas in the same proportion as the total number of *dwelling units* constructed within the *development.*

(8) All *density* calculations resulting in fractional units shall be rounded up to the next number.

(9) All *density* calculations shall be based on the pre-bonus number of units.

§143.0735 On-Site Building Bonus Provisions

(a) Outside the Costal Overlay Zone, ~~A~~ a residential *development* proposal requesting an increase in residential units in accordance with Section 143.0718(a) is subject to the following:

(1) The *development* shall be permitted an on-site building bonus of the amount of units requested by the *applicant*, up to a total project dwelling unit count of 110 percent of the units permitted by the *density* regulations of the applicable base zone where the *density* does not exceed that allowed in the applicable *land use plan.*

(2) The residential *development* shall contain affordable units on the same site as the market rate units, in accordance with Section 142.1306(b)(1).

(b) Inside the Costal Overlay Zone, ~~A~~ a residential *development* proposal requesting an increase in residential units in accordance with Section 143.0718(b) is subject to the following:

(1) The *development* shall be permitted an on-site building bonus of the amount of units requested by the *applicant*, up to a total project dwelling unit count of 110 percent of the units permitted by the *density* regulations of the applicable base zone where the *density* does not exceed that allowed in the applicable *land use plan.*

(2) The residential *development* shall contain affordable units on the same site as the market rate units, in accordance with Section 142.1306(b)(1).

§ 143.0740 ~~Additional~~ Development Incentive or Concessions for Affordable Housing

(a) Outside the Costal Overlay Zone the following regulations apply:

~~In accordance with the provisions of Government Code Section 65915, the City may grant a development incentive in addition to the 25 percent *density* bonus. The additional development incentive may consist of the following:~~

~~(a)~~(1) ~~A *density* bonus of more than 25 percent;~~ In addition to the *density* bonus provisions contained in Sections 143.0730(a)(1) and (2), the *applicant* shall be entitled to, upon request, one of the following *development* incentives or concessions when providing residential units in accordance with Section 143.0720(a)(2)(A)(i), (ii), or (iv):

~~(b) A financial incentive consisting of:~~

~~(1) Fee reductions or deferrals as authorized for affordable housing in the Municipal Code; or~~

~~(2) Direct financing assistance from the Housing Commission, Redevelopment Agency, or other public funds, if authorized by the applicable agency on a case-by-case basis, or~~

~~(c)~~ (A) A deviation from applicable *development* regulations of the underlying zone ~~pursuant to Section 143.0750.~~, such as setback, parking, lot size, height, or FAR to the limited extent the deviation results in identifiable, financially sufficient, and actual cost reductions, pursuant to Section 143.0760; or

(B) 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 *development* and the existing or planned *development* in the area where the proposed housing *development* will be located; or

(C) Other regulatory incentives or concessions proposed by the *applicant* or the City of San Diego that result in identifiable, financially sufficient, and actual cost reductions.

(2) In addition to the *density* bonus provisions contained in Section 143.0730(a)(1) and (2), the *applicant* shall be entitled to, upon request, two of the *development* incentives or concessions described in Section 143.0740(a)(A) – (C) when providing residential units that included at least 20 percent of the total pre-bonus 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 *condominium* or planned *development.*

(3) In addition to the *density* bonus provisions contained in Section 143.0730(a)(1) and (2), the *applicant* shall be entitled to, upon request, three of the *development* incentives or concessions described in Section 143.0740(a)(1)(A) – (C) when providing residential units that included at least 30 percent of the total pre-bonus 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 *condominium* or planned *development.*

(<u>NOTE TO THE CLERK</u>: The strikeout portion of this section was applicable Inside the Coastal Zone pursuant to Ordinance No. __________, which was not shown in the codified version of the Municipal Code.)

~~§ 143.0740 Affordable Housing Provisions~~

<u>(b) Inside the Coastal Overlay Zone the following regulations apply:</u>

~~(a) The number of dwelling units reserved for purchase or rent at prices affordable by persons and *families* of *low income* or *moderate income* shall equal or exceed the number of bonus units constructed within the *development*.~~

~~(b) Where the *development* consists of two or more noncontiguous parcels lying within two or more community planning areas, the dwelling units reserved at prices affordable by persons and *families* of *low income* or *moderate income* shall be distributed among community planning areas in the same proportion as the total number of dwelling units constructed within the *development*.~~

<u>(1) In addition to the *density* bonus provisions contained in Sections 143.0730(b)(1) and (2), the *applicant* shall be entitled to, upon request, one of the following *development* incentives or concessions when providing residential units in accordance with Section 143.0720(b)(2)(A)(i),(ii) or (iv):</u>

<u>(A) A deviation from applicable *development* regulations of the underlying zone, such as setback, parking, lot size, height, or FAR to the limited extent the duration results in</u>

identifiable, financially sufficient, and actual cost reductions, pursuant to Section 143.0760; or

(B) 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 *development* and the existing or planned *development* in the area where the proposed housing *development* will be located; or

(C) Other regulatory incentives or concessions proposed by the *applicant* or the City of San Diego that result in identifiable, financially sufficient, and actual cost reductions.

(2) In addition to the *density* bonus provisions contained in Section 143.0730(b)(1) and (2), the *applicant* shall be entitled to, upon request, two of the *development* incentives or concessions described in Section 143.0740(b)(A) – (C) when providing residential units that included at least 20 percent of the total pre-bonus 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 *condominium* or planned *development.*

(3) In addition to the *density* bonus provisions contained in Section 143.0730(b)(1) and (2), the *applicant* shall be entitled to, upon request, three of the *development* incentives or concessions described in Section 143.0740(b)(A) – (C) when providing residential units that included at least 30 percent of the total pre-bonus 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 *condominium* or planned *development.*

~~**§143.0750 Deviation to Allow for Additional Development Incentive**~~

~~An *applicant* may request a deviation from the applicable *development* regulations as an additional development incentive for affordable housing pursuant to a Site Development Permit decided in accordance with Process Four provided that the *findings* in Section 126.0504(a) and the supplemental *findings* in Section 126.0504(1) are made.~~

(NOTE TO THE CLERK: The strikeout portion of this section was applicable Inside the Coastal Zone pursuant to Ordinance No. O-18451, which was not shown in the codified version of the Municipal Code.)

~~**§ 143.0750 Transfer of Bonus Density Units**~~

~~(a) Within any *development* involving an affordable housing *density* bonus where the transfer of *density* rights between either contiguous or noncontiguous parcels in proposed, a Site Development Permit is required.~~

~~(b) When a transfer of *density* rights would result in a *development* on any parcel exceeding 125 percent of the units permitted by the *density*~~

~~regulations of the applicable zone, the approval of a Site Development Permit shall require that the *findings* in Section 126.0504(1) be made.~~

~~(c) If a hearing results in denial of transfer of *density* to a particular parcel and a *construction permit* has already been issued on its companion parcel, the *density* of which is being reduced, the *applicant* shall, for a period of 12 months from the date of the denial, be entitled to submit one or more substitute parcels to the hearing process to complete the *development* for purposes of *density* bonus transfer to the substitute parcel.~~

§ 143.0750 Development Incentive or Concessions for Affordable Housing with Child Care Facility

(a) Outside the Coastal Overlay Zone, where the *applicant* proposes to construct a residential *development* that conforms to the requirements of this Division and includes a child care facility that will be located on the *premises*, as a part of, or adjacent to the residential *development*, the *applicant* is entitled to:

(1) an additional *density* bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet of the child care facility; or

(2) an additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(b) Inside the Coastal Overlay Zone, where the *applicant* proposes to construct a residential *development* that conforms to the requirements of this Division and includes a child care facility that will be located on the *premises*, as a part of, or adjacent to the residential *development*, the *applicant* is entitled to:

(1) an additional *density* bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet of the child care facility; or

(2) an additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

~~**§143.0760 Deviations from Density Bonus and Affordable Housing Provisions**~~

~~(a) A deviation from the provisions of either Section 143.0730 or Section 143.0740 may be requested in accordance with a Site Development Permit and shall require that the *findings* in Section 126.0504(m) be made.~~

~~(b) Deviations may only be considered as follows:~~

~~(1) An increase in the affordable housing *density* bonus provisions of Section 143.0730(a) and/or decrease in the affordable housing provisions of Section 143.0740(a), may be granted where the *development* provides for the inclusion of dwelling units affordable by persons of *very low income*. The total *density* bonus shall not result in a *development* containing more than 150 percent of the units permitted by the *density* regulations of the base zone nor shall the affordable housing requirement provide that less than 10~~

~~percent of the total *development* be affordable by persons and *families* of very *low income*.~~

~~(2) An increase in the affordable housing density bonus provisions of Section 143.0730(a), and/or decrease in the affordable housing provisions of Section 143.0740(a), may be granted where the *development* is located within a census tract where the median household income exceeds 120 percent of the citywide median household income as measured by the most recent U.S. Bureau of Census survey and the *development* provides for the inclusion of dwelling units affordable by persons of *low income*. The total *density* bonus shall not result in a *development* containing more than 150 percent of the units permitted by the *density* regulations of the applicable zone nor shall the affordable housing requirement provide that less than 10 percent of the total *development* be affordable by persons and *families* of *low income*~~

§ 143.0760 Rules for Granting Development Incentives or Concessions

(a) Outside the Coastal Overlay Zone, an application for the incentive or concession pursuant to Section 143.0740 or Section 143.0750 shall be decided in accordance with Process 4.

(1) The City of San Diego shall grant the additional concession or incentive pursuant to Section 143.0740 unless the decision-maker makes one of the following *findings*, in writing:

(A) the incentive or concession is not required in order to provide for affordable housing costs as defined in Health and Safety Code section 50052.5, as amended from time to time, or for rents for the targeted units to be set in accordance with Section 143.0720(a)(2)(A)(i) or (ii); or

(B) granting the incentive would have a specific adverse impact, as defined in Government Code section 65589.5(d)(2), as amended from time to time, upon public health and safety or upon 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-income* and *moderate income* households.

(2) The City of San Diego shall grant the additional concession or incentive pursuant to Section 143.0750 unless the decision-maker makes one of the following *findings*, in writing:

(A) The additional *density* bonus is not an amount of square feet of residential space equal to or greater than the amount of square feet of the child care facility; or

(B) The additional concession or incentive does not contribute significantly to the economic feasibility of the construction of the child care facility.

(b) Inside the Coastal Overlay Zone, an application for the incentive or concession pursuant to Section 143.0740 or Section 143.0750 shall be decided in accordance with Process 4.

(1) The City of San Diego shall grant the additional concession or incentive pursuant to Section 143.0740 unless the decision-maker makes one of the following *findings*, in writing:

(A) the incentive or concession is not required in order to provide for affordable housing costs as defined in Health and Safety Code section 50052.5, as amended from time to time, or for rents for the targeted units to be set in accordance with Section 143.0720(b)(1)(A) or (B); or

(B) granting the incentive would have a specific adverse impact, as defined in Government Code section 65589.5(d)(2), as amended from time to time, upon public health and safety or upon 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-income* and *moderate income* households.

(2) The City of San Diego shall grant the additional concession or incentive pursuant to Section 143.0750 unless the decision-maker makes one of the following *findings*, in writing:

(A) The additional *density* bonus is not an amount of square feet of residential space equal to or greater than the amount of square feet of the child care facility; or

(B) The additional concession or incentive does not contribute significantly to the economic feasibility of the construction of the child care facility.

§ 143.0770 Waiver or Reduction of Development Standards for Affordable Housing Density Bonus Developments

(a) Outside the Coastal Overlay Zone, an app*licant* may request a waiver or reduction of any *development* standard that will have the effect of precluding the construction of *development* under Section 143.0720(a)(2)(A)(i) – (iv) with receiving the concessions or incentives allowed under Section 143.0740. The request shall show that the waiver or modification is necessary to make the housing units economically feasible.

(b) Inside the Coastal Overlay Zone, an app*licant* may request a waiver or reduction of any *development* standard that will have the effect of precluding the construction of *development* under

Section 143.0720(b)(2)(A)(i) – (iv) or with receiving the concessions or incentives allowed under Section 143.0740. The request shall show that the waiver or modification is necessary to make the housing units economically feasible.

§ 143.0780 Rules for Granting a Waiver or Reduction of Development Standards for Affordable Housing Density Bonus Developments

(a) Outside the Coastal Overlay Zone, an *applicant* requesting a waiver or reduction of *development* standards pursuant to Section143.0770 shall be decided in accordance with Process 4.

(1) The City of San Diego shall grant the reduction or waiver of *development* standards, whichever is minimally required to allow for construction of the *development* under Section 143.0720(a)(2)(A)(i) – (iv) or with receiving the concessions or incentives allowed under Section 143.0740, unless the decision-maker makes one of the following *findings*, in writing:

(A) granting the reduction or waiver of *development* standards is not necessary to make the housing units economically feasible; or

(B) granting the reduction or waiver of *development* standards would have a specific adverse impact, as defined in Government Code section 65589.5(d)(2), as amended from time to time, upon public health and safety, or upon the physical environment for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact; or

(C) granting the reduction or waiver of *development* standards would have an adverse impact on real property that is listed in the California Register of Historical Resources.

(b) Inside the Coastal Overlay Zone, an *applicant* requesting a waiver or reduction of *development* standards pursuant to Section143.0770 shall be decided in accordance with Process 4.

(1) The City of San Diego shall grant the reduction or waiver of *development* standards, whichever is minimally required to allow for construction of the *development* under Section 143.0720(b)(2)(A)(i) – (iv) or with receiving the concessions or incentives allowed under Section 143.0740, unless the decision-maker makes one of the following *findings*, in writing:

(A) granting the reduction or waiver of *development* standards is not necessary to make the housing units economically feasible; or

(B) granting the reduction or waiver of *development* standards would have a specific adverse impact, as defined in Government Code section 65589.5(d)(2), as amended from time to time, upon public health and safety, or upon the physical environment for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact; or

(C) granting the reduction or waiver of *development* standards would have an adverse impact on real property that is listed in the California Register of Historical Resources.

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Or.Dept: DSD
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MODERATE INCOME FOR SALE CONDOMINIUM CATEGORY

Manager's Report 05-028
Attachment 6

Percentage of Units Restricted for Moderate Income Buyers	State Proposed Density Bonus Percentage	City Proposed Density Bonus Percentage
10	5	20
11	6	21
12	7	22
13	8	23
14	9	24
15	10	25
16	11	26
17	12	27
18	13	28
19	14	29
20	15	30
21	16	31
22	17	32
23	18	33
24	19	34
25	20	35
26	21	35
27	22	35
28	23	35
29	24	35
30	25	35
31	26	35
32	27	35
33	28	35
34	29	35
35	30	35
36	31	35
37	32	35
38	33	35
39	34	35
40	35	35

Good Neighbors
San Diego
Housing Commission

REPORT

TO: The Members of the Land Use and Housing Committee

DATE: January 27, 2005
For the LU&H Agenda of February 2, 2005

REPORT NO.: LUH05-001

SUBJECT: Density Bonus Procedures Manual

Issue: Should the Land Use and Housing Committee recommend the adoption of the Density Bonus Procedures Manual in conjunction with the update to both the Affordable Housing Density Bonus Regulations and Inclusionary Housing Regulations (Manager's Report Nos. 03-237 and 04-127)?

Recommendation: Accept and recommend adoption of the Density Bonus Procedures Manual and forward to the Community Planners Committee, Housing Commission and Planning Commission for input/recommendations and then to the City Council for adoption.

BACKGROUND

The intent of this Procedures Manual is to clarify the revisions to the City's Affordable Housing Density Regulations interact with state law, Coastal Affordable Housing Replacement Regulations and the City's Inclusionary Housing Regulations in an effort to provide further incentives for the building of more affordable units throughout the City.

Due to the passage of SB 1818 the new state law presented a significant number of obstacles in reconciling the state requirements and what the City was attempting to accomplish with its update to the Inclusionary Housing Ordinance (San Diego Municipal Code Chapter 14, Article 2, Division 13) and the existing Coastal Affordable Housing Replacement Regulations (Chapter 14, Article 3, Division 8).

Specifically, it was unclear what effects the on-site building bonus would have on developments given the newly adopted state law and the proposed update to the City's density bonus regulations. Therefore, it was decided to bring forth the on-site building bonus as part of the larger discussion regarding the City's Affordable Housing Density Bonus Regulations rather than to include it as part of the Inclusionary Housing Ordinance update.

DISCUSSION

Spanning the months of November 2004 to January 2005, representatives from the City's Planning Department, City Attorney's Office and the San Diego Housing Commission met to discuss the City's density bonus program, the City's coastal replacement requirements, the proposed on-site building bonus and how SB 1818 would interact and affect each of these programs.

The vast complexity of combining these various programs was quickly realized, and it was determined that the drafting of a Procedures Manual would be in order. The Procedures Manual will provide developers with a valuable resource in deciphering how the density bonus program will be administered by the City of San Diego.

The Procedures Manual is designed to provide further explanation of the following issues:

- incentives a developer of a residential housing development is entitled to when complying with the requirements of the density bonus program;
- requirements attached to affordable units built within a residential housing development;
- affordable unit resale calculation procedures;
- ratios of affordable units to the received density bonus for moderate, low-income and very-low income brackets (both rental and for-sale);
- interaction of the density bonus program with other affordable housing programs;
- comparability provisions for affordable units;
- fees associated with the administration of the program; and
- relocation provisions for density bonus units converting to condominiums.

CONCLUSION

As the City's density bonus regulations are being discussed and updated to conform to recently enacted state law, it is recommended that a companion Procedures Manual be adopted to provide further explanation of program expectations and multiple program interaction. Such a manual will ideally provide valuable information which will result in the building of more affordable units within the City of San Diego. The manual should be subject to periodic monitoring for updating the information contained therein. Substantive changes should be reserved for City Council decision, while ministerial alterations should be resolved by the San Diego Housing Commission.

Respectfully Submitted,

____

D. Todd Philips
Policy Advisor to the President and CEO

ATTACHMENT:

1. Draft of Density Bonus Procedure Manual

DRAFT (1/26/2005)
DENSITY BONUS AFFORDABLE HOUSING
GUIDELINES AND PROCEDURES MANUAL

Regulations pertaining to the City of San Diego's Affordable Housing Density Bonus Program ("Program") are incorporated in San Diego Municipal Code Chapter 14, Article 3, Division 7 and San Diego Municipal Code Chapter 14, Article 1, Division 3, Subsection 141.0310 (Senior Housing). State of California Density Bonus Legislation can be found in California Government Code Sections 65915-65918

The purpose of the Density Bonus Affordable Housing Guidelines and Procedures Manual ("Procedures Manual") is to provide additional detail for the administration of the Program.

Density Bonus Application

The President and Chief Executive Officer of the Housing Commission is charged with the duty of entering into agreements with applicants which allow for the density bonus in projects that comply with the requirements of State law and San Diego Municipal Code. Applicants wanting to use the Density Bonus Program should complete and submit a Density Bonus Application to the San Diego Housing Commission. (Call 619-578-7582 to request a copy of the application).

Housing Commission staff will work with City of San Diego Development Services staff during the review and approval stages of the project. After the project receives final approval by the City of San Diego, and prior to pulling building permits, the Housing Commission will prepare a Density Bonus Agreement and related documents for signature and recordation.

Applicants constructing affordable units pursuant to the requirements of the Program may be eligible for expedited permit processing through the Affordable/Infill Housing and Sustainable Buildings Expedite Program as implemented by Council Policy 600-27 (See Information Bulletin 538).

Density Bonus Agreement and Restrictions

A. Developers of residential "housing developments" with at least five dwelling units who agree to comply with the requirements of the Density Bonus Program shall be granted the following:

1. A density bonus, as provided herein, above the underlying zone designation on each housing development, provided, however, that in no event shall any density bonus in excess of 35% be granted with respect to any project.

2. One, two, or three development incentives or concessions, depending on the level of affordability offered, if requested by the applicant in order to provide for affordable housing costs.

3. Upon the request of the developer, the city shall allow the following vehicular parking ratio, inclusive of handicapped and guest parking:

   1. 0 – 1 bedroom: 1 onsite parking space

   2. 2 – 3 bedrooms: 2 onsite parking spaces

   3. 4 or more bedrooms: 2 ½ onsite parking spaces.

   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. A development may provide "onsite parking" through tandem parking or uncovered parking, but not through onstreet parking.

"Housing Development" means the new construction of one or more groups of projects for residential units in the City of San Diego. It also includes either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling unit as defined in California Government Code Section 65863.4(d), where the result of the rehabilitation would be a net increase in available residential units. Substantial rehabilitation will be based upon a rehabilitation cost per-unit ratio. Currently, to qualify as substantial rehabilitation, a minimum of $15,000 per unit must be proposed. All units proposed for rehabilitation must be inspected by the Housing Commission before the rehabilitation work is initiated and again upon completion.

B. The City of San Diego will grant a 20% density bonus and incentives or concessions, as set forth herein, when the applicant agrees to construct at least any one of the following:

1. Provide 10 percent of the total dwelling units of a housing development for lower income households (households with income at or below 80 percent of area median income as adjusted for household size) at rents not to exceed 30 percent of 60 percent of area median income as adjusted for assumed household size, or

2. Provide 5 percent of the total dwelling units of a housing development for very low-income households (households with income at or below 50 percent of area median income as adjusted for household size) at rents not to exceed 30 percent of 50 percent of area median income as adjusted for assumed household size, or

3. Provide a senior housing development as defined in Sections 51.3 and 51.12 of the California Civil Code. "Senior" means a person 62 years of age or older, or 55 years of age or older if in a senior housing development. "Senior housing development" means a residential development developed, substantially rehabilitated, or substantially renovated, for seniors that has at least 35 dwelling units.

4. Provide 10 percent of the total dwelling units in a condominium project or planned development for persons or families of moderate income (income at or below 120

percent of area median income as adjusted for household size) at a sales price which results in housing costs, as set forth herein, that not to exceed 35 percent of 110 percent of area median income as adjusted for assumed household size, and utilizing prevailing Housing Commission underwriting standards.

Developers of condominiums or planned developments are limited to the use of option B.4 above; they may not meet the density bonus affordability requirements by offering rental units, unless they are developing mixed-use developments containing both for-sale condominium units and rental units. In this circumstance, affordable density bonus rental and for-sale units must be provided in proportion to the total development, subject to the approval of the Housing Commission's President and Chief Executive Officer, in her sole reasonable discretion.

C. The City of San Diego will grant a 15% density bonus, as set forth herein, when the applicant agrees to donate and transfer land, no later than the date of approval of the final map, parcel map or residential development permit application, that meets all of the following requirements:

1. The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households (households with income at or below 50 percent of area median income as adjusted for household size) in an amount not less than 10 percent of the number of residential units of the proposed development; and

2. The transferred land is at least 1 acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned for development as affordable housing, and is or will be served by adequate public facilities and infrastructure. The land shall have appropriate zoning and development standards to make the development of the affordable units feasible. No later than the date of approval of the final map, parcel map, or of the residential development permit, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, except that the City of San Diego may subject the proposed development to subsequent design review to the extent authorized by Government Code Section 65583.2(i) if the design is not reviewed by the City of San Diego prior to the time of transfer; and

3. The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units in accordance with Sections 143.0720 (b)(4) or 143.0720 (b) (5) and shall be recorded on the property at the time of dedication; and

4. The land is transferred to the Housing Commission or to a housing developer approved by the Housing Commission in its sole and reasonable discretion. The Housing Commission may require the applicant to identify and transfer the land to the developer; and

5. The transferred land shall be within the boundary of the proposed development or, if the City of San Diego agrees, within one-quarter mile of the boundary of the proposed development.

For each 1% increase above the minimum 10% land donation described in (C)(1) above, the density bonus shall be increased by 1%, up to a maximum of 35%. This increase shall be in addition to an increase in density bonus mandated by Section 143.0730 up to a maximum combined density increase of 35%.

D. The calculation of the number of units restricted for moderate, low or very low-income is based upon the number of units within any project prior to the density bonus. Any fraction derived in this calculation shall be increased to the next whole number.

E. Developer shall agree to execute an "Agreement Authorizing Affordable Housing Density Bonus and Imposing Covenants and Restrictions On Real Property" as required by the President and Chief Executive Officer. The "Agreement" shall enumerate the restrictions placed on the dwelling units reserved for low or very low-income households. The restrictions on rental units shall include the following:

1. Affordable unit(s) shall not be rented to a tenant whose income has not been certified in accordance with the income criteria set for low and very low-income households as adjusted for household size.

2. Tenant certification shall be performed by the Developer and submitted to the Housing Commission's Occupancy Monitoring staff for approval, in the sole reasonable discretion of the Housing Commission, prior to tenant occupancy. No Affordable unit may be rented to a prospective tenant or occupied by any person unless and until the Housing Commission has determined that the prospective tenant or occupant has satisfied the eligibility requirements.

3. Tenant certification shall be performed annually to assure continued eligibility. In the event any occupant of an affordable unit, ceases to be eligible to occupy such affordable unit, the owner will have 60 days to either cause the affordable unit to be occupied by an eligible tenant or to designate a replacement unit acceptable to the Housing Commission, which replacement unit shall be rent and occupancy restricted as set forth herein. If neither action is taken within such 60 day period, the Housing Commission will impose a monthly in-lieu fee on the owner until a replacement unit is provided for an eligible household.

4. Developer shall rent affordable unit(s) only on a month-to-month basis.

5. Affordable unit(s) shall not be occupied by the Developer/Owner or any person related to or affiliated with the Developer/Owner, or the resident manager or maintenance personnel.

6. Affordable unit(s) shall not be occupied exclusively by full-time students, unless such persons are married and eligible to file a joint federal income tax return. In addition, a student dependent will not qualify unless the taxpayer (upon whom the student is dependent upon) resides in the same unit.

7. Affordable unit(s) shall not be occupied by households who own improved real property.

8. To maximize the availability of affordable housing, the affordable density bonus unit(s) shall not be occupied by households receiving rental assistance from HUD under Section 8 of the Housing Act of 1937, the Voucher Program, or any successor program. Section 8 households are not precluded from renting available market-rate units.

9. The Agreement shall ensure the continued affordability of all designated Affordable units(s) for at least 30 years from the issuance of a certificate of occupancy.

10. Developer shall only sell the density bonus property to parties who execute and deliver to the Housing Commission an express written assumption of the terms of the Agreement in a form and format acceptable to and approved by the Housing Commission in its sole reasonable discretion. The Developer shall reimburse the Housing Commission for the costs and expenses of Housing Commission staff and legal expenses incurred to prepare and execute said Assumption Agreement. Such reimbursement shall be paid by the Developer to the Housing Commission prior to the execution of the Assumption Agreement and prior to any such transfer of the property.

F. Developer shall agree to execute an "Agreement Authorizing Affordable Housing Density Bonus and Agreement to Restrict the Sale of Affordable Units" as required by the President and Chief Executive Officer. The "Agreement" shall enumerate the restrictions placed on the dwelling units required to initially be sold to moderate-income households. The restrictions on For-Sale units shall include the following:

1. The affordability restrictions for the moderate income condominium or planned development units shall be comprised of both initial occupancy restrictions on the purchasers as well as initial restricted sales prices.

2. The moderate income condominium or planned development units shall initially be sold to and occupied by persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code (at the time of this writing, income at or below 120 percent of area median income as adjusted for household size).

3. The moderate income condominium or planned development units initial sales price shall be restricted to the maximum sales price, as established by the Housing Commission in its sole reasonable discretion, which will generate a monthly "housing cost" as defined in Section 50052.5 of the Health and Safety Code, which does not

exceed 35% of 110% of AMI, assuming a down payment of five percent (5%) of the restricted sales price and utilizing the standard underwriting criteria of the Housing Commission as of the date of the initial sale of, and assuming prevailing 30-year fixed interest rates for, the moderate income restricted density bonus unit(s). Housing Costs shall include mortgage principal and interest, taxes, insurance, HOA fees and assessments.

4. The moderate income condominium or planned development units shall be owner occupied at all times prior to the first resale by the moderate income household.

5. Prior to or concurrently with the closing of the initial sale by the Developer to a moderate income household, of a moderate income condominium or planned development unit, the developer shall cause the moderate income purchaser to execute and deliver to the Housing Commission a promissory note, secured by a deed of trust, in favor of the Housing Commission, in an original principal amount equal to the difference between the initial fair market sales price at the time of the initial sale minus the initial moderate income restricted sales price. It being the intent of this provision to perpetuate housing which is affordable to moderate income households through the continued financing, by the Housing Commission, of moderate income household home ownership and to prevent a windfall profit to the initial moderate income household purchasers. Such promissory note shall be in a form and format acceptable to the Housing Commission in its sole reasonable discretion.

6. Upon the first "resale" of the moderate income restricted density bonus unit by the initial moderate income purchaser, the Housing Commission shall be entitled to its share of appreciation and to the payoff of the Housing Commission's promissory note in its entirety and the seller of the density bonus unit shall retain the value of any improvements, the down payment, and the seller's proportionate share of appreciation. The Housing Commission shall recapture its proportionate share of appreciation, as defined below, which shall then be used within three years for any of the purposes described in Health and Safety Code Section 33334.2(e) that promote homeownership. "Resale" for the purposes shall include, but is not limited to, the sale, transfer, conveyance, hypothecation, pledging, refinancing with cash out (refinancing without cash out to reduce interest rates shall not be deemed a resale), further encumbrance, leasing of the property, failure to occupy the property as a primary place of residence, or other disposition of the moderate income restricted density bonus unit, or any portion thereof, without the express, advance written consent of the Housing Commission. Fair market values and restricted market values, if and when required to calculate and determine shares of appreciation, shall be determined by state certified real estate appraisals selected by the Housing Commission, in its sole reasonable discretion.

7. The Housing Commission's proportionate share of appreciation shall be equal to the percentage by which the initial sale price of the moderate income restricted density bonus unit to the moderate-income household was less than the fair market value of the unit at the time of initial sale.

8. Appreciation shall mean the amount of increase, if any, in the fair market unrestricted value of the moderate income restricted density bonus unit on the date of the resale of such unit, less the initial unrestricted fair market value of the density bonus unit at the time of the initial sale, less the value of any San Diego Housing Commission approved permanent improvements to the unit.

9. Value of permanent improvements shall mean the actual written documented cost of such permanent improvements, but only when the owner of the density bonus unit has given advance written notice of the improvements to the Housing Commission of said owner's intention of making a permanent improvement in the unit and, provided, further, that such permanent improvement(s) have been approved by the San Diego Housing Commission, in its sole reasonable discretion, in advance of such improvement.

Sample Resale Calculation

Assume the initial moderate income household purchases the affordable condominium or planned development unit for $150,000 and at the time of such purchase the unrestricted fair market value of the condominium or planned development unit is $200,000. Prior to purchasing the unit the moderate income household will execute a promissory note and deed of trust in favor of the Housing Commission in the amount of $50,000 ($200,000 FMV minus the $150,000 restricted sales price). The Housing Commission's share of the appreciation is 25% ($50,000/$200,000).

Assume the initial moderate income household incurs $20,000 in costs to permanently improve the condominium or planned development unit, which costs were approved in writing by the Housing Commission in advance of the initial moderate income household incurring such costs.

The initial moderate income household later resells the house for its then fair market value of $320,000. In such event, the appreciation is $100,000 (the $320,000 fair market selling price of the unit, minus the $200,000 initial unrestricted fair market value of the unit, minus $20,000 in pre-approved permanent improvements).

Upon the first resale of the unit, the Housing Commission will receive $75,000 from the sale proceeds (the $50,000 note payoff, plus the Housing Commission's $25,000 share of the appreciation (.25 x $100,000)). The initial moderate income household will receive $95,000 from the sale proceeds (the $20,000 in pre-approved permanent improvements, plus the initial moderate income household's $75,000 share of the appreciation ($100,000 minus the $25,000 paid to the Housing Commission).

Level of Affordability and Development Incentives

Low-Income and Very Low-Income Rental Units

Program requirements can be fulfilled through the provision of rental housing units having rents affordable at 30% of 60% of AMI to Low-Income Households (incomes at or below 80% of AMI) or having rents affordable at 30% of 50% AMI to Very Low-Income Households (incomes at or below 50% of AMI).

The amount of the density bonus will be based on the percentage of affordable units provided.

- For Very Low-Income units, the City will grant a 20% density bonus for developments with 5% of the units set-aside for very low-income households. For each 1% increase above 5% in the percentage of affordable units affordable to very-low income households, the density bonus shall be increased by 2.5 percentage points, up to a maximum of 35% density bonus.

- For Low-Income units, the City will grant a 20% density bonus for developments with 10% of the units set-aside for low-income households. For each 1% increase above 10% in the percentage of affordable units affordable to low income households, the density bonus shall be increased by 1.5 percentage points, up to a maximum of 35% density bonus.

The number of development incentives granted will be based on the percentage of affordable units provided.

Project Serves Very Low-Income Households (50% AMI)			Project Serves Low Income Households (60% AMI)		
% Affordable Units	% Density Increase	Number of Incentives	% Affordable	% Density Increase	Number of Incentives
5	20	1	10	20	1
6	22.5	1	11	21.5	1
7	25	1	12	23	1
8	27.5	1	13	24.5	1
9	30	1	14	26	1
10	32.5	2	15	27.5	1
11	35	2	16	29	1
12-14	35	2	17	30.5	1
≥15	35	3	18	32	1
			19	33.5	1
			20	35	2
			21-29	35	2
			≥30	35	3

If the number of affordable units or density bonus units is other than a whole number, the number shall be rounded up to the next whole number.

Moderate-Income For-Sale Units

Program requirements can be fulfilled through the provision of for-sale condominium or planned development housing units for moderate-income households with incomes at or below 120% of AMI. Sales price restrictions shall be established based on housing costs that do not exceed 35% of 110% of area median income adjusted for family size. Housing Costs include mortgage principal and interest, taxes, insurance, HOA fees and assessments.

The amount of the density bonus will be based on the percentage of affordable units provided.

- For Moderate-Income units, the City will grant a 20% density bonus for developments with 10% of the units set-aside for moderate-income households. For each 1% increase above 10% in the percentage of affordable units affordable to moderate- income households, the density bonus shall increased by 1 percentage point, up to a maximum of 35% density bonus.

The number of development incentives granted will be based on the percentage of affordable units provided.

Project Serves Moderate Income Households (120% AMI)		
% Affordable Units	**% Density Increase**	**Number of Incentives**
10	20	1
11	21	1
12	22	1
13	23	1
14	24	1
15	25	1
16	26	1
17	27	1
18	28	1
19	29	1
20	30	2
21	31	2
22	32	2
23	33	2
24	34	2
25	35	2
26-29	35	2
30+	35	3

If the number of affordable units or density bonus units is other than a whole number, the number shall be rounded up to the next whole number.

Development Incentives

The City will grant the number of development incentives set forth in the preceding sections, if requested by the Developer, unless the City makes a written finding, based upon substantial evidence of either of the following:

1. The incentive is not required in order to provide for the affordable rents or the affordable housing costs as defined in Section 50052.5 of the Health and Safety Code, or

2. The incentive would have a specific adverse impact 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, as defined in California Government Code Section 65589.5 (2)(d).

Development incentive means any of the following:

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 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 costs 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 that result in identifiable, financially sufficient, and actual cost reductions.

Rent Restrictions

Very Low-Income and Low-Income rent calculations shall be based on the updated AMI limits as adjusted for household size by the U.S. Department of Housing and Urban Development for San Diego County. Affordability is generally defined as not more than 30% of gross monthly income for rent and tenant paid utilities as adjusted for household size.

Current rent levels, as of February 2004, as adjusted by household size, are as follows:

RENT RESTRICTIONS					
		Very Low-Income (50% AMI)		**Low-Income (60% AMI)**	
Household Size	**Unit Size**	**Income**	**Gross Rent***	**Income**	**Gross Rent***
One	Studio	$24,000	$600	$28,800	$720
Two	1 bedroom	$27,400	$685	$32,880	$822
Three	2 bedroom	$30,850	$771	$37,020	$926
Four	3 bedroom	$34,250	$856	$41,100	$1,028

*Gross rent is equal to cash rent plus all tenant-paid utilities. See the “San Diego Housing Commission Utility Allocation Schedule” to calculate the tenant-paid utilities based on the project’s actual utilities mix. Maximum density bonus rents shall be equal to the Gross Rent minus a utility allowance.

Sales Prices Restrictions

Moderate-Income For-Sale Condominium or Planned Development

For-sale units meeting program requirements shall be affordable to households earning 120% AMI or less. Income restrictions shall be adjusted annually based upon the revisions to Area Median Income limits as promulgated from time to time by the U.S. Department of Housing and Urban Development.

The moderate income condominium or planned development units initial sales price shall be restricted to the maximum sales price, as established by the Housing Commission in its sole reasonable discretion, which will generate a monthly "housing cost" as defined in Section 50052.5 of the Health and Safety Code, which does not exceed 35% of 110% of AMI, assuming a down payment of five percent (5%) of the restricted sales price and utilizing the standard underwriting criteria of the Housing Commission as of the date of the initial sale of, and assuming prevailing 30-year fixed interest rates for, the moderate income restricted density bonus unit(s). Housing Costs shall include mortgage principal and interest, taxes, insurance, HOA fees and assessments. Upon request, the San Diego Housing Commission shall prepare and make available to Applicant any general information that the San Diego Housing Commission possesses regarding income limitations, sales prices, occupancy policies and restrictions which are applicable to the affected units.

Estimated maximum sales price restrictions as of February 2004 are as follows:

2004 Estimated Maximum Sales Price Restrictions
110% Area Median Income

Bedroom Size	**Studio**	**1-BR**	**2-BR**	**3-BR**
Family Size	1	2	3	4
110% AMI	$48,800 / $4,067	$55,800 / $4,650	$62,750 / $5,229	$69,750 / $5,813
Housing Debt	35%	35%	35%	35%
Amount Available For Housing	$ 1,423	$ 1,628	$ 1,830	$ 2,035
Less: HOA Taxes/Assess. @ 1.25%	 $ -225 $ -186 $ -411	 $ -225 $ -218 $ -443	 $ -225 $ -249 $ -474	 $ -225 $ -281 $ -506
Amount Available For 1st Trust Deed Loan	$ 1,012	$ 1,185	$ 1,356	$ 1,529
1st Trust Deed Loan*	$169,385	$198,360	$226,860	$255,835
5% Down Payment	$ 8,915	$ 10,440	$ 11,940	$ 13,465
Maximum Sales Price	**$178,300**	**$208,800**	**$238,800**	**$269,300**

* Interest rate 5.97% based on FHA 30-year fixed (week 2/16/04)

Final sales prices will be set 4 months prior to construction completion, on a project-by-project basis, in accordance with the Housing Commission Schedule of Sales Price Restrictions in effect at such time.

The eligibility of each prospective buyer and the sales price under the restrictions set forth above shall be certified by the San Diego Housing Commission. Developers shall submit documentation to the San Diego Housing Commission for a determination of buyer eligibility at least 45 days prior to the close of Escrow on each restricted unit. Affordable Units must be owner-occupied.

Interaction between Density Bonus Program and Other Affordable Housing Programs

A project can utilize the density bonus program to meet other affordable housing development obligations, including the City's Inclusionary Housing Program and Coastal Affordable Housing Program. In the event of a conflict between the rules and regulations of two or more affordable housing programs, the more restrictive program rules shall apply. If a developer wishes to build a project using local, state, or federal affordable housing financing, the Affordable Housing Density Bonus may also be used (e.g., Multifamily Bond Program, Federal Tax Credit Program, City Redevelopment Agency). The following are some anticipated scenarios:

1. Density Bonus and Inclusionary Housing Program

Where a developer is utilizing the density bonus program, the density bonus affordable units shall count towards the developer's affordability requirements under the City of San Diego's Inclusionary Housing Program (San Diego Municipal Code Chapter 14, Article 2, Division 13).

A. Density Bonus Rental Units Restricted at 50% of AMI

(1) Number of Density Bonus Affordable Units Equal Number of Inclusionary Affordable Units. Any rental affordable unit that must be restricted at or below 50% of AMI under the Density Bonus Program, that will count towards the developer's affordability requirements under the Inclusionary Housing Program, shall be rented to persons with incomes at or below 50% of area median income, at a monthly rent equal to 1/12th of 30% of 50% of AMI for 55 years.

Example: 100 units; 10% density bonus @ 50% AMI, 10% Inclusionary @ 65% AMI			
	Inclusionary Housing	Density Bonus	Combined
Number of units	10	10	10
Affordability Term	55 years	30 years	55 years
Affordability Level	65% AMI	50% AMI	50% AMI
Income Limits	65% AMI	50% AMI	50% AMI

(2) Number of Density Bonus Affordable Units Exceed Number of Inclusionary Affordable Units. In the event the developer is required to restrict a number of units at 50% of AMI under the Density Bonus Program, which number exceeds the number of units that must be

restricted under the Inclusionary Housing Program, then such units in excess of the number of units that must be restricted under the Inclusionary Housing Program, shall be restricted under the terms of the Density Bonus Program only (i.e., at 50% of AMI for 30 years).

Example: 100 units; 11% density bonus @ 50% AMI, 10% Inclusionary @ 65% AMI				
	Inclusionary Housing	Density Bonus	Combined	
Number of units	10	11	10	1
Affordability Term	55 years	30 years	55 years	30 years
Affordability Level	65% AMI	50% AMI	50%	50%
Income Limits	65% AMI	50% AMI	50%	50%

(3) <u>Number of Inclusionary Affordable Units Exceed Number of Density Bonus Affordable Units</u>. In the event the developer is required to restrict a number of units under the Inclusionary Housing Program, which number exceeds the number of units that must be restricted at 50% of AMI under the Density Bonus Program, then such units in excess of the number of units that must be restricted under the Density Bonus Program, shall be restricted under the terms of the Inclusionary Housing Program only (i.e., at 65% of AMI for 55 years).

Example: 100 units; 5% density bonus @ 50% AMI, 10% Inclusionary @ 65% AMI				
	Inclusionary Housing	Density Bonus	Combined	
Number of units	10	5	5	5
Affordability Term	55 years	30 years	55 years	55 years
Affordability Level	65% AMI	50% AMI	50%	65%
Income Limits	65% AMI	50% AMI	50%	65%

B. <u>Density Bonus Rental Units Restricted at 60% of AMI</u>

(1) <u>Number of Density Bonus Affordable Units Equal Number of Inclusionary Affordable Units</u>. Any rental affordable unit that must be restricted at or below 60% of AMI under the Density Bonus Program, that will count towards the developer's affordability requirements under the Inclusionary Housing Program, shall be rented to persons with incomes at or below 60% of area median income, at a monthly rent equal to 1/12th of 30% of 60% of AMI for 55 years.

Example: 100 units; 10% density bonus @ 60% AMI, 10% Inclusionary @ 65% AMI			
	Inclusionary Housing	Density Bonus	Combined
Number of units	10	10	10
Affordability Term	55 years	30 years	55 years
Affordability Level	65% AMI	60% AMI	60% AMI
Income Limits	65% AMI	80% AMI	65% AMI

(2) <u>Number of Density Bonus Affordable Units Exceed Number of Inclusionary Affordable Units</u>. In the event the developer is required to restrict a number of units at 60% of AMI under the Density Bonus Program, which number exceeds the number of units that must be restricted under the Inclusionary Housing Program, then such units in excess of the number of

units that must be restricted under the Inclusionary Housing Program, shall be restricted under the terms of the Density Bonus Program only (i.e., at 60% of AMI for 30 years).

Example: 100 units; 20% density bonus @ 60% AMI, 10% Inclusionary @ 65% AMI				
	Inclusionary Housing	Density Bonus	Combined	
Number of units	10	20	10	10
Affordability Term	55 years	30 years	55 years	30 years
Affordability Level	65% AMI	60% AMI	60%	60%
Income Limits	65% AMI	80% AMI	65%	80%

(3) Inclusionary Affordable Units Cannot Exceed 60% Density Bonus Affordable Units. The number of Inclusionary Affordable Units cannot exceed the number of Density Bonus Affordable Units restricted at 60%, since the minimum number of units that must be restricted at 60% in order to receive a density bonus is 10%, which equals the number of units which must be restricted under the Inclusionary Housing Program.

C. Condominium and Planned Development Density Bonus Units

(1) Condominium Density Bonus Affordable Units Equal or Exceed Inclusionary Affordable Units. In the case of for-sale condominiums or planned developments, the for-sale condominium or planned development density bonus affordable units shall count towards the developer's affordability requirements under the Inclusionary Housing Program. In such event the Density Bonus provisions shall apply to the project, i.e., the units shall be sold to households with incomes at or below 120% of AMI, the initial sales prices of the units shall equal an amount which will generate a monthly "housing cost" which does not exceed 35% of 110% of AMI (using all of the criteria set forth hereinabove) and upon the first "resale" of the density bonus unit by the initial moderate income purchaser, the Housing Commission shall be entitled to its share of appreciation and to the payoff of the Housing Commission's promissory note, etc.

Example: 100 units; 25% density bonus @ 110% AMI, 10% Inclusionary @ 100% AMI			
	Inclusionary Housing	Density Bonus	Combined
Number of units	10	25	25
Resale Provisions	Inclusionary Shared Equity	Density Bonus Resale & Recapture Provisions	Density Bonus Resale & Recapture Provisions
Affordability Level	100% AMI	110% AMI	110% AMI
Income Limits	100% AMI	120% AMI	100% AMI

(2) Inclusionary Affordable Units Cannot Exceed Condominium Density Bonus Units. The number of Inclusionary Affordable Units cannot exceed the number of condominiums or planned developments density bonus Affordable Units, since the minimum number of condominiums or planned developments units that must be restricted in order to receive a density bonus is 10%, which equals the number of units which must be restricted under the Inclusionary Housing Program.

2. Density Bonus, Coastal Affordable, and Inclusionary

Where a developer is utilizing the density bonus program, the density bonus affordable units shall count towards the developer's replacement requirements under the City of San Diego's Coastal Affordable Housing Replacement Regulations (San Diego Municipal Code Chapter 14, Article 3, Division 8) (in addition to counting towards the developer's requirements under the Inclusionary Housing Program).

A. Density Bonus Rental Units Restricted at 50% of AMI

(1) 50% Density Bonus Units Count Towards Inclusionary and Coastal Requirements. Any rental affordable unit that must be restricted at or below 50% of AMI under the Density Bonus Program, that will count towards the developer's affordability requirements under the Inclusionary Housing Program and the developer's replacement requirements under the Coastal Affordable Housing Replacement Regulations, shall be rented to persons with incomes at or below 50% of area median income, at a monthly rent equal to 1/12th of 30% of 50% of AMI for 55 years.

	Inclusionary Housing	Density Bonus	Coastal	Combined
Affordability Term	55 years	30 years	5 years	55 years
Affordability Level	65% AMI	50% AMI	80% or 120% of AMI	50% AMI

(2) Density Bonus Affordable Units Exceed Inclusionary Affordable Units. In the event the developer is required to restrict a number of units under the Density Bonus Program, which number exceeds the number of units that must be restricted under the Inclusionary Housing Program (such units shall count towards developer's replacement requirements under the Coastal Affordable Housing Replacement Regulations), then such units in excess of the number of units that must be restricted under the Inclusionary Housing Program, shall be restricted under the terms of the Density Bonus Program only (i.e., at 50% of AMI for 30 years).

Example: 100 units; 11% density bonus @ 50% AMI, 10% Inclusionary @ 65% AMI					
	Inclusionary Housing	Density Bonus	Coastal	Combined	
Number of units	10	11	10	10	1
Affordability Term	55 years	30 years	5 years	55 years	30 years
Affordability Level	65% AMI	50% AMI	80% or 120% of AMI	50% AMI	50% AMI

(3) Inclusionary Affordable Units Exceed Density Bonus Affordable Units. In the event the developer is required to restrict a number of units under the Inclusionary Housing Program (such units shall count towards developer's replacement requirements under the Coastal Affordable Housing Replacement Regulations), which number exceeds the number of units that must be restricted under the Density Bonus Program, then such units in excess of the number of units that must be restricted under the Density Bonus Program, shall be restricted under the terms of the Inclusionary Housing Program only (i.e., at 65% of AMI for 55 years).

Example: 100 units; 5% density bonus @ 50% AMI, 10% Inclusionary @ 65% AMI					
	Inclusionary Housing	Density Bonus	Coastal	Combined	
Number of units	10	5	10	5	5
Affordability Term	55 years	30 years	5 years	55 years	55 years
Affordability Level	65% AMI	50% AMI	80% or 120% of AMI	50% AMI	65% AMI

(4) Coastal Affordable Units Exceed Density Bonus and Inclusionary Affordable Units. In the event the developer is required to restrict a number of units under the Coastal Affordable Housing Replacement Regulations, which number exceeds the number of units that must be restricted under the Inclusionary Housing Program and the Density Bonus Program, then such units in excess of the number of units that must be restricted under the Inclusionary Housing Program and the Density Bonus Program, shall be restricted under the terms of the Coastal Affordable Housing Replacement Regulations, as applicable (i.e., at 80% or 120% of AMI for 5 years).

Example: 100 units; 5% density bonus @ 50% AMI, 10% Inclusionary @ 65% AMI						
	Inclusionary Housing	Density Bonus	Coastal	Combined		
Number of units	10	5	15	5	5	5
Affordability Term	55 years	30 years	5 years	55 years	55 years	5 years
Affordability Level	65% AMI	50% AMI	80% or 120% of AMI	50% AMI	65% AMI	80% or 120% of AMI

B. Rental Density Bonus Units Restricted at 60% of AMI

(1) 60% Density Bonus Units Count Towards Inclusionary and Coastal Requirements. Any rental affordable unit that must be restricted at or below 60% of AMI under the Density Bonus Program, that will count towards the developer's affordability requirements under the Inclusionary Housing Program and the developer's replacement requirements under the Coastal Affordable Housing Replacement Regulations, shall be rented to persons with incomes at or below 60% of area median income, at a monthly rent equal to $1/12^{th}$ of 30% of 60% of AMI for 55 years.

	Inclusionary Housing	Density Bonus	Coastal	Combined
Affordability Term	55 years	30 years	5 years	55 years
Affordability Level	65% AMI	60% AMI	80% or 120% of AMI	50% AMI

(2) Density Bonus Affordable Units Exceed Inclusionary Affordable Units. In the event the developer is required to restrict a number of units under the Density Bonus Program, which number exceeds the number of units that must be restricted under the Inclusionary Housing Program (such units shall count towards developer's replacement requirements under the Coastal Affordable Housing Replacement Regulations), then such units in excess of the number of units that must be restricted under the Inclusionary Housing Program, shall be restricted under the terms of the Density Bonus Program only (i.e., at 60% of AMI for 30 years).

Example: 100 units; 20% density bonus @ 60% AMI, 10% Inclusionary @ 65% AMI					
	Inclusionary Housing	Density Bonus	Coastal	Combined	
Number of units	10	20	10	10	10
Affordability Term	55 years	30 years	5 years	55 years	30 years
Affordability Level	65% AMI	60% AMI	80% or 120% of AMI	60% AMI	60% AMI

(3) Inclusionary Affordable Units Cannot Exceed 60% Density Bonus Affordable Units. The number of Inclusionary Affordable Units cannot exceed the number of Density Bonus Affordable Units restricted at 60%, since the minimum number of units that must be restricted at 60% in order to receive a density bonus is 10%, which equals the number of units which must be restricted under the Inclusionary Housing Program.

(4) Coastal Affordable Units Exceed Density Bonus Affordable Units. In the event the developer is required to restrict a number of units under the Coastal Affordable Housing Replacement Regulations, which number exceeds the number of units that must be restricted under the Density Bonus Program, then such units in excess of the number of units that must be restricted under the Density Bonus Program, shall be restricted under the terms of the Coastal Affordable Housing Replacement Regulations, as applicable (i.e., at 80% or 120% of AMI for 5 years).

Example: 100 units; 15% density bonus @ 60% AMI, 10% Inclusionary @ 65% AMI						
	Inclusionary Housing	Density Bonus	Coastal	Combined		
Number of units	10	15	20	10	5	5
Affordability Term	55 years	30 years	5 years	55 years	30 years	5 years
Affordability Level	65% AMI	60% AMI	80% or 120% of AMI	60% AMI	60% AMI	80% or 120% of AMI

C. Condominium and Planned Development Density Bonus Units

(1) Condominium Density Bonus Units Count Towards Inclusionary and Coastal Requirements. In the case of for-sale condominiums or planned developments, the for-sale condominium or planned development density bonus affordable units shall count towards the

developer's affordability requirements under the Inclusionary Housing Program and the developer's replacement requirements under the Coastal Affordable Housing Replacement Regulations (regardless of whether the Coastal replacement requirement is at 80% or 120% of AMI, in such event the Density Bonus provisions shall apply to the project, i.e., the units shall be sold to households with incomes at or below 120% of AMI, the initial sales prices of the units shall equal an amount which will generate a monthly "housing cost" which does not exceed 35% of 110% of AMI (using all of the criteria set forth hereinabove) and upon the first "resale" of the density bonus unit by the initial moderate income purchaser, the Housing Commission shall be entitled to its share of appreciation and to the payoff of the Housing Commission's promissory note, etc.

(2) Inclusionary Affordable Units Cannot Exceed Condominium Density Bonus Units. The number of Inclusionary Affordable Units cannot exceed the number of condominiums or planned developments density bonus Affordable Units, since the minimum number of condominiums or planned developments units that must be restricted in order to receive a density bonus is 10%, which equals the number of units which must be restricted under the Inclusionary Housing Program.

(3) Coastal Affordable Units Exceed Condominium Density Bonus Affordable Units. In the event the developer is required to restrict a number of units under the Coastal Affordable Housing Replacement Regulations, which number exceeds the number of units that must be restricted under the Density Bonus Program, then such units in excess of the number of units that must be restricted under the Density Bonus Program, shall be restricted under the terms of the Coastal Affordable Housing Replacement Regulations, as applicable (i.e., at 80% or 120% of AMI for 5 years).

3. Density Bonus and On-Site Building Bonus

Where a developer is utilizing the on-site building bonus of 10% (San Diego Municipal Code §142.1320, §143.0718 and §173.0735), the developer may also obtain a density bonus in accordance with the provisions set forth herein. In such event the density bonus will be in addition to the 10% on-site building bonus, provided, however, in no event shall the combined bonus (the 10% on-site building bonus, plus the density bonus) exceed 35%.

Example: 100 units, 35% increase in density (10% On-Site + 25% State Density Bonus); 13% density bonus @ 60% AMI, 10% Inclusionary @ 65% AMI				
	Inclusionary Housing	Density Bonus	Combined	
Number of units	10	13	10	3
Affordability Term	55 years	30 years	55 years	30 years
Affordability Level	65% AMI	60% AMI	60% AMI	60% AMI

Comparability Provisions

San Diego Municipal Code requires that the affordable units shall be comparable in bedroom mix and characteristics to the market-rate units.

1. Size - Affordable unit(s) shall be similarly sized as the market-rate units in the development. The affordable units shall not be substantially smaller than the market rate units.

2. Unit/model type - Affordable unit(s) shall be provided in proportion to the total project unit/model type ratio (e.g. a 20-unit project with 5 two-bedroom/2 bath units, 5 two-bedroom/one-bath units, and 10 three-bedroom two-bath units; Developer shall provide 1 two-bedroom/2 bath unit, 1 two-bedroom/one-bath unit, and 2 three-bedroom 2-bath units.)

3. Amenities - Affordable unit(s) shall be provided the same amenities as offered to the market rate units. E.g. If market rate units have garages, balconies, or access to recreational services such as pools or recreation rooms, the affordable units shall have garages, balconies and access to recreational services in proportion to the market rate units. Internal finishes, material and features are not considered amenities.

4. In cases of only one affordable unit per project, developers shall provide the unit/model type most common in the project. (e.g., Within a ten-unit project where six units are two-bedroom/two-bath units of 905 square feet with identical amenities, one of these six units shall be designated as the affordable unit.)

5. Location. 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. When affordable units are located on the same site as the density bonus units, the affordable units shall be dispersed throughout the development, with the intent of avoiding "segregated" housing. The City of San Diego encourages balanced communities and the dispersion of affordable units throughout the City as well as within individual developments. The City of San Diego discourages the segregation of housing by income-level.

6. The President and Chief Executive Officer of the Housing Commission shall be responsible, in her sole reasonable discretion, for determining whether the proposed density bonus affordable units are comparable.

Fees

Monitoring Fees

The San Diego Housing Commission shall perform the following monitoring functions and services, on a periodic basis: (A) reviewing the applications of prospective or actual occupants and/or purchasers of the affected units, to determine the eligibility of such persons and/or households; (B) reviewing the documentation submitted by Developers in connection with the certification process for eligible households and/or occupants. Density Bonus affordable units may not be rented or sold to prospective tenants or occupied by persons unless and until the Housing Commission has determined that the prospective tenant meets the tenant eligibility criteria. The Housing Commission will charge the following occupancy monitoring/eligibility determination fees:

Rental Units

Initial Set-up Fee. . .. .$500.00 (due upon execution of density bonus agreement)
Annual Fees. . . . . .1-40 units $65 per unit
. . . . .41-80 units $55 per unit
. . . . .81+ units $45 per unit

For-Sale Units

Developer Fee . . . . $500.00 (Paid by Developer prior to Escrow Closing)
Purchaser Fee . . . . $500.00 (Paid by Purchaser at Escrow Closing)

These fees may be adjusted annually based upon the percentage increase in the Cost of Living as referenced in the Consumer Price Index for the San Diego Metropolitan Area.

Housing Commission Staff and Attorney Fees

The Housing Commission will bill the owner/developer for staff time to review and process the density bonus application and staff time spent reviewing and processing owner requests for amendments to existing Density Bonus Agreements. Staff time will be billed at an hourly rate that includes salaries, benefits and overhead (currently at the rate of $75.00 per hour). Fees must be paid prior to the execution of the Density Bonus Agreement or Amendment.

The Housing Commission will bill the Developer for attorney fees incurred to draft and execute density bonus agreements, amendments, and associated documents, including the documents related to the purchase of for-sale density bonus units. Fees must be paid prior to the execution of the Density Bonus Agreement and related documents. Attorney fees will be charged at the rate charged the Housing Commission (currently at a rate of $170 per hour).

Other Fees/Program Income

Miscellaneous fees, damage awards, and program income collected under the Density Bonus Program shall be reallocated as follows:

- Funds collected will be recycled to the rental housing production or homeownership program, based on program demand. These recycled fees shall be permitted for re-allocation to affordable housing activities anywhere in the City of San Diego.

- Any recapture of the Housing Commission's proportionate share of appreciation, shall be recycled to the homeownership program and used within three years for any of the purposes described in Health and Safety Code Section 33334.2 (e) that promote homeownership. These recycled fees shall be permitted for re-allocation to homeownership activities anywhere in the City of San Diego.

- Ten percent (10%) of all fees and program income collected may be used as administrative fees to offset Housing Commission staff expenses under the Rental Housing Production Program and Homeownership Program.

Conversion of Tenure Type for Affordable Units

Any Affordable Units originally constructed pursuant to the Program, and later proposed to change the type of tenure from rental to for-sale must satisfy the requirements of this Procedures Manual. Any affordable rental units to be converted to for-sale units shall be sold at or below the Maximum Purchase Price, as determined by the Commission in its sole reasonable discretion, to Targeted Ownership Households meeting the income qualifications specified in the Density Bonus Agreement, with a right of first refusal for the occupants. E.g. if the Density bonus agreement income restrictions are at 80% AMI, the maximum sales prices will be calculated at 35% of 80% AMI, using current Housing Commission guidelines. The Maximum Purchase Price shall be calculated by the Commission in its sole reasonable discretion, using the methodology set forth under the heading “Density Bonus Agreement and Restrictions”, Section F.3., above, except that such purchase price shall be calculated based upon the income qualifications applicable to such unit as set forth in the Density Bonus Agreement. All provisions of the Program at the time of said conversion shall apply to the conversion of the Unit, including sales price, length of restriction, and method of restriction.

Relocation Plan

Developers of density bonus units converting to condominium, which action has been previously approved by the Housing Commission’s President and Chief Executive Officer, shall provide the following:

- Tenant Relocation Assistance in the form of payment in the amount of three months of the current rent. The relocation payment shall be paid no later than the day on which the applicant gives notice to the density bonus tenant to vacate the premises. This money may be used by the tenant as down payment assistance to purchase the unit when it is converted.
- Tenant must be provided a Notice of an exclusive right to contract for the purchase of their unit upon the same terms and conditions that such unit will be initially offered to the general public, or terms more favorable to the tenant.
- All required Notices per California State Law (California Government Code Section 66427.1) and the City of San Diego’s Municipal Code (Sections 125.0431 and 125.0640).