HOLLISTER PLANNING COMMISSION AGENDA

Regular Meeting
January 26, 2023
6:00 PM

CITY OF HOLLISTER
CITY COUNCIL CHAMBERS, CITY HALL
375 FIFTH STREET
HOLLISTER, CA 95023
(831) 636-4360
www.hollister.ca.gov

NOTICE TO PUBLIC

Persons who wish to address the Planning Commission are asked to complete a Speaker's Card and give it to the Secretary before addressing the Planning Commission. Those who wish to address the Planning Commission on an Agenda item will be heard when the presiding officer calls for comments from the audience. City related items not on the Agenda will be heard under the Public Input Section of the agenda. Following recognition persons desiring to speak are requested to advance to the podium and state their name and address. If you are joining us by Zoom, please click on the bottom of your screen to raise your hand. If you are joining us by Zoom using a cell phone, please press *9. After hearing audience comments, the public portion of the meeting will be closed, and the matter brought to the Planning Commission for discussion.

PUBLIC PARTICIPATION NOTICE

The public may watch the meeting via live stream at:

Community Media Access Partnership (CMAP) at:
http://cmaptv.com/watch/

or

City of Hollister YouTube Channel:
https://www.youtube.com/channel/UCu_SKHetqbOiiz5mH6XgpYw/featured

Public Participation: The public may attend meetings.

NOTICE: The Planning Commission will hold its public meetings in person, with a virtual option for public participation based on availability. The City of Hollister utilizes Zoom teleconferencing technology for virtual public participation; however, we make no representation or warranty of any kind, regarding the adequacy, reliability, or availability of the use of this platform in this manner. Participation by members of the public through this means is at their own risk. (Zoom teleconferencing may not be available at all meetings.)

If you wish to make a public comment remotely during the meeting, please use the zoom registration link below:

https://us02web.zoom.us/webinar/register/WN_wIMaPkQYSz2F8w51FJSj4Q

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL Commissioners: David Huboi, Kevin Henderson, Luke Corona, Steven Belong

VERTIFCIATION OF AGENDA POSTING Friday, January 20, 2023 at 1:20 PM

APPROVAL OF MINUTES None

PUBLIC INPUT

This is the time for anyone in the audience to speak on any item not on the agenda and within the subject matter jurisdiction of the Planning Commission. Speaker cards are available in the lobby, and are to be completed and given to the Secretary before speaking. When the Secretary calls your name, please come to the podium, state your name and city for the record, and speak to the City Planning Commission. If you are joining us by Zoom, please click on the bottom of your screen to raise your hand. If you are joining us by Zoom using a cell phone, please press *9. Each speaker will be limited to three (3) minutes with a maximum of 30 minutes per subject. Please note that state law prohibits the Planning Commission from discussing or taking action on any item not on the agenda.

PUBLIC HEARINGS

1. **Tentative Map 2021-1, Conditional Use Permit 2021-6 for a Planned Unit Development, Site & Architectural Review 2021-4 Extension** - 1620 Buena Vista, LLC. – The applicant is requesting an extension of time to the previous approvals to subdivide an ~11.10-acre parcel into 130 multi-family units across 48 duplex and triplex buildings. This project site is located within the Medium Density Residential Performance Overlay (R3-M/PZ) Zoning District at 1620 Buena Vista Road, further identified at San Benito County Assessor Parcel Number 052-410-001. CEQA: Mitigated Negative Declaration.

2. **Conditional Use Permit 2022-4** – Target Corporation – The applicant is requesting a conditional use permit to allow for the sale of beer, wine, and distilled spirits at the existing Target retail store. This project requires a finding of public convenience or necessity in addition to the Conditional Use Permit. The project site is located in the General Commercial (GC) Zoning District at 1790 Airline Highway, further identified as San Benito County Assessor Parcel Number 057-430-007. CEQA: Categorically Exempt.

3. **Zoning Ordinance Amendment 2023-1** – City of Hollister – Amendments to the Zoning Ordinance related to the adoption of a new Section – Accessory Dwelling Units.

4. **Zoning Ordinance Amendment 2023-2** – City of Hollister – Amendments to the Zoning Ordinance related to Chapter 17.04 Article II – Density Bonus.

NEW BUSINESS

OLD BUSINESS

PLANNING DEPARTMENT REPORTS

PLANNING COMMISSION REPORTS

ADJOURNMENT

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City of Hollister's Planning Division at (831) 636-4360. Notification of 48 hours prior to the meeting will enable the City to attempt to make reasonable arrangements to ensure accessibility to this meeting [28 CFR 2.102-35. 104 ADA Title II].

Materials related to an item of this agenda submitted to the Planning Commission after distribution of the agenda packet are available for public inspection at the City Clerk's office at City Hall, 375 Fifth Street, Hollister, Monday through Friday, 8:00 a.m. to noon, 1:00 p.m. to 5:00 p.m. (closed between 12:00 and 1:00 p.m.). Materials are also available at the Development Services Department office located 339 Fifth Street, Hollister, Monday through Thursday, 8:30 a.m. to noon, 1:00 p.m. to 4:30 p.m. (closed between 12:00 p.m. and 1:00 p.m.).

Notice to anyone attending any public meeting: The meeting may be broadcast live on Cable 17 and/or videotaped or photographed. Recent Planning Commission meetings may also be viewed at www.CMAP.com and periodically on Cable Channel 17.

The next Planning Commission Meetings are scheduled as follows:

Planning Commission Study Session – Thursday, February 9, 2023 at 6:00 p.m.

Regular Planning Commission Meeting – Thursday, February 23, 2023 at 6:00 p.m.

Planning Commission
Staff Report
January 26, 2023
Item 1

SUBJECT: **Tentative Map 2021-1, Conditional Use Permit 2021-6 for a Planned Unit Development, Site & Architectural Review 2021-4 Extension** The applicant is requesting an extension of time to the previous approvals to subdivide an ~11.10-acre parcel into 130 multi-family units across 48 duplex and triplex buildings. This project site is located within the Medium Density Residential Performance Overlay (R3-M/PZ) Zoning District at 1620 Buena Vista Road, further identified at San Benito County Assessor Parcel Number 052-410-001. CEQA: Mitigated Negative Declaration.

STAFF PLANNER: Mindy Davis, Senior Planner (831) 636-4360

RECOMMENDATION: Continue the item to the February 9, 2023 Planning Commission Special Meeting

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Staff is requesting a continuance of this item to the February 9, 2023 Planning Commission Special Meeting, as there was a noticing error which means that the public hearing was not properly noticed for the January 26, 2023 Planning Commission meeting.

Staff recommends that the Planning Commission continue this item to a date certain of February 9, 2023 for review by the Planning Commission during a public hearing to allow staff time to prepare notices consistent with the requirements of state law.

Planning Commission
Staff Report
January 26, 2023
Item 2

SUBJECT:	**Conditional Use Permit 2022-4** The applicant is requesting a Conditional Use Permit to allow for the sale of beer, wine, and distilled spirits at the existing Target retail store. This project requires a finding of public convenience or necessity in addition to the Conditional Use Permit. The project site is located in the General Commercial (GC) Zoning District at 1790 Airline Highway, further defined as San Benito County Assessor Parcel Number 057-430-007. CEQA: Categorically Exempt.
STAFF PLANNER:	Liz Gagliardi, Associate Planner (831) 636-4360
RECOMMENDATION:	Continue the item to the February 9, 2023 Planning Commission Special Meeting

Staff is requesting a continuance of this item to the February 9, 2023 Planning Commission Special Meeting, as there was a noticing error which means that the public hearing was not properly noticed for the January 26, 2023 Planning Commission meeting.

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Planning Commission
Staff Report
January 26, 2022
Item 3

SUBJECT: **Zoning Ordinance Amendment 2023-1** – City of Hollister – Amendments to the Zoning Ordinance related to Accessory Dwelling Units.

STAFF PLANNER: Eva Kelly, Interim Planning Manager (831) 636-4360
Erica Fraser, AICP, Consulting Planner

ATTACHMENTS:

1. Resolution recommending City Council approve amendments to the Zoning Ordinance to repeal Section 17.22.040, Accessory dwelling units and replace with a new Chapter, Chapter 17.32, Accessory Dwelling Units, with the new Chapter 17.32 attached as Exhibit A.
2. August 4, 2022 Planning Commission Study Session Staff Report (without Attachments).
3. Current Section 17.22.040, Accessory dwelling units. Of the Zoning Ordinance.
4. Accessory Dwelling Unit Handbook (California Department of Housing and Community Development.

RECOMMENDATION: Approve Resolution

BACKGROUND:

The Planning Commission reviewed necessary modifications to the Zoning Ordinance related to Accessory Dwelling Units (Section 17.22.040 of the Zoning Ordinance) during a Study Session on August 4, 2022 (Attachment 2). The purpose of the Study Session was to discuss changes in State Law that were codified after this Section of the Zoning Ordinance was last amended in 2019. Please refer to pages 5-7 of the August 4 Staff Report for a discussion of the laws that were adopted by the State between 2019-2022.

Following the Study Session, Governor Newsom signed two additional Bills which further restrict how a City can regulate Accessory Dwelling Units (ADUs). These Bills took effect on January 1, 2023 and are described in detail below.

Assembly Bill 2221 and Senate Bill 897

These two Bills made additional changes to Government Code 65852.2 to allow ADUs to go taller and closer to the property line and codified interpretations of the law. Change to State Law made by these bills include:

- Modifies the maximum height of attached and detached ADUs.

- Requires a City to relax the required front yard setback if the setback would preclude one 800 square foot ADU from being constructed on a property.

- If a City denies an ADU, the City must provide the applicant with a full set of reasons on why the ADU does not comply with the Zoning Ordinance/State Law and what must be done in order for the City to approve the request.

- The City cannot deny an application for an ADU solely on the basis that there are nonconforming zoning conditions, building code violations, or unpermitted structures on the site.

- Specifically allows Junior Accessory Dwelling Units (JADU) to be constructed within the garage (clarification of earlier Bills).

- Requires an interior door to allow access into the primary residence when the JADU shares a bathroom with the main house.

- Includes a definition of objective standard which is now defined as a standard that involves "no personal or subjective judgment by a public official" and that is "uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal."

ANALYSIS:

The existing Section 17.22.040 of the Zoning Ordinance will be repealed and replaced with Chapter 17.32, Accessory Dwelling Units. The new Chapter 17.32 incorporates the requirements of two bills discussed above as well as all requirements of Government Code Sections 65852.2 and 65852.22. The new Chapter 17.32, Accessory Dwelling Units is discussed in detail below.

Section 17.32.020 Definitions

This Section provides definitions for all of the terms in Chapter 17.32, Accessory Dwelling Units.

Section 17.32.030 Accessory Dwelling Units (ADU)

Accessory Dwelling Units (ADUs) are defined as (Section 17.32.030(A):

"Accessory Dwelling Unit (ADU) shall have the same meaning as defined under Section 65852.2(j) of the Government Code and shall mean an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling. An ADU also includes an efficiency unit and a manufactured home, provided it is built on a permanent foundation. An ADU may be located within an existing attached or detached garage, shed, barn or any other accessory structure. An ADU may add up to

150 square feet beyond the physical dimensions of the existing accessory structure to provide for ingress and egress (including, but not limited to entryways, stairwells, and hallways)."

Section 17.32.030 establishes the requirements for attached and detached ADUs for single family and multi-family properties. The following regulations established in this Section are required by Government Code Section 65852.2:

- Maximum number of ADUs allowed on a property (for example, only one ADU and JADU are allowed per single family property).
- Maximum ADU size (discussed in further detail below).
- Minimum Unit Size of 150 square feet.
- Side and rear yard setbacks of 4 feet.
- Requirement that detached ADUs are set back 6 feet from the primary dwelling unit and three feet from any uninhabited structures.
- Lot coverage is the same as lot coverage established for the Zoning District in which the property is located.
- ADUs on properties which are located within a historic district or on a historic property must be located so that they are not visible from the public right-of-way or entirely within the existing residence or within an existing detached structure on the property.
- One parking space is required for every ADU with one or more bedrooms. If the ADU is a studio apartment, no parking spaces are required.
- Each ADU is required to have its own entrance.
- Fire sprinklers are only required to serve the ADU if the existing or proposed primary dwelling unit has fire sprinklers.

The following regulations established in this Section are optional and are allowed to be included in a City's Ordinance. Staff recommends that these requirements be included in the ADU Ordinance to guide the design of the units and to ensure that the ADU is compatible with the design and character of the City's residential neighborhoods.

- No more than 50% of the front setback area may contain hardscape, excluding the allowed driveway for garages.
- A separate utility connection shall not be required for any accessory dwelling units which are the result of a conversion of existing space (plus an addition of up to 150 square feet as allowed by this Section) or within the proposed space of a single-family dwelling (new construction). All other accessory dwelling units will require a separate utility connection.

- ADUs which are visible from the street are required to have the same architectural style, detail, color, and building materials as the existing or proposed primary dwelling unit.

- ADUs which are not visible from the street shall have the same color and materials of the existing or proposed primary dwelling unit.

- All mechanical equipment shall be screened from view.

- Short-term rental (of less than 30 days) are not permitted.

Pursuant to the Government Code, the required front yard setback and maximum lot coverage must be waived if it would preclude one 800 square foot ADU from being constructed on the property.

Government Code Section 65952.2(c)(2)(B) requires a City to allow an ADU that has a minimum size of 850 square feet for studio – one bedroom units. For ADUs which have more than one bedroom, the City is required to allow a minimum of 1,000 square feet. Section 17.32.030.C in the Draft Ordinance (Exhibit A of Attachment 1) allows for the minimum prescribed in the Government Code and states:

> *"Unit Size.* The total floor area of an attached or detached accessory dwelling unit shall not exceed 1,000 square feet for an ADU with more than one bedroom or 850 square feet for a single bedroom. However, in no case shall an attached accessory dwelling unit exceed 50% of the total square footage of the existing principal residence. An exception to the 50% maximum shall be waived in order to allow a minimum 800 square foot and a maximum 1,000 square foot ADU."

The above maximum size meets the requirements of what a City is required to allow pursuant to Government Code Section 65852.2. A City may allow for larger ADUs (up to 1,200 square feet) if they would like to. Should the Planning Commission determine that a larger size for an ADU is appropriate, this Section can be modified during the Public Hearing to allow the maximum size determined by the Planning Commission.

Section 17.32.030.H of the Draft Ordinance limits the maximum height of detached ADUs to 16 feet for ADUs located on single family properties and 18 feet in height for ADUs on multi-family properties. These heights are established in Government Code Section 65852.2(c)(2)(D). A City may allow for a taller ADU should they desire to. A maximum height of 18 feet for both types of ADUs could allow for a cleaner requirement and be easier to interpret for property owners. Should the Planning Commission determine that the same maximum height should be allowed for single family and multi-family properties, this Section can be modified by the Planning Commission during the Public Hearing to allow for a maximum height of 18 feet for both types of ADUs.

Section 17.32.040 Junior Accessory Dwelling Units (JADU)

This Section establishes the regulations for JADUs. These regulations are required by Government Code Section 65852.22.

Section 17.32.020(D) defines a JADU as:

> *"Junior Accessory Dwelling Unit (JADU)* shall mean a unit that is no more than 500 square feet in size and is contained entirely within a single-family residence, including within an attached garage, and does not result in an addition to the structure for ingress or egress which is more than 150 square feet in size. A junior accessory dwelling unit may include separate sanitation facilities or may share sanitation facilities with the single-family dwelling."

The regulations for JADUs established in Section 17.32.040 include:

- A JADU must be located within the walls of an existing or proposed single family residence, including within the garage.
- An addition of up to 150 square feet to allow for ingress and egress into the unit is allowed.
- Only one JADU is allowed on a property.
- The maximum size of a JADU is 500 square feet.
- Off-street parking is not required.
- A separate entrance from the primary dwelling unit is required.
- The JADU must include an efficiency kitchen.
- The owner of the property is required to occupy the JADU or the primary residence.

<u>Section 17.32.050 Permit Applications</u>

This Section lists the information that must be submitted by an Applicant for an Application for an ADU or JADU. As part of the process, the Applicant will also be required to record a restrictive covenant which runs with the land and includes the following:

- A prohibition on non-residential use of any units, with the exception of Home Occupations approved by the City;
- A prohibition against renting or leasing the units for a period of less than thirty (30) days;
- A prohibition on the sale of an accessory dwelling unit separate from the sale of the single-family residence; and
- A restriction on the size and attributes of the junior accessory dwelling unit that conforms with Government Code Section 65862.22.

Section 17.32.060 Review Procedures

This Section establishes the review process for all ADUs and JADUs. For an ADU or JADU, the Director of Development Services will approve or disapprove the Application.

Non-Permitted Accessory Dwelling Units

The conversion of space within a non-habitable space (such as a garage or carport) to habitable space is allowed pursuant to Section 17.16.020(B)(3). These conversions are not permitted to include a kitchen and therefore are not considered to be an ADU or JADU. These types of conversions were popular before the impact fees for ADU and JADUs were reduced in 2020 by the implementation of the new State Laws.

Staff is aware that some residents have converted these permitted spaces to include a kitchen after they were constructed, or include areas for cooking that would qualify as an efficiency kitchen. In some cases, the property owners have requested a second ADU or JADU on the property (in addition to the converted space). When a request comes in for a ADU or a JADU, Staff will check the records for the property to determine if a conversion was previously approved. If one was approved, Staff will conduct an on-site visit to determine if the converted space now meets the definition of a ADU or JADU established by Section 17.32.020. If the conversion does, the property owner will be limited to the maximum number of units allowed on the property (one JADU and one ADU).

For all other property owners who wish to legalize their conversion or modify the approved conversion to allow a kitchen in the converted space, Staff will be happy to work with the property owners to legalize the space or allow the space to be converted to a legal ADU or JADU.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

The proposed Zoning Ordinance amendments are exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines because the proposed amendments will not result in any direct physical change to the City and therefore the proposed amendments are not a project under CEQA and are exempt from further review (CEQA Guidelines, Section 15378). Additionally, the construction of Accessory Dwelling Units and Junior Accessory Dwelling Units are Categorically Exempt from CEQA review (Class 3) pursuant to CEQA Guidelines Section 15303.

CONCLUSION:

The proposed amendment to the Zoning Ordinance is part of Phase I of the overhaul of the Zoning Ordinance. Section 17.22.040, Accessory dwelling units, was last modified in 2019 and the State has passed several Bills and amendment the Government Code to further restrict how cities can regulate ADUs and JADUs. Staff is proposing to rescind the existing 17.22.040 and replace with a new Chapter that is designed to meet the City's goal of modifying the Zoning Ordinance so that it is more user friendly and clearly establishes the requirements for ADUs and JADUs. The new Chapter 17.32, Accessory Dwelling Units, is consistent with the requirements of the Government Code.

PLANNING COMMISSION OPTIONS:

The Planning Commission can choose one of the following options:

1. Adopt a Resolution recommending City Council approval of amendments to the Zoning Ordinance to repeal Section 17.22.040, Accessory dwelling units and replace with a new

Chapter, Chapter 17.32, Accessory Dwelling Units, with the new Chapter 17.32 attached as Exhibit A.

2. Adopt a Resolution recommending City Council approval of amendments to the Zoning Ordinance to repeal Section 17.22.040, Accessory dwelling units and replace with a new Chapter, Chapter 17.32, Accessory Dwelling Units, with the new Chapter 17.32 attached as Exhibit A, with modifications to the proposed amendments as proposed by the Planning Commission;

3. Continue the hearing and direct Staff to provide additional information or clarification.

Staff recommends the Planning Commission select Option 1 for this Item. Should the Planning Commission determine that modifications to the height and size of ADUs is appropriate, the Planning Commission should select Option 2.

PLANNING COMMISSION RESOLUTION NO. 2023-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HOLLISTER RECOMMENDING CITY COUNCIL APPROVAL OF A ZONING ORDINANCE AMENDMENT TO REPEAL SECTION 17.22.040, ACCESSORY DEWLLING UNITS AND REPLACE WITH CHAPTER 17.32, ACCESSORY DWELLING UNITS (ZOA 2023-1)

WHEREAS, the City occasionally initiates an amendment to the Zoning Ordinance in order to codify requirements pursuant to State Law; and

WHEREAS, following an amendment to Section 17.22.040, Accessory Dwelling Units, the Governor signed several Bills into law which limits how cities can regulate and review Accessory Dwelling Units; and

WHEREAS, these regulations are included in Government Code Section 65852.2 and 65852.22; and

WHEREAS, State Law allows a local agency to adopt an Ordinance to implement the provisions of Government Code 65852.2 and 65852.22; and

WHEREAS, the City desires to repeal the existing 17.22.040, Accessory Dwelling Units, which is inconsistent with State Law and replace with Chapter 17.32, Accessory Dwelling Units; and

WHEREAS, the Planning Commission discussed the requirements of Accessory Dwelling Units during a Study Session on August 4, 2022; and

WHEREAS, the Planning Commission held a duly noticed public hearing on January 26, 2022 to review the new Chapter 17.32, Accessory Dwelling Units, during which all interested parties were heard; and

WHEREAS, a Staff Report was submitted to the Planning Commission of the City of Hollister recommending approval of a Zoning Ordinance Amendment to repeal 17.22.040, Accessory Dwelling Units, and add Chapter 17.32, Accessory Dwelling Units; and

WHEREAS, the draft Chapter 17.32, Accessory Dwelling Units, is included as Exhibit A to this Resolution; and

WHEREAS, the proposed Zoning Ordinance amendment is exempt from further review under the California Environmental Quality Act because the California Environmental Quality Act (CEQA) does not apply to Accessory Dwelling Units and/or Junior Accessory Dwelling Units because approval of these projects is categorically exempt from CEQA (Class 3 Categorical Exemption, CEQA Guidelines Section 15303). Additionally, the adoption of an Ordinance related

to Accessory Dwelling Units and Junior Accessory Dwelling Units is exempt from CEQA because the Ordinance is not a project under CEQA (CEQA Guidelines, Section 15378); and

WHEREAS, the City will work with property owners to legalize any Accessory Dwelling Units or Junior Accessory Dwelling Units that may occur as a result of a permitted conversion (pursuant to Section 17.16.020(B)(3) of the Zoning Ordinance) that was converted to an Accessory Dwelling Unit or Junior Accessory Dwelling Unit without obtaining the required permit from the City; and

WHEREAS, any illegal conversions to an Accessory Dwelling Unit or Junior Accessory Dwelling Unit will be counted as an Accessory Dwelling Unit or Junior Accessory Dwelling Unit if the Unit meets the definitions included in 17.32.020 of the Zoning Ordinance when reviewing any requests for an additional Accessory Dwelling Unit or Junior Accessory Dwelling Unit; and

NOW THEREFORE IT IS RESOLVED, that the Planning Commission of the City of Hollister does hereby recommend that the City Council approve the amendment to the Zoning Ordinance to repeal Section 17.22.040, Accessory Dwelling Units and include Chapter 17.32, Accessory Dwelling Units, included as Exhibit A.

PASSED AND ADOPTED, at a regular meeting of the City of Hollister Planning Commission held on this 26th day of January 2023, by the following vote:

AYES:
NOES:
ABSTAINED:
ABSENT:

_____
Chairperson of the Planning Commission
of the City of Hollister

ATTEST:

_____
Adrianna Ortiz, Secretary

17.32.010 Purpose.

The purpose of this Chapter is to establish development standards for the construction of Accessory Dwelling Units and Junior Accessory Dwelling Units in residential or mixed-use (single-family and multi-family) zoning districts consistent with Government Code Sections 65852.2 and 65852.22.

17.32.020 Definitions

A. *Accessory Dwelling Unit (ADU)* shall have the same meaning as defined under Section 65852.2(j) of the Government Code and shall mean an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling. An ADU also includes an efficiency unit and a manufactured home, provided it is built on a permanent foundation. An ADU may be located within an existing attached or detached garage, shed, barn or any other accessory structure. An ADU may add up to 150 square feet beyond the physical dimensions of the existing accessory structure to provide for ingress and egress (including, but not limited to entryways, stairwells, and hallways).

B. *Efficiency kitchen* shall mean an area with cooking appliances, food preparation counter(s) and storage cabinets that are of a reasonable size in relation to the size of the junior accessory dwelling unit.

C. *Efficiency Unit* shall mean a dwelling unit construction in accordance with Health and Safety Code Section 17958.1 or the California Building Code Section 1208.4.

D. *Junior Accessory Dwelling Unit (JADU)* shall mean a unit that is no more than 500 square feet in size and is contained entirely within a single-family residence, including within an attached garage, and does not result in an addition to the structure for ingress or egress which is more than 150 square feet in size. A JADU may include separate sanitation facilities or may share sanitation facilities with the single-family dwelling.

E. *Multi-family* for the purposes of this Chapter shall mean a property with two (2) or more attached dwelling units on a single lot. Multiple detached dwelling units are not considered a multi-family property.

F. *Primary dwelling unit* shall mean a residential dwelling, other than an ADU or JADU, with provisions for living, sleeping, eating, a kitchen for cooking, and sanitation facilities.

G. *Single-family unit* for the purposes of this Chapter shall mean a property with one (1) detached residential dwelling unit.

H. *Tandem parking* shall mean two or more automobiles parked on a driveway or on any other location on a lot, lined up behind one another.

17.32.030 Accessory Dwelling Units (ADU)

An Accessory Dwelling Unit (attached or detached) shall comply with the following regulations:

A. *Location.* An ADU may be located on any property where a residential dwelling is permitted by right or conditionally permitted and where the proposed accessory dwelling unit will be an accessory to the primary dwelling unit.

B. Maximum Number of Units and Density.

1. For lots with a single-family residence, there shall be a maximum of one (1) attached ADU or one (1) detached ADU unit which may be combined with a Junior Accessory Dwelling Unit that is consistent with Section 17.32.040. An ADU may be located within a detached garage.

2. For lots with a two-unit residential development, approved under Chapter 17.26, Two-unit Residential Developments and Urban Lot Splits, an ADU or JADU may not be constructed if two (2) primary dwelling units exist on the site.

3. Accessory Dwelling Units that conform to this chapter shall be exempted from the calculation of the maximum allowable density for the lot on which it is located.

4. Accessory Dwelling Units on a multi-family property are subject to the following:

    a. A minimum of one (1) ADU will be allowed within the non-livable portions of the existing multi-family structure, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, and garages. The maximum number of ADUs shall not exceed 25% of the number of existing legally established dwelling units within the existing multifamily structure; and/or

    b. A maximum of two (2) ADUs that are detached from the multi-family structure.

C. *Unit Size.* The total floor area of an attached or detached ADU shall not exceed 1,000 square feet for an ADU with more than one bedroom or 850 square feet for a single bedroom. However, in no case shall an attached ADU exceed 50% of the total square footage of the existing principal residence. An exception to the 50% maximum shall be

waived in order to allow a minimum 800 square foot and a maximum 1,000 square foot ADU.

D. *Minimum Unit Size.* An ADU shall be a minimum of 150 square feet or the size necessary to accommodate an efficiency unit as defined by Health and Safety Code Sections 17958.1 whichever is greater.

E. Setbacks.

1. Front Yard. The minimum front yard setback shall conform to the requirements of the Zoning District which governs the property, except where necessary to allow a minimum 800 square foot ADU with side and rear yard setbacks as defined below.

2. Side Yard. The minimum side yard setback shall be four feet.

3. Rear Yard. The minimum rear yard setback shall be four feet.

4. Existing Structure. The setback for an existing, legal nonconforming shall be allowed to continue on the site. Any addition to the existing structure shall be allowed to use the same setbacks that were previously approved.

5. Setbacks Between Structures. A detached accessory structure shall be setback six (6) feet from the primary dwelling unit and all new structures shall be set back a minimum of five (5) feet from the eaves of an inhabited structure (measured from eave to eave) and a minimum of 3 feet to an uninhabitable structure.
6. Planned Unit Development. Where a Planned Unit Development allows a smaller setback for side or rear yards than the setbacks under this Chapter, the new ADU shall comply with those Planned Unit Development setbacks.

7. Second Story ADU. For an ADU located on a second story, the second story shall be set back five (5) feet from the main wall of the existing primary dwelling unit.

F. *Lot Coverage.* The principal residence and ADU combined shall meet the requirements for lot coverage or floor area ratio of the Zoning District in which the property is located. The maximum lot coverage or floor area ratio required by the Zoning Ordinance shall be waived in the amounts necessary to accommodate an ADU with a gross floor area of up to 800 square feet with the minimum required side and rear yard setbacks.

G. *Historic District or Property*. If the proposed ADU is located on a lot that is located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to an

Ordinance by the City of Hollister or San Benito County, the proposed ADU shall comply with the following:

1. A newly constructed ADU (attached or detached) shall not be visible from the public right-of-way; or

2. The ADU shall be entirely contained within the existing dwelling unit (excluding any porch or other architectural detail or feature on the property) or within a detached structure on the property.

H. *Height.* A detached ADU shall not exceed 16 feet in height on a single-family property or 18 feet in height for an ADU on a multi-family property. The maximum height for an attached ADU shall conform to the height requirements of the zoning district where the lot is located.

I. *Required Parking.* The following parking requirements apply to ADUs and JADUs.

1. An ADU shall be provided with one (1) off-street parking space per unit (if the ADU is a studio, then no space is required) in addition to parking required for the principal residence in accordance with Table 17.18-1, Off-Street Parking and Bicycle Spaces Required by Land Use Type.

2. If a space is required, the space may be compact, may be uncovered, and may be in a tandem space with the required parking of the principal dwelling unit (either covered or uncovered).

3. Off-street parking for an ADU or JADU is not required in any of the following instances:

    a. When the ADU is created through the conversion of a garage, carport, or covered parking structure.

    b. The ADU is located within an architecturally and historically significant historic district.

    c. The ADU is within a new or existing primary dwelling unit or accessory structure.

    d. When on-street parking permits are required but not offered to the occupant of the ADU.

    e. The ADUis located within one-half mile walking distance of a public transit stop.

f. When there is a car share vehicle located within one block of the ADU.

J. *Entrance.* An ADU shall require a separate entrance from the main entrance to the proposed or existing principal residence. An exterior stairway proposed to serve an ADU on a second story or higher shall not be visible from the front public right-of-way.

K. *Maximum Front Setback Coverage.* No more than 50% of the front setback area may contain hardscape, excluding the allowed driveway for garages pursuant to Chapter 17.18, Pedestrian, Bicycle, Parking and Loading Standards. Driveway width shall be a maximum of 20 feet in width for a double car garage and 30 feet for a three car garage.

L. *Public Utilities and Services.* Accessory Dwelling Units shall be served by public water and sewer and shall have access to an improved public street. A separate utility connection shall not be required for any ADUs which are the result of a conversion of existing space (plus an addition of up to 150 square feet as allowed by this Section) or within the proposed space of a single-family dwelling (new construction). All other ADUs will require a separate utility connection.

M. *Design*. All attached and detached ADUs which are visible from the street shall have the same architectural style, detail, color and building materials as the existing or proposed primary dwelling unit. For detached ADUs which are not visible from the street, the detached ADU shall have the same color and materials as the existing or proposed primary dwelling unit.

I. *Mechanical Equipment.* All mechanical and utility equipment shall be screened from view from the street through a combination of wall or fencing and landscape plant materials sufficient to screen the height and width of the equipment.

N. *Fire Sprinklers.* Fire Sprinklers in an ADU shall not be required if they were not required for the primary dwelling, in accordance with Government Code Section 65852.2. For an ADU in a multi-family structure, the entire residential structure shall serve as the "primary residence" for the purposes of this requirement. If the multi-family structure is served by fire sprinklers, the ADU shall be required to install fire sprinklers.

O. *Occupancy.* Owner-occupancy shall not be required as a condition of permit approval for ADUs permitted between January 1, 2020 and January 1, 2025.

P. *Ownership*. An ADU shall not be sold or otherwise conveyed separately from the residential dwelling(s).

Q. *No Short-Term Rental.* Accessory Dwelling Units shall not be rented for terms of 30 days or less.

17.32.040 Junior Accessory Dwelling Units (JADU)

A Junior Accessory Dwelling Unit(JADU) shall comply with the following regulations:

A. *Location Permitted*. A JADU unit may be located on a property within a single-family residential zone with one primary dwelling unit located, or proposed to be built, on the property. For historic lots with a two-unit residential development, approved under Chapter 17.26, Two-unit Residential Developments and Urban Lot Splits, a JADU may not be constructed if two (2) primary dwelling units exist on the site.

B. *Relationship to Principal Use.* The JADU shall be located entirely within the walls of a proposed or existing single-family residence, including an attached garage, except that up to 150 square feet may be constructed outside of the walls of the existing structure in order to provide ingress and egress into the unit.

C. *Maximum Number of Units and Density.* There shall be a maximum of one (1) JADU per lot. A JADU may be in addition to a detached Accessory Dwelling Unit that is consistent with Section 17.32.030.

D. *Unit Size.* The total floor area of a JADU shall not be more than 500 square feet, excluding any shared sanitation facility within the principal single-family residence.

E. *Parking.* No off-street parking is required for a JADU.

F. *Entrance.* A JADU shall require a separate exterior entrance from the main entrance of the proposed or existing single-family residence. An exterior stairway proposed to serve a JADU on a second story or higher shall not be visible from the front public right-of-way. If the JADU shares a bathroom with the existing dwelling, access from the inside of the unit to the main living area of the dwelling shall be provided.

G. *Efficiency Kitchen*. A JADU shall include an efficiency kitchen.

H. Occupancy and Ownership.

1. Owner-occupancy of the primary dwelling unit is required. The owner may reside in the remaining portion of the structure or the JADU.

2. A JADU shall not be sold or otherwise conveyed separately from the principal single-family residence.

3. A deed restriction, which shall run with the land, shall be filed with the building permit application and include the following:

a. Prohibition on the sale of the JADU separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.

b. A restriction on the size and attributes of the JADU that conforms with Government Code Section 65862.22.

I. No Short-Term Rental. JADUs shall not be rented for terms of 30 days or less. Ord. 17-20 (November 2020)

17.32.050 Permit Application

An application for an Administrative Permit Review for an Accessory Dwelling Unit and/or Junior Accessory Dwelling Unit shall be submitted to the Development Services Department. The application package shall include the following:

A. *Application*. An applicant for an ADU or JADU shall submit an application on a form provided by the City, along with all information and materials prescribed by such form. No application shall be accepted unless it is completed as prescribed, all required materials are submitted, and the application fee is paid.

B. *Preliminary Title Report.* A preliminary title report dated within 6 months of the application submittal date, including a digital copy of all referenced documents.

C. *Utility and Service Information*. Provide information on available utility easements, services and connections.

D. *Deed Restriction*. Prior to issuance of a Building Permit, the Applicant shall record a restrictive covenant in the form prescribed by the City, which shall run with the land and provide for the following, as applicable:

1. A prohibition on non-residential use of any units, with the exception of Home Occupations approved by the City;

2. A prohibition against renting or leasing the units for a period of less than thirty (30) days;

3. A prohibition on the sale of an ADU separate from the sale of the single-family residence; and

4. A restriction on the size and attributes of the JADU that conforms with Government Code Section 65862.22.

E. *Nonconforming Conditions*. The construction of an ADU or JADU shall not create any unpermitted construction or illegal nonconforming zoning conditions; however, an application shall not be denied due to the correction of preexisting nonconforming zoning conditions.

17.32.060 Review Procedures

A. For an ADU or JADU located on a lot with an existing residential dwelling(s), consistent with state law, the Director of Development Services will administratively consider and approve or disapprove a complete application for an Administrative Permit Review under this Chapter ministerially, without discretionary review or public hearing. The City shall process the application request pursuant to the timelines in Government Code Section 65862.22.

B. If an application for an ADU or JADU is submitted with a permit application to create a new residence on a lot, the application for the ADU or JADU may not be acted upon until the permit application to create the new residence is approved.

Planning Commission
Study Session Staff Report
August 4, 2022
Item 2

PURPOSE: **Changes in State Law Related to Density Bonuses, SB 9 and Accessory Dwelling Units** – A discussion of the recent changes in State Law related to Density Bonuses and Accessory Dwelling Units and the new Senate Bill 9 related to single family residential development.

STAFF PLANNER: Eva Kelly, Interim Planning Manager (831) 636-4360
Erica Fraser, AICP, Consulting Planner

ATTACHMENTS:

1. Text of Senate Bill 9
2. SB 9 Graphic Illustration (ABAG)
3. Section 17.22.040, Accessory Dwelling Units, of the Hollister Zoning Ordinance
4. Accessory Dwelling Unit Handbook (California Department of Housing and Community Development)
5. Chapter 17.04, Article II, Density Bonuses, of the Hollister Zoning Ordinance
6. Government Code Sections 65915-65918, Density Bonuses and Other Incentives

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BACKGROUND:

Several changes in State Law and the introduction of Senate Bill 9 (SB 9) have occurred since the Zoning Ordinance was last updated. SB 9 was signed into law on September 16, 2021 and took effect on January 1, 2022. SB 9 allows property owners within a single-family residential zone (Hollister's R1 (Low Density Residential) Zoning District) to build two units and/or to subdivide their lot into two parcels, which would allow a maximum of four residential dwellings to be constructed.

Several changes in State Law have been made since Section 17.22.040, Accessory Dwelling Units, of the Hollister Zoning Ordinance was last modified in 2019. On January 1, 2021, several changes to State Law were introduced to further reduce barriers to the construction of ADUs and to streamline the process for approval. Section 17.22.040 of the Zoning Ordinance is not consistent with current State Law.

Several changes in State Law and a court ruling have changed how a City can evaluate a density bonus request. Density bonuses in Hollister are regulated under Chapter 17.04, Article II which was last updated in 2011. The current Article II, Density Bonus is not consistent with the current State Law.

Because the City's Zoning Ordinance is not up to date with the current SB 9 as well as changes in State Law regarding ADUs and Density Bonuses, the City must review applications for the items against the Government Code and cannot use the Zoning Ordinance.

Tonight's discussion is an overview of the new SB 9 and the changes in State Law related to ADUs and Density Bonuses.

ANALYSIS:

Senate Bill 9 (SB 9)

Senate Bill (SB) 9 took effect on January 1, 2022 and is not codified in the current Zoning Ordinance. The purpose of SB 9 is to increase density in single family neighborhoods (the most expensive type of housing to own or rent) and to increase housing units in the State and to create more inclusive neighborhoods.

SB 9 applies to all single-family residential zoned properties with several key exceptions:

- Environmentally sensitive areas (i.e. farmland, wetlands, protected habitats, or easements);
- Environmental hazard areas (such as a fault zone) if mitigations are not possible;
- Historic properties and districts;
- Properties where the Ellis Act was used to evict tenants at any time in the last 15 years; and
- Additionally, demolition is generally not permitted for units rented in the last 3 years, rent-controlled units, or units restricted to people of low or moderate incomes.

SB 9 requires ministerial approval of the following:

- Two-unit Housing Development – Two homes on an eligible single-family residential parcel (whether the proposal adds up to two new housing units or adds one new unit to one existing unit).

- Urban Lot Split - A one-time subdivision of an existing single-family residential parcel into two parcels. This would allow up to four units (unless a jurisdiction decides to allow additional units).

Two-Unit Housing Development

Under the provisions of SB 9, a person can request to construct a maximum of two primary dwellings units (attached or detached) on a single family residential parcel. The following requirements apply to all two-unit housing developments under SB 9:

- The City must review and process an application for a SB 9 development ministerially without any discretionary/subjective review;

- Development of a two-unit residential development and an Urban Lot Splits is not subject to the California Environmental Quality Act;

- Minimum four foot interior side and rear yard setbacks;

- Front yard and street side setbacks shall be the same as the regulations for the zoning district in which it is located unless it precludes the construction of two 800 square foot units on the subject property;

- If the existing dwelling unit is demolished to make way for a new two-unit residential development, the City cannot impose any setback requirements that are above what was existing on the site prior to the dwelling being torn down;

- The residential dwellings may be attached as long as they meet building code safety standards;

- All uses are restricted to residential uses only;

- Provide a minimum of one off street parking space per unit unless the subject property is located within ½ mile, walking distance, to a major transit stop and then no parking spaces are required;

- The City may restrict the short term rental of dwelling units created by SB 9 to a term of greater than 30 days;

- The City must allow an ADU or JADU to be constructed per primary dwelling unit if the lot was not previously split under SB 9;

- The design of the unit must comply with any objective design standards or design

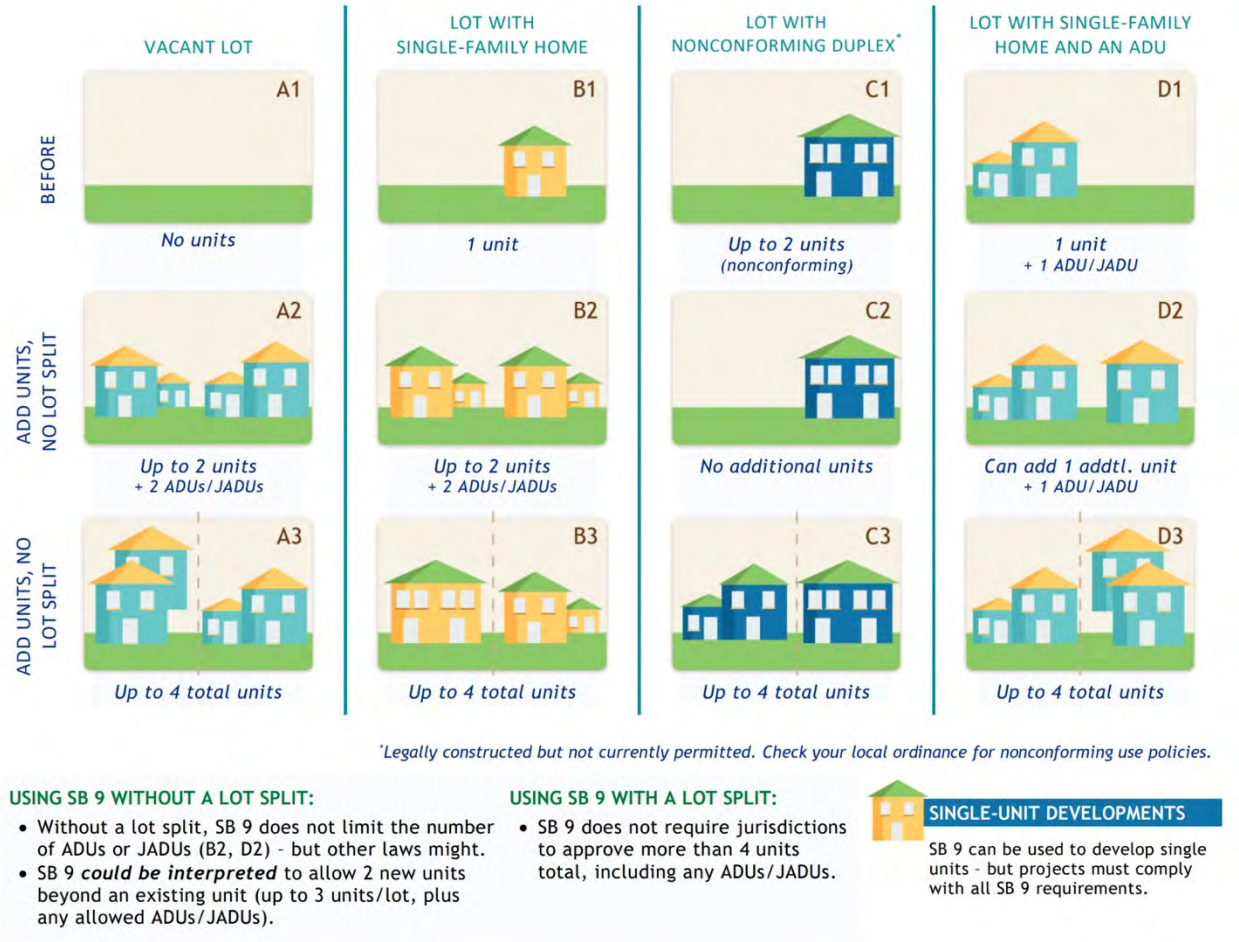
guidelines the City has adopted for the Zoning District in which the property is located.

Urban Lot Splits

Under the provisions of SB 9, a person may choose to divide an existing residential parcel into two new parcels (otherwise known as an Urban Lot Split). This split may be conducted one time only and the two lots created by the lot split cannot be split later into additional lots. All Urban Lots Splits are required to comply with the following:

- Each new lot must be a minimum of 1,200 square feet in size;
- The Urban Lot Split must result in lots of approximately equal size provided that one parcel shall not be smaller than 40 percent of the size of the original parcel;
- The property owner must intend to occupy one of the units as their principle residence for a minimum of three years;
- A maximum of two dwelling units are allowed on each lot;
- The same development standards for a two-unit development (as stated above) shall also apply for the construction of dwelling units on the new parcel.

The following graphic prepared by the Association of Bay Area Governments illustrates potential scenarios that could occur on a single-family property under SB 9 (please also refer to Attachment 2 for more information):



Under SB 9, the City must review and process applications for SB 9 two-unit housing developments and urban lot splits ministerially without any discretionary/subjective review or CEQA. The City may only deny an SB 9 proposal if the Building Official finds that it would have a "specific, adverse impact [as defined by the law], upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact." Any denials must be based on objective, identified public health and safety standards, policies, or conditions that existed when the application was submitted.

The City's Zoning Ordinance does not include provisions that would allow the development of units permitted by SB 9. Minor modifications to allowable residential uses in the Zoning Ordinance as well as a new section in the Zoning Ordinance dedicated to these type of developments would be required in order to comply with SB 9.

Accessory Dwelling Units (ADUs)

An Accessory Dwellings Unit (ADU) is an accessory dwelling with complete living facilities for one

or more persons. There are several types of ADUs including:

- Detached – which means the ADU is separated from the primary dwelling unit or structure;
- Attached – which means the ADU is attached to the primary structure on a lot;
- Converted Existing Space – which is any space on a lot with a primary dwelling unit (i.e. master bedroom, garage, storage space, accessory structure, etc.) that is converted into an independent living unit.
- Junior Accessory Dwelling Unit (JADU) - which is a specific type of conversion of an existing space within a single-family residence that is contained entirely within that structure.

The City regulates Accessory Dwelling Units under Chapter 17.22.040 of the Zoning Ordinance (Attachment 3). This Ordinance was last updated in 2019, but is not consistent with the changes in State Law which are summarized below.

The following changes to State Law have been made with regards to how the City processes review of an Application for an ADU:

- The Application for an ADU or JADU shall be deemed approved if the City has not acted on a complete application within 60 days (reduced from 120 days);

- Requires ministerial approval of an application for a Building Permit in a residential or mixed use zone to create one ADU and one JADU per lot;

- Establishes impact fee exemptions and limitations; and

- Prohibits Covenants, Codes and Restrictions that restrict the construction of or use of and ADU or JADU.

The following changes to State Law have been made which restrict how a City can review ADUs which are not consistent with the City's current Zoning Ordinance:

- Allows for the rental of a ADU or JADU even if the ADU or JADU was approved with a condition that restricted the unit being rented;

- Prohibits requirements which require a minimum lot size for construction of an ADU;

- Eliminates owner occupancy requirements for ADUs approved between January 1, 2020 – January 1, 2025;

- Prohibits a City from establishing a maximum size of an ADU of less than 850 square

feet, or 1,000 square feet if the ADU has one or more bedrooms;

- When an ADU is created through the conversion of a garage, carport, or covered parking, the City may not require replacement off-street parking;

- The accessory structure definition has been modified to read "a structure that is accessory or incidental to a dwelling on the same lot as the ADU";

- Allows a City to identify an ADU or JADU as an adequate site to satisfy Regional Housing Needs Allocation housing needs;

- Allows a JADU to be constructed within the walls of a proposed or existing single family residence and eliminates the required inclusion of an existing bedroom or interior entry into the residence;

- An ADU does not count towards the allowable density of a lot;

- Parking requirements for an ADU may not exceed one parking space per unit or bedroom, whichever is less and may be provided as tandem parking on a driveway;

- There is no limit on the number of bedrooms in an ADU; and

- An ADU is also permitted on a lot where an SB 9 lot split has occurred (as long as there are no more than two total dwelling units on each parcel).

For additional information regarding ADUs, please refer to the Accessory Dwelling Unit Handbook, prepared by the California Department of Housing and Community Development, included as Attachment 4. As mentioned above, the existing Zoning Ordinance is not consistent with State Law and changes to the Ordinance will need to be made in order to comply with State Law.

Density Bonus

The State Density Bonus Law (Sections 65915-65918 of the California Government Code, Attachment 6) allows developer to seek a density bonus in exchange for donating land or for building affordable projects. A density bonus means the increase over the otherwise maximum allowable gross residential density established by the City, the amount of which varies based on the type and percentage of affordable housing provided by the Developer.

The following Table summarizes the percentage of bonus granted by the Target Group (level of affordability) and the percentage of affordable units that are provided on-site. The density bonus granted by the current Density Bonus State Law is higher than what is currently listed in Hollister's

Zoning Ordinance.

Table 1: Density Bonus by Target Group and Percentage of Development Affordability

Target Group	Minimum % Target Units	Bonus Granted	Additional Bonus for Each 1% Increase in Target Units	% Target Units Required for Maximum 50% Bonus
Very Low Income	5%	20%	2.5%	15%
Low Income	10%	20%	1.5%	24%
Moderate Income (Common Interest Development, Condo or PUD only)	10%	5%	1%	44%
Senior Citizen Housing Development	100%	20%	–	–
100% Affordable Project (includes bonus units)	100%	80%[1]	–	–

[1] If the housing development is located within one-half mile of a major transit stop, the city shall not impose any maximum controls on density [Gov. Code. Sec. 65915 (f)(3)(D)(ii)]

In addition to granting a density bonus, the City is required to provide one or more incentives or concessions to each project which qualifies for a density bonus (see Table 1). The following have been identified as a concession or incentive under the Government Code:

- A reduction in site development standards or a modification of zoning code or architectural design requirements, such as a reduction in setback or minimum square footage requirements; or

- Approval of mixed use zoning; or

- Other regulatory incentives or concessions which actually result in identifiable and actual cost reductions.

The number of incentives that can be granted are based on the percentage and type of affordable housing provided in the development.

Several changes have been made to the State Density Bonus Law since the City's Density Bonus Ordinance was amended in 2011. The following changes to have been made which are not consistent with the City's current Ordinance:

- The City must allow for a higher density bonus as listed in Table 1;

- The City must grants a density bonus for the provision of units for foster youths, disabled veterans, homeless and college students;

- The Law now allows a density bonus for mixed-use projects;

- The State Law establishes parking requirements which are lower than what is in the Zoning Ordinance (granted based on the provision of affordable housing, a Developer may also seek an incentive to further reduce required on-site parking);

- The State Law establishes affordable housing restrictions which are different from what is in the current Zoning Ordinance;

- A City is required to clearly show what information must be submitted for a complete density bonus application;

- Current law increases the total number of incentives the City must provide (up to four incentives);

- A City must grant a density bonus for the provision of a childcare facility on residential and commercial and industrial projects; and

- Permits the City to grant a floor area ratio bonus rather than a tradition density bonus for high density projects adjacent to public transit.

As mentioned above, the existing Zoning Ordinance is not consistent with State Law and changes to the Ordinance will need to be made in order to comply with State Law.

CONCLUSION:

The City's Zoning Ordinance is not consistent with State Law with respect to Density Bonuses and Accessory Dwelling Units. Additionally, SB 9 recently took effect and the Hollister Zoning Ordinance does not allow for the additional dwellings allowed under this Senate Bill. Modifications to the Zoning Ordinance are required in order to comply with current regulations.

RECCOMENDATION:

Staff recommends that the Planning Commission provide Staff with direction/comments and direct Staff to do the following:

- Draft a new Ordinance related to SB 9 for inclusion into the Zoning Ordinance; and

- Make minor modifications in the Zoning Ordinance so that the Zoning Ordinance is consistent with the new Ordinance related to SB 9; and

- Modify Section 17.22.040, Accessory Structures, so that this Section is consistent with State Law; and

- Modify Chapter 17.04, Article II, Density Bonus, so that this section is consistent with State Law.

NEXT STEPS:

Should the Planning Commission direct Staff to make the modifications mentioned above, Staff will bring draft Ordinances to the Planning Commission for review during a Public Hearing for recommendation to the City Council.

Most of the current Zoning Ordinance has not been amended since 2008. Staff is aware of several changes to the Zoning Ordinance that both the Planning Commission and City Council would like made. Additionally, changes will be required once the Hollister 2040 General Plan is adopted, which is currently being drafted. Once the General Plan is adopted, Staff intends to overhaul the entire Zoning Ordinance to reflect desired changes, changes required by the General Plan and to make the Zoning Ordinance more user friendly. Staff intends to bring the modifications to the Planning Commission for review during several Study Sessions prior to a Public Hearing.

17.22.040 Accessory dwelling units.

Where allowed by this Zoning Ordinance, an accessory dwelling unit, as that term is defined in California Government Code Section 65852.2(j)(4), shall be constructed as follows:

A. No more than one additional accessory dwelling unit shall be permitted on any single-family parcel.

B. An additional accessory dwelling unit may only be allowed on a residential parcel with one existing single-family detached accessory dwelling unit, and the accessory dwelling unit may be within, attached to or detached from the existing main dwelling unit. If detached, the accessory dwelling unit shall be separated from the main dwelling unit a minimum of ten feet. The accessory dwelling unit may be rented, although rental is not required.

C. The parcel upon which the additional accessory dwelling unit is to be established shall conform to all of the standards of the applicable residential zoning district (e.g., height, setbacks, parcel coverage, etc.).

D. The minimum size of the parcel upon which the additional accessory dwelling unit may be built shall be 6,750 square feet on an interior lot and 8,000 square feet on cul-de-sac or knuckle lots.

E. The additional accessory dwelling unit shall not exceed one story, or in the case of an accessory dwelling unit constructed over a garage or a unit located within the primary unit, shall not exceed the height limit of the applicable zoning district unless the applicant demonstrates a compelling need to exceed the height requirement and it can be demonstrated that the additional height will not preclude solar access and that the massing of the structure will not be out of scale or overwhelm the adjoining properties.

F. The maximum living floor area of the accessory dwelling unit shall not exceed 850 square feet.

G. The minimum living floor area of the accessory dwelling unit shall be 150 square feet.

H. The additional dwelling unit shall be architecturally compatible with the main dwelling unit, and shall contain separate kitchen and bathroom facilities and a separate entrance.

I. The additional accessory dwelling unit shall be provided with off-street parking, in addition to that required for the main dwelling unit, in compliance with Section 17.18.060, unless the accessory dwelling unit meets the exemptions described in California Government Code Section 65852.2(e).

J. Both the main dwelling unit and the additional accessory dwelling unit shall each be provided with a minimum of 450 square feet of usable private open yard area.

K. The additional accessory dwelling unit shall be metered separately from the main dwelling unit for electricity, gas, and water/sewer services. However, the owner of the accessory dwelling unit shall not be required to pay for the connection fee or capacity charge for water and/or sewer for the accessory dwelling unit. For the purposes of impact fees, the accessory dwelling unit shall be charged as a multi-family unit as applicable.

L. In the case of a lot with an existing dwelling unit of less than 850 square feet, a principal unit may be constructed in compliance with the applicable standards for single-family dwellings.

M. In the case of a unit utilizing alley access, the minimum setback shall be ten feet.

N. A detached accessory dwelling unit shall be separated from the principal unit by a minimum of ten feet.

O. The applicant for the required administrative permit review shall be the owner of the subject property as well as the resident of either one of the dwelling units;

P. This section shall not validate any existing illegal "additional" dwelling unit. An application for an Administrative Permit Review may be made in compliance with Section 17.24.160 to convert a non-permitted "additional" unit to a conforming legal "additional" accessory dwelling unit, and the standards and requirements for the conversion shall be the same as for a newly proposed "additional" accessory dwelling unit.

Q. The following findings shall be made, in addition to those outlined in Section 17.24.160, in order to approve an Administrative Permit for an additional accessory dwelling unit:

1. That the additional accessory dwelling unit is compatible with the design of the main dwelling unit and the surrounding neighborhood in terms of bulk, exterior treatment, height, landscaping, length, parcel coverage, scale and width and will not cause excessive noise, traffic, or other disturbances to the existing residential neighborhood or result in significantly adverse effects on public services and resources; and

2. That the additional accessory dwelling unit will not contribute to a high concentration of these units sufficient to change the character of the surrounding residential neighborhood.

(Ord. 1038, § 2, 2008; Ord. 1083, § 6, 2012; Ord. 1138 § 2, 2017; Ord. 1177 , §§ 3, 4, 2019)




CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

ACCESSORY DWELLING UNIT HANDBOOK

UPDATED JULY 2022

Table of Contents

Understanding Accessory Dwelling Units (ADUs) and Their Importance

California's housing production is not keeping pace with demand. In the last decade, fewer than half of the homes needed to keep up with the population growth were built. Additionally, new homes are often constructed away from job-rich areas. This lack of housing that meets people's needs is impacting affordability and causing average housing costs, particularly for renters in California, to rise significantly. As affordable housing becomes less accessible, people drive longer distances between housing they can afford and their workplace or pack themselves into smaller shared spaces, both of which reduce quality of life and produce negative environmental impacts.

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Beyond traditional construction, widening the range of housing types can increase the housing supply and help more low-income Californians thrive. Examples of some of these housing types are accessory dwelling units (ADUs – also referred to as second units, in-law units, casitas, or granny flats) and junior accessory dwelling units (JADUs).

What is an ADU?

An ADU is accessory to a primary residence and has complete independent living facilities for one or more persons and has a few variations:

- Detached: The unit is separated from the primary structure.
- Attached: The unit is attached to the primary structure.
- Converted Existing Space: Space (e.g., master bedroom, attached garage, storage area, or similaruse, or an accessory structure) on the lot of the primary residence that is converted into an independent living unit.
- JADU: A specific type of conversion of existing space that iscontained entirely within an existing or proposed single-family residence.

ADUs tend to be significantly less expensive to build than new detached single-family homes and offer benefits that address common development barriers, such as environmental quality. Because ADUs must be built on lots with existing or proposed housing, they do not require paying for new land or other costly infrastructure often required to build a new single-family home. Because they are contained inside existing or proposed single-family homes, JADUs require relatively modest renovations and are much more affordable to complete. ADUs are often built with cost-effective one- or two-story wood frames, which are also less expensive than other construction types. Additionally, prefabricated ADUs (e.g., manufactured housing and factory-built housing) can be directly purchased and can further reduce construction time and cost. ADUs can provide as much living space as apartments and condominiums and work well for couples, small families, friends, young people, and seniors.

Much of California's housing crisis comes from job-rich, high-opportunity areas where the total housing stock is insufficient to meet demand and exclusionary practices have limited housing choice and inclusion. Professionals and students often prefer living closer to jobs and amenities rather than spending hours commuting. Parents oftenwant better access to schools and do not necessarily require single-family homes to meet their housing needs. There is a shortage of affordable units, and the units that are available can be out of reach for many people. Homeowners can construct an ADU on their lot or convert an underutilized part of their home into a JADU. This flexibility benefits both renters and homeowners, who can receive extra monthly rental income while also contributing to meeting state housing production goals.

ADUs also give homeowners the flexibility to share independent living areas with family members and others, allowing seniors to age in place, even if they require more care, thus helping extended families stay together while maintaining privacy. ADUs provide housing for family members, students, the elderly, in-home health care providers, individuals with disabilities, and others at below market prices within existing neighborhoods.

New policies are making ADUs even more affordable to build, in part by limiting the development impact fees that local jurisdictions may charge for ADU construction and relaxing local zoning requirements. ADUs and JADUs can often be built at a fraction of the price of a new single-family home, and homeowners may use their existing lot to create additional housing. Often the rent generated from the ADU can pay for the entire project in a matter of years.

ADUs and JADUs are a flexible form of housing that can help Californians more easily access job-rich, high-opportunity areas. By design, ADUs are more affordable to renters and can provide additional income to homeowners. Local governments can encourage the development of ADUs and improve access to jobs, education, and services for many Californians.

Summary of Recent Changes to ADU Laws

In Government Code Section 65852.150, the California Legislature found and declared that, among other things, allowing ADUs in zones that allow single-family and multifamily uses provides additional rental housing and is an essential component in addressing California's housing needs. Over the years, State ADU Law has been revised to improve its effectiveness at creating more housing units. Changes to State ADU Law effective January 1, 2021, further reduce barriers, streamline approval processes, and expand capacity to accommodate the development of ADUs and JADUs. Within this context, the California Department of Housing and Community Development (HCD) developed – and continues to update – this handbook to assist local governments, homeowners, architects, and the general public in encouraging the development of ADUs. Below is a summary of recent legislation that amended State ADU Law. Please see Attachment 1 for the complete statutory changes.

AB 345 (Chapter 343, Statutes of 2021)

AB 345 (Chapter 343, Statutes of 2021) builds upon recent changes to State ADU Law, particularly Government Code sections 65852.2 and 65852.26, to require the allowance of the separate conveyance of ADUs from the primary dwelling in certain circumstances, provided they meet certain conditions, including those listed below, found in Government Code section 65852.26, subdivisions (a)(1-5):

- The ADU or primary dwelling was built or developed by a qualified nonprofit. (Gov. Code, § 65852.26, subd. (a).)
- There is an enforceable restriction on the use of the property between the low-income buyer and nonprofit that satisfies the requirements of Section 402.1 of the Revenue and Taxation Code. (Gov. Code, § 65852.26, subd. (a)(2).)
- The entire property is subject to the affordability restrictions to assure that the ADU and primary dwelling are preserved for owner-occupied, low-income housing for 45 years and are sold or resold only to a qualified buyer. (Gov. Code, § 65852.26, subd. (a)(3)(D).)
- The property is held in a recorded tenancy in common agreement that meets certain requirements. (Gov. Code, § 65852.26, subd. (a)(3).)

AB 345 does not apply to JADUs, and local ordinances must continue to prohibit JADUs from being sold separately from the primary residence.

AB 3182 (Chapter 198, Statutes of 2020)

AB 3182 (Chapter 198, Statutes of 2020) builds upon recent changes to State ADU Law, specifically Government Code section 65852.2 and Civil Code Sections 4740 and 4741, to further address barriers to the development and use of ADUs and JADUs.

This legislation, among other changes, addresses the following:

- States that an application for the creation of an ADU or JADU shall be *deemed approved* (not just subject to ministerial approval) if the local agency has not acted on the completed application within 60 days. (Gov. Code, § 65852.2, subd. (a)(3).)
- Requires ministerial approval of an application for a building permit within a residential or mixed-use zone to create one ADU *and* one JADU per lot (not one or the other), within the proposed or existing single-family dwelling, if certain conditions are met. (Gov. Code, § 65852.2, subd. (e)(1)(A).)
- Provides for the rental or leasing of a separate interest ADU or JADU in a common interest development, notwithstanding governing documents that otherwise appear to prohibit renting or leasing of a unit, and without regard to the date of the governing documents. (Civ. Code, § 4740, subd. (a), and Civ. Code, § 4741, subd. (a).)
- Provides that not less than 25 percent of the separate interest units within a common interest development be allowed as rental or leasable units. (Civ. Code, § 4740, subd. (b).)

AB 68 (Chapter 655, Statutes of 2019), AB 881 (Chapter 659, Statutes of 2019), and SB 13 (Chapter 653, Statutes of 2019)

AB 68 (Chapter 655, Statutes of 2019), AB 881 (Chapter 659, Statutes of 2019), and SB 13 (Chapter 653, Statutes of 2019) build upon recent changes to ADU and JADU Law, specifically Government Code sections 65852.2 and 65852.22, and further address barriers to the development of ADUs and JADUs.

This legislation, among other changes, addresses the following:

- Prohibits local agencies from including in development standards for ADUs requirements on minimum lot size. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i).)
- Clarifies that areas designated by local agencies for ADUs may be based on the adequacy of water and sewer services, as well as on impacts on traffic flow and public safety. (Gov. Code, § 65852.2, subd. (a)(1)(A).)
- Eliminates all owner-occupancy requirements by local agencies for ADUs approved between January 1, 2020, and January 1, 2025. (Gov. Code, § 65852.2, subd. (a)(6).)
- Prohibits a local agency from establishing a maximum size of an ADU of less than 850 square feet, or 1,000 square feet if the ADU contains more than one bedroom and

requires approval of a permit to build an ADU of up to 800 square feet. (Gov. Code, § 65852.2, subds. (c)(2)(B) and (C).)

- Clarifies that when ADUs are created through the conversion of a garage, carport or covered parking structure, replacement of off-street parking spaces cannot be required by the local agency. (Gov. Code, § 65852.2, subd. (a)(1)(D)(xi).)
- Reduces the maximum ADU and JADU application review time from 120 days to 60 days. (Gov. Code, § 65852.2, subd. (a)(3) and (b).)
- Clarifies that "public transit" includes various means of transportation that charge set fees, run on fixed routes, and are available to the public. (Gov. Code, § 65852.2, subd. (j)(9).)
- Establishes impact fee exemptions and limitations based on the size of the ADU. ADUs up to 750 square feet are exempt from impact fees, and ADUs that are 750 square feet or larger may be charged impact fees but only such fees that are proportional in size (by square foot) to those for the primary dwelling unit. (Gov. Code, § 65852.2, subd. (f)(3).)
- Defines an "accessory structure" to mean a structure that is accessory and incidental to a dwelling on the same lot. (Gov. Code, § 65852.2, subd. (j)(2).)
- Authorizes HCD to notify the local agency if HCD finds that the local ADU ordinance is not in compliance with state law. (Gov. Code, § 65852.2, subd. (h)(2).)
- Clarifies that a local agency may identify an ADU or JADU as an adequate site to satisfy its Regional Housing Needs Allocation (RHNA). (Gov. Code, §§ 65583.1, subd. (a), and 65852.2, subd. (m).)
- Permits JADUs even where a local agency has not adopted an ordinance expressly authorizing them. (Gov. Code, § 65852.2, subds. (b) and (e).)
- Allows a permitted JADU to be constructed within the walls of the proposed or existing single-family residence and eliminates the required inclusion of an existing bedroom and an interior entry into the single-family residence. (Gov. Code, § 65852.22, subd. (a)(4-5).)
- Requires, upon application and approval, a local agency to delay enforcement against a qualifying substandard ADU for five years to allow the owner to correct the violation, so long as the violation is not a health and safety issue, as determined by the enforcement agency. (Gov. Code, § 65852.2, subd. (n); Health & Safety Code, § 17980.12).)

AB 587 (Chapter 657, Statutes of 2019), AB 670 (Chapter 178, Statutes of 2019), and AB 671 (Chapter 658, Statutes of 2019)

In addition to the legislation listed above, AB 587 (Chapter 657, Statutes of 2019), AB 670 (Chapter 178, Statutesof 2019), and AB 671 (Chapter 658, Statutes of 2019) also have an

impact on State ADU Law, particularly through Health and Safety Code Section 17980.12. These pieces of legislation, among other changes, address the following:

- AB 587 creates a narrow exemption to the prohibition for ADUs to be sold or otherwise conveyed separately from the primary dwelling by allowing deed-restricted sales to occur if the local agency adopts an ordinance. To qualify, the primary dwelling and the ADU are to be built by a qualified nonprofit corporation whose mission is to provide units to low-income households. (Gov. Code, § 65852.26).)
- AB 670 provides that covenants, conditions and restrictions that either effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU on a lot zoned for single-family residential use are void and unenforceable. (Civ. Code, § 4751).)
- AB 671 requires local agencies' housing elements to include a plan that incentivizes and promotes the creation of ADUs that can offer affordable rents for very low-, low-, or moderate-income households and requires HCD to develop a list of state grants and financial incentives in connection with the planning, construction, and operation of affordable ADUs. (Gov. Code, § 65583; Health & Safety Code, § 50504.5).)

Frequently Asked Questions

1. Legislative Intent

- **Should a local ordinance encourage the development of ADUs?**

Yes. Pursuant to Government Code section 65852.150, the California Legislature found and declared that, among other things, California is facing a severe housing crisis and ADUs are a valuable form of housing that meets the needs of family members, students, the elderly, in-home health care providers, people with disabilities, and others. Therefore, ADUs are an essential component of California's housing supply.

State ADU Law and recent changes intend to address barriers, streamline approval, and expand potential capacity for ADUs, recognizing their unique importance in addressing California's housing needs. The preparation, adoption, amendment, and implementation of local ADU ordinances must be carried out consistent with Government Code section 65852.150 and must not unduly constrain the creation of ADUs. Local governments adopting ADU ordinances should carefully weigh the adoption of zoning, development standards, and other provisions for impacts on the development of ADUs.

ADU Law is the statutory minimum requirement. Local governments may elect to go beyond this statutory minimum and further the creation of ADUs. (Gov. Code, § 65852.2, subd. (g).) Many local governments have embraced the importance of ADUs as an important part of their overall housing policies and have pursued innovative strategies.

Government Code section 65852.150:

(a) The Legislature finds and declares all of the following:

(1) Accessory dwelling units are a valuable form of housing in California.

(2) Accessory dwelling units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods.

(3) Homeowners who create accessory dwelling units benefit from added income, and an increased sense of security.

(4) Allowing accessory dwelling units in single-family or multifamily residential zones provides additional rental housing stock in California.

(5) California faces a severe housing crisis.

(6) The state is falling far short of meeting current and future housing demand with serious consequences for the state's economy, our ability to build green infill consistent with state greenhouse gas reduction goals, and the well-being of our citizens, particularly lower and middle-income earners.

(7) Accessory dwelling units offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character.

(8) Accessory dwelling units are, therefore, an essential component of California's housing supply.

(b) It is the intent of the Legislature that an accessory dwelling unit ordinance adopted by a local agency has the effect of providing for the creation of accessory dwelling units and that provisions in this ordinance relating to matters including unit size, parking, fees, and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance.

2. Zoning, Development and Other Standards

A) Zoning and Development Standards

- **Are ADUs required jurisdiction-wide?**

  No. ADUs proposed pursuant to subdivision (e) of Government Code section 65852.2 must be permitted in any residential or mixed-use zone, which should be construed broadly to mean any zone where residential uses are permitted by-right or by conditional use. For other ADUs, local governments may, by ordinance, designate areas in zones where residential uses are permitted that will also permit ADUs. However, any limits on where ADUs are permitted may only be based on the adequacy of water and sewer service and on the impacts on traffic flow and public safety.

  Further, local governments may not preclude the creation of ADUs altogether, and any limitation should be accompanied by detailed findings of fact explaining why ADU limitations are required and consistent with these factors. If a lot with a residence has been rezoned to a use that does not allow for residential uses, that lot is no longer eligible to create an ADU. (Gov. Code § 65852.2 subd. (a)(1) and (e)(1).)

  Impacts on traffic flow should consider factors like lower car ownership rates for ADUs. Finally, local governments may develop alternative procedures, standards, or special conditions with mitigations for allowing ADUs in areas with potential health and safety concerns.

- **Can ADUs exceed general plan and zoning densities?**

  Yes. An ADU is an accessory use for the purposes of calculating allowable density under the general plan and zoning and does not count toward the allowable density. For example, if a zoning district allows one unit per 7,500 square feet, then an ADU would not be counted as an additional unit. Further, local governments could elect to allow more than one ADU on a lot, and ADUs are automatically a residential use deemed consistent with the general plan and zoning. (Gov. Code, § 65852.2, subd. (a)(1)(C).)

- **Can a local government apply design and development standards?**

  Yes. With an adopted ADU ordinance in compliance with State ADU Law, a local government may apply development and design standards that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historical Resources. **However, these standards should be objective to allow ministerial review of an ADU**. (Gov. Code, § 65852.2, subds. (a)(1)(B)(i) and (a)(4).)

  ADUs created under subdivision (e) of Government Code section 65852.2 shall not be subject to design and development standards except for those that are noted in the subdivision.

ADUs that do not meet objective and ministerial development and design standards may still be permitted through an ancillary discretionary process if the applicant chooses to pursue this route. In this scenario, the applicant assumes time and monetary costs associated with a discretionary approval process. Some jurisdictions with compliant ADU ordinances apply additional processes to further the creation of ADUs that do not otherwise comply with the minimum standards necessary for ministerial review. Importantly, these processes are intended to provide additional opportunities to create ADUs that would not otherwise be permitted, and a discretionary process may not be used to review ADUs that are fully compliant with State ADU Law.

- **Are ADUs permitted ministerially?**

  Yes. ADUs subject to State ADU Law must be considered, approved, and permitted ministerially, without discretionary action. Development and other decision-making standards must be sufficiently objective to allow for ministerial review. Examples include numeric and fixed standards such as heights or setbacks, or design standards such as colors or materials. Subjective standards require judgement and can be interpreted in multiple ways, such as privacy, compatibility with neighboring properties, or promoting harmony and balance in the community; subjective standards must not be imposed on ADU development. Further, ADUs must not be subject to hearing requirements or any ordinance regulating the issuance of variances or special use permits and must be considered ministerially. (Gov. Code § 65852.2, subds. (a)(3) and (a)(4).)

- **Is there a streamlined permitting process for ADU and JADU applications?**

  Yes. Whether or not a local agency has adopted an ordinance, applications to create an ADU or JADU shall be considered and approved ministerially within 60 days from the date the local agency receives a completed application. Although the allowed 60-day review period may be interrupted due to an applicant addressing comments generated by a local agency during the permitting process, additional 60-day time periods may not be required by the local agency for minor revisions to the application. (Gov. Code § 65852.2, subds. (a)(3) and (b).)

- **Can I create an ADU if I have multiple detached dwellings on a lot?**

  Yes. A lot where there are currently multiple detached single-family dwellings is eligible for creation of one ADU per lot by converting space within the proposed or existing space of a single-family dwelling or existing structure and by building a new detached ADU subject to certain development standards. (Gov. Code § 65852.2, subds. (e)(1)(A) and (B).)

- **What is considered a multifamily dwelling under ADU Law?**

  For the purposes of State ADU Law, a structure with two or more attached dwellings on

a single lot is considered a multifamily dwelling structure. Multiple detached single-unit dwellings on the same lot are not considered multifamily dwellings for the purposes of State ADU Law.

- **Can I build an ADU in a historic district or if the primary residence is subject to historic preservation?**

  Yes. ADUs are allowed within a historic district and on lots where the primary residence is subject to historic preservation. State ADU Law allows for a local agency to impose standards that prevent adverse impacts on any real property that is listed in the California Register of Historical Resources. However, these standards do not apply to ADUs proposed pursuant to Government Code section 65852.2, subdivision (e).

  As with non-historic resources, a jurisdiction may impose objective and ministerial standards that are sufficiently objective to be reviewed ministerially and do not unduly burden the creation of ADUs. Jurisdictions are encouraged to incorporate these standards into their ordinances and to submit these standards along with their ordinances to HCD. (Gov. Code, § 65852.2, subds. (a)(1)(B)(i) and (a)(5).)

B) Size Requirements

- **Can minimum lot size requirements be imposed on ADUs? What about lot coverage, floor area ratio, or open space requirements?**

  No. While local governments may impose certain development standards on ADUs, these standards shall not include minimum lot size requirements. Further, lot coverage requirements cannot preclude the creation of a statewide exemption ADU (see below). If lot coverage requirements do not allow such an ADU, an automatic exception or waiver should be given to appropriate development standards such as lot coverage, floor area, or open space requirements. Local governments may continue to enforce building and health and safety standards and may consider design, landscape, and other standards to facilitate compatibility. (Gov. Code, § 65852.2, subds. (c)(2)(C).)

What is a statewide exemption ADU?

A statewide exemption ADU, found in Government Code section 65852, subdivision (e), is an ADU of up to 800 square feet, 16 feet in height, as potentially limited by a local agency, and with four-foot side and rear yard setbacks. State ADU Law requires that no lot coverage, floor area ratio, open space, or minimum lot size will preclude the construction of a statewide exemption ADU. Further, State ADU Law allows the construction of a detached new construction statewide exemption ADU to be combined on the same lot with a JADU in a single-family residential zone. In addition, ADUs are allowed in any residential or mixed uses regardless of zoning and development standards imposed in an ordinance. See more discussion below.

- **Can minimum and maximum unit sizes be established for ADUs?**

  Yes. A local government may, by ordinance, establish minimum and maximum unit size requirements for both attached and detached ADUs; however, maximum unit size requirements must allow an ADU of at least 850 square feet, or 1,000 square feet for ADUs with more than one bedroom. For local agencies without an ADU ordinance, maximum unit sizes are 1,200 square feet for a new detached ADU and up to 50 percent of the floor area of the existing primary dwelling for an attached ADU (at least 800 square feet). Finally, the local agency must not establish by ordinance a minimum square footage requirement that prohibits the development of an efficiency unit as defined in Health and Safety Code section 17958.1.

  The conversion of an existing accessory structure or a portion of the existing primary residence to an ADU is not subject to unit size requirements. For example, an existing 3,000 square-foot barn converted to an ADU would not be subject to the local unit size requirements, regardless of whether a local government has an adopted ADU ordinance. Should an applicant want to expand an accessory structure to create an ADU beyond 150 square feet, this ADU would be subject to the size maximums outlined in State ADU Law or in the local agency's adopted ordinance.

- **Can a percentage of the primary dwelling be used to limit the maximum size of an ADU?**

  Yes. Local agencies may utilize a percentage (e.g., 50 percent) of the primary dwelling as a maximum unitsize for attached ADUs, but only if it does not restrict an ADU's size to less than the standard of at least 850 square feet (or at least 1,000 square feet for ADUs with more than one bedroom). Local agencies shall not, by ordinance, establish any other minimum or maximum unit sizes, including limits based on a percentage of the area of the primary dwelling, that precludes an 800 square-foot ADU. (Gov. Code, § 65852.2, subd. (c)(2)(C).) Local agencies utilizing percentages of the primary dwelling as maximum unit sizes can consider multi-pronged standards to help navigate these requirements (e.g., shall not exceed 50 percent of the dwelling or 1,000 square feet, whichever is greater).

- **Can maximum unit sizes exceed 1,200 square feet for ADUs?**

  Yes. Maximum unit sizes can exceed 1,200 square feet for ADUs through the adoption of a local ADU ordinance. State ADU Law does not limit the authority of local agencies to adopt *less* restrictive requirements for the creation of ADUs. (Gov. Code, § 65852.2, subd. (g).)

C) Parking Requirements

- **Are certain ADUs exempt from parking requirements?**

  Yes. A local agency shall not impose ADU parking standards for any of the following ADUs, pursuant to Government Code section 65852.2, subdivisions (d)(1-5) and (j)(10):

  (1) ADUs located within one-half mile walking distance of public transit.
  (2) ADUs located within an architecturally and historically significant historic district.
  (3) ADUs that are part of the proposed or existing primary residence or an accessory structure.
  (4) When on-street parking permits are required but not offered to the occupant of the ADU.
  (5) When there is a car share vehicle located within one block of the ADU.

  Note: For the purposes of State ADU Law, a jurisdiction may use the designated areas where a car share vehicle may be accessed. Public transit is any location where an individual may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the general public. Walking distance is defined as the pedestrian shed to reach public transit. Additional parking requirements to avoid impacts to public access may be required in the Coastal Zone.

- **Can ADU parking requirements exceed one space per unit or bedroom?**

  No. Parking requirements for ADUs shall not exceed one parking space per unit or bedroom, whichever isless. These spaces may be provided as tandem parking on a driveway. Guest parking spaces shall not berequired for ADUs under any circumstances. For certain ADUs, pursuant to Government Code section 65852.2, subdivisions (d)(1-5) and (j)(10), a local agency may not impose any ADU parking standards (see above question).

  What is Tandem Parking?

  Tandem parking means two or more automobiles that are parked on a driveway or in any other location ona lot, lined up behind one another. (Gov. Code, § 65852.2, subds. (a)(1)(D)(x)(I) and (j)(11).)

  Local agencies may choose to eliminate or reduce parking requirements for ADUs, such as requiring zero or half a parking space per each ADU, to remove barriers to ADU construction and to facilitate development.

- **Is flexibility for siting ADU parking recommended?**

  Yes. Local agencies should be flexible when siting parking for ADUs. Off-street parking spaces for the ADU shall be permitted in setback areas in locations determined by the local agency or through tandem parking unless specific findings are made. Specific findings must be based on specific site or regional topographical or fire and life safety conditions.

  When a garage, carport, or covered parking structure is demolished in conjunction with the construction ofan ADU, or converted to an ADU, the local agency shall not require that those off-street parking spaces for the primary unit be replaced. (Gov. Code, § 65852.2, subd. (a)(1)(D)(xi).)

D) Setbacks

- **Can setbacks be required for ADUs?**

  Yes. A local agency may impose development standards, such as setbacks, for the creation of ADUs. However, setbacks should not unduly constrain the creation of ADUs and cannot be required for ADUs proposed pursuant to subdivision (e). Further, a setback of no more than four feet from the side and rear lot lines shall be required for an attached or detached ADU. (Gov. Code, § 65852.2, subd. (a)(1)(D)(vii).) Additional setback requirements may be required in the Coastal Zone if required by a local Coastal Program. Setback requirements must also comply with any recorded utility easements or other previously recorded setback restrictions.

  No setback shall be required for an ADU created within an existing living area or accessory structure or an ADU created in a new structure in the same location as an existing structure, while not exceeding the existing dimensions, including height. (Gov. Code, § 65852.2, subd. (a)(1)(D)(vii).)

  A local agency may also allow the expansion of a detached structure being converted into an ADU when the existing structure does not have four-foot rear and side setbacks. A local agency may also allow the expansion area of a detached structure being converted into an ADU to have no setbacks, or setbacks ofless than four feet, if the existing structure has no setbacks, or has setbacks of less than four feet, respectively. A local agency shall not require setbacks of more than four feet for the expanded area of a detached structure being converted into an ADU.

  A local agency may still apply front yard setbacks for ADUs, but front yard setbacks cannot preclude an ADU of at least 800 square feet and must not unduly constrain the creation of all types of ADUs. (Gov. Code, §65852.2, subd. (c) and (e).)

- **Is there a distance requirement between an ADU and other structures on the lot?**

  State ADU Law does not address the distance between an ADU and other structures on a lot. A local agency may impose development standards for the creation of ADUs, and ADUs shall comply with local building codes. However, development standards should not unduly constrain the creation of ADUs, cannot preclude a statewide exemption ADU (an ADU of up to 800 square feet, 16 feet in height, as potentially limited by a local agency, and with four-foot side and rear yard setbacks), and should not unduly constrain the creation of all types of ADUs, where feasible. (Gov. Code, § 65852.2, subd. (c).)

E) Height Requirements

- **Is there a limit on the height or number of stories of an ADU?**

  There is no height limit contained in State ADU Law, but local agencies may impose height limits provided that the limit is no less than 16 feet. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i).) For a local agency to impose a height limit, it must do so through the adoption of a compliant ADU ordinance.

F) Bedrooms

- **Can a limit on the number of bedrooms in an ADU be imposed?**

  A limit on the number of bedrooms could be construed as a discriminatory practice towards protected classes, such as familial status, and would be considered a constraint on the development of ADUs. Building code standards for minimum bedroom size still apply.

G) Impact Fees

- **Can impact fees be charged for an ADU less than 750 square feet?**

  No. An ADU is exempt from incurring impact fees from local agencies, special districts, and water corporations if less than 750 square feet. If an ADU is 750 square feet or larger, impact fees shall be charged proportionately in relation to the square footage of the ADU to the square footage of the primary dwelling unit.

  What is "Proportionately"?

  "Proportionately" is some amount in relation to a total amount, in this case, an impact fee for a single-family dwelling. For example, a 2,000 square-foot primary dwelling with a proposed 1,000 square-foot ADU could result in 50 percent of the impact fee that would be charged for a new primary dwelling on the same site. In all cases, the impact fee for the ADU must be less than the primary dwelling. Otherwise, the fee is not calculated proportionately. When utilizing proportions, careful consideration should be given to the impacts on costs, feasibility, and, ultimately, the creation of ADUs. In the case of the example above,anything greater than 50 percent of the primary dwelling could be considered a constraint on the development of ADUs. A proportional fee shall not be greater than 100 percent, as when a proposed ADU exceeds the size of the existing primary dwelling.

  For purposes of calculating the fees for an ADU on a lot with a multifamily dwelling, the proportionality shall be based on the average square footage of the units within that multifamily dwelling structure. For ADUs converting existing space with a 150 square-foot expansion, a total ADU square footage over 750square feet could trigger the proportionate fee requirement. (Gov. Code, § 65852.2, subd. (f)(3)(A).)

- **Can local agencies, special districts, or water corporations waive impact fees?**

  Yes. Agencies can waive impact and any other fees for ADUs. Also, local agencies may use fee deferrals for applicants.

- **Can school districts charge impact fees?**

  Yes. School districts are authorized to, but do not have to, levy impact fees for ADUs greater than 500 square feet pursuant to Section 17620 of the Education Code. ADUs less than 500 square feet are not subject to school impact fees. Local agencies are encouraged to coordinate with school districts to carefully weigh the importance of promoting ADUs, ensuring appropriate nexus studies and appropriate fees to facilitate construction or reconstruction of adequate school facilities.

- **What types of fees are considered impact fees?**

  Impact fees charged for the construction of ADUs must be determined in accordance with the Mitigation Fee Act and generally include any monetary exaction that is charged by a local agency in connection with the approval of an ADU, including impact fees, for the purpose of defraying all or a portion of the cost of public facilities relating to the ADU. A local agency, special district, or water corporation shall not consider ADUs as a new residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer services. However, these provisions do not apply to ADUs that are constructed concurrently with a new single-family home. (Gov. Code, §§ 65852.2, subd. (f), and 66000.)

- **Can I still be charged water and sewer connection fees?**

  ADUs converted from existing space and JADUs shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, unless constructed with a new single-family dwelling. The connection fee or capacity charge shall be proportionate to the burden of the proposed ADU, based on its square footage or plumbing fixtures as compared to the primary dwelling. ADU Law does not cover monthly charge fees. (Gov. Code, § 65852.2, subd. (f)(2).)

H) Ministerially Approved ADUs and Junior ADUs (JADUs) Not Subject to Local Standards

- **Are local agencies required to comply with Government Code section 65852.2, subdivision (e)?**

  Yes. All local agencies must comply with subdivision (e). This subdivision requires the ministerial approval of ADUs within a residential or mixed-use zone. The subdivision creates four categories of ADUs that should not be subject to other specified areas of State ADU Law, most notably zoning and development standards. For example, ADUs under this subdivision should not have to comply with lot coverage, setbacks, heights, and unit sizes. However, ADUs under this subdivision must meet the building code and health and safety requirements. The four categories of ADUs under subdivision (e)(1) are:

  (A) One ADU and one JADU are permitted per lot within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure that meets specified requirements such as exterior access and setbacks for fire and safety.

  (B) One detached new construction ADU that does not exceed four-foot side and rear yard setbacks. This ADU may be combined on the same lot with a JADU, and may be required to meet a maximum unit size requirement of 800 square feet and a height limitation of 16 feet.

(C) Multiple ADUs within the portions of multifamily structures that are not used as livable space. Local agencies must allow at least one of these types of ADUs and up to 25 percent of the existing multifamily structures.

(D) Up to two detached ADUs on a lot that has existing multifamily dwellings that are subject to height limits of 16 feet and four-foot rear and side yard setbacks.

The above four categories may be combined. For example, local governments must allow (A) and (B) together or (C) and (D) together.

The most common ADU that can be created under subdivision (e) is a conversion of proposed or existing space of a single-family dwelling or accessory structure into an ADU, without any prescribed size limitations, height, setback, lot coverage, architectural review, landscape, or other development standards.This would enable the conversion of an accessory structure, such as a 2,000 square-foot garage, to an ADU without any additional requirements other than compliance with building standards for dwellings.

These types of ADUs are also eligible for a 150 square-foot expansion (see discussion below).

ADUs created under subdivision (e) shall not be required to provide parking if the ADU qualifies for one of the five exemptions listed under subdivision (d). Moreover, these units shall not, as a condition for ministerial approval, be required to correct any existing or created nonconformity. Subdivision (e) ADUs shall be required to be rented for terms longer than 30 days and only require fire sprinklers if fire sprinklers are required for the primary residence. These ADUs shall not be counted as units when calculating density for the general plan and are not subject to owner occupancy.

- **How many ADUs are allowed on a multifamily site under subdivision (e)?**

Under subdivision (e), an applicant may apply to build up to two detached ADUs and at least one interior ADU up to 25 percent of the number of units in the proposed or existing multifamily dwelling. All interior ADUs, however, must be converted from non-livable space, which is not a requirement under subdivision (a) for ADUs associated with single-family sites. It should also be noted that if there is no existing non-livable space within a multifamily structure, an applicant would not be able to build an interior ADU under subdivision (e). Attached ADUs are also prohibited under this subdivision.

By contrast, under subdivision (a), an applicant may choose to build one attached, detached, or conversion ADU on a site with a proposed or existing multifamily dwelling, with local objective development standards applied in the same manner as they would be applied to an ADU proposed on a single-family site under subdivision (a). JADUs can only be constructed on a site with a proposed or existing single-family dwelling; however, a JADU cannot be constructed on a multifamily site concurrently with an ADU under subdivision (a).

- **Can I convert my accessory structure into an ADU?**

  Yes. The conversion of garages, sheds, barns, and other existing accessory structures, either attached or detached from the primary dwelling, into ADUs is permitted and promoted through State ADU Law.

  These conversions of accessory structures are not subject to any additional development standards, such as unit size, height, and lot coverage requirements, and shall be from existing space that can be made safe under building and safety codes. A local agency should not set limits based on when the structure was created, and the structure must meet standards for health and safety.

  Additionally, the two ADUs allowed on each multifamily site under subdivision (e) may be converted from existing detached structures on the site. Existing, detached accessory structures on a lot with an existing multifamily dwelling that are converted to ADUs cannot be required to be modified to correct for a non-conforming use. Both structures must be accessory structures detached from the primary residence, and because they are conversions of existing structures, these ADUs would not have to comply with the four-foot setback requirements under subdivision (e) if the existing structures are closer than four feet to the property line. This would also mean that the 16-foot height limitation would not apply if the existing structure were taller than 16 feet. Conversion ADUs in this scenario would not be subject to any square footage restrictions as long as they are built within the footprint of the previous structure.

- **Can an ADU created by converting existing space be expanded?**

  Yes. An ADU created within the existing or proposed space of a single-family dwelling or accessory structure can be expanded beyond the physical dimensions of the structure. Per State ADU Law, only an ADU created within an existing accessory structure may be expanded up to 150 square feet without application of local development standards, but this expansion shall be limited to accommodating ingress and egress. An ADU created within the space of an existing or proposed single-family dwelling is subject to local development standards. An example of where this expansion could be applicable is for the creation of a staircase to reach a second story ADU. These types of ADUs shall conform to setbacks sufficient for fire and safety.

  A local agency may allow for an expansion beyond 150 square feet, though the ADU would have to comply with the size maximums as per State ADU Law or per a local agency's adopted ordinance. (Gov. Code, § 65852.2, subd. (e)(1)(i).)

  As a JADU is limited to being created within the walls of a primary residence and not an accessory structure, this expansion of up to 150 square feet does not pertain to JADUs.

- **Can an ADU be constructed in the non-livable spaces of the non-residential portions of a mixed-use development?**

  No. The non-livable space used to create an ADU or ADUs under Government Code section 65852.2, subdivision (e)(1)(C), should be limited to the residential areas of a mixed-use development, and not the areas used for commercial or other activities. The parking and storage areas for these non-residential uses would also be excluded from potential ADU development.

I) Nonconforming Zoning Standards

- **Does the creation of an ADU require the applicant to carry out public improvements?**

  No physical improvements shall be required for the creation or conversion of an ADU. Any requirement to carry out public improvements is beyond what is required for the creation of an ADU, as per State ADU Law. For example, an applicant shall not be required to improve sidewalks or carry out street or access improvements to create an ADU. Additionally, as a condition for ministerial approval of an ADU, anapplicant shall not be required to correct nonconforming zoning conditions. (Gov. Code, § 65852.2, subd. (e)(2).)

J) Renter- and Owner-Occupancy

- **Are rental terms allowed?**

  Yes. Local agencies may require that the property be used for rentals of terms longer than 30 days. ADUs permitted ministerially, under subdivision (e), shall be rented for terms longer than 30 days. (Gov. Code, §65852.2, subds. (a)(6) and (e)(4).)

- **Are there any owner-occupancy requirements for ADUs?**

  No. Prior to recent legislation, ADU laws allowed local agencies to elect whether the primary dwelling orADU was required to be occupied by an owner. The updates to State ADU Law removed the owner-occupancy requirement for newly created ADUs effective January 1, 2020. The new owner-occupancy exclusion is set to expire on December 31, 2024; however, local agencies may not retroactively require owner-occupancy for ADUs permitted between January 1, 2020, and December 31, 2024.

  However, should a property have both an ADU and JADU, JADU law requires owner-occupancy of either the newly created JADU or the single-family residence. Under this specific circumstance, a lot with an ADU would be subject to owner-occupancy requirements. (Gov. Code, § 65852.22, subd. (a)(2).)

K) Fire Sprinkler Requirements

- **Can fire sprinklers be required for ADUs?**

  Installation of fire sprinklers may not be required in ADUs (attached, detached, or conversion) where sprinklers were not required by building codes for the existing primary residence. For example, a detached single-family home designed and constructed decades ago would not have been required to have fire sprinklers installed under the applicable building code at the time. However, if the same primary dwelling recently underwent significant alteration and is now required to have fire sprinklers, any ADU created after that alteration must be provided with fire sprinklers. (Gov. Code, § 65852.2, subds. (a)(1)(D)(xii) and (e)(3).)

  Please note, for ADUs created on lots with multifamily residential structures, the entire residential structure shall serve as the "primary residence" for the purposes of this analysis. Therefore, if the multifamily structure is served by fire sprinklers, the ADU can be required to install fire sprinklers.

  For additional guidance on ADUs and fire sprinkler system requirements, please consult the Office of the State Fire Marshal.

L) Solar System Requirements

- **Are solar systems required for newly constructed ADUs?**

  Yes, newly constructed ADUs are subject to the California Energy Code requirement (excluding manufactured homes) to provide solar systems if the unit(s) is a newly constructed, non-manufactured, detached ADU (though some exceptions apply). Per the California Energy Commission (CEC), the solar systems can be installed on the ADU or on the primary dwelling unit. ADUs that are constructed within existing space, or as an addition to existing homes, including detached additions where an existing detached building is converted from non-residential to residential space, are not subject to the Energy Code requirement to provide solar systems.

  Please refer to the CEC on this matter. For more information, see the CEC's website at www.energy.ca.gov. You may email your questions to title24@energy.ca.gov, or contact the Energy Standards Hotline at 800-772-3300. CEC memos can also be found on HCD's website at https://www.hcd.ca.gov/policy-research/AccessoryDwellingUnits.shtml.

  See HCD's Information Bulletin 2020-10 for information on the applicability of California solar requirements to manufactured housing.

3. JADUs – Government Code Section 65852.22

- **What is a JADU?**

  A “junior accessory dwelling unit” or JADU is a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A JADU may include separate sanitation facilities or may share sanitation facilities with the existing structure. (Gov. Code, § 65852.22, subd. (h)(1).)

- **Are two JADUs allowed on a lot?**

  No. A JADU may be created on a lot zoned for single-family residences with one primary dwelling. The JADU may be created within the walls of the proposed or existing single-family residence, including attached garages, as attached garages are considered within the walls of the existing single-family residence. Please note that JADUs created in the attached garage are not subject to the same parking protections as ADUs and could be required by the local agency to provide replacement parking.

  JADUs are limited to one per residential lot with a single-family residence. Lots with multiple detached single-family dwellings are not eligible to have JADUs. (Gov. Code, § 65852.22, subd. (a)(1).)

- **Are JADUs required to have an interior connection to the primary dwelling?**

  No. Although JADUs are required to be within the walls of the primary dwelling, they are not required to have an interior connection to the primary dwelling. That said, JADUs may share a significant interior connection to the primary dwelling, as they are allowed to share bathroom facilities with the primary dwelling.

- **Are JADUs allowed in detached accessory structures?**

  No, JADUs are not allowed in accessory structures. The creation of a JADU must be within the single- family residence. As noted above, attached garages are eligible for JADU creation. (Gov. Code, § 65852.22, subds. (a)(1) and (a)(4).)

- **Are JADUs allowed to be increased up to 150 square feet when created within an existingstructure?**

  No. Only ADUs are allowed to add up to 150 square feet “beyond the physical dimensions of the existing accessory structure” to provide for ingress. (Gov. Code, § 65852.2, subd. (e)(1)(A)(i).)

  This provision extends only to ADUs and excludes JADUs. A JADU is required to be created within the single-family residence.

- **Are there any owner-occupancy requirements for JADUs?**

  Yes. The owner must reside in either the remaining portion of the primary residence or in the newly created JADU. (Gov. Code, § 65852.22, subd. (a)(2).)

4. Manufactured Homes

- **Are manufactured homes considered to be an ADU?**

  Yes. An ADU is any residential dwelling unit with independent living facilities and permanent provisions for living,sleeping, eating, cooking and sanitation. An ADU includes a manufactured home. (Health & Saf. Code, § 18007.)

> Health and Safety Code section 18007, subdivision (a): **"Manufactured home,"** for the purposesof this part, means a structure that was constructed on or after June 15, 1976, is transportable in one or more sections, is eight body feet or more in width, or 40 body feet or more in length, in the traveling mode, or, when erected on site, is 320 or more square feet, is built on a permanent chassis and designed to be used as a single-family dwelling with or without a foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. "Manufactured home" includes any structure that meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification and complies with the standards established under the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C., Sec. 5401, and following).

5. Regional Housing Needs Allocation (RHNA) and the Housing Element

- **Do ADUs and JADUs count toward a local agency's RHNA?**

  Yes. Pursuant to Government Code section 65852.2 subdivision (m), and section 65583.1, ADUs and JADUs may be utilized towards the RHNA and Housing Element Annual Progress Report (APR) pursuant to Government Code section 65400. To credit a unit toward the RHNA, HCD and the Department of Finance (DOF) utilize the census definition of a housing unit. Generally, an ADU, and a JADU with shared sanitation facilities, and any other unit that meets the census definition and is reported to DOF as part of the DOF annual City and County Housing Unit Change Survey can be credited toward the RHNA based on the appropriate income level. The housing element or APR must include a reasonable methodology to demonstrate the level of affordability. Local governments can track actual or anticipated affordability to assure ADUs and JADUs are

counted towards the appropriate income category. For example, some local governments request and track information such as anticipated affordability as part of the building permit or other local applications. For more information, please contact HousingElements@hcd.ca.gov.

- **What analysis is required to count ADUs toward the RHNA in the housing element?**

  To count ADUs towards the RHNA in the housing element, local agencies must generally use a three-part approach: (1) development trends, (2) anticipated affordability, and (3) resources and incentives. Development trends must consider ADUs permitted in the prior planning period and may also consider more recent trends. Anticipated affordability can use a variety of methods to estimate the affordability by income group. Common approaches include rent surveys of ADUs, using rent surveys and square footage assumptions and data available through the APR pursuant to Government Code section 65400. Resources and incentives include policies and programs to encourage ADUs, such as prototype plans, fee waivers, expedited procedures, and affordability monitoring programs.

- **Are ADUs required to be addressed in the housing element?**

  Yes. The housing element must include a description of zoning available to permit ADUs, including development standards and analysis of potential constraints on the development of ADUs. The element must include programs as appropriate to address identified constraints. In addition, housing elements must include a plan that incentivizes and promotes the creation of ADUs that can offer affordable rents for very low-, low-, or moderate-income households and requires HCD to develop a list of state grants and financial incentives in connection with the planning, construction, and operation of affordable ADUs. (Gov. Code, § 65583 and Health & Saf. Code, § 50504.5.) This list is available on HCD's ADU webpage.

6. Homeowners Associations

- **Can my local Homeowners Association (HOA) prohibit the construction of an ADU orJADU?**

  No. Assembly Bill 670 (2019) and AB 3182 (2020) amended Section 4751, 4740, and 4741 of the Civil Code to preclude common interest developments from prohibiting or unreasonably restricting the construction or use, including the renting or leasing of, an ADU on a lot zoned for single-family residential use. Covenants, conditions and restrictions (CC&Rs) that either effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU on such lots are void and unenforceable or may be liable for actual damages and payment of a civil penalty. Applicants who encounter issues with creating ADUs or JADUs within CC&Rs are encouraged to reach out to HCD for additional guidance. Refer to Section 4100 of the Civil Code for the meaning of a common interest development.

7. ADU Ordinances and Local Agencies

- **Are ADU ordinances existing prior to new 2020 laws null and void?**

  Maybe. ADU ordinances existing prior to the new 2020 laws, as well as newly adopted ordinances, are null and void when they conflict with State ADU Law. Subdivision (a)(4) of Government Code section 65852.2 states that an ordinance that fails to meet the requirements of subdivision (a) shall be null and void, and the local agency shall apply the state standards until a compliant ordinance is adopted. See the question on Enforcement below for more detail.

- **Do local agencies have to adopt an ADU ordinance?**

  No. Local governments may choose not to adopt an ADU ordinance. Should a local government choose not to adopt an ADU ordinance, any proposed ADU development would be subject only to standards set in State ADU Law. If a local agency adopts an ADU ordinance, it may impose zoning, development, design, and other standards in compliance with State ADU Law.

- **Is a local government required to send an ADU ordinance to HCD?**

  Yes. A local government, upon adoption of an ADU ordinance, must submit a copy of the adopted ordinance to HCD within 60 days after adoption. After the adoption of an ordinance, HCD may review and submit written findings to the local agency as to whether the ordinance complies with State ADU Law. (Gov. Code, § 65852.2, subd. (h)(1).)

  Local governments may also submit a draft ADU ordinance for preliminary review by HCD. HCD recommends that local agencies do so, as this provides local agencies the opportunity to receive feedback on their ordinance and helps to ensure compliance with State ADU Law prior to adoption.

- **Are charter cities and counties subject to the new ADU laws?**

  Yes. State ADU Law applies to a local agency, which is defined as a city, county, or city and county, whether general law or chartered. (Gov. Code, § 65852.2, subd. (j)(5)).

  Further, pursuant to Chapter 659, Statutes of 2019 (AB 881), the Legislature found and declared State ADU Law addresses *"…a matter of statewide concern rather than a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution*" and concluded that State ADU Law applies to all cities, including charter cities.

- **Do the new ADU laws apply to jurisdictions located in the California Coastal Zone?**

  Yes. ADU laws apply to jurisdictions in the California Coastal Zone, but do not

necessarily alter or lessen the effect or application of Coastal Act resource protection policies. (Gov. Code, § 65852.22, subd. (l).) Coastal localities should seek to harmonize the goals of protecting coastal resources and addressing housing needs of Californians. For example, where appropriate, localities should amend Local Coastal Programs for California Coastal Commission review to comply with the California Coastal Act and new ADU laws. For more information, see the California Coastal Commission 2020 Memo and reach out to thelocality's local Coastal Commission district office.

- **Do the new ADU laws apply to areas governed by the Tahoe Regional Planning Agency (TRPA)?**

  Possibly. The TRPA was formed through a bistate compact between California and Nevada. Under the compact, TRPA has authority to adopt ordinances, rules, and regulations, and those ordinances, rules, and regulations are considered federal law. Under this authority, TRPA has adopted certain restrictions that effectively limit lot coverage on developed land. State ADU Law may conflict to a degree with the TRPA standards, and to the extent that it does, the TRPA law likely preempts or overrides State ADU Law.

8. Enforcement

- **Does HCD have enforcement authority over ADU ordinances?**

  Yes. Pursuant to Government Code section 65852.2, subdivision (h), local agencies are required to submit a copy of newly adopted ADU ordinances within 60 days of adoption. HCD may thereafter provide written findings to the local agency as to whether the ordinance complies with State ADU Law. If HCD finds that the local agency's ADU ordinance does not comply with State ADU Law, HCD must provide a reasonable time, no longer than 30 days, for the local agency to respond. The local agency shall either amend its ordinance in accordance with HCD's written findings or adopt the ordinance without changes but include findings in its resolution explaining why the ordinance complies with State ADU Law despite HCD's findings. If the local agency does not amend its ordinance in accordance with HCD's findings or adopt a resolution explaining why the ordinance is compliant, HCD shall notify the local agency that it is in violation of State ADU Law. HCD may also notify the Attorney General of the local agency's violation. While an ordinance is non-compliant, the local agency shall apply state standards.

  In addition, HCD may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify State ADU Law.

9. Senate Bill (SB) 9 (2021)

- **Does SB 9 have any impact on ADUs?**

  SB 9 (Gov. Code Sections 66452.6, 65852.21 and 66411.7) contains some overlaps with State ADU Law, but only on a relatively small number of topics. Please note that although HCD does not administer or enforce SB 9, violations of SB 9 may concurrently violate other housing laws that HCD does enforce, including, but not limited to, State ADU Law and State Housing Element Law. As local jurisdictions implement SB 9, including adopting local

ordinances, it is important to keep these and other housing laws in mind. For details regarding SB 9, please see HCD's SB 9 Factsheet.

10. Funding

- **Is there financial assistance or funding available for ADUs?**
  Effective September 20, 2021, the California Housing Finance Agency's (CalHFA) ADU Grant Program provides up to $40,000 in assistance to reimburse qualifying homeowners for predevelopment costs necessary to build and occupy an ADU or JADU on a lot with a single-family dwelling unit. The ADU Grant Program is intended to create more housing units in California by providing a grant to reimburse qualifying homeowners for predevelopment costs. Predevelopment costs include, but are not limited to, architectural designs, permits, soil tests, impact fees, property surveys, and energy reports. For additional information or questions, please see CalHFA's ADU Grant Program at https://www.calhfa.ca.gov/adu or contact the CalHFA Single Family Lending Division at (916) 326-8033 or SFLending@calhfa.ca.gov.

Resources

Attachment 1: Statutory Changes (Strikeout/Italics and Underline)

GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4, ARTICLE 2

Combined changes from AB 345, AB 3182, AB 881, AB 68, and SB 13 (Changes noted in strikeout, underline/italics)

Effective January 1, 2022, Section 65852.2 of the Government Code is amended to read:

65852.2.

(a)(1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned toallow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:

(A)Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.

(B)(i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback,landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any realproperty that is listed in the California Register of ~~Historic~~ *Historical* Resources. These standards shall not include requirements on minimum lot size.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessorydwelling unit located within its jurisdiction.

(C)Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessorydwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D)Require the accessory dwelling units to comply with all of the following:

(i) ~~The~~ *Except as provided in Section 65852.26, the* accessory dwelling unit may be rented separate from the primary residence, but may not be sold orotherwise conveyed separate from the primary residence.

(ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existingdwelling.

(iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling,including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

(iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall notexceed 50 percent of the existing primary dwelling.

(v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in thesame location and to the same dimensions as an existing structure that is

converted to an accessory dwelling unitor to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasiblebased upon specific site or regional topographical or fire and life safety conditions.

(III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of anaccessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.

(xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primaryresidence.

(1) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limitresidential growth.

(2) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall act on theapplication to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date thelocal agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. *If the local agency hasnot acted upon the completed application within 60 days, the application shall be deemed approved.* A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(3) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an

ordinance that complies with this section.
(4) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.
(5) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed, including any owner-occupant requirement, except that a local agency may require that the property be used for rentals of terms longer than 30 days.
(6) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.
(7) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.
(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.
(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.
(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:
(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.
(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:
(i) 850 square feet.
(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.
(C) Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local

development standards.
(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:
(1) The accessory dwelling unit is located within one-half mile walking distance of public transit.
(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.
(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.
(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
(5) When there is a car share vehicle located within one block of the accessory dwelling unit.
(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:
(A) One accessory dwelling unit ~~or~~ *and* one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:
(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.
(ii) The space has exterior access from the proposed or existing single-family dwelling.
(iii) The side and rear setbacks are sufficient for fire and safety.
(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.
(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:
(i) A total floor area limitation of not more than 800 square feet.
(ii) A height limitation of 16 feet.
(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.
(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.
(D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.
(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.
(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.
(4) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.
(5) A local agency may require, as part of the application for a permit to create an accessory

dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, ifthe percolation test has been recertified, within the last 10 years.
(6)Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.
(f)(1) Fees charged for the construction of accessory dwelling units shall be determined in accordance withChapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).
(2)An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to bea new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.
(3)(A) A local agency, special district, or water corporation shall not impose any impact fee upon the developmentof an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.
(B) For purposes of this paragraph, “impact fee” has the same meaning as the term “fee” is defined in subdivision
(b) of Section 66000, except that it also includes fees specified in Section 66477. “Impact fee” does not include anyconnection fee or capacity charge charged by a local agency, special district, or water corporation.
(4)For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a localagency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee orcapacity charge, unless the accessory dwelling unit was constructed with a new single-family home.
(5)For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwellingunit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.
(g)This section does not limit the authority of local agencies to adopt less restrictive requirements for the creationof an accessory dwelling unit.
(h)(1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.
(2)(A) If the department finds that the local agency’s ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other

action authorized by this section.
(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shalldo one of the following:
(i) Amend the ordinance to comply with this section.
(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despitethe findings of the department.
(3)(A) If the local agency does not amend its ordinance in response to the department's findings or does not adopta resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.
(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017,and January 1, 2020.
(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3of Title 2.
(j) As used in this section, the following terms mean:
(1)"Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes thefollowing:
(A)An efficiency unit.
(B)A manufactured home, as defined in Section 18007 of the Health and Safety Code.
(2)"Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.
(3)"Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.
(4)"Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does notinclude a garage or any accessory structure.
(5)"Local agency" means a city, county, or city and county, whether general law or chartered.
(6)"Nonconforming zoning condition" means a physical improvement on a property that does not conform withcurrent zoning standards.
(7)"Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entranceof the accessory dwelling unit.
(8)"Proposed dwelling" means a dwelling that is the subject of a permit application and that meets therequirements for permitting.
(9)"Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and areavailable to the public.
(10) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on alot, lined up behind one another.
(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.
(l) Nothing in this section shall be construed to supersede or in any way alter or lessen the

effect or application ofthe California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code),except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.
(m)A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, asspecified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with thisdivision.
(n)In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:
(1)The accessory dwelling unit was built before January 1, 2020.
(2)The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time theaccessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.
(o)This section shall remain in effect only until January 1, 2025, and as of that date is repealed.
(Becomes operative on January 1, 2025)

Section 65852.2 of the Government Code is amended to read (changes from January 1, 2021 statute noted inunderline/italic):

65852.2.
(a)(1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned toallow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:
(A)Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.
(B)(i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback,landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any realproperty that is listed in the California Register of Historic Resources. These standards shall not include requirements on minimum lot size.
(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.
(C)Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.
(D)Require the accessory dwelling units to comply with all of the following:
(i)The accessory dwelling unit may be rented separate from the primary residence, but may not be sold orotherwise conveyed separate from the primary residence.
(ii)The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.
(iii)The accessory dwelling unit is either attached to, or located within, the proposed or

existing primary dwelling,including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

(iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.

(v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in thesame location and to the same dimensions as an existing structure that is converted to an accessory dwelling unitor to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasiblebased upon specific site or regional topographical or fire and life safety conditions.

(III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of anaccessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.

(xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primaryresidence.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limitresidential growth.

(3) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall act on theapplication to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date thelocal agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. *If the local agency hasnot acted upon the completed application within 60 days, the application shall be deemed approved.* A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs

of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.
(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.
(5) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.
(6) *(A)* This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or ~~imposed, including any owner-occupant requirement, except that~~ *imposed except that, subject to subparagraph (B),* a local agency may require *an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or* that the property be used for rentals of terms longer than 30 days.
(B) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit permitted between January 1, 2020, to January 1, 2025, during which time the local agency was prohibited from imposing an owner-occupant requirement.
(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.
(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.
(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If

the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.

(c)(1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements forboth attached and detached accessory dwelling units.

(2)Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A)A minimum square footage requirement for either an attached or detached accessory dwelling unit thatprohibits an efficiency unit.

(B)A maximum square footage requirement for either an attached or detached accessory dwelling unit that is lessthan either of the following:

(i)850 square feet.

(ii)1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C)Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size,for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(d)Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessorydwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1)The accessory dwelling unit is located within one-half mile walking distance of public transit.

(2)The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3)The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(4)When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5)When there is a car share vehicle located within one block of the accessory dwelling unit.

(e)(1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an applicationfor a building permit within a residential or mixed-use zone to create any of the following:

(A)One accessory dwelling unit ~~or~~ *and* one junior accessory dwelling unit per lot with a proposed or existingsingle-family dwelling if all of the following apply:

(i)The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii)The space has exterior access from the proposed or existing single-family dwelling.

(iii)The side and rear setbacks are sufficient for fire and safety.

(iv)The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B)One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combinedwith a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i)A total floor area limitation of not more than 800 square feet.

(ii)A height limitation of 16 feet.

(C)(i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements,or garages, if each unit complies with state building standards for dwellings.
(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shallallow up to 25 percent of the existing multifamily dwelling units.
(D)Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.
(2)A local agency shall not require, as a condition for ministerial approval of a permit application for the creation ofan accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.
(3)The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not requiredfor the primary residence.
(4)A local agency may require owner occupancy for either the primary dwelling or the accessory dwelling unit on asingle-family lot, subject to the requirements of paragraph (6) of subdivision (a).
~~(4)~~ *(5)* A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivisionbe for a term longer than 30 days.
~~(5)~~ *(6)* A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, ifthe percolation test has been recertified, within the last 10 years.
~~(6)~~ *(7)* Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1,2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.
(f)(1) Fees charged for the construction of accessory dwelling units shall be determined in accordance withChapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).
(2)An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to bea new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.
(3)(A) A local agency, special district, or water corporation shall not impose any impact fee upon the developmentof an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.
(B) For purposes of this paragraph, “impact fee” has the same meaning as the term “fee” is defined in subdivision
(b) of Section 66000, except that it also includes fees specified in Section 66477. “Impact fee” does not include anyconnection fee or capacity charge charged by a local agency, special district, or water corporation.
(4)For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory

dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family ~~home.~~ *dwelling.*

(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.

(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.

(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:

(i) Amend the ordinance to comply with this section.

(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.

(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.

(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.

(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(j) As used in this section, the following terms mean:

(1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located

on the same lot.

(3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.

(4) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

(5) "Local agency" means a city, county, or city and county, whether general law or chartered.

(6) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.

(7) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(8) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

(9) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

(10) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.

(l) 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 of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.

(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:

(1) The accessory dwelling unit was built before January 1, 2020.

(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

(o) This section shall ~~remain in effect only until January 1, 2025, and as of that date is repealed.~~ *become operative on January 1, 2025.*

GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4, ARTICLE 2
AB 345 (Accessory Dwelling Units)

Effective January 1, 2022, Section 65852.26 is amended to read:

65852.26.

(a) Notwithstanding clause (i) of subparagraph (D) of paragraph (1) of subdivision (a) of Section 65852.2, a local agency ~~may, by ordinance~~, *shall* allow an accessory dwelling unit to be sold or conveyed separately from the primary residence to a qualified buyer if all of the following apply:

(1) The ~~property~~ *accessory dwelling unit or the primary dwelling* was built or developed by a qualified nonprofit corporation.

(2) There is an enforceable restriction on the use of the land pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation that satisfies all of the requirements specified in paragraph (10) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code.

(3) The property is held pursuant to a recorded tenancy in common agreement that includes all of the following:

(A) The agreement allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each *that* qualified buyer occupies.

(B) A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the~~property~~ *accessory dwelling unit or primary dwelling* if the buyer desires to sell or convey the property.

(C) A requirement that the qualified buyer occupy the ~~property~~ *accessory dwelling unit or primary dwelling* as the buyer's principal residence.

(D) Affordability restrictions on the sale and conveyance of the ~~property~~ *accessory dwelling unit or primary dwelling* that ensure the ~~property~~ *accessory dwelling unit and primary dwelling* will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.

(E) *If the tenancy in common agreement is recorded after December 31, 2021, it shall also include all of the following*

(i) Delineation of all areas of the property that are for the exclusive use of a cotenant. Each cotenant shall agree not to claim a right of occupancy to an area delineated for the exclusive use of another cotenant, provided that the latter cotenant's obligations to each of the other cotenants have been satisfied.

(ii) Delineation of each cotenant's responsibility for the costs of taxes, insurance, utilities, general maintenance and repair, improvements, and any other costs, obligations, or liabilities associated with the property. This delineation shall only be binding on the parties to the agreement, and shall not supersede or obviated the liability, whether joint and several or otherwise, of the parties for any cost, obligation, or liability associated with the property where such liability is otherwise established by law or by agreement with a third party.

(iii) Procedures for dispute resolution among the parties before resorting to legal action.

(4) A grant deed naming the grantor, grantee, and describing the property interests being transferred shall be recorded in the county in which the property is located. A Preliminary Change of Ownership Report shall be filed concurrently with this grant deed pursuant to Section 480.3 of the Revenue and Taxation Code.

(5) Notwithstanding subparagraph (A) of paragraph (2) of subdivision (f) of Section 65852.2, if requested by a utility providing service to the primary residence, the accessory dwelling unit has a separate water, sewer, or electrical connection to that utility.

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

(1) "Qualified buyer" means persons and families of low or moderate income, as that term is defined in Section 50093 of the Health and Safety Code.

(2) "Qualified nonprofit corporation" means a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 of the Revenue and Taxation Code for properties intended to be sold to low-income families who participate in a special no-interest loan program.

Effective January 1, 2021, Section 4740 of the Civil Code is amended to read (changes noted in strikeout, underline/italics) (AB 3182 (Ting)):

4740.

(a) An owner of a separate interest in a common interest development shall not be subject to a provision in a governing document or an amendment to a governing document that prohibits the rental or leasing of any of the separate interests in that common interest development to a renter, lessee, or tenant unless that governing document, or amendment thereto, was effective prior to the date the owner acquired title to ~~his or her~~ *their* separate interest.

(b) ~~Notwithstanding the provisions of this section, an owner of a separate interest in a common interest development may expressly consent to be subject to a governing document or an amendment to a governing document that prohibits the rental or leasing of any of the separate interests in the common interest development to a renter, lessee, or tenant.~~

(c) *(b)* For purposes of this section, the right to rent or lease the separate interest of an owner shall not be deemed to have terminated if the transfer by the owner of all or part of the separate interest meets at least one of the following conditions:

(1) Pursuant to Section 62 or 480.3 of the Revenue and Taxation Code, the transfer is exempt, for purposes of reassessment by the county tax assessor.

(2) Pursuant to subdivision (b) of, solely with respect to probate transfers, or subdivision (e), (f), or (g) of, Section 1102.2, the transfer is exempt from the requirements to prepare and deliver a Real Estate Transfer Disclosure Statement, as set forth in Section 1102.6.

(d) *(c)* Prior to renting or leasing ~~his or her~~ *their* separate interest as provided by this section, an owner shall provide the association verification of the date the owner acquired title to the separate interest and the name and contact information of the prospective tenant or lessee or the prospective tenant's or lessee's representative.

(e) *(d)* Nothing in this section shall be deemed to revise, alter, or otherwise affect the voting process by which a common interest development adopts or amends its governing documents.

(f) ~~This section shall apply only to a provision in a governing document or a provision in an amendment to a governing document that becomes effective on or after January 1, 2012.~~

Effective January 1, 2021 of the Section 4741 was added to the Civil Code, to read:

4741.
(a)An owner of a separate interest in a common interest development shall not be subject to a provision in a governing document or an amendment to a governing document that prohibits, has the effect of prohibiting, or unreasonably restricts the rental or leasing of any of the separate interests, accessory dwelling units, or junior accessory dwelling units in that common interest development to a renter, lessee, or tenant.
(b)A common interest development shall not adopt or enforce a provision in a governing document or amendment to a governing document that restricts the rental or lease of separate interests within a common interest to less than 25 percent of the separate interests. Nothing in this subdivision prohibits a common interest development from adopting or enforcing a provision authorizing a higher percentage of separate interests to be rented or leased.(c) This section does not prohibit a common interest development from adopting and enforcing a provision in a governing document that prohibits transient or short-term rental of a separate property interest for a period of 30 days or less.
(d)For purposes of this section, an accessory dwelling unit or junior accessory dwelling unit shall not be construed as a separate interest.
(e)For purposes of this section, a separate interest shall not be counted as occupied by a renter if the separate interest, or the accessory dwelling unit or junior accessory dwelling unit of the separate interest, is occupied by the owner.
(f)A common interest development shall comply with the prohibition on rental restrictions specified in this section on and after January 1, 2021, regardless of whether the common interest development has revised their governingdocuments to comply with this section. However, a common interest development shall amend their governing documents to conform to the requirements of this section no later than December 31, 2021.
(g)A common interest development that willfully violates this section shall be liable to the applicant or other party for actual damages, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars ($1,000).
(h)In accordance with Section 4740, this section does not change the right of an owner of a separate interest who acquired title to their separate interest before the effective date of this section to rent or lease their property.

Effective January 1, 2020, Section 65852.22 of the Government Code was amended to read:

65852.22.
(a)Notwithstanding Section 65852.2, a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones. The ordinance may require a permit to be obtained for the creation of a junior accessory dwelling unit, and shall do all of the following:
(1)Limit the number of junior accessory dwelling units to one per residential lot zoned for single-family residenceswith a single-family residence built, or proposed to be built, on the lot.
(2)Require owner-occupancy in the single-family residence in which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the

structure or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, landtrust, or housing organization.
(3)Require the recordation of a deed restriction, which shall run with the land, shall be filed with the permittingagency, and shall include both of the following:
(A)A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-familyresidence, including a statement that the deed restriction may be enforced against future purchasers.
(B)A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section.
(4)Require a permitted junior accessory dwelling unit to be constructed within the walls of proposed or existing single-family residence.
(5)Require a permitted junior accessory dwelling to include a separate entrance from the main entrance tothe proposed or existing single-family residence.
(6)Require the permitted junior accessory dwelling unit to include an efficiency kitchen, which shall include all of the following:
(A) A cooking facility with appliances.
(B) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.
(b)(1) An ordinance shall not require additional parking as a condition to grant a permit.
(2) This subdivision shall not be interpreted to prohibit the requirement of an inspection, including the imposition of a fee for that inspection, to determine if the junior accessory dwelling unit complies with applicable building standards.
(c)An application for a permit pursuant to this section shall, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, be considered ministerially, without discretionary review or a hearing. The permitting agency shall act on the application to create a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family dwelling on the lot. If the permit application to create a junior accessory dwelling unit is submitted witha permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. A local agency may charge a fee to reimburse the local agency for costs incurred in connection with the issuance of a permit pursuant to this section.
(d)For purposes of any fire or life protection ordinance or regulation, a junior accessory dwelling unit shall not beconsidered a separate or new dwelling unit. This section shall not be construed to prohibit a city, county, city andcounty, or other local public entity from adopting an ordinance or regulation relating to fire and life protection requirements within a single-family residence that contains a junior accessory dwelling unit so long as the ordinance or regulation applies uniformly to all single-family residences within the zone regardless of whether thesingle-family residence includes a junior accessory dwelling unit or not.
(e)For purposes of providing service for water, sewer, or power, including a connection fee, a junior accessorydwelling unit shall not be considered a separate or new dwelling unit.
(f)This section shall not be construed to prohibit a local agency from adopting an ordinance or regulation, related to parking or a service or a connection fee for water, sewer, or power, that applies to a single-family residence that contains a junior accessory dwelling unit, so long as

that ordinance or regulation applies uniformly to all single- family residences regardless of whether the single-family residence includes a junior accessory dwelling unit.
(g) If a local agency has not adopted a local ordinance pursuant to this section, the local agency shall ministerially approve a permit to construct a junior accessory dwelling unit that satisfies the requirements set forth in subparagraph (A) of paragraph (1) of subdivision (e) of Section 65852.2 and the requirements of this section.
(h) For purposes of this section, the following terms have the following meanings:
(1) "Junior accessory dwelling unit" means a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.
(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

Effective January 1, 2020 Section 17980.12 was added to the Health and Safety Code, immediately following Section 17980.11, to read:

17980.12.
(a)(1) An enforcement agency, until January 1, 2030, that issues to an owner of an accessory dwelling unit described in subparagraph (A) or (B) below, a notice to correct a violation of any provision of any building standard pursuant to this part shall include in that notice a statement that the owner of the unit has a right to request a delay in enforcement pursuant to this subdivision:
(A) The accessory dwelling unit was built before January 1, 2020.
(B) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.
(2) The owner of an accessory dwelling unit that receives a notice to correct violations or abate nuisances as described in paragraph (1) may, in the form and manner prescribed by the enforcement agency, submit an application to the enforcement agency requesting that enforcement of the violation be delayed for five years on the basis that correcting the violation is not necessary to protect health and safety.
(3) The enforcement agency shall grant an application described in paragraph (2) if the enforcement determines that correcting the violation is not necessary to protect health and safety. In making this determination, the enforcement agency shall consult with the entity responsible for enforcement of building standards and other regulations of the State Fire Marshal pursuant to Section 13146.
(4) The enforcement agency shall not approve any applications pursuant to this section on or after January 1, 2030. However, any delay that was approved by the enforcement agency before January 1, 2030, shall be valid for the full term of the delay that was approved at the time of the initial approval of the application pursuant to paragraph (3).
(b) For purposes of this section, "accessory dwelling unit" has the same meaning as defined in Section 65852.2.
(c) This section shall remain in effect only until January 1, 2035, and as of that date is repealed.

CIVIL CODE: DIVISION 4, PART 5, CHAPTER 5, ARTICLE 1
AB 670 Accessory Dwelling Units

Effective January 1, 2020, Section 4751 was added to the Civil Code, to read (AB 670 (Friedman)):

4751.
(a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document, that either effectively prohibits or unreasonably restricts the construction or use of an accessory dwelling unit or junior accessory dwelling unit on a lot zoned for single-family residential use that meets the requirements of Section 65852.2 or 65852.22 of the Government Code, is void and unenforceable.
(b) This section does not apply to provisions that impose reasonable restrictions on accessory dwelling units or junior accessory dwelling units. For purposes of this subdivision, "reasonable restrictions" means restrictions that do not unreasonably increase the cost to construct, effectively prohibit the construction of, or extinguish the ability to otherwise construct, an accessory dwelling unit or junior accessory dwelling unit consistent with the provisions of Section 65852.2 or 65852.22 of the Government Code.

GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 3, ARTICLE 10.6
AB 671 Accessory Dwelling Units

Effective January 1, 2020, Section 65583(c)(7) of the Government Code was added to read (sections of housing element law omitted for conciseness) (AB 671 (Friedman)):

65583(c)(7).
Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low, low-, or moderate-income households. For purposes of this paragraph, "accessory dwelling units" has the same meaning as "accessory dwelling unit" as defined in paragraph (4) of subdivision (i) of Section 65852.2.

Effective January 1, 2020, Section 50504.5 was added to the Health and Safety Code, to read (AB 671 (Friedman)):

50504.5.
(a) The department shall develop by December 31, 2020, a list of existing state grants and financial incentives for operating, administrative, and other expenses in connection with the planning, construction, and operation of an accessory dwelling unit with affordable rent, as defined in Section 50053, for very low, low-, and moderate-income households.
(b) The list shall be posted on the department's internet website by December 31, 2020.
(c) For purposes of this section, "accessory dwelling unit" has the same meaning as defined in paragraph (4) of subdivision (i) of Section 65852.2 of the Government Code.

GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4, ARTICLE 2 & TITLE 7, DIVISION 2, CHAPTER 1, ARTICLE 1
SB 9 Housing development: approvals

Effective January 1, 2022, Section 65852.21 was added to the Government Code, to read:

65852.21. *(a) A proposed housing development containing no more than two residential units within a single-family residential zone shall be considered ministerially, without discretionary review or a hearing, if the proposed housing development meets all of the following requirements:*
(1) The parcel subject to the proposed housing development is located within a city, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.
(2) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.
(3) Notwithstanding any provision of this section or any local law, the proposed housing development would not require demolition or alteration of any of the following types of housing:
(A) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.
(B) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.
(C) Housing that has been occupied by a tenant in the last three years.
(4) The parcel subject to the proposed housing development is not a parcel on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application. 94 — 3 — Ch. 162
(5) The proposed housing development does not allow the demolition of more than 25 percent of the existing exterior structural walls, unless the housing development meets at least one of the following conditions:
(A) If a local ordinance so allows.
(B) The site has not been occupied by a tenant in the last three years.
(6) The development is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.
(b)(1) Notwithstanding any local law and except as provided in paragraph (2), a local agency may impose objective zoning standards, objective subdivision standards, and objective design review standards that do not conflict with this section.
(2)(A) The local agency shall not impose objective zoning standards, objective subdivision standards, and objective design standards that would have the effect of physically precluding the construction of up to two units or that would physically preclude either of the two units from being at least 800 square feet in floor area. (B)(i) Notwithstanding subparagraph (A), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.
(ii) Notwithstanding subparagraph (A), in all other circumstances not described in clause (i), a local agency may require a setback of up to four feet from the side and rear lot lines.

(c) In addition to any conditions established in accordance with subdivision (b), a local agency may require any of the following conditions when considering an application for two residential units as provided for in this section:
(1) Off-street parking of up to one space per unit, except that a local agency shall not impose parking requirements in either of the following instances:
(A) The parcel is located within one-half mile walking distance of either a high-quality transit corridor, as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop, as defined in Section 21064.3 of the Public Resources Code.
(B) There is a car share vehicle located within one block of the parcel. (2) For residential units connected to an onsite wastewater treatment system, a percolation test completed within the last 5 years, or, if the percolation test has been recertified, within the last 10 years.
(d) Notwithstanding subdivision (a), a local agency may deny a proposed housing development project if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is 94 Ch. 162 — 4 — no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.
(e) A local agency shall require that a rental of any unit created pursuant to this section be for a term longer than 30 days.
(f) Notwithstanding Section 65852.2 or 65852.22, a local agency shall not be required to permit an accessory dwelling unit or a junior accessory dwelling unit on parcels that use both the authority contained within this section and the authority contained in Section 66411.7.
(g) Notwithstanding subparagraph (B) of paragraph (2) of subdivision (b), an application shall not be rejected solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance.
(h) Local agencies shall include units constructed pursuant to this section in the annual housing element report as required by subparagraph (I) of paragraph (2) of subdivision (a) of Section 65400.
(i) For purposes of this section, all of the following apply:
(1) A housing development contains two residential units if the development proposes no more than two new units or if it proposes to add one new unit to one existing unit.
(2) The terms "objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by both the development applicant or proponent and the public official prior to submittal. These standards may be embodied in alternative objective land use specifications adopted by a local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.
(3) "Local agency" means a city, county, or city and county, whether general law or chartered.
(j) A local agency may adopt an ordinance to implement the provisions of this section. An ordinance adopted to implement this section shall not be considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.
(k) 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 of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local agency shall not be required to hold public hearings for coastal development permit applications for a housing development pursuant to this section.

Section 66411.7 is added to the Government Code, to read:

66411.7. *(a) Notwithstanding any other provision of this division and any local law, a local agency shall ministerially approve, as set forth in this section, a parcel map for an urban lot split only if the local agency determines that the parcel map for the urban lot split meets all the following requirements:*

(1) The parcel map subdivides an existing parcel to create no more than two new parcels of approximately equal lot area provided that one parcel shall not be smaller than 40 percent of the lot area of the original parcel proposed for subdivision.

(2) (A) Except as provided in subparagraph (B), both newly created parcels are no smaller than 1,200 square feet. (B) A local agency may by ordinance adopt a smaller minimum lot size subject to ministerial approval under this subdivision.

(3) The parcel being subdivided meets all the following requirements:

(A) The parcel is located within a single-family residential zone.

(B) The parcel subject to the proposed urban lot split is located within a city, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(C) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

(D) The proposed urban lot split would not require demolition or alteration of any of the following types of housing: (i) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(ii) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power. (iii) A parcel or parcels on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(iv) Housing that has been occupied by a tenant in the last three years.

(E) The parcel is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

(F) The parcel has not been established through prior exercise of an urban lot split as provided for in this section. (G) Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent parcel using an urban lot split as provided for in this section.

(b) An application for a parcel map for an urban lot split shall be approved in accordance with the following requirements:

(1) A local agency shall approve or deny an application for a parcel map for an urban lot split ministerially without discretionary review.

(2) A local agency shall approve an urban lot split only if it conforms to all applicable objective requirements of the Subdivision Map Act (Division 2 (commencing with Section 66410)), except as otherwise expressly provided in this section.

(3) Notwithstanding Section 66411.1, a local agency shall not impose regulations that require dedications of rights-of-way or the construction of offsite improvements for the parcels being created as a condition of issuing a parcel map for an urban lot split pursuant to this section.

(c) (1) Except as provided in paragraph (2), notwithstanding any local law, a local agency may impose objective zoning standards, objective subdivision standards, and objective design review standards applicable to a parcel created by an urban lot split that do not conflict with this section.
(2) A local agency shall not impose objective zoning standards, objective subdivision standards, and objective design review standards that would have the effect of physically precluding the construction of two units on either of the resulting parcels or that would result in a unit size of less than 800 square feet.
(3) (A) Notwithstanding paragraph (2), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.
(B) Notwithstanding paragraph (2), in all other circumstances not described in subparagraph (A), a local agency may require a setback of up to four feet from the side and rear lot lines.
(d) Notwithstanding subdivision (a), a local agency may deny an urban lot split if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.
(e) In addition to any conditions established in accordance with this section, a local agency may require any of the following conditions when considering an application for a parcel map for an urban lot split:
(1) Easements required for the provision of public services and facilities.
(2) A requirement that the parcels have access to, provide access to, or adjoin the public right-of-way. (3) Off-street parking of up to one space per unit, except that a local agency shall not impose parking requirements in either of the following instances:
(A) The parcel is located within one-half mile walking distance of either a high-quality transit corridor as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop as defined in Section 21064.3 of the Public Resources Code.
(B) There is a car share vehicle located within one block of the parcel.
(f) A local agency shall require that the uses allowed on a lot created by this section be limited to residential uses. (g) (1) A local agency shall require an applicant for an urban lot split to sign an affidavit stating that the applicant intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of the approval of the urban lot split.
(2) This subdivision shall not apply to an applicant that is a "community land trust," as defined in clause (ii) of subparagraph (C) of paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code, or is a "qualified nonprofit corporation" as described in Section 214.15 of the Revenue and Taxation Code.
(3) A local agency shall not impose additional owner occupancy standards, other than provided for in this subdivision, on an urban lot split pursuant to this section.
(h) A local agency shall require that a rental of any unit created pursuant to this section be for a term longer than 30 days.
(i) A local agency shall not require, as a condition for ministerial approval of a parcel map application for the creation of an urban lot split, the correction of nonconforming zoning conditions.
(j) (1) Notwithstanding any provision of Section 65852.2, 65852.21, 65852.22, 65915, or this section, a local agency shall not be required to permit more than two units on a parcel created through the exercise of the authority contained within this section.
(2) For the purposes of this section, "unit" means any dwelling unit, including, but not limited to, a unit or units created pursuant to Section 65852.21, a primary dwelling, an accessory dwelling unit as defined in Section 65852.2, or a junior accessory dwelling unit as defined in Section 65852.22.

(k) Notwithstanding paragraph (3) of subdivision (c), an application shall not be rejected solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance.
(l) Local agencies shall include the number of applications for parcel maps for urban lot splits pursuant to this section in the annual housing element report as required by subparagraph (I) of paragraph (2) of subdivision (a) of Section 65400.
(m) For purposes of this section, both of the following shall apply:
(1) "Objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. These standards may be embodied in alternative objective land use specifications adopted by a local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.
(2) "Local agency" means a city, county, or city and county, whether general law or chartered.
(n) A local agency may adopt an ordinance to implement the provisions of this section. An ordinance adopted to implement this section shall not be considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.
(o) 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 of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local agency shall not be required to hold public hearings for coastal development permit applications for urban lot splits pursuant to this section.

Attachment 2: ADU Resources

ACCESSORY DWELLING UNITS: CASE STUDY

By the United States Department of Housing and Urban Development, Office of Policy Development and Research. (2008)

Introduction: Accessory dwelling units (ADUs) — also referred to as accessory apartments, ADUs, or granny flats— are additional living quarters on single-family lots that are independent of the primary dwelling unit. The separate living spaces are equipped with kitchen and bathroom facilities and can be either attached or detached from the main residence. This case study explores how the adoption of ordinances, with reduced regulatory restrictions to encourage ADUs, can be advantageous for communities. Following an explanation of the various types of ADUs and their benefits, this case study provides examples of municipalities with successful ADU legislation and programs. Section titles include: History of ADUs; Types of Accessory Dwelling Units; Benefits of Accessory Dwelling Units; and Examples of ADU Ordinances and Programs.

ADU UPDATE: EARLY LESSONS AND IMPACTS OF CALIFORNIA'S STATE AND LOCAL POLICY CHANGES

By David Garcia (2017)
Terner Center for Housing and Innovation, UC Berkeley

As California's housing crisis deepens, innovative strategies for creating new housing units for all income levels are needed. One such strategy is building Accessory Dwelling Units (ADUs) by private homeowners. While large scale construction of new market rate and affordable homes is needed to alleviate demand-driven rent increases and displacement pressures, ADUs present a unique opportunity for individual homeowners to create more housing as well. In particular, ADUs can increase the supply of housing in areas where there are fewer opportunities for larger-scale developments, such as neighborhoods that are predominantly zoned for and occupied by single-family homes.

In two of California's major metropolitan areas -- Los Angeles and San Francisco -- well over three quarters of the total land area is comprised of neighborhoods where single-family homes make up at least 60 percent of the community's housing stock. Across the state, single-family detached units make up 56.4 percent of the overall housing stock. Given their prevalence in the state's residential land use patterns, increasing the number of single- family homes that have an ADU could contribute meaningfully to California's housing shortage.

ACCESSORY DWELLING UNITS AS LOW-INCOME HOUSING: CALIFORNIA' FAUSTIAN BARGAIN

By Darrel Ramsey-Musolf (2018)
University of Massachusetts Amherst, ScholarWorks@UMass Amherst

In 2003, California allowed cities to count accessory dwelling units (ADU) towards low-income housing needs. Unless a city's zoning code regulates the ADU's maximum rent, occupancy income, and/or effective period, then the city may be unable to enforce low-income occupancy. After examining a stratified random sample of 57 low-, moderate-, and high-income cities, the high-income cities must proportionately accommodate more low-income needs than low-income cities. By contrast, low-income cities must quantitatively accommodate three times the low- income needs of high-income cities. The sample counted 750 potential ADUs as low-income housing. Even though 759 were constructed, no units were identified as available low-income housing. In addition, none of the cities' zoning codes enforced low-income occupancy. Inferential tests determined that cities with colleges and high incomes were more probable to count ADUs towards overall and low-income housing needs. Furthermore, a city's count of potential ADUs and cities with high proportions of renters maintained positive associations with ADU production, whereas a city's density and prior compliance with state housing laws maintained negative associations. In summary, ADUs did increase local housing inventory and potential ADUs were positively associated with ADU production, but ADUs as low-income housing remained a paper calculation.

IMPLEMENTING THE BACKYARD REVOLUTION: PERSPECTIVES OF CALIFORNIA'S ADU OWNERS (2022)

By Karen Chapple, Dori Ganetsos, and Emmanuel Lopez (2022)
UC Berkeley Center for Community Innovation

The report presents the findings from the first-ever statewide ADU owner survey in California.

JUMPSTARTING THE MARKET FOR ACCESSORY DWELLING UNITS: LESSONS LEARNED FROM PORTLAND, SEATTLE AND VANCOUVER

By Karen Chapple et al (2017)
Terner Center for Housing and Innovation, UC Berkeley

Despite government attempts to reduce barriers, a widespread surge of ADU construction has not materialized. The ADU market remains stalled. To find out why, this study looks at three cities in the Pacific Northwest of the United States and Canada that have seen a spike in construction in recent years: Portland, Seattle, and Vancouver. Each city has adopted a set of zoning reforms, sometimes in combination with financial incentives and outreach programs, to spur ADU construction. Due to these changes, as well as the acceleration of the housing crisis in each city, ADUs have begun blossoming.

THE MACRO VIEW ON MICRO UNITS

By Bill Whitlow, et al. – Urban Land Institute
(2014)Library Call #: H43 4.21 M33 2014

The Urban Land Institute Multifamily Housing Councils were awarded a ULI Foundation research grant in fall 2013to evaluate from multiple perspectives the market performance and market acceptance of micro and small units.

REACHING CALIFORNIA'S ADU POTENTIAL: PROGRESS TO DATE AND THE NEED FOR ADU FINANCE

Karen Chapple, et al. – Terner Center (2020)

To build upon the early success of ADU legislation, the study argues that more financial tools are needed to facilitate greater ADU development amongst low to moderate income homeowners who do not have access to cash saving and cannot leverage home equity. The study recommends that the federal government create ADU-specific construction lending programs. In addition, California could lead this effort by creating a program to assist homeowners in qualifying for ADU construction loans.

RETHINKING PRIVATE ACCESSORY DWELLINGS

By William P. Macht. Urbanland online. (March 6, 2015)
Library Location: Urbanland 74 (1/2) January/February 2015, pp. 87-91.

One of the large impacts of single-use, single-family detached zoning has been to severely shrink the supply of accessory dwellings, which often were created in or near primary houses. Detached single-family dwelling zones—the largest housing zoning category—typically preclude more than one dwelling per lot except under stringent regulation, and then only in some jurisdictions. Bureaucratically termed "accessory dwelling units" that are allowed by some jurisdictions may encompass market-derived names such as granny flats, granny cottages, mother-in-lawsuites, secondary suites, backyard cottages, casitas, carriage flats, sidekick houses, basement apartments, attic apartments, laneway houses, multigenerational homes, or home-within-a-home.

REGULATION ADUS IN CALIFORNIA: LOCAL APPROACHES & OUTCOMES

By Deidra Pfeiffer (May 16, 2019)
Terner Center for Housing and Innovation, UC Berkeley

Accessory dwelling units (ADU) are often mentioned as a key strategy in solving the nation's housing problems, including housing affordability and challenges associated with aging in place. However, we know little about whether formal ADU practices—such as adopting an ordinance, establishing regulations, and permitting— contribute to these goals. This research helps to fill this gap by using data from the Terner California Residential Land Use Survey and the U.S. Census Bureau to understand the types of communities engaging in different kinds of formal ADU practices in California, and whether localities with adopted ordinances and less restrictive regulations have more frequent applications to build ADUs and increasing housing affordability and aging in place. Findings suggest that three distinct approaches to ADUs are occurring in California: 1) a more restrictive approach in disadvantaged communities of color, 2)

a moderately restrictive approach in highly advantaged, predominately White and Asian communities, and 3) a less restrictive approach in diverse and moderately advantaged communities. Communities with adopted ordinances and less restrictive regulations receive more frequent applications to build ADUs but have not yet experienced greater improvements in housing affordability and aging inplace. Overall, these findings imply that 1) context-specific technical support and advocacy may be needed to helpalign formal ADU practices with statewide goals, and 2) ADUs should be treated as one tool among many to manage local housing problems.

SECONDARY UNITS AND URBAN INFILL: A LITERATURE REVIEW

By Jake Wegmann and Alison Nemirow (2011)
UC Berkeley: IURD
Library Call # D44 4.21 S43 2011

This literature review examines the research on both infill development in general, and secondary units in particular, with an eye towards understanding the similarities and differences between infill as it is more traditionally understood – i.e., the development or redevelopment of entire parcels of land in an already urbanized area – and the incremental type of infill that secondary unit development constitutes.

Planning Commission
Staff Report
January 26, 2022
Item 4

SUBJECT: **Zoning Ordinance Amendment 2023-2** – City of Hollister – Amendments to the Zoning Ordinance related to Density Bonuses.

STAFF PLANNER: Eva Kelly, Interim Planning Manager (831) 636-4360
Erica Fraser, AICP, Consulting Planner

ATTACHMENTS:
1. Resolution recommending City Council approve amendments to the Zoning Ordinance to repeal Article II, Density Bonus of Chapter 17.04, Residential Zoning Districts, and replace with a new Chapter, Chapter 17.34, Density Bonus, with the new Chapter 17.34 attached as Exhibit A.
2. Current Article II, Density Bonus of Chapter 17.04, Residential Zoning Districts of the Hollister Zoning Ordinance.
3. Government Code Section 65915.

RECOMMENDATION: Approve Resolution

BACKGROUND:

The Planning Commission discussed changes in State Law related to Density Bonuses during a Study Session on August 4, 2022. Several changes in State Law and a court ruling have changed how a City can evaluate a Density Bonus request. Density Bonuses in Hollister are currently regulated under Chapter 17.04, Article II which was last updated in 2008. The current Article II, Density Bonus is not consistent with the current State Law.

Government Code 65915-65918 – Density Bonuses and Other Incentives

The State Density Bonus Law (Sections 65915-65918 of the California Government Code, Attachment 3) allows developer to seek a density bonus in exchange for donating land or for building affordable projects. A density bonus means an increase in the permitted number of dwelling units over the otherwise maximum allowable gross residential density established by the City, the amount of which varies based on the type and percentage of affordable housing provided by the Developer. A developer does not have to take advantage of the increase in dwelling units permitted by the State Density Bonus Law. A developer may choose to only select an incentive/concession given for the provision of affordable units.

The following Table summarizes the percentage of bonus granted by the Target Group (level of affordability) and the percentage of affordable units that are provided on-site. The density bonus granted

by the current Density Bonus State Law is higher than what is currently listed in Hollister's Zoning Ordinance.

Table 1: Density Bonus by Target Group and Percentage of Development Affordability

Target Group	Minimum % Target Units	Bonus Granted	Additional Bonus for Each 1% Increase in Target Units	% Target Units Required for Maximum 50% Bonus
Very Low Income	5%	20%	2.5%	15%
Low Income	10%	20%	1.5%	24%
Moderate Income (Must be For-Sale)	10%	5%	1%	44%
Maximum Incentive/Concession	1	2	3	4

In addition to granting a density bonus, the City is required to provide one or more incentives or concessions to each project which qualifies for a density bonus (see Table 1). The following have been identified as a concession or incentive under the Government Code:

- A reduction in site development standards or a modification of zoning code or architectural design requirements, such as a reduction in setback or minimum square footage requirements; or
- Approval of mixed-use zoning; or
- Other regulatory incentives or concessions which result in identifiable and actual cost reductions.

The number of incentives that can be granted are based on the percentage and type of affordable housing provided in the development.

Several changes have been made to the State Density Bonus Law since the City's Density Bonus Ordinance was amended in 2011. The following changes to have been made which are not consistent with the City's current Ordinance:

- The City must allow for a higher density bonus as listed in Table 1;
- The City must grant a density bonus for the provision of units for foster youths, disabled veterans, homeless and college students;
- A City can no longer require a pro forma or other documentation to prove that the requested incentives and concession are necessary to make the housing development financially feasible;
- The Law now allows a density bonus for mixed-use projects;

- The State Law establishes parking requirements which are lower than what is in the Zoning Ordinance (granted based on the provision of affordable housing, a Developer may also seek an incentive to further reduce required on-site parking);

- The State Law establishes affordable housing restrictions which are different from what is in the current Zoning Ordinance;

- A City is required to clearly show what information must be submitted for a complete density bonus application;

- Current law increases the total number of incentives the City must provide (up to four incentives);

- A City must grant a density bonus for the provision of a childcare facility on residential and commercial and industrial projects; and

- Permits the City to grant a floor area ratio bonus rather than a tradition density bonus for high density projects adjacent to public transit.

ANALYSIS:

The existing Article II, Density Bonuses, of Chapter 17.04, Residential Zoning Districts, of the Zoning Ordinance will be repealed and replaced with Chapter 17.34, Density Bonus. The new Chapter 17.34 incorporates all the requirements included in Government Code Sections 65915-65918. The Chapter was prepared with assistance from the City Attorney's office. The new Chapter 17.34, Density Bonus, is described in detail below.

Section 17.34.020 - Definitions

This Section provides definitions for all the terms in Chapter 17.34, Density Bonus.

Section 17.34.030 - Eligibility for Bonus, Incentives, or Concessions

This Section establishes the eligibility for a Density Bonus and incentives and concession. A Density Bonus shall be granted any housing developments of five or more dwelling units which provides very low, low and/or moderate-income units in the amount listed in Table 1.

Section 17.34.040 - Allowed Density Bonus

This Section establishes the maximum allowed density bonus, or the maximum number of dwelling units allowed in excess of the maximum number of dwelling units than would otherwise be allowed under the Zoning Ordinance and General Plan. The total number of additional units is based on the percentage of, and type of affordable units provided in the residential development. Pursuant to State Law and opinions published by the California Department of Housing and Community Development, a developer is not required to construct the additional units permitted under the Density Bonus, nor are they required to

construct the maximum number of dwelling units permitted under the Zoning Ordinance. When determining the density bonus percentage, a developer may only select from one affordable type.

Table 2: Maximum Density Bonus by Affordability

	Granted Density Bonus Percentage (Max)		
Percentage of Development	**Very-Low Income**	**Low-Income**	**For-Sale Moderate**
5	20	--	--
6	22.5	--	--
7	25	--	--
8	27.5	--	--
9	30	--	--
10	32.5	20	5
11	35	21.5	6
12	38.75	23	7
13	42.5	24.5	8
14	46.25	26	9
15	50	27.5	10
16	--	29	11
17	--	30.5	12
18	--	32	13
19	--	33.5	14
20	--	35	15
21	--	38.75	16
22	--	42.5	--
23	--	46.25	--
24	--	50	--

For example, if a developer provided 10 units for low-income households within a 100 unit residential unit development (10% affordability), the developer would be allowed a 20 percent density bonus - or a total of 20 additional dwelling units. If the Zoning Ordinance allows a maximum density of 100 dwelling units for the subject property, the developer would be allowed to construct 20 units above the maximum for a total of 120 dwelling units on the property. This increase above the maximum density does not require a General Plan Amendment or a Rezone.

If a developer provided five units for very-low and five units for low-income households, the developer would choose which affordable type they wished to receive a bonus for. The developer would select very-low and as shown in Table 2 above, the developer would be allowed a 20 percent density bonus.

Section 17.34.050 – Density Bonus for Affordable Housing on the Site of a Commercial Development

An Applicant may also receive a density bonus by partnering with a housing development to construct residential dwellings in addition to a commercial development on a property which is designated for commercial development only. At least 15 percent of the units must be dedicated to very-low income

households or 30 percent of the total units must be dedicated to low-income households in order to be eligible for this incentive.

Section 17.34.060 – Allowed Incentives or Concessions

This Section establishes the incentives or concessions a developer may ask for as part of a Density Bonus Application. An Applicant may receive one to four incentives. The total number of incentives is based on the total percentage and income level of the affordable units. Please refer to Table 1 for more information. The following are incentives or concessions available to developers:

- A reduction in the standards required by the Zoning Ordinance (such as lot size, setbacks, lot coverage, design standards, and parking standards). All requests for relief from the provisions of the Zoning Ordinance count as one incentive (i.e., a request for a setback and lot coverage modification only counts as one incentive).

- Approved of mixed-use for the site where not otherwise allowed.

- Other regulatory incentives (such as street width, sidewalks, etc.).

- Direct financial contribution. This request must be approved by the City Council. A City is not required to approve requests for financial contributions.

Section 17.34.070 – Parking Requirements

Parking requirements for projects eligible for a density bonus are subject to the parking required by the Government Code.

Section 17.34.080 – Bonus and Incentive for Developments with Child Care Facilities

A housing development is eligible for an additional incentive or concession if the development includes a child care facility within the project area. The requested incentive must be related to the support of the construction or operation of a child care facility and can include an additional bonus which increases the total square footage of the residential development, which is the equal to the square footage of the childcare facility, or another bonus (as identified by the developer) which will contribute to the economic feasibility of the construction of the child care facility. In order to ensure that the childcare facility will be constructed, the request for a Density Bonus for a child care facility must be accompanied by a Site and Architectural Review and/or a Conditional Use Permit for the facility.

Section 17.34.090 - Location and Type of Designated Units

Affordable units will be required to be dispersed throughout the development, the same type as the market rate units (for example if the units are single family dwellings, the affordable units must also be single family dwellings), and the exterior design and quality of constructions are required to be the same as the market rate units.

Section 17.34.100 – Density Bonus Application

This Section establishes the submittal requirements for Density Bonus Applications including specific submittal requirements for Density Bonus requests that include a childcare facility, student housing, condominium conversions, land donations, and requests for a mixed-use development.

Section 17.34.110 – Review of Density Bonus Application

A Density Bonus Application shall be considered and acted upon by the approval body with authority to approve the development (most likely the Planning Commission). This Section includes the findings for approval of a Density Bonus request as well as the required findings for denial.

Section 17.34.120 – Density Bonus Housing Agreement

All Applicants who are requesting a Density Bonus will be required to enter into a Density Bonus Agreement with the City. The Agreement will include the requirements for sale and rental of the units, required deed restrictions, allow the City first right to lease or buy the affordable units, owner-occupancy for for-sale dwelling units, and requirements related to the condition of rental units.

Section 17.34.130 – Deed Restriction

The City will also require a Deed Restriction for the properties where an affordable unit is located. The Deed Restriction will include the requirements of the Density Bonus Housing Agreement as well as the following:

- A prohibition on non-residential uses (with the exception of Home Occupations);
- A prohibition on short term rentals of less than 30 days);
- A description of the affordability requirements; and
- The number of years the unit is subject of affordability.

Section 17.34.140 – Continued Affordability and Availability

All very-low and low income units are required to remain affordable for a period of fifty-five years. Moderate income level units will remain affordable for thirty years. The period of affordability for moderate income units is at the City's discretion. Staff is recommending that the period of affordability for moderate income units be thirty years for consistency with the City's current affordable programs.

Section 17.34.150 – Control of Resale

This Section establishes the requirements related to the resale of affordable units to ensure that units remain affordable for the period required in Section 17.34.140.

Section 17.34.160 – Judicial Relief

As provided by Government Code Section 65915(d)(3), the applicant may initiate judicial proceedings if the City refuses to grant a requested density bonus, incentive, or concession.

Application Fee

Currently there is no filing fee associated with a Density Bonus Application. This may be an oversight due to the fact that prior to 2022, Density Bonus requests were very rare (Staff is unable to find any). In 2022, Staff received one request for a Density Bonus and several other Applicants have indicated that they intend to apply for a Density Bonus.

The review of a Density Bonus Application can be time consuming. Due to the complexity of the law and the varied requirements for land donations, specific types of developments, and child care facilities both Staff and the City Attorney spend a significant amount of time reviewing these requests. It is estimated that Staff has spent well over ten hours of Staff's time plus ten hours of the City Attorney's time reviewing the one request that is currently under review and Staff anticipates that this number will at least double. The costs associated with this review are not being funded by the Applicant and are passed onto the City because the Application is free.

Staff recommends that the Planning Commission recommend to City Council that an Application Fee be established for Density Bonuses. Staff feels that the Application Fee for a Conditional Use Permit ($5,227.00) is comparable with the time Staff anticipates spending on these types of Applications. The Planning Commission can also recommend a different Fee that should be charged.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

The proposed Zoning Ordinance amendments are exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines because the proposed amendments will not result in any direct physical change to the City and therefore the proposed amendments are not a project under CEQA and are exempt from further review (CEQA Guidelines, Section 15378). Future development of a site will be subject to the requirements of CEQA.

CONCLUSION:

The proposed amendment to the Zoning Ordinance is part of Phase I of the overhaul of the Zoning Ordinance. Article II, Density Bonus, was last modified in 2008 and the State has passed several Bills and amendment the Government Code to regulate Density Bonus requests. Staff is proposing to rescind the existing Article II and replace with a new Chapter that is designed to meet the City's goal of modifying the Zoning Ordinance so that it is more user friendly and clearly establishes the requirements for Density Bonuses. The new Chapter 17.34, Density Bonus, is consistent with the requirements of the Government Code.

PLANNING COMMISSION OPTIONS:

The Planning Commission can choose one of the following options:

1. Adopt a Resolution recommending City Council approval of amendments to the Zoning Ordinance to repeal Article II, Density Bonus of Chapter 17.04, Residential Zoning Districts, and replace with a new Chapter, Chapter 17.34, Density Bonus, with the new Chapter 17.34 and a recommendation to the City Council to adopt an Application Fee related to Density Bonus Applications.

2. Adopt a Resolution recommending City Council approval of amendments to the Zoning Ordinance to repeal Article II, Density Bonus of Chapter 17.04, Residential Zoning Districts, and replace with a new Chapter, Chapter 17.34, Density Bonus, with the new Chapter 17.34 and a recommendation to the City Council to adopt an Application Fee related to Density Bonus Applications with modifications to the proposed amendments as proposed by the Planning Commission;

3. Continue the hearing and direct Staff to provide additional information or clarification.

Staff recommends the Planning Commission select Option 1 for this Item.

PLANNING COMMISSION RESOLUTION NO. 2023-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HOLLISTER RECOMMENDING CITY COUNCIL APPROVAL OF A ZONING ORDINANCE AMENDMENT TO REPEAL ARTICLE II, DENSITY BONUS, OF CHAPTER 17.04, RESIDENTIAL ZONING DISTRICTS, AND REPLACE WITH CHAPTER 17.34, DENSITY BONUS AND THE ADOPTION OF AN APPLICATION FEE FOR DENSITY BONUS REQUESTS (ZOA 2023-2)

WHEREAS, the City occasionally initiates an amendment to the Zoning Ordinance in order to codify requirements pursuant to State Law; and

WHEREAS, following the adoption of Article II, Density Bonus, the Governor signed several Bills into law which limits how cities can regulate and review Density Bonus requests; and

WHEREAS, these regulations are included in Government Code Section 65915; and

WHEREAS, State Law allows a local agency to adopt an Ordinance to implement the provisions of Government Code Section 65915; and

WHEREAS, the City desires to repeal the existing Article II, Density Bonus of Chapter 17.04, Residential Zoning Districts, which is inconsistent with State Law and replace with Chapter 17.34, Density Bonus; and

WHEREAS, the Planning Commission discussed changes in State Law and the necessary modifications to the City's existing Density Bonus Ordinance during a Study Session on August 4, 2022; and

WHEREAS, currently there is no Application Fee associated with an application request for a Density Bonus and the City desires to establish a Fee for these types of projects; and

WHEREAS, an Application Fee of $5,227.00 is comparable to the amount of time Staff spends on this Application type; and

WHEREAS, the Planning Commission held a duly noticed public hearing on January 26, 2022 to review the new Chapter 17.34, Density Bonus and the proposed Application Fee for Density Bonus Applications during which all interested parties were heard; and

WHEREAS, a Staff Report was submitted to the Planning Commission of the City of Hollister recommending approval of a Zoning Ordinance Amendment to repeal Article II, Density Bonus and replace with Chapter 17.34, Density Bonus and the adoption of a new Fee; and

WHEREAS, the draft Chapter 17.34, Density Bonus, is included as Exhibit A to this Resolution; and

WHEREAS, the proposed Zoning Ordinance amendments are exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines because the proposed amendments will not result in any direct physical change to the City and any future development projects will be subject to the requirements of CEQA and therefore the proposed amendments are not a project under CEQA and are exempt from further review (CEQA Guidelines, Section 15378); and

NOW THEREFORE IT IS RESOLVED, that the Planning Commission of the City of Hollister does hereby recommend that the City Council approve the amendment to the Zoning Ordinance to repeal Article II, Density Bonus, of Chapter 17.04, Residential Zoning Districts and include Chapter 17.34, Density Bonus, included as Exhibit A and recommends that the City Council adopt an Application Fee of $5,227.00.

PASSED AND ADOPTED, at a regular meeting of the City of Hollister Planning Commission held on this 26th day of January 2023, by the following vote:

AYES:
NOES:
ABSTAINED:
ABSENT:

Chairperson of the Planning Commission
of the City of Hollister

ATTEST:

Adrianna Ortiz, Secretary

Chapter 17.34 Density Bonus

17.34.010 - Purpose

As required by Government Code Section 65915, this chapter offers Density Bonuses and incentives or concessions for the development of housing that is affordable to the types of households and qualifying residents identified in Section 17.04.090 (Eligibility for bonus, incentives, or concessions). This chapter is intended to implement the requirements of Government Code Section 65915 et seq., and the Housing Element of the General Plan. As used in this chapter and when otherwise required by Government Code Section 65915 et seq., "housing development" means a development project for five (5) or more residential units, including a mixed-use development, that meets the requirements of Government Code Section 65915(i).

17.34.020 - Definitions

The following definitions shall apply to this Chapter:

A. *Affordable ownership cost* means a reasonable down payment and an average monthly housing cost during the first calendar year of occupancy, mortgage insurance, property taxes and property assessments, homeowner's insurance, homeowner's association dues, if any, and all other dues and fees assessed as a condition of property ownership, which does not exceed the income limits established under Section 50052.5(b) of the California Health and safety Code.

B. *Affordable rent* means monthly rent, including a reasonable allowance for garbage collection, water, electricity, gas, and other heating, cooking, and refrigeration fuels, and all mandatory fees charged for use of the property, which does not exceed the income limits established under Section 50053(b) of the California Health and Safety Code.

C. *Area median income* means the annual median income for San Benito County, adjusted for household size, as published periodically in Title 25, Section 6932, California Code of Regulations, or its successor provision, or as established by the city of Hollister in the event that such median income figures are no longer published periodically in the California Code of Regulations.

D. *Applicant* shall mean any person, firm, partnership, non-profit, association, joint venture, corporation, or any entity or combination of entities who seeks approval of a permit from the City for a development that incudes residential dwelling units on a parcel within the City which is owned or not owned by the Applicant.

E. *Child care facility* means a facility approved and licensed by the State, other than a family day care home, that provides non-medical care on less than a 24-hour basis, including infant centers, preschools, extended day care facilities, and school age children, operated

and maintained by the operator or owner. Day care center does not include residential care facilities, residential service facilities, interim housing, or convalescent hospitals/nursing homes.

F. *Common Interest Development* shall mean a community apartment project, a condominium project, a planned development or a stock cooperative.

G. *Concessions* means a reduction in site development standards or a modification of zoning code or architectural design requirements, approved of mixed-use zoning or other regulatory incentives or concessions which actually result in cost reductions**.**

H. *Density Bonus* means an increase in the number of dwelling units over the otherwise maximum allowable residential density as established in the Land Use Element of the Hollister General Plan and the Zoning Ordinance in accordance with State law and this Chapter.

I. *Density Bonus Units* means those residential dwelling units approved pursuant to this Chapter, which exceed the otherwise allowable maximum allowable residential density for the development site.

J. *Development standard* means a site or construction condition, other than density or lot size, including but not limited to: a height limitation, minimum lot size, lot dimensions, setback requirements, lot coverage (except where Floor Area Ratio is used instead of lot coverage), or open space requirement that applies to a residential development pursuant to any ordinance, General Plan Element, Specific Plan, or other City condition, law, policy, resolution, or regulation.

K. *First approval* means the first of the following approvals to occur with respect to a residential development: Specific Plan, Development Agreement, Planned Unit Development Permit, Tentative Map, Minor Subdivision, Conditional Use Permit, Site Plan Review, or Building Permit.

L. *Housing Development* means a development project consisting of five or more residential units including mixed-use developments. Housing development also includes a subdivision or common interest development, as defined in Section 4100 of the Civil Code, approved by the City and consistent 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, where the result of the rehabilitation would be a net increase of the available residential units.

M. *Homeless persons* shall have the same meaning as defined in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.).

N. *Incentives* means such regulatory incentives as defined in Section 17.30.100, Incentives and Concessions.

O. *Lower-income households* means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. The limits shall be published by the department in the California Code of Regulations as soon as possible after adoption by the Secretary of Housing and Urban Development. In the event the federal standards are discontinued, the department shall, by regulation, establish income limits for lower income households for all geographic areas of the state at 80 percent of area median income, adjusted for family size and revised annually. Lower-income households includes very low-income households, as defined in Section 50105, and extremely low-income households, as defined in Section 50106.

P. *Lower income student* means a student who has a household income and asset level that does not exceed the level for Cal Grant A or Cal Grant B award recipients as set forth in paragraph (1) of subdivision (k) of Section 69432.7 of the Education Code. The eligibility of a student to occupy a unit for lower income students under this section shall be verified by an affidavit, award letter, or letter of eligibility provided by the institution of higher education in which the student is enrolled or by the California Student Aid Commission that the student receives or is eligible for financial aid, including an institutional grant or fee waiver from the college or university, the California Student Aid Commission, or the federal government.

Q. *Major transit stop* shall have the same meaning as defined in subdivision (b) of Section 21155 of the Public Resources Code.

R. *Maximum allowable residential density* means the maximum number of dwelling units permitted for a residential project by the City's Zoning Ordinance and by the Land Use Element of the General Plan on the date that the application for the residential project is deemed complete, excluding any units allowed by a Density Bonus. If the maximum density allowed by the Zoning Ordinance is inconsistent with the density allowed by the Land Use Element of the General Plan, the General Plan density shall prevail.

S. *Mixed-use development* shall mean a development that includes residential as well as commercial, office or industrial uses.

T. *Moderate-income households* means households whose income does not exceed the moderate income limits applicable to San Benito County as published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provision) by the California Department of Housing and Community Development, adjusted for household size.

U. *Non-restricted units* means all dwelling units within a residential development except the target units.

V. *Residential development* means a development project of five or more dwelling units and includes a subdivision or common interest development.

W. *Shared housing building* shall mean a residential or mixed-use structure, with five or more shared housing units and one or more common kitchens and dining areas designed for permanent residence of more than 30 days by its tenants. The kitchens and dining areas within the shared housing building shall be able to adequately accommodate all residents. A shared housing building may include other dwelling units that are not shared housing units, provided that those dwelling units do not occupy more than 25 percent of the floor area of the shared housing building. A shared housing building may include 100 percent shared housing units. A shared housing building may include incidental commercial uses, provided that those commercial uses are otherwise allowable and are located only on the ground floor or the level of the shared housing building closest to the street or sidewalk of the shared housing building.

X. *Shared housing unit* shall mean one or more habitable rooms, not within another dwelling unit, that includes a bathroom, sink, refrigerator, and microwave, is used for permanent residence, that meets the "minimum room area" specified in Section R304 of the California Residential Code (Part 2.5 of Title 24 of the California Code of Regulations), and complies with the definition of "guestroom" in Section R202 of the California Residential Code.

Y. *Senior housing development* means a residential development that has a minimum of 35 dwelling units and that is constructed or substantially renovated for senior citizens aged fifty-five (55) years or older.

Z. *Specific adverse impact* means a significant, quantifiable, direct and unavoidable impact based on objective and identified written public health or safety standards, policies or conditions as they existed on the date that the application for the housing development was deemed complete as defined by Section 65589.5 of the Government Code.

AA. *State Density Bonus Law* means the State of California Government Code Section 65915 as may be amended.

BB. *Student Housing Development* shall mean a housing development use exclusively for undergraduate, graduate, or professional student enrolled full time at an institution of higher education accredited by the Western Association of Schools and Colleges or the Accrediting Commission for Community and Junior colleges.

CC. *Target unit* means a dwelling unit within a housing development that is reserved for sale or rent to, and is made available at an affordable rent or affordable ownership cost to:

very-low, lower, or moderate-income households, or is a dwelling unit in a senior housing development, and which qualifies the residential development for a Density Bonus and other incentives or concessions pursuant to Section 17.04.080 (State Density Bonuses for Construction of Affordable and Senior Housing) of this Article.

DD. *Very-low income households* means households whose income does not exceed the very-low income limits applicable to San Benito County as published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provision) by the California Department of Housing and Community Development, adjusted for household size.

17.34.030 - Eligibility for Bonus, Incentives, or Concessions

To be eligible for a Density Bonus and other incentives or concessions as provided by this chapter, a proposed housing development shall comply with the following requirements and shall satisfy all other applicable provisions of Hollister Municipal Code, except as provided by Section 17.34.060 (Allowed Incentives or Concessions).

A. *Resident Requirements*. A housing development proposed to qualify for a Density Bonus shall be designed and constructed so that it includes at least one of the following:

1. Ten percent (10%) of the total number of proposed pre-Density Bonus, base units are for lower-income households, as defined in Health and Safety Code Section 50079.5;

2. Five percent (5%) of the total number of proposed pre-Density Bonus, base units are for very low-income households, as defined in Health and Safety Code Section 50105;

3. The project is a senior citizen housing development as defined in Civil Code Sections 51.3 and 51.12, or is a mobile home park that limits residency based on age requirements for housing older persons in compliance with Civil Code Sections 798.76 and 799.5;

4. Ten percent (10%) of the total number of proposed pre-Density Bonus, base units in a common interest development as defined in Civil Code Section 4100 are for persons and families of moderate income, as defined in Health and Safety Code Section 50093; provided, that all units in the development are offered to the public for purchase;

5. Ten percent (10%) of the total number of proposed pre-Density Bonus, base units of housing for transitional foster youth, as defined in Section 66025.9 of the Education Code, disabled veterans, as defined in Section 18541 of the Government Code, or homeless persons, as defined in the federal McKinney-

Vento Homeless Assistance Act (42 U.S.C. Section 11301 et seq.), where such units are subject to a recorded affordability restriction of fifty-five (55) years and provided at the same affordability level as very low income units;

6. Twenty percent (20%) of the total number of proposed pre-Density Bonus, base units are for lower income students and made available at an affordable rent in an exclusively student housing development, as specified in Government Code Section 65915(b)(1)(F), where such units are subject to a recorded affordability restriction of fifty-five (55) years and priority is given to students experiencing homelessness; or

7. One hundred percent (100%) of all units in the development, including total units and Density Bonus Units, but exclusive of a manager's unit or units, are for lower income households, as defined by Health and Safety Code Section 50079.5, except that up to twenty percent (20%) of the units in the development, including total units and Density Bonus Units, may be for moderate-income households, as defined in Health and Safety Code Section 50053.

B. *Applicant Selection of Basis for Bonus*. For purposes of calculating the amount of the Density Bonus in compliance with Section 17.04.100 (Allowed Density Bonuses), the applicant who requests a Density Bonus shall elect whether the bonus shall be awarded on the basis of subsection (A)(1), (2), (3), (4), (5), (6), or (7) of this section. An application submitted pursuant to Section 17.04.160, shall include the number of bonus units requested pursuant to this section.

C. *Bonus Units not Included in Calculation.* Except as provided in subsection (A)(7), a Density Bonus granted in compliance with Section 17.04.100 (Allowed Density Bonuses) shall not be included when determining the number of housing units that is equal to the percentages required by subsection A of this section.

D. *Minimum Project Size to Qualify for Density Bonus.* The Density Bonus provided by this chapter shall be available only to a housing development of five (5) or more dwelling units.

E. *Condominium conversion projects.* A condominium conversion project for which a Density Bonus is requested shall comply with the eligibility and other requirements in Government Code Section 65915.5.

F. *Existing Units; Replacement.* When a proposed project affects existing units and/or any other circumstances identified in Government Code section 65915(c)(3) apply, a proposed development must replace the affected units and comply with all other requirements of Government Code section 65915(c)(3), as specified, to be eligible for a Density Bonus or other incentives or concessions.

17.34.040 - Allowed Density Bonuses

The amount of Density Bonus allowed in a housing development shall be determined in compliance with this section.

A. *Density Bonus.* A housing development that complies with the eligibility requirements in Section 17.30.030(A)(1), (2), (3), (4), (5), (6), or (7) shall be entitled to Density Bonuses as follows, unless a lesser percentage is proposed by the applicant:

1. Bonus for Units for Lower-Income Households. A housing development that is eligible for a bonus in compliance with the criteria in Section 17.04.090(A)(1) (ten percent (10%) of units for lower-income households) shall be entitled to a Density Bonus calculated as follows:

Table 17.34-1: Density Bonus for Low-Income Units

Percentage of Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
16	29
17	30.5
18	32
19	33.5
20	35
21	38.75
22	42.5
23	46.25
24	50

2. Bonus for Units for Very Low-Income Households. A housing development that is eligible for a bonus in compliance with the criteria in Section 17.04.090(A)(2) (five percent (5%) of units for very low-income households) shall be entitled to a Density Bonus calculated as follows:

Table 17.34-2: Density Bonus for Very-Low Income Units

Percentage of Very-Low Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35
12	38.75
13	42.5
14	46.25
15	50

3. Bonus for Senior Citizen Development. A housing development that is eligible for a bonus in compliance with the criteria in Section 17.04.090(A)(3) (senior citizen development or mobile home park) shall be entitled to a Density Bonus of twenty percent (20%) of the number of senior housing units.

4. Bonus for Moderate-Income Units in Common Interest Development. A housing development that is eligible for a bonus in compliance with the criteria in Section 17.04.090(A)(4) (ten percent (10%) of units in a common interest development for persons and families of moderate income) shall be entitled to a Density Bonus calculated as follows:

Table 17.34-3: Density Bonus for for-Sale Moderate-Income Units

Percentage of Moderate-Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16

Percentage of Moderate-Income Units	Percentage Density Bonus
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35
41	38.75
42	42.5
43	46.25
44	50

5. Bonus for Transitional Foster Youth, Disabled Veterans, or Homeless Persons Development. A housing development that is eligible for a bonus in compliance with the criteria in Section 17.04.090(A)(5) (transitional foster youth, disabled veterans, or homeless persons) shall be entitled to a Density Bonus of twenty percent (20%) of the units of the type giving rise to a Density Bonus.

6. Bonus for Lower Income Students in a Student Housing Development. A housing development that is eligible for a bonus in compliance with the criteria in Section 17.04.090(A)(6) (lower income students in student housing) shall be entitled to a Density Bonus of thirty-five percent (35%) of the student housing units.

7. Bonus for Units for Lower-Income and Moderate-Income Households. A housing development that is eligible for a bonus in compliance with the criteria in Section 17.30.030(A)(7) (lower-income and moderate-income households) shall be

entitled to a Density Bonus of eighty percent (80%) of the number of units of lower income households.

a. If the housing development described in this subsection (A)(7) is located within one-half mile of a major transit stop, there shall be no maximum controls on density. "Major transit stop" means a site containing an existing rail or bus rapid transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods, and also includes major transit stops that are included in the applicable regional transportation plan.

b. A housing development that receives a waiver from maximum controls on density shall only be eligible for a waiver or reduction of a height increase of up to three additional stories, or 33 feet, as expressly provided in Section 17.04.120(C)(4).

8. Density Bonus for Land Donation. When an applicant for a tentative map, parcel map, or other residential development approval donates land to the City in compliance with this subsection, the applicant shall be entitled to a Density Bonus for the entire development, as follows; provided, that nothing in this subsection shall be construed to affect the authority of the City to require a developer to donate land as a condition of development.

a. Basic Bonus. The applicant shall be entitled to a fifteen percent (15%) increase above the otherwise maximum allowable residential density under the applicable Land Use Plan designation and zoning district for the entire development, and an additional increase as follows:

Table 17.34-4: Density Bonus for Land Donation

Percentage of Very Low-Income Units Proposed	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22

Percentage of Very Low-Income Units Proposed	Percentage Density Bonus
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32
28	33
29	34
30	35

b. Increased Bonus. The increase identified in the table above shall be in addition to any increase in density required by subsections (A)(1) through (7) of this section up to a maximum combined mandated density increase of thirty-five percent (35%) if an applicant seeks both the increase required in compliance with this subsection (A)(8), as well as the bonuses provided by subsections (A)(1) through (7) of this section.

c. Eligibility for Increased Bonus. An applicant shall be eligible for the increased Density Bonus provided by this subsection if all the following conditions are met:

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

(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 ten percent (10%) 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 forty (40) units; has the appropriate General Plan land use designation; is appropriately zoned for development as affordable housing; and is or will be served by adequate public facilities and infrastructure. The land

shall have appropriate zoning and development standards to make the development of the affordable units feasible.

(4) No later than the date of approval of the final map, parcel map, or other applicable development review application for the residential development, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low-income housing units on the transferred land, except that the City may subject the proposed development to subsequent design review to the extent authorized by Government Code Section 65583.2(i) if the design is not reviewed by the City before the time of transfer.

(5) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with Section 17.04.190 and 17.04.200 (Continued availability), which shall be recorded on the property at the time of dedication.

(6) The land is transferred to the City or to a housing developer approved by the City. The City may require the applicant to identify and transfer the land to the approved housing developer.

(7) The transferred land shall be within the boundary of the proposed development or, if the City agrees, within one-quarter (1/4) mile of the boundary of the proposed development, provided that the City Council finds, based on substantial evidence, that off-site donation will provide as much or more affordable housing at the same or even lower income levels, and of the same or superior quality of design and construction, and will otherwise provide greater public benefit, than donating land on site.

(8) No later than the date of approval of the final map, parcel map or other applicable development review application for the residential development, a proposed source of funding for the very low-income units shall be identified.

B. *Greater or Lesser Bonuses.* The City may choose to grant a Density Bonus greater than provided by this section for a development that meets the requirements of this section, or grant a proportionately lower Density Bonus than required by this section for a development that does not fully comply with the requirements of this section. The

applicant may elect a lesser percentage of density increase than what is provided in this section.

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

D. *Requirements for Amendments or Discretionary Approval.* The granting of a Density Bonus shall not be interpreted, in and of itself, to require a General Plan amendment, Zoning Map amendment, or other discretionary approval.

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

17.34.050 - Density Bonus for Affordable Housing on the Site of a Commercial Development

A. An applicant seeking City approval of a commercial development that has entered into an agreement for partnered housing where at least 30 percent of the total units are dedicated to low-income households or at least 15 percent of the total units for very-low income are eligible for a development bonus, mutually agreed upon by the developer and the City, that may include, but are not limited to, any of the following:

1. Up to a 20-percent increase in maximum allowable intensity in the General Plan.

2. Up to a 20-percent increase in maximum allowable floor area ratio.

3. Up to a 20-percent increase in maximum height requirements.

4. Up to a 20-percent reduction in minimum parking requirements.

5. Use of a limited-use/limited-application elevator for upper floor accessibility.

6. An exception to a zoning ordinance or other land use regulation.

B. The agreement between the applicant and the housing developer shall identify how the commercial developer will contribute affordable housing and the timeline for construction. The agreement between the applicant and the housing developer shall be approved by the City.

C. Nothing in this Section shall preclude an affordable housing developer from seeking a Density Bonus under Section 17.04.100 (Allowed Density Bonuses). If the developer of the affordable units does not commence with construction of the affordable units as

outlined in the agreement between the applicant and the housing developer, the City may withhold certificates of occupancy for the commercial development under construction until the developer has completed construction of the affordable units.

17.34.060 - Allowed Incentives or Concessions

A. *Applicant Request and City Approval.*

1. An applicant for a Density Bonus in compliance with this chapter may submit to the City a proposal for the specific incentives or concessions listed in subsection D of this section (Type of incentives) that the applicant requests in compliance with this section. The applicant may file a request either before filing a final application for City approval of a proposed project or concurrently with a final application for project approval. A preliminary application submitted pursuant to Section 17.04.160, or a final application if a preliminary application is not submitted, shall include any incentives, concessions, waivers, or parking reductions requested pursuant to this section.

2. Incentive or concession requests that comply with this section shall be granted unless either of the following findings is made, in writing, and based upon substantial evidence:

    a. The incentive or concession is not required to provide for affordable housing costs, as defined in Health and Safety Code Section 50052.5, or for rents for the targeted units to be set as specified in Section 9.26.070(B) (Unit cost requirements); or

    b. The incentive or concession would have a specific adverse impact, as defined in Government Code Section 65589.5(d)(2), upon public health and safety or the physical environment, or on any real property listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

B. *Waiver of Standards Preventing the Use of Bonuses, Incentives, or Concessions.*

1. As required by Government Code Section 65915(e), the City will not apply a development standard that will have the effect of physically precluding the construction of a development meeting the criteria of Section 17.04.090(A) (Resident requirements), at the densities or with the concessions or incentives allowed by this chapter.

2. An applicant may submit to the City a proposal for the waiver or reduction of development and zoning standards that will have the effect of physically precluding the construction of a development meeting the criteria of Section 17.04.090(A) (Resident requirements), at the densities or with the concessions or incentives allowed by this chapter on a specific site, including minimum parcel size, side setbacks, and placement of public works improvements. The proposal must identify the specific waiver(s), concession(s), or incentive(s) sought and demonstrate that the request satisfies the requirements of Government Code Section 65915(e).

3. Nothing in this subsection shall be interpreted to require the City to waive or reduce development standards that would have an adverse impact upon health, safety, or the physical environment, for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, or upon any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law..

C. *Number of Incentives*. The applicant shall receive the following number of incentives or concessions:

1. One Incentive or Concession. One incentive or concession for a project that includes at least ten percent (10%) of the total units for lower-income households, at least five percent (5%) for very low-income households, or at least ten percent (10%) for persons and families of moderate income in a common interest development.

2. Two (2) Incentives or Concessions. Two (2) incentives or concessions for a project that includes at least seventeen percent (17%) of the total units for lower-income households, at least ten percent (10%) for very low-income households, or at least twenty percent (20%) for persons and families of moderate income in a common interest development.

3. Three (3) Incentives or Concessions. Three (3) incentives or concessions for a project that includes at least twenty-four percent (24%) of the total units for lower-income households, at least fifteen percent (15%) for very low-income households, or at least thirty percent (30%) for persons and families of moderate income in a common interest development.

4. Four (4) Incentives or Concessions. Four (4) incentives or concessions for projects where one hundred percent (100%) of all units in the development, including total units and Density Bonus Units, but exclusive of a manager's unit or units, are for lower income households, as defined by Health and Safety Code Section 50079.5, except that up to twenty percent (20%) of all units in the development, including total units and Density Bonus Units, but exclusive of a manager's unit or units, may

be for moderate-income households, as defined in Health and Safety Code Section 50053.

a. If the housing development described in this subsection (C)(4) is located within one-half mile of a major transit stop, the applicant shall also receive a height increase of up to three (3) additional stories, or 33 feet. "Major transit stop" means a site containing an existing rail or bus rapid transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods, and also includes major transit stops that are included in the applicable regional transportation plan.

Table 17.34-5 Incentives or Concessions Summary

Target Group	Target Units			
Very Low-Income	5%	10%	15%	100%[(1)(2)]
Low-Income	10%	17%	24%	100%[(1)(2)]
Student Housing Low Income	20%	--	--	--
Moderate Income	10%	20%	30%	--
Maximum Incentive/Concession	1	2	3	4

[(1)] Projects in this category may include moderate-income units that comprise up to 20% of the development.
[(2)] Projects in this category, within one-half (1/2) mile of a major transit stop, shall also receive a height increase of up to three (3) additional stories, or 33 feet.

D. *Type of Incentives.* For the purposes of this chapter, concession or incentive means any of the following:

1. A reduction in the site development standards of the Hollister Municipal Code (e.g., site coverage limitations, setbacks, reduced parcel sizes, and/or parking requirements (see also Section 17.04.130 Parking Requirements in Density Bonus Projects), or a modification of architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission in compliance with Health and Safety Code Section 18901 et seq., that would otherwise be required, that results in identifiable, financially sufficient, and actual cost reductions to provide for affordable housing costs and/or rents;

2. Approval of mixed-use land uses not otherwise allowed by the City's development and zoning ordinances, in conjunction with the housing development, if nonresidential land uses will reduce the cost of the housing development, and the

nonresidential land uses are compatible with the housing project and the existing or planned development in the area where the project will be located;

3. Other regulatory incentives proposed by the applicant or the City that will result in identifiable, financially sufficient, and actual cost reductions to provide for affordable housing costs and/or rents; and/or

4. In its sole and absolute discretion, a direct financial contribution granted by the Council, including writing down land costs, subsidizing the cost of construction, or participating in the cost of infrastructure.

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

F. *Exceptions*. Notwithstanding the provisions of this Chapter, nothing in this section shall be interpreted to require the City to:

1. Grant a Density Bonus, incentive, or concession, or waive or reduce development standards, if the bonus, incentive, concession, waiver, or reduction would have a specific adverse impact, as defined in Government Code Section 65589.5(d)(2), upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

2. Grant a Density Bonus, incentive, or concession, or waive or reduce development standards, if the bonus, incentive, concession, waiver, or reduction would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

3. Grant a Density Bonus, incentive, or concession, or waive or reduce development standards, if the bonus, incentive, concession, waiver, or reduction would be contrary to state or federal law.

17.34.070 - Parking Requirements in Density Bonus Projects.

A. Applicability. This section applies to a development that meets the requirements of Section 17.04.090 (Eligibility for bonus, incentives, or concessions) but only at the request of the applicant. An applicant may request additional parking incentives or concessions beyond those provided in this section in compliance with Section 17.04.120 (Allowed incentives or concessions).

B. Number of Parking Spaces Required.

1. At the request of the applicant, the City shall require the following vehicular parking ratios for a project that complies with the requirements of Section 17.04.090 (Eligibility for bonus, incentives, or concessions), inclusive of handicapped and guest parking:

    a. Zero (0) to one bedroom: One on-site parking space.

    b. Two (2) to three (3) bedrooms: One and one-half (1-1/2) on-site parking spaces.

    c. Four (4) and more bedrooms: Two and one-half (2-1/2) on-site 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.

Table 17.34–6: Parking Requirements For a Density Bonus Project

Unit Type	Required Off-Street Parking
Studio	1 Parking Space
1 Bedroom	1 Parking Space
2 Bedrooms	1.5 Parking Spaces
3 Bedrooms	1.5 Parking Spaces
4+ Bedrooms	2.5 Parking Spaces

C. *Adjustments to Parking Requirements.*

1. If the development includes at least twenty percent (20%) low-income units or at least eleven percent (11%) very low-income units, and the development is located within one-half mile of a major transit stop, as defined in Section 21155 of the Public Resources Code, and there is unobstructed access to the major transit stop from the development, the parking ratio, inclusive of handicapped and guest parking, shall not exceed one-half (1/2) spaces per unit.

2. At the request of the applicant, if the development consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health and Safety Code, no vehicular parking standards will apply:

    a. If the development is located within one-half (1/2) mile of a major transit stop, as defined in Section 21155 of the Public Resources Code, and there is unobstructed access to the major transit stop from the development.

b. If the development is a for-rent housing development for individuals who are sixty-two (62) years of age or older that complies with Sections 51.2 and 51.3 of the Civil Code and the development has either paratransit service or unobstructed access, within one-half (1/2) mile, to fixed bus route service that operates at least eight (8) times per day.

c. If the development is either a special needs housing development, as defined in Health and Safety Code Section 51312, or a supportive housing development, as defined in Health and Safety Code Section 50675.14, and the development has either paratransit service or unobstructed access, within one-half (1/2) mile, to fixed bus route service that operates at least eight (8) times per day.

D. *Location of Parking.* For purposes of this section, a development may provide on-site parking through uncovered parking, but not through on-street parking.

E. *Religious Institution Affiliated Housing Development Projects*. The requirements of Government Code section 65913.6 shall apply to any "religious institution affiliated housing development project," as defined, that proposes to eliminate parking as part of the housing development project. Except as specifically required by Government Code section 65913.6, all other applicable provisions of this Section 17.04.130 and this Chapter 17.04 shall apply to the proposed housing development project.

17.34.080 - Bonus and Incentives for Developments with Child Care Facilities.

A. *Housing Developments.* A housing development that complies with the resident and project size requirements of Sections 17.04.090(A) and (D), and also includes as part of that development a child care facility other than a large or small family day care home, that will be located on the site of, as part of, or adjacent to the development, shall be subject to the following additional bonus, incentives, and requirements.

1. Additional Bonus and Incentives. The City shall grant a housing development that includes a child care facility in compliance with this section either of the following:

a. An additional Density Bonus that is an amount of floor area in square feet of residential space that is equal to or greater than the floor area of the child care facility; or

b. An additional incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

2. Requirements to Qualify for Additional Bonus and Incentives.

a. The City shall require, as a condition of approving the housing development, that:

(1) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the Density Bonus Units are required to remain affordable in compliance with Section 17.04.200 (Continued Affordability and Availability); and

(2) Of the children who attend the child care facility, the children of very low-income households, lower-income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low-income households, lower-income households, or families of moderate income in compliance with Section 17.04.090(A) (Resident requirements).

b. The City shall not be required to provide a Density Bonus for a child care facility in compliance with this section if it finds, based upon substantial evidence, that the community has adequate child care facilities.

B. *Commercial and Industrial Developments.* A developer of a commercial or industrial development project, containing at least fifty thousand (50,000) square feet of floor area, may be granted a Density Bonus when that developer agrees to set aside at least two thousand (2,000) square feet of interior floor area and three thousand (3,000) outdoor square footage to be used for a child care facility, other than a large or small family day care home, in compliance with Government Code Section 65917.5 (Commercial Density Bonus).

1. Allowable Density Bonuses. The allowable Density Bonus may be one of the following:

a. A maximum of five (5) square feet of floor area for each one square foot of floor area contained in the child care facility located in an existing child care facility; or

b. A maximum of ten (10) square feet of floor area for each one square foot of floor area contained in the child care facility located in a new child care facility.

2. Requirements to qualify for the additional Density Bonus shall include all of the following.

a. For purposes of calculating the allowable Density Bonus under this subsection, both the total area contained within the exterior walls of the child care facility and all outdoor areas devoted to the use of the facility in compliance with applicable State child care licensing requirements shall be considered.

b. The child care facility shall be of a sufficient size to comply with all applicable State licensing requirements in order to accommodate at least forty (40) children.

c. This facility may be located either on the project site or may be located off site as agreed upon by the developer and the City.

d. If the child care facility is not located on the site of the development project, the City shall determine whether the location of the child care facility is appropriate and whether it complies with the purpose and intent of this section.

e. The granting of a Density Bonus shall not preclude the City from imposing necessary conditions on the development project or on the additional square footage in compliance with Government Code Section 65917.5 (Commercial Density Bonus).

17.34.090 - Location and Type of Designated Units

A. Target units shall be constructed concurrently with non-restricted dwelling units or pursuant to a schedule included in the Density Bonus Housing Agreement approved pursuant to Section 17.04.180, Density Bonus Housing Agreement.

B. Single-family detached target units shall be dispersed throughout the residential development. Townhouse, row house, and multifamily target units shall be located so as not to create a geographic concentration of target units within the residential development.

C. Target units shall have the same proportion of dwelling unit types as the market-rate dwelling units in the residential development.

D. The quality of exterior design and overall quality of construction of the target units shall be consistent with the exterior design and quality of construction of the market rate units.

E. The affordable units shall be the same as the unit type of the market rate units within the development.

F. Target units made available for purchase shall include space and connections for a clothes washer and dryer within the dwelling unit. Target units made available for rent shall include either connections for a clothes washer and dryer within the target unit or sufficient on-site self-serve laundry facilities to meet the needs of all tenants without laundry connections in their dwelling units.

G. The residential development shall comply with all requirements of the Building Code, Fire Code, Housing Code and all other requirements related to the safety of the project.

17.34.100 - Density Bonus Application

Applications for a Density Bonus shall include:

A. *Application Form.* The project Applicant shall submit an application on a form prescribed by the City, with all the information listed on the form as part of the request for a Density Bonus.

B. *Site Plan.* A tentative map and/or site plan, drawn to scale, showing the number and location of all residential units, location and square footage of any commercial space, the location of the affordable units, and the layout of each unit (for single family, duplex and townhouse developments.

C. *Design of Project.* The Applicant shall submit floor plans and elevations for each unit type, drawn to scale, and noting all colors, materials and exterior design features.

D. Proposed sales price, financing, terms, rental rates or other factors which will make the units affordable.

E. Construction schedule or phasing including the timing of the construction of the affordable dwelling units.

F. *Land Donation*. If a Density Bonus is requested for a land donation, the location of the land to be dedicated, proof of site control and reasonable documentation that each of the requirements included in Government Code Section 65915(g) can be met.

G. *Mixed Use Development*. If the Density Bonus request includes a request for a mixed-use development (where mixed-use is not permitted or conditionally permitted by the zoning district in which the property is located), the square footage of the commercial development shall be noted on the site plan.

H. *Child Care Facility.* If the Density Bonus or incentive/concession is based on the provision of a childcare facility, a written summary addressing all the eligibility requirements in Government Code Section 65915(g) can be met. An application for a Site and Architectural

Review to ensure that the facility will be constructed shall be submitted with an application for a Density Bonus.

I. *Condominium Conversion.* If the Density Bonus or incentive/concession is based on the provision of affordable units as part of a condominium conversion, a written summary addressing the eligibility requirements as described in Government Code Section 65915(h) have been met.

J. *Student Housing Development*. The Applicant shall provide evidence that the Applicant has entered into an operating agreement or master lease with one or more institutions of higher education for the institution or institutions to occupy all units of the student housing development with students from that institution or institutions. An operating agreement or master lease entered into pursuant to this subclause is not violated or breached if, in any subsequent year, there are not sufficient students enrolled in an institution of higher education to fill all units in the student housing development.

K. *Incentives/Concession.* If an incentive/concession is requested, above the waiver of lot size granted by this Chapter, the Applicant shall submit the following:

1. The number of incentives/concessions the applicant is eligible for pursuant to State Density Bonus Law.

2. A list of all Development Standards the Applicant is requesting be waived as part of the incentives/concessions for the project.

3. A list of all of the regulatory standards the Applicant is requesting be waived as part of the incentives/concessions for the project.

4. A written description of how the incentive will result in actual cost reductions.

17.34.110 - Review of Density Bonus Application

A. An Application for a Density Bonus shall be considered by and acted upon by the approval body with authority to approve the residential development. The Density Bonus Plan may be ministerially approved or denied pursuant to the findings required by this Chapter. Any decision regarding a Density Bonus, incentive, concession, waiver, modification, or revised parking standard may be appealed in accordance with the requirements of Section 17.24.140 (Appeals) of the Zoning Ordinance.

B. An Application for a Density Bonus shall be approved pursuant to the State Density Bonus Law if the following findings can be made, in addition to the required findings of other permits as part of the project.

1. The residential development meets the requirements of this Article.

2. The proposed project provides the required number of Target Units for the proposed affordability type as listed in Section 17.04.090 (Eligibility for Bonus, Incentives, or Concessions).

3. The Applicant is requesting concessions or incentives that the project is eligible under Section 17.04.120 (Allowed Incentives or Concessions).

C. An application for a Density Bonus may be denied if the following findings are made:

1. The residential development, as proposed, does not meet the requirements of this Article.

2. The concession or incentive does not result in identifiable and actual cost reductions to provide affordable housing.

3. A 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 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.

4. The concession or incentive would be contrary to state or federal law.

5. The proposed project does not meet the number of Target Units for the affordability type as listed in Section 17.04.090 (Eligibility for Bonus, Incentives, or Concessions).

6. The Applicant is requesting concessions or incentives in an amount greater than the number of incentives or concessions the project is eligible under Section 17.04.120 (Allowed Incentives or Concessions).

D. For projects that include land donation, the findings listed in Section 17.04.100(A)(8)(c)(2) shall also be made.

17.34.120 - Density Bonus Housing Agreement.

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

B. *Agreement Provisions.*

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

    a. The total number of units approved for the housing development, including the number of designated dwelling units;

    b. A description of the household income group to be accommodated by the housing development;

    c. Duration of the use restrictions for designated dwelling units of the time periods required by Section 17.04.200 (Continued Affordability and Availability);

    d. A schedule for completion and occupancy of the designated dwelling units;

    e. A description of the additional incentives and concessions being provided by the City;

    f. A description of the remedies for breach of the agreement by the owners, developers, and/or successors-in-interest of the project; and

    g. Other provisions to ensure successful implementation and compliance with this chapter.

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

    a. The developer shall give the City the continuing right-of-first-refusal to lease or purchase any or all of the designated dwelling units at the appraised value;

    b. The deeds to the designated dwelling units shall contain a covenant stating that the developer or successors-in-interest shall not assign, lease, rent, sell, sublet, or otherwise transfer any interests for designated units without written notice to the City;

    c. The City shall have the authority to enter into other agreements with the developer, or purchasers of the designated dwelling units, to ensure that the required dwelling units are continuously occupied by eligible households;

    d. Applicable deed restrictions, in a form satisfactory to the City Attorney, shall contain provisions for the enforcement of owner or developer compliance. Any default or failure to comply may result in foreclosure, specific performance, or withdrawal of the certificate of occupancy;

e. In any action taken to enforce compliance with the deed restrictions, the City Attorney shall, if compliance is ordered by a court of competent jurisdiction, take all action that may be allowed by law to recover all of the City's costs of action including legal services; and

f. Compliance with the agreement will be monitored and enforced in compliance with the measures included in the agreement.

3. For-Sale Housing Conditions. In the case of a for-sale housing development, the agreement shall provide for the following conditions governing the initial sale and use of designated dwelling units during the applicable restriction period:

a. Designated dwelling units shall be owner-occupied by eligible households, or by qualified residents;

b. The initial purchaser of each designated dwelling unit shall execute an instrument or agreement which:

(1) Restricts the sale of the unit in compliance with this Article, or other applicable City policy or ordinance, during the applicable use restriction period;

(2) Contains provisions as the City may require ensuring continued compliance with this Article and State law; and

(3) Shall be recorded against the parcel containing the designated dwelling unit.

c. The agreement shall include an equity sharing provision, as required by Government Code section 65915(c).

4. Rental Housing Conditions. In the case of a rental housing development, the agreement shall provide for the following conditions governing the use of designated dwelling units during the applicable restriction period:

a. The tenant qualifications, affordable rent category(ies), and designating dwelling units for qualified tenants;

b. Provisions requiring owners to maintain books and records to demonstrate compliance with this chapter;

c. Provisions requiring owners to submit an annual report to the City demonstrating compliance with this chapter; and

d. The applicable use restriction period shall comply with the time limits for continued availability in Section 17.04.200 (Continued Affordability and Availability).

C. *Execution of Agreement.*

1. Following approval of the agreement, and execution of the agreement by all parties, the City shall record the completed agreement on the parcels designated for the construction of designated dwelling units, at the County Recorder's Office.

2. The approval and recordation shall take place at the same time as the final map or, where a map is not being processed, before issuance of building permits for the designated dwelling units.

3. The agreement shall be binding on all future owners, developers, and/or successors-in-interest.

17.34.130 - Deed Restriction

A. *Residential Units for Rent*. Prior to the issuance of a Building Permit, the Applicant shall record a restrictive covenant in the form prescribed by the City, which shall run with the land which contains the following:

1. A prohibition on non-residential use of any units, with the exception of Home Occupations approved by the City;

2. A prohibition against renting or leasing the units for a period of less than thirty (30) days;

3. A description of the affordability requirements of the Residential Housing Development pursuant to the Density Bonus and Density Bonus Housing Agreement;

4. The number of years the property is subject to affordability as required by the Density Bonus Housing Agreement; and

5. A notation that the property is subject to a Density Bonus and the requirements of a Density Bonus Housing Agreement.

B. *Residential Units for Sale*. Prior to the issuance of a Building Permit, the Applicant shall record a restrictive covenant in the form prescribed by the City, for each lot which is for sale in the development, which shall run with the land which contains the following:

1. A prohibition on non-residential use of any units, with the exception of Home Occupations approved by the City;

2. A prohibition against renting or leasing the units for a period of less than thirty (30) days;

3. The owner is required to occupy their unit as their principal residence;

4. The restriction on the sale of the affordable unit to another household that meets the affordability requirements of the unit for a period of time required by Section 65915 of the Government Code; and

5. A notation that the property is subject to a Density Bonus and the requirements of a Density Bonus Housing Agreement.

17.34.140 - Continued Affordability and Availability

The units that qualified the housing development for a Density Bonus and other incentives and concessions shall continue to be available as affordable units in compliance with the following requirements, as required by Government Code Section 65915(c). See also Section 17.04.210 (Control of Resale).

A. *Duration of Affordability*. The applicant shall agree to, and the City shall ensure, the continued availability of the units that qualified the housing development for a Density Bonus and other incentives and concessions, as follows:

1. Low- and Very Low-Income Units. The continued affordability of all low- and very low-income qualifying units shall be maintained for fifty-five (55) years, or a longer time if required by the construction or mortgage financing assistance program, mortgage insurance program, rental subsidy program, or by City policy or ordinance.

2. Moderate-Income Units in Common Interest Development. The continued availability of moderate-income units in a common interest development shall be maintained for a minimum of thirty (30) years, or a longer time if required by City policy or ordinance.

B. *Unit Cost Requirements.* The rents and owner-occupied costs charged for the housing units in the development that qualify the project for a Density Bonus and other incentives and concessions shall not exceed the following amounts during the period of continued availability required by this section:

1. Rental Units. Rents for the lower-income Density Bonus Units shall be set at an affordable rent as defined in Health and Safety Code Section 50053.

a. For housing developments specified in Section 17.04.090(A)(7), rents for all units in the development, including both base density and Density Bonus Units, shall be as follows:

(1) The rent for at least twenty percent (20%) of the units in the development shall be set at an affordable rent, as defined in Health and Safety Code Section 50053.

(2) The rent for the remaining units in the development shall be set at an amount consistent with the maximum rent levels for a housing development that receives an allocation of state or federal low-income housing tax credits from the California Tax Credit Allocation Committee.

2. Owner-Occupied Units. Owner-occupied units shall be available at an affordable housing cost as defined in Health and Safety Code Section 50052.5.

17.34.150 - Control of Resale

To maintain the availability of for-sale affordable housing units constructed in compliance with this chapter, the following resale conditions shall apply.

A. *Limits on Resale Price*. The price received by the seller of an affordable unit shall be limited to the purchase price plus an increase based on the local consumer price index, an amount consistent with the increase in the median income since the date of purchase, or the fair market value, whichever is less. Before offering an affordable housing unit for sale, the seller shall provide written notice to the City of their intent to sell. The notice shall be provided by certified mail to the Director.

B. *Units to be Offered to the City.* Home ownership affordable units constructed, offered for sale, or sold under the requirements of this section shall be offered to the City or its assignee for a period of at least ninety (90) days from the date the notice of intent to sell is delivered to the City by the first purchaser or subsequent purchasers. Home ownership affordable units shall be sold and resold from the date of the original sale only to households determined to be eligible for affordable units in compliance with this section. The seller shall not levy or charge any additional fees nor shall any “finder’s fee” or other monetary consideration be allowed other than customary real estate commissions and closing costs.

C. *Declaration of Restrictions.* The owners of any affordable unit shall attach and legally reference in the grant deed conveying title of the affordable ownership unit a declaration of restrictions stating the restrictions imposed in compliance with this section. The grant deed shall afford the grantor and the City the right to enforce the declaration of

restrictions. The declaration of restrictions shall include all applicable resale controls, occupancy restrictions, and prohibitions required by this section.

D. *City to Monitor Resale of Units*. The City may monitor the resale of ownership affordable units. The City or its designee shall have a ninety (90) day option to commence purchase of ownership affordable units after the owner gives notification of intent to sell. Any abuse in the resale provisions shall be referred to the City for appropriate action.

17.34.160 - Judicial Relief

A. *Judicial Relief.* As provided by Government Code Section 65915(d)(3), the applicant may initiate judicial proceedings if the City refuses to grant a requested Density Bonus, incentive, or concession.

ARTICLE II. DENSITY BONUS

17.04.070 Purpose and definitions.

A. *Purpose.* In accordance with Sections 65915, 65915.5 and 65917 of the California Government Code, the purpose of this Article is to provide density bonuses, incentives, or concessions for the production of housing for very-low, lower, and moderate-income households, senior households, and for the provision of day care centers and donations of land. In enacting this Article, it is also the intent of the City to implement the goals, objectives, and policies of the City's General Plan Housing Element and to establish a City density bonus for the provision of affordable senior housing.

B. *Definitions.* The following definitions shall apply to this Article:

Affordable ownership cost means a reasonable down payment and an average monthly housing cost during the first calendar year of occupancy, mortgage insurance, property taxes and property assessments, homeowner's insurance, homeowner's association dues, if any, and all other dues and fees assessed as a condition of property ownership, which does not exceed: (1) 30 percent of 50 percent of area median income for very-low income households; (2) 30 percent of 70 percent of area median income for lower-income households; and (3) 30 percent of 120 percent of area median income for moderate-income households. Area median income shall be adjusted for assumed household size based on unit size as follows: one person in a studio dwelling unit; two persons in a one-bedroom dwelling unit; three persons in a two-bedroom dwelling unit; four persons in a three-bedroom dwelling unit; five persons in a four-bedroom dwelling unit; and six persons in a five-bedroom dwelling unit. The City Council, by resolution, shall establish guidelines for determining affordable ownership cost.

Affordable rent means monthly rent, including a reasonable allowance for garbage collection, water, electricity, gas, and other heating, cooking, and refrigeration fuels, and all mandatory fees charged for use of the property, which does not exceed: (1) 30 percent of 50 percent of area median income for very-low income households; or (2) 30 percent of 60 percent of area median income for lower-income households. Area median income shall be adjusted for assumed household size based on dwelling unit size as follows: one person in a studio dwelling unit; two persons in a one-bedroom dwelling unit; three persons in a two-bedroom dwelling unit; four persons in a three-bedroom dwelling unit; five persons in a four-bedroom dwelling unit; six persons in a five-bedroom dwelling unit. The City Council, by resolution, shall establish guidelines for determining affordable rent.

Area median income means the annual median income for San Benito County, adjusted for household size, as published periodically in Title 25, Section 6932, California Code of Regulations, or its successor provision, or as established by the city of Hollister in the event that such median income figures are no longer published periodically in the California Code of Regulations.

Concessions means such regulatory concessions as defined in Section 17.04.280 (Development Incentives or Concessions) of this Article.

Day care center means a facility approved and licensed by the State, other than a family day care home, that provides non-medical care on less than a 24-hour basis, including infant centers, preschools, extended day care facilities, adult day care and elderly day care facilities. Day care center does not include residential care facilities, residential service facilities, interim housing, or convalescent hospitals/nursing homes.

Density bonus means an increase in the number of dwelling units over the otherwise maximum allowable residential density as established in the land use element of the Hollister General Plan in accordance with State law and this Article. This definition has the same meaning as "Density Bonus" defined in Section 65915 of the California Government Code.

Density bonus program guidelines means guidelines adopted by resolution of the City that outline the criteria and procedures for implementing density bonuses or other regulations.

Density bonus units means those residential dwelling units approved pursuant to this Article, which exceed the otherwise allowable maximum allowable residential density for the development site.

Development standard means a site or construction condition that applies to a residential development pursuant to any ordinance, General Plan Element, Specific Plan, or other City condition, law, policy, resolution, or regulation. A "site and construction condition" is a development regulation or law that specifies the physical development of a site and buildings on the site in a residential development.

First approval means the first of the following approvals to occur with respect to a residential development: Specific Plan, Development Agreement, Planned Unit Development Permit, Tentative Map, Minor Subdivision, Conditional Use Permit, Site Plan Review, or Building Permit.

Incentives means such regulatory incentives as defined in Section 17.04.280 (Development Incentives or Concessions) of this Article.

Lower-income households means households whose income does not exceed the low income limits applicable to San Benito County as published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provision) by the California Department of Housing and Community Development, adjusted for household size.

Maximum allowable residential density means the maximum number of dwelling units permitted in a residential project by the City's zoning ordinance and by the land use element of the General Plan on the date that the application for the residential project is deemed complete, excluding any density bonus. If the maximum density allowed by the zoning ordinance is inconsistent with the density allowed by the land use element of the General Plan, the General Plan density shall prevail.

Moderate-income households means households whose income does not exceed the moderate income limits applicable to San Benito County as published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provision) by the California Department of Housing and Community Development, adjusted for household size.

Non-restricted units means all dwelling units within a residential development except the target units.

Qualifying residents means persons eligible to reside in senior housing as defined in California Civil Code Section 51.3.

Residential development means any project requiring any Specific Plan, Development Agreement, Planned Unit Development Permit, Tentative Map, Minor Subdivision, Conditional Use Permit, Site Plan Review, or Building Permit, for which a development review application has been submitted to the City, and which would create five or more additional dwelling units by construction or alteration of structures.

Senior housing Type 1 means a senior citizen housing development of 35 dwelling units or more as defined in California Civil Code Section 51.3, or a mobile home park that limits residency based on age requirements for older persons pursuant to California Civil Code Section 798.76 or 799.5. This definition pertains to the density bonus allowed for senior housing dwelling units allowed in accordance with the State Density Bonus provisions.

Senior housing Type 2 means a residential development of five dwelling units or more designed for residency by qualifying residents in accordance with California Civil Code Section 51.3 and in which a minimum of 35 percent of the dwelling units are provided at an affordable housing cost as required in Section 17.04.200 (City Density Bonus for Affordable Senior Housing Type 2). This definition applies to the density bonus allowed for senior housing dwelling units in accordance with the city of Hollister Density Bonus provisions.

Target unit means a dwelling unit within a housing development that is reserved for sale or rent to, and is made available at an affordable rent or affordable ownership cost to: very-low, lower, or moderate-income

households, or is a dwelling unit in a senior housing development, and which qualifies the residential development for a density bonus and other incentives or concessions pursuant to Section 17.04.080 (State Density Bonuses for Construction of Affordable and Senior Housing) of this Article.

Very-low income households means households whose income does not exceed the very-low income limits applicable to San Benito County as published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provision) by the California Department of Housing and Community Development, adjusted for household size.

(Ord. 1071, § 9, 2011)

17.04.080 State density bonuses for construction of affordable and senior housing.

A. *Basic Density Bonus in Accordance with State Law (Very-Low and Lower-Income Units).* A residential development is eligible for a 20 percent density bonus if it includes at least five dwelling units, and the applicant seeks a density bonus and agrees to construct at least one of the following:

   1. Ten percent of the total dwelling units of the residential development as dwelling units affordable to lower-income households; or

   2. Five percent of the total dwelling units of the residential development as dwelling units affordable to very-low income households.

B. *Basic Density Bonus in Accordance with State Law (Moderate-Income Ownership Units).* A residential development is eligible for a five percent density bonus if it includes at least five dwelling units, is a common interest development as defined in Civil Code Section 1351, all the dwelling units in the development are offered to the public for purchase, and the applicant seeks a density bonus and agrees to construct ten percent of the total dwelling units as ownership units affordable to moderate-income households.

C. *Basic Density Bonus in Accordance with State Law (Senior Housing Type 1).* A senior housing Type 1 development is eligible for a 20 percent density bonus if it includes at least 35 dwelling units, and the applicant seeks a density bonus. Senior housing Type 1 developments are not required under State law to be affordable to very-low, lower, or moderate-income households to be eligible for this bonus.

D. *Additional Density Bonus in Accordance with State Law.* The density bonus to which the applicant is entitled shall increase if the percentage of affordable housing units exceeds the base percentage established in subsections A or B above, as follows:

   1. *Very-Low Income Units.* For each one percent increase above five percent in the percentage of dwelling units affordable to very-low income households, the density bonus shall be increased by two and one-half percent up to a maximum of 35 percent.

   2. *Lower-Income Units.* For each one percent increase above ten percent in the percentage of dwelling units affordable to lower-income households, the density bonus shall be increased by one and 1½ percent up to a maximum of 35 percent.

   3. *Moderate-Income Ownership Units.* For each one percent increase above ten percent of the percentage of ownership units affordable to moderate-income households, the density bonus shall be increased by one percent up to a maximum of 35 percent.

E. The requirements of this section and Section 17.04.120 (Incentives or Concessions in Accordance with State Law) are minimum requirements and shall not preclude a residential development from providing additional affordable dwelling units or affordable dwelling units with lower rents or sales prices than required by these sections.

(Ord. 1071, § 9, 2011)

17.04.100 Calculation of density bonus.

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

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

C. The developer may request a lesser density bonus than the project is entitled to, but no reduction will be permitted in the number of required target units pursuant to Section 17.04.080 (State Density Bonuses for Construction of Affordable and Senior Housing). Regardless of the number of target units, no residential development may be entitled to a total density bonus of more than 35 percent except senior housing Type 2 pursuant to Section 17.04.200 (City Density Bonus for Affordable Senior Housing Type 2).

D. Each residential development is entitled to only one density bonus, which may be selected by the applicant based on the percentage of either very-low income target units, lower-income target units, or moderate-income ownership target units, or the project's status as either a senior housing Type 1 or 2 development. Density bonuses from more than one category may not be combined, except that bonuses for land dedication pursuant to Section 17.04.140 (State Density Bonus for Land Donation) may be combined with bonuses granted pursuant to this subsection, up to a maximum of 35 percent, and an additional square footage bonus for day care centers may be granted as described in Section 17.04.160 (State Density Bonus or Incentive or Concession for Day Care Centers).

(Ord. 1071, § 9, 2011)

17.04.120 Incentives or concessions in accordance with State law.

A residential development is eligible for incentives and concessions as defined in Section 17.04.280 (Development Incentives or Concessions) if it includes at least five dwelling units, and the applicant seeks a density bonus and agrees to construct affordable dwelling units as follows:

A. *Very-Low Income Units.* A residential development is entitled to one incentive or concession for a project that includes at least five percent of the dwelling units for very-low income households; two incentives or concessions for a project that includes at least ten percent of the dwelling units for very-low income households; and three incentives or concessions for a project that includes at least 15 percent of the dwelling units for very-low income households.

B. *Lower-Income Units.* A residential development is entitled to one incentive or concession if it includes at least ten percent of the dwelling units for lower-income households; two incentives or concessions if it includes at least 20 percent of the dwelling units for lower-income households; and three incentives or concessions if it includes at least 30 percent of the dwelling units for lower-income households.

C. *Moderate-Income Ownership Units.* A residential development with ownership units affordable to moderate-income households is entitled to one incentive or concession for a project that includes at least ten percent of the ownership units for moderate-income households; two incentives or concessions for a project that includes at least 20 percent of the ownership units for moderate-income households; and three incentives or concessions for a project that includes at least 30 percent of the ownership units for moderate-income households.

(Ord. 1071, § 9, 2011)

17.04.140 State density bonus for land donation.

A. When an applicant for a residential development seeks a density bonus for the donation and transfer of land for the development of units affordable to very-low income households, as provided for in this Section 17.04.140, the residential development shall be eligible for a 15 percent density bonus above the otherwise maximum allowable residential density in accordance with State law. For each one percent increase above the minimum ten percent land donation described in subsection (B)(2) of this section, the maximum density bonus shall be increased by one percent up to a maximum of 35 percent. This increase shall be in addition to any increase in density allowed by Section 17.04.080 (State Density Bonuses for Construction of Affordable and Senior Housing), up to a maximum combined density bonus of 35 percent if an applicant seeks both the density bonus authorized by this Section 17.04.140 and the density bonus authorized by Section 17.04.080. When calculating the number of permitted density bonus units, any calculations resulting in fractional dwelling units shall be rounded to the next larger whole number. This density bonus applies only when land is donated for the construction of very-low income housing.

B. The City may approve the density bonus described in this section if it makes all of the following findings when approving the residential development:

1. The applicant will donate and transfer the land no later than the date of approval of the Final Map, Parcel Map, or applicable development review application for the residential development.

2. The developable acreage and regulations of the applicable zoning district of the land to be transferred will permit construction of dwelling units affordable to very-low income households in an amount not less than ten percent of the total number of residential dwelling units in the proposed development, or will permit construction of a greater percentage of dwelling units if proposed by the developer to qualify for a density bonus of more than 15 percent.

3. The transferred land is at least one acre in size or is large enough to permit development of at least 40 dwelling units, has the appropriate General Plan land use designation, has the appropriate zoning and development standards to make feasible the development of very-low income housing, and at the time of project approval is, or at the time of construction will be, served by adequate public facilities and infrastructure.

4. No later than the date of approval of the Final Map, Parcel Map, or other applicable development review application for the residential development, the transferred land will have all of the applicable development permits and approvals, other than any required building permit approval, necessary for the development of the very-low income dwelling units on the transferred land unless the City Council finds that the applicant has provided specific assurances guaranteeing the timely completion of the very-low income units, including satisfactory assurances that construction and permanent financing will be secured for the construction of the dwelling units within a reasonable time.

5. The transferred land and the very-low income units constructed on the land will be subject to a recorded Density Bonus Housing Agreement ensuring continued affordability of the dwelling units consistent with Section 17.04.240 (Affordability and Occupancy Standards), which restriction shall be filed for recordation by the City Planner with the San Benito County Recorder's Office on the property at the time of dedication.

6. The land will be transferred to the City, Hollister Redevelopment Agency, or to a housing developer approved by the City. The City reserves the right to require the applicant to identify a developer for the very-low income units and to require that the land be transferred to that developer.

7. The transferred land is within the site boundaries of the proposed residential development. The transferred land may be located within one-quarter mile of the boundary of the proposed residential development provided that the City Council finds, based on substantial evidence, that off-site donation

will provide as much or more affordable housing at the same or even lower income levels, and of the same or superior quality of design and construction, and will otherwise provide greater public benefit, than donating land on site.

(Ord. 1071, § 9, 2011)

17.04.160 State density bonus or incentive or concession for day care centers.

A residential project that contains a child care facility as defined by Government Code Section 65915(h) may be eligible for an additional density bonus or incentive pursuant to the requirement set forth in that section.

(Ord. 1071 § 9, 2011)

17.04.180 State density bonus for condominium conversions.

A. Condominium conversions may be eligible for a density bonus or incentive pursuant to the requirements set forth in Government Code Section 65915.5.

B. Also see Chapter 16.17 "Conversion of Multifamily Rental Units" of Title 16, Subdivisions, of the Hollister Municipal Code.

(Ord. 107, § 9, 2011)

17.04.200 City density bonus for affordable senior housing Type 2.

A. A residential development may be considered for a density bonus under this subsection if:

1. The applicant seeks a density bonus and the residential development consists entirely of senior housing Type 2;

2. At least 35 percent of the dwelling units are affordable housing units. For the purposes of this subsection, "affordable housing units" include dwelling units available at an affordable rent or affordable ownership cost to lower-income and very-low income households. A minimum of 60 percent of such affordable housing units shall be available at an affordable rent or affordable ownership cost to very-low income senior households, and 40 percent of such affordable housing units shall be available at an affordable rent or affordable ownership cost to lower-income senior households. However, a greater percentage of very-low income senior housing units may be provided in lieu of some or all of the lower-income senior housing units on a dwelling unit for dwelling unit basis; and

3. The density bonus shall be equal to 20 percent, in addition to the 20 percent density bonus permitted by Section 17.04.080(C), for a total maximum density bonus of 40 percent.

B. A Conditional Use Permit shall be required for a density bonus granted pursuant to this subsection. The approval body shall find that the residential development conforms with the property development regulations of the applicable zoning district or has received a Planned Unit Development permit; is compatible with neighboring development; has adequate open space, on-site amenities, and services for the intended residents; is within reasonable walking distance of neighborhood services; and has adequate available infrastructure to accommodate the proposed density.

C. Any density bonus granted under this section that is greater than the bonus that the project is eligible for under Section 17.04.080 (State Density Bonuses for Construction of Affordable and Senior Housing) shall be considered an incentive or concession as described in Section 17.04.280 (Development Incentives or

Concessions). Any affordable housing units that qualify a project for a density bonus under Section 17.04.080 (State Density Bonuses for Construction of Affordable and Senior Housing) may not also be used to qualify a project for a density bonus under this section.

D. At its discretion, the City Council may grant up to two incentives or concessions for senior housing Type 2 that is eligible for a density bonus under this subsection.

(Ord. 1071, § 9, 2011)

17.04.220 Summary tables.

The following tables (Table 17.04-7), (Table 17.04-8), (Table 17.04-9), and (Table 17.04-10) summarize the available density bonuses, incentives, and concessions pursuant to State and City Density Bonus Law.

Table 17.04-7 Density Bonus Summary

Target Units or Category	**Minimum % Target Units[(a)]**	**Bonus Granted**	**Additional Bonus for Each 1% Increase in Target Units**	**% of Target Units Required for Maximum Bonus**
Pursuant to State Density Bonus Law: A State density bonus may be selected from only one category, except that bonuses for land donation may be combined with others, up to a maximum of 35%, and an additional square foot bonus may be granted for a day care center.				
Very-low income	5%	20%	2.5%	11%
Lower-income	10%	20%	1.5%	20%
Moderate-income (ownership units only)	10%	5%	1%	40%
Senior housing Type 1 (35 dwelling units or more or senior mobile home park; no affordable units required)	100% senior	20%	—	—
Land donation for very-low income housing	10% of market-rate units	15%	1%	30%
Condominium conversion—moderate-income	33%	25%[(b)]	—	—
Condominium conversion—lower-income	15%	25%[(b)]	—	—
Day care center	—	Sq. ft. in day care center[(b)]	—	—
Pursuant to City Density Bonus				
Senior housing Type 2	100% senior; 35% affordable	20% additional[(c)]	—	100% senior; 35% affordable[(c)]

Notes:

(a) Only the project's base density is considered when determining the percentage of target units. See Section 17.04.100 (Calculation of density bonus).

(b) Or an incentive of equal value, at the City's option.

(c) Senior housing Type 2 projects with at least 35% low and very-low income units are eligible for an additional 20% bonus, for a total of 40%, upon granting of a Conditional Use Permit. See Section 17.04.200.

Table 17.04-8 Example of Use of Density Bonuses for a 100-Dwelling Unit Project

Number (%) of Affordable Units in the Category	Density Bonus Granted (%)	Additional Density Bonus Units Granted	Total Dwelling Units in the Development
Very-Low Income Units (for Sale or Rent)			
0—4 (less than 5%)	0% (requires minimum 5% very-low income)	0	100
5 (5%)	20%	20	120
8 (8%)	27.5% (20% + (3 x 2.5%))	28 (round up)	128
11 (11%)	35% (20% + (6 x 2.5%))	35	135
More than 11%	35% (maximum possible)	35	135
Lower Income Units (for Sale or Rent)			
0—9 (less than 10%)	0% (requires minimum 10% lower income)	0	100
10 (10%)	20%	20	120
15 (15%)	27.5% (20% + (5 x 1.5%))	28 (round up)	128
20 (20%)	35% (20% + (10 x 1.5%))	35	135
More than 20%	35% (maximum possible)	35	135
Moderate Income Units (for Sale)			
0—9 (less than 10%)	0% (requires minimum 10% lower income)	0	100
(10) 10%	5%	5	105
20 (20%)	15% (5% + (10 x 1%))	15	115
40 (40%)	35% (5% + (30 x 1%))	35	135
More than 40%	35% (maximum possible)	35	135

Table 17.04-9 State Density Bonus Incentives and Concessions Summary

Target Units or Category	% of Target Units		
Pursuant to State Density Bonus			
Very-low income	5%	10%	15%
Lower-income	10%	20%	30%
Moderate-income (ownership units only)	10%	20%	30%
Condominium conversion—33% moderate-income	(e)		
Condominium conversion—25% lower-income	(e)		
Day care center	(e)		

Maximum Incentive(s)/Concession(s)[(a)(b)(c)(d)]	1	2	3

Notes:

(a) A concession or incentive may be requested only if an application is also made for a density bonus.

(b) Concessions or incentives may be selected from only one category (very low, lower, or moderate).

(c) No concessions or incentives are available for land donation.

(d) No concessions or incentives are available for Type 1 senior housing without affordable units except the parking incentive listed in Section 17.04.280(C)(7).

(e) Condominium conversions and day care centers may have one concession or a density bonus at the City's option, but not both.

Table 17.04-10 City Density Bonus Incentives and Concessions Summary

Target Units or Category	Maximum Incentives/Concessions
Senior housing Type 2 (at least 35% affordable)	2[(a)]

Note:

(a) At the discretion of City Council.

(Ord. 1071, § 9, 2011)

17.04.240 Affordability and occupancy standards.

A. The City Council, by resolution, shall approve standard documents to ensure the continued affordability of target units consistent with Government Code Section 65915 and this section. The documents may include, but are not limited to, Density Bonus Housing Agreements, regulatory agreements, promissory notes, deeds of trust, resale restrictions, options to purchase, or other documents, which shall be recorded against all target units and prepared at the applicant's expense.

B. Target units offered for rent to lower-income and very-low income households shall be made available for rent at an affordable rent and shall remain restricted and affordable to the designated income group for a minimum period of 30 years, except that senior housing Type 2 target units offered for rent shall remain restricted and affordable to the designated income group for a minimum period of 55 years. A longer term of affordability may be required if the residential development receives a subsidy of any type including, but not limited to, a loan, grant, mortgage financing, mortgage insurance, or rental subsidy, and the subsidy program requires a longer term of affordability.

C. Target units offered for sale to very-low, lower, or moderate-income households shall be sold at an affordable ownership cost. Senior housing Type 2 target units offered for sale shall remain restricted and affordable to the designated income group for a minimum period of 45 years. Target units offered for sale to lower-income and very-low income households shall remain restricted affordable to the designated income group for a term of at least 30 years. Target units offered for sale to moderate-income households shall remain restricted and affordable to moderate-income households for a term of at least 45 years consistent with the provisions of Health and Safety Code Section 33413(c). A longer term of affordability may be required if the residential development receives a subsidy of any type including, but not limited to, a loan, grant, mortgage financing, mortgage insurance, or rental subsidy, and the subsidy program requires a longer term of affordability.

D. Any household that occupies a target unit must occupy that dwelling unit as its principal residence.

E. No household may begin occupancy of a target unit until the household has been determined by the City or its designee to be eligible to occupy that dwelling unit. The City Council, by resolution, shall establish

guidelines for determining household income, maximum occupancy standards, affordable ownership cost, affordable rent, provisions for continued monitoring of tenant eligibility, and other eligibility criteria.

F. The City Council by resolution may establish fees for projects requesting density bonuses and incentives or concessions and for the on-going administration and monitoring of the target units and day care centers, which fees may be updated periodically, as required.

G. All promissory note repayments, shared appreciation payments, or other payments collected under this Article shall be deposited in a designated account to be used for the provision and maintenance of affordable housing.

H. Any person who is a member of the City Council or the Planning Commission, and their immediate family members, or any person having any equity interest in the residential development, including, but not limited to, a developer, partner, investor, or applicant and their immediate family members, is ineligible to rent, lease, occupy, or purchase a target unit. The City Council, by resolution, may establish guidelines for determination of "immediate family members."

(Ord. 1071, § 9, 2011)

17.04.260 Development standards.

A. Target units shall be constructed concurrently with non-restricted dwelling units or pursuant to a schedule included in the Density Bonus Housing Agreement approved pursuant to Section 17.04.340 (Density Bonus Housing Agreement).

B. Single-family detached target units shall be dispersed throughout the residential development. Townhouse, row house, and multifamily target units shall be located so as not to create a geographic concentration of target units within the residential development.

C. Target units shall have the same proportion of dwelling unit types as the market-rate dwelling units in the residential development.

D. The quality of exterior design and overall quality of construction of the target units shall meet all site, design, and construction standards included in Chapter 17.04 (Residential Zoning Districts), Sections 17.08.030 (Mixed Use Development Standards), 17.08.040 (Mixed Use Supplemental Standards), 17.08.060 (West Gateway Supplemental Standards), and 17.14.020 (Residential Performance Overlay Zoning District) of the Hollister Municipal Code including, but not limited to, compliance with all design guidelines included in applicable specific plans or otherwise adopted by the City Council.

E. Target units made available for purchase shall include space and connections for a clothes washer and dryer within the dwelling unit. Target units made available for rent shall include either connections for a clothes washer and dryer within the target unit or sufficient on-site self-serve laundry facilities to meet the needs of all tenants without laundry connections in their dwelling units.

(Ord. 1071, § 9, 2011)

17.04.280 Development incentives or concessions.

A. One to three incentives or concessions may be requested for eligible residential developments pursuant to Section 17.04.120 (Incentives or Concessions in Accordance with State Law).

B. For purposes of this Article, a concession or incentive includes any of the following:

1. A reduction of development standards or architectural design requirements which exceed the minimum applicable building standards approved by the State Building Standards Commission

pursuant to Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, which result in identifiable, financially sufficient, and actual cost reductions, based upon appropriate financial analysis and documentation if required by the City;

2. Allowing mixed use development in conjunction with the proposed residential development, if nonresidential land uses will reduce the cost of the residential project and the nonresidential land uses are compatible with the residential project and existing or planned surrounding development; and

3. Other regulatory incentives which result in identifiable, financially sufficient, and actual cost reductions, based upon appropriate financial analysis and documentation if required by the City.

C. *Concessions Not Requiring Financial Pro Forma from Applicant.* The following concessions and incentives are determined by the City to result in identifiable, financially sufficient, and actual cost reductions to residential development, and no financial pro forma needs to be submitted by the applicant:

1. Up to 15 percent deviation from the minimum yard requirement, with each deviation counting as one concession;

2. Up to 15 percent reduction in the usable open space requirement or maximum lot coverage requirement;

3. Up to 15 percent reduction in lot dimensions;

4. Up to 15 percent increase in maximum building height;

5. Up to 15 percent reduction in minimum distance between buildings;

6. Up to 15 percent reduction in landscaping area requirements;

7. An off-street vehicular parking standard, inclusive of handicapped and guest parking, that does not exceed the following:

   a. Zero to one bedroom: one on-site parking space,

   b. Two to three bedrooms: two on-site parking spaces,17.04.280

   c. Four and more bedrooms: two and one-half parking spaces,

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

   e. The residential development may provide the required parking through on-site tandem parking or uncovered parking, but not through on-street parking;

8. Waiver of any fees imposed pursuant to Section 17.04.240 (Affordability and Occupancy Standards) or Section 17.04.300 (Application Requirements);

9. Approval of mixed use buildings or developments in conjunction with the residential development, if nonresidential land uses will reduce the cost of the residential development, and if the City finds that the proposed nonresidential uses are compatible with the residential development and with existing or planned development in the area where the proposed residential development will be located;

10. Deferral until occupancy of development impact fees (including, but not limited to, park fees, fire fees, sanitary sewer trunk line fees, storm drain trunk line fees, street tree fees, library fees, or traffic impact fees); and

11. Density bonus for senior housing Type 2 pursuant to Section 17.04.200 (City Density Bonus for Affordable Senior Housing Type 2) that is in excess of the density bonus that the project is entitled to under Section 17.04.080 (State Density Bonuses for Affordable and Senior Housing).

D. *Concessions Requiring Financial Pro Forma from Applicant.* When requested by the applicant, the following concessions and incentives shall require the applicant to demonstrate to the City Council that the requested concessions or incentives result in identifiable, financially sufficient, and actual cost reductions to the project:

1. A reduction of development regulations standards or a modification of Zoning Code requirements that exceed or those listed in subsection C;

2. Reduced parking space dimensions, driveway width, parking aisle width, garage and carport dimension, location of parking spaces within required yards, or reduced bicycle parking requirements;

3. Reductions in architectural design standards; and

4. All other regulatory incentives or concessions.

E. An applicant may seek a waiver of any development standards that will physically preclude the construction of a residential development with the requested density bonus, incentives, and concessions permitted by this Article. The applicant shall bear the burden of demonstrating that the development standards that are requested to be waived will have the effect of physically precluding the construction of the residential development with the density bonus and incentives.

F. Nothing in this Article requires the City to grant direct financial incentives for the residential development, including but not limited to the provision of financial subsidies, publicly owned land, fee waivers, or waiver of dedication requirements. The City, at its sole discretion, may choose to provide such direct financial incentives.

(Ord. 1071, § 9, 2011)

17.04.300 Application requirements.

Applications for a density bonus shall include:

A. A Density Bonus Housing Plan, showing any density bonus, incentive, concession, waiver, modification, or revised parking standard requested pursuant to this Article, shall be submitted as part of the first approval of any residential development. The Density Bonus Housing Plan shall specify, at the same level of detail as the application for the residential development: the number, dwelling unit type, level of affordability, tenure, number of bedrooms and baths, approximate location, size, and design, construction and completion schedule of all target units, number and location of all density bonus units, phasing of target units in relation to nonrestricted units, and marketing plan. The Density Bonus Housing Plan shall also specify the methods to be used to verify tenant and buyer incomes and to maintain the affordability of the target units. The Density Bonus Housing Plan shall specify a financing mechanism for the on-going administration and monitoring of the target units.

B. A description of any requested incentives, concessions, waivers, or modifications of development standards, or modified parking standards.

C. For all incentives and concessions except those listed in Section 17.04.280(C), the applicant shall provide a pro forma to the City demonstrating that the requested incentives and concessions result in identifiable, financially sufficient, and actual cost reductions. The cost of reviewing any required pro forma data submitted in support of a request for a concession or incentive including, but not limited to, the cost to the City of hiring a consultant to review the pro form, shall be borne by the applicant. The pro-forma shall be reviewed by a third party as selected by the City and paid for by the applicant unless the City Planner waives the requirement for such a review.

D. For waivers or modifications of development standards, the application shall demonstrate that the development standards will have the effect of physically precluding the construction of a housing development at the densities or with the incentives or concessions permitted by this Article.

E. If a density bonus or concession is requested for a land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the findings included in Section 17.04.140 (State Density Bonus with Land Donation) can be made.

F. If a density bonus or concession is requested for a day care center, the application shall show the location and square footage of the day care center and provide evidence that the findings included in Section 17.04.160 (State Density Bonus or Incentive or Concession for Day Care Centers) can be made.

G. If a mixed-use building or development is proposed, the application shall provide evidence that the finding included in Section 17.04.280(B)(2) can be made.

(Ord. 1071, § 9, 2011)

17.04.320 Review of application.

A. An application for a density bonus, incentive, concession, waiver, modification, or revised parking standard pursuant to this Article shall be considered by and acted upon by the approval body with authority to approve the residential development. The Density Bonus Plan may be approved, approved with conditions, or denied pursuant to the findings required by this Article. Any decision regarding a density bonus, incentive, concession, waiver, modification, or revised parking standard may be appealed to the Planning Commission and from the Planning Commission to the City Council in accordance with the requirements of Section 17.24.140 (Appeals). In accordance with State law, neither the granting of an incentive, concession, waiver, or modification nor the granting of a density bonus shall be interpreted, in and of itself, to require a General Plan Amendment, Zoning Code Amendment or Rezone, Variance, or other Discretionary Review Application approval.

B. Before approving an application for a density bonus, incentive, concession, waiver, or modification, the approval body shall make the following findings:

1. The application is eligible for a density bonus and any concessions, incentives, waivers, modifications, or reduced parking standards requested; conforms to all standards for affordability included in this Article; and includes a financing mechanism for all implementation and monitoring costs.

2. Any requested incentive or concession will result in identifiable, financially sufficient, and actual cost reductions based upon appropriate financial analysis and documentation as described in Section 17.04.300 (Application Requirements).

3. If the density bonus is based all or in part on donation of land, the approval body has made the findings included in Section 17.04.140 (State Density Bonus with Land Donation).

4. If the density bonus, incentive, or concession is based all or in part on the inclusion of a day care center, the approval body has made the finding included in Section 17.04.160 (State Density Bonus or Incentive or Concession for Day Care Centers).

5. If the incentive or concession includes mixed use buildings or developments, the approval body has made the finding included in Section 17.04.280(B)(2) (Development Incentives or Concessions).

6. If a waiver or modification of development standards is requested, the developer has shown that the development standards to be waived will have the effect of physically precluding the construction of the residential development at the densities or with the incentives or concession permitted by this Article.

C. If the required findings can be made, and a request for an incentive or concession is otherwise consistent with this Article, the approval body may deny an incentive or concession only if it makes a written finding, based upon substantial evidence, of either of the following:

1. The incentive or concession is not required to provide for affordable rents or affordable ownership costs; or

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

3. The incentive or concession would be contrary to State or Federal law.

D. If the required findings can be made, and a request for a waiver or modification is otherwise consistent with this Article, the approval body may deny the requested waiver or modification only if it makes a written finding, based upon substantial evidence, of either of the following:

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

2. The waiver or modification would have an adverse impact on any real property that is listed in the California Register of Historic Resources; or

3. The waiver or modification would be contrary to State or Federal law.

E. If a density bonus or concession is based on the provision of day care centers, and if the required findings can be made, the approval body may deny the bonus or concession only if it finds, based on substantial evidence, that the City already has adequate day care centers.

F. A request for a minor modification of an approved Density Bonus Housing Plan may be granted by the City Manager or designee if the modification is substantially in compliance with the original Density Bonus Housing Plan and conditions of approval. Other modifications to the Density Bonus Housing Plan shall be processed in the same manner as the original plan.

(Ord. 1071, § 9, 2011)

17.04.340 Density Bonus Housing Agreement.

A. Following the first approval of a residential development, the City shall prepare a Density Bonus Housing Agreement providing for implementation of the Density Bonus Housing Plan and conditions of approval and consistent with the provisions of this Article and any density bonus program guidelines adopted by City Council resolution.

B. Prior to the approval of any Final or Parcel Map or issuance of any building permit for a residential development subject to this Article, the Density Bonus Housing Agreement shall be executed by the City and

the applicant, and the Density Bonus Housing Agreement shall be recorded against the entire residential development property to ensure that the Agreement will be enforceable upon any successor in interest. The Density Bonus Housing Agreement shall run with the land, and bind future owners and successors in interest as required to ensure compliance with the provisions of this Article.

(Ord. 1071, § 9, 2011)

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TITLE 7. PLANNING AND LAND USE [65000 - 66499.58] *(Heading of Title 7 amended by Stats. 1974, Ch. 1536.)*

DIVISION 1. PLANNING AND ZONING [65000 - 66301] *(Heading of Division 1 added by Stats. 1974, Ch. 1536.)*

CHAPTER 4.3. Density Bonuses and Other Incentives [65915 - 65918] *(Chapter 4.3 added by Stats. 1979, Ch. 1207.)*

65915. (a) (1) 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 comply with this section. A city, county, or city and county shall adopt an ordinance that specifies how compliance with this section will be implemented. Except as otherwise provided in subdivision (s), failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.

(2) A local government shall not condition the submission, review, or approval of an application pursuant to this chapter on the preparation of an additional report or study that is not otherwise required by state law, including this section. This subdivision does not prohibit a local government from requiring an applicant to provide reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p).

(3) In order to provide for the expeditious processing of a density bonus application, the local government shall do all of the following:

(A) Adopt procedures and timelines for processing a density bonus application.

(B) Provide a list of all documents and information required to be submitted with the density bonus application in order for the density bonus application to be deemed complete. This list shall be consistent with this chapter.

(C) Notify the applicant for a density bonus whether the application is complete in a manner consistent with the timelines specified in Section 65943.

(D) (i) If the local government notifies the applicant that the application is deemed complete pursuant to subparagraph (C), provide the applicant with a determination as to the following matters:

(I) The amount of density bonus, calculated pursuant to subdivision (f), for which the applicant is eligible.

(II) If the applicant requests a parking ratio pursuant to subdivision (p), the parking ratio for which the applicant is eligible.

(III) If the applicant requests incentives or concessions pursuant to subdivision (d) or waivers or reductions of development standards pursuant to subdivision (e), whether the applicant has provided adequate information for the local government to make a determination as to those incentives, concessions, or waivers or reductions of development standards.

(ii) Any determination required by this subparagraph shall be based on the development project at the time the application is deemed complete. The local government shall adjust the amount of density bonus and

parking ratios awarded pursuant to this section based on any changes to the project during the course of development.

(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f), and, if requested by the applicant and consistent with the applicable requirements of this section, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p), if an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development, including a shared housing building development, for rental or sale to lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Five percent of the total units of a housing development, including a shared housing building development, for rental or sale to very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code. For purposes of this subparagraph, "development" includes a shared housing building development.

(D) Ten percent of the total dwelling units of a housing development are sold to persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(E) Ten percent of the total units of a housing development for transitional foster youth, as defined in Section 66025.9 of the Education Code, disabled veterans, as defined in Section 18541, or homeless persons, as defined in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.). The units described in this subparagraph shall be subject to a recorded affordability restriction of 55 years and shall be provided at the same affordability level as very low income units.

(F) (i) Twenty percent of the total units for lower income students in a student housing development that meets the following requirements:

(I) All units in the student housing development will be used exclusively for undergraduate, graduate, or professional students enrolled full time at an institution of higher education accredited by the Western Association of Schools and Colleges or the Accrediting Commission for Community and Junior Colleges. In order to be eligible under this subclause, the developer shall, as a condition of receiving a certificate of occupancy, provide evidence to the city, county, or city and county that the developer has entered into an operating agreement or master lease with one or more institutions of higher education for the institution or institutions to occupy all units of the student housing development with students from that institution or institutions. An operating agreement or master lease entered into pursuant to this subclause is not violated or breached if, in any subsequent year, there are not sufficient students enrolled in an institution of higher education to fill all units in the student housing development.

(II) The applicable 20-percent units will be used for lower income students.

(III) The rent provided in the applicable units of the development for lower income students shall be calculated at 30 percent of 65 percent of the area median income for a single-room occupancy unit type.

(IV) The development will provide priority for the applicable affordable units for lower income students experiencing homelessness. A homeless service provider, as defined in paragraph (3) of subdivision (e) of Section 103577 of the Health and Safety Code, or institution of higher education that has knowledge of a person's homeless status may verify a person's status as homeless for purposes of this subclause.

(ii) For purposes of calculating a density bonus granted pursuant to this subparagraph, the term "unit" as used in this section means one rental bed and its pro rata share of associated common area facilities. The units described in this subparagraph shall be subject to a recorded affordability restriction of 55 years.

(G) One hundred percent of all units in the development, including total units and density bonus units, but exclusive of a manager's unit or units, are for lower income households, as defined by Section 50079.5 of the Health and Safety Code, except that up to 20 percent of the units in the development, including total units and density bonus units, may be for moderate-income households, as defined in Section 50053 of the Health and

Safety Code. For purposes of this subparagraph, "development" includes a shared housing building development.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), an applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), (D), (E), (F), or (G) of paragraph (1).

(c) (1) (A) An applicant shall agree to, and the city, county, or city and county shall ensure, the continued affordability of all very low and low-income rental units that qualified the applicant for the award of the density bonus for 55 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

(B) (i) Except as otherwise provided in clause (ii), rents for the lower income density bonus units shall be set at an affordable rent, as defined in Section 50053 of the Health and Safety Code.

(ii) For housing developments meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b), rents for all units in the development, including both base density and density bonus units, shall be as follows:

(I) The rent for at least 20 percent of the units in the development shall be set at an affordable rent, as defined in Section 50053 of the Health and Safety Code.

(II) The rent for the remaining units in the development shall be set at an amount consistent with the maximum rent levels for lower income households, as those rents and incomes are determined by the California Tax Credit Allocation Committee.

(2) (A) An applicant shall agree to ensure, and the city, county, or city and county shall ensure, that a for-sale unit that qualified the applicant for the award of the density bonus meets either of the following conditions:

(i) The unit is initially occupied by a person or family of very low, low, or moderate income, as required, and it is offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code and is subject to an equity sharing agreement.

(ii) The unit is purchased by a qualified nonprofit housing corporation pursuant to a recorded contract that satisfies all of the requirements specified in paragraph (10) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code and that includes all of the following:

(I) A repurchase option that requires a subsequent purchaser of the property that desires to resell or convey the property to offer the qualified nonprofit corporation the right to repurchase the property prior to selling or conveying that property to any other purchaser.

(II) An equity sharing agreement.

(III) Affordability restrictions on the sale and conveyance of the property that ensure that the property will be preserved for lower income housing for at least 45 years for owner-occupied housing units and will be sold or resold only to persons or families of very low, low, or moderate income, as defined in Section 50052.5 of the Health and Safety Code.

(B) For purposes of this paragraph, a "qualified nonprofit housing corporation" is a nonprofit housing corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 of the Revenue and Taxation Code for properties intended to be sold to low-income families who participate in a special no-interest loan program.

(C) The local government shall enforce an equity sharing agreement required pursuant to clause (i) or (ii) of subparagraph (A), unless it is in conflict with the requirements of another public funding source or law or may defer to the recapture provisions of the public funding source. The following apply to the equity sharing agreement:

(i) Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation.

(ii) Except as provided in clause (v), the local government shall recapture any initial subsidy, as defined in clause (iii), and its proportionate share of appreciation, as defined in clause (iv), which amount shall be used within five years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote home ownership.

(iii) For purposes of this subdivision, the local government's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

(iv) For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the ratio of the local government's initial subsidy to the fair market value of the home at the time of initial sale.

(v) If the unit is purchased or developed by a qualified nonprofit housing corporation pursuant to clause (ii) of subparagraph (A) the local government may enter into a contract with the qualified nonprofit housing corporation under which the qualified nonprofit housing corporation would recapture any initial subsidy and its proportionate share of appreciation if the qualified nonprofit housing corporation is required to use 100 percent of the proceeds to promote homeownership for lower income households as defined by Health and Safety Code Section 50079.5 within the jurisdiction of the local government.

(3) (A) An applicant shall be ineligible for a density bonus or any other incentives or concessions under this section if the housing development is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low income households, unless the proposed housing development replaces those units, and either of the following applies:

(i) The proposed housing development, inclusive of the units replaced pursuant to this paragraph, contains affordable units at the percentages set forth in subdivision (b).

(ii) Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.

(B) For the purposes of this paragraph, "replace" shall mean either of the following:

(i) If any dwelling units described in subparagraph (A) are occupied on the date of application, the proposed housing development shall provide at least the same number of units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy. If the income category of the household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. For unoccupied dwelling units described in subparagraph (A) in a development with occupied units, the proposed housing development shall provide units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as the last household in occupancy. If the income category of the last household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) If all dwelling units described in subparagraph (A) have been vacated or demolished within the five-year period preceding the application, the proposed housing development shall provide at least the same number of units of equivalent size as existed at the highpoint of those units in the five-year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known. If the incomes of the persons and families in occupancy at the highpoint is not known, it shall be rebuttably presumed that low-income and very low income renter households occupied these units in the same proportion of low-income and very low income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United

States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(C) Notwithstanding subparagraph (B), for any dwelling unit described in subparagraph (A) that is or was, within the five-year period preceding the application, subject to a form of rent or price control through a local government's valid exercise of its police power and that is or was occupied by persons or families above lower income, the city, county, or city and county may do either of the following:

(i) Require that the replacement units be made available at affordable rent or affordable housing cost to, and occupied by, low-income persons or families. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) Require that the units be replaced in compliance with the jurisdiction's rent or price control ordinance, provided that each unit described in subparagraph (A) is replaced. Unless otherwise required by the jurisdiction's rent or price control ordinance, these units shall not be subject to a recorded affordability restriction.

(D) For purposes of this paragraph, "equivalent size" means that the replacement units contain at least the same total number of bedrooms as the units being replaced.

(E) Subparagraph (A) does not apply to an applicant seeking a density bonus for a proposed housing development if the applicant's application was submitted to, or processed by, a city, county, or city and county before January 1, 2015.

(d) (1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:

(A) The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), 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 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.

(C) The concession or incentive would be contrary to state or federal law.

(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 development in which the units are for sale.

(B) Two incentives or concessions for projects that include at least 17 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 development in which the units are for sale.

(C) Three incentives or concessions for projects that include at least 24 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 development in which the units are for sale.

(D) Four incentives or concessions for a project meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b). If the project is located within one-half mile of a major transit stop or is located in a very low vehicle travel area in a designated county, the applicant shall also receive a height increase of up to three additional stories, or 33 feet.

(E) One incentive or concession for projects that include at least 20 percent of the total units for lower income students in a student housing 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. This subdivision shall not 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 or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. This subdivision shall not 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.

(4) The city, county, or city and county shall bear the burden of proof for the denial of a requested concession or incentive.

(e) (1) In no case may a city, county, or city and county apply any development standard that will have the effect of physically 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. Subject to paragraph (3), an applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted under this section, 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. This subdivision shall not 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 or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. This subdivision shall not be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

(2) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(3) A housing development that receives a waiver from any maximum controls on density pursuant to clause (ii) of subparagraph (D) of paragraph (3) of subdivision (f) shall only be eligible for a waiver or reduction of development standards as provided in subparagraph (D) of paragraph (2) of subdivision (d) and clause (ii) of subparagraph (D) of paragraph (3) of subdivision (f), unless the city, county, or city and county agrees to additional waivers or reductions of development standards.

(f) For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable gross residential density as of the date of application by the applicant to the city, county, or city and county, or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density. The amount of density increase 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).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5

16	29
17	30.5
18	32
19	33.5
20	35
21	38.75
22	42.5
23	46.25
24	50

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Very Low Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35
12	38.75
13	42.5
14	46.25
15	50

(3) (A) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of senior housing units.

(B) For housing developments meeting the criteria of subparagraph (E) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of the type of units giving rise to a density bonus under that subparagraph.

(C) For housing developments meeting the criteria of subparagraph (F) of paragraph (1) of subdivision (b), the density bonus shall be 35 percent of the student housing units.

(D) For housing developments meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b), the following shall apply:

(i) Except as otherwise provided in clauses (ii) and (iii), the density bonus shall be 80 percent of the number of units for lower income households.

(ii) If the housing development is located within one-half mile of a major transit stop, the city, county, or city and county shall not impose any maximum controls on density.

(iii) If the housing development is located in a very low vehicle travel area within a designated county, the city, county, or city and county shall not impose any maximum controls on density.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Moderate-Income Units	Percentage Density Bonus

10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35
41	38.75
42	42.5
43	46.25
44	50

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not require, or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

(g) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county in accordance with this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density for the entire development, as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32
28	33
29	34
30	35

(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks an increase pursuant to both this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

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

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

(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned with appropriate development standards for development at the density described in paragraph (3) of subdivision (c) of Section 65583.2, and is or will be served by adequate public facilities and infrastructure.

(D) The transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, not later than the date of approval of the final subdivision map, parcel map, or residential development application, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government before the time of transfer.

(E) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on

the property at the time of the transfer.

(F) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(G) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(H) A proposed source of funding for the very low income units shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.

(h) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a childcare 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 childcare facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the childcare 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 childcare 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 childcare 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 city and county shall not be required to provide a density bonus or concession for a childcare facility if it finds, based upon substantial evidence, that the community has adequate childcare facilities.

(4) "Childcare facility," as used in this section, means a child daycare facility other than a family daycare home, including, but not limited to, infant centers, preschools, extended daycare facilities, and schoolage childcare centers.

(i) "Housing development," as used in this section, means a development project for five or more residential units, including mixed-use developments. For the purposes of this section, "housing development" also includes a subdivision or common interest development, as defined in Section 4100 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 shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(j) (1) The granting of a concession or incentive shall not require or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, study, or other discretionary approval. For purposes of this subdivision, "study" does not include reasonable documentation to establish eligibility for the concession or incentive or to demonstrate that the incentive or concession meets the definition set forth in subdivision (k). This provision is declaratory of existing law.

(2) Except as provided in subdivisions (d) and (e), the granting of a density bonus shall not require or be interpreted to require the waiver of a local ordinance or provisions of a local ordinance unrelated to development standards.

(k) 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 and actual cost reductions, 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).

(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 and actual cost reductions 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).

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

(m) This section does not supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which the applicant is entitled under this section shall be permitted in a manner that is consistent with this section and Division 20 (commencing with Section 30000) of the Public Resources Code.

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

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

(1) "Designated county" includes the Counties of Alameda, Contra Costa, Los Angeles, Marin, Napa, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Francisco, San Mateo, Santa Barbara, Santa Clara, Solano, Sonoma, and Ventura.

(2) "Development standard" includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, a minimum lot area per unit requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.

(3) "Located within one-half mile of a major transit stop" means that any point on a proposed development, for which an applicant seeks a density bonus, other incentives or concessions, waivers or reductions of development standards, or a vehicular parking ratio pursuant to this section, is within one-half mile of any point on the property on which a major transit stop is located, including any parking lot owned by the transit authority or other local agency operating the major transit stop.

(4) "Lower income student" means a student who has a household income and asset level that does not exceed the level for Cal Grant A or Cal Grant B award recipients as set forth in paragraph (1) of subdivision (k) of Section 69432.7 of the Education Code. The eligibility of a student to occupy a unit for lower income students under this section shall be verified by an affidavit, award letter, or letter of eligibility provided by the institution of higher education in which the student is enrolled or by the California Student Aid Commission that the student receives or is eligible for financial aid, including an institutional grant or fee waiver from the college or university, the California Student Aid Commission, or the federal government.

(5) "Major transit stop" has the same meaning as defined in subdivision (b) of Section 21155 of the Public Resources Code.

(6) "Maximum allowable residential density" or "base density" means the maximum number of units allowed under the zoning ordinance, specific plan, or land use element of the general plan, or, if a range of density is permitted, means the maximum number of units allowed by the specific zoning range, specific plan, or land use element of the general plan applicable to the project. If the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan or specific plan, the greater

shall prevail. Density shall be determined using dwelling units per acre. However, if the applicable zoning ordinance, specific plan, or land use element of the general plan does not provide a dwelling-units-per-acre standard for density, then the local agency shall calculate the number of units by:

(A) Estimating the realistic development capacity of the site based on the objective development standards applicable to the project, including, but not limited to, floor area ratio, site coverage, maximum building height and number of stories, building setbacks and stepbacks, public and private open space requirements, minimum percentage or square footage of any nonresidential component, and parking requirements, unless not required for the base project. Parking requirements shall include considerations regarding number of spaces, location, design, type, and circulation. A developer may provide a base density study and the local agency shall accept it, provided that it includes all applicable objective development standards.

(B) Maintaining the same average unit size and other project details relevant to the base density study, excepting those that may be modified by waiver or concession to accommodate the bonus units, in the proposed project as in the study.

(7) (A) (i) "Shared housing building" means a residential or mixed-use structure, with five or more shared housing units and one or more common kitchens and dining areas designed for permanent residence of more than 30 days by its tenants. The kitchens and dining areas within the shared housing building shall be able to adequately accommodate all residents. If a local ordinance further restricts the attributes of a shared housing building beyond the requirements established in this section, the local definition shall apply to the extent that it does not conflict with the requirements of this section.

(ii) A "shared housing building" may include other dwelling units that are not shared housing units, provided that those dwelling units do not occupy more than 25 percent of the floor area of the shared housing building. A shared housing building may include 100 percent shared housing units.

(B) "Shared housing unit" means one or more habitable rooms, not within another dwelling unit, that includes a bathroom, sink, refrigerator, and microwave, is used for permanent residence, that meets the "minimum room area" specified in Section R304 of the California Residential Code (Part 2.5 of Title 24 of the California Code of Regulations), and complies with the definition of "guestroom" in Section R202 of the California Residential Code. If a local ordinance further restricts the attributes of a shared housing building beyond the requirements established in this section, the local definition shall apply to the extent that it does not conflict with the requirements of this section.

(8) (A) "Total units" or "total dwelling units" means a calculation of the number of units that:

(i) Excludes a unit added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

(ii) Includes a unit designated to satisfy an inclusionary zoning requirement of a city, county, or city and county.

(B) For purposes of calculating a density bonus granted pursuant to this section for a shared housing building, "unit" means one shared housing unit and its pro rata share of associated common area facilities.

(9) "Very low vehicle travel area" means an urbanized area, as designated by the United States Census Bureau, where the existing residential development generates vehicle miles traveled per capita that is below 85 percent of either regional vehicle miles traveled per capita or city vehicle miles traveled per capita. For purposes of this paragraph, "area" may include a travel analysis zone, hexagon, or grid. For the purposes of determining "regional vehicle miles traveled per capita" pursuant to this paragraph, a "region" is the entirety of incorporated and unincorporated areas governed by a multicounty or single-county metropolitan planning organization, or the entirety of the incorporated and unincorporated areas of an individual county that is not part of a metropolitan planning organization.

(p) (1) Except as provided in paragraphs (2), (3), and (4), upon the request of the developer, a city, county, or city and county shall not require a vehicular parking ratio, inclusive of parking for persons with a disability and guests, of a development meeting the criteria of subdivisions (b) and (c), that exceeds the following ratios:

(A) Zero to one bedroom: one onsite parking space.

(B) Two to three bedrooms: one and one-half onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) (A) Notwithstanding paragraph (1), if a development includes at least 20 percent low-income units for housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b) or at least 11 percent very low income units for housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), is located within one-half mile of a major transit stop, and there is unobstructed access to the major transit stop from the development, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of parking for persons with a disability and guests, that exceeds 0.5 spaces per unit. Notwithstanding paragraph (1), if a development includes at least 40 percent moderate-income units for housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and the residents of the development have unobstructed access to the major transit stop from the development then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of parking for persons with a disability and guests, that exceeds 0.5 spaces per bedroom.

(B) For purposes of this subdivision, "unobstructed access to the major transit stop" means a resident is able to access the major transit stop without encountering natural or constructed impediments. For purposes of this subparagraph, "natural or constructed impediments" includes, but is not limited to, freeways, rivers, mountains, and bodies of water, but does not include residential structures, shopping centers, parking lots, or rails used for transit.

(3) Notwithstanding paragraph (1), if a development meets the criteria of subparagraph (G) of paragraph (1) of subdivision (b), then, upon the request of the developer, a city, county, or city and county shall not impose vehicular parking standards if the development meets any of the following criteria:

(A) The development is located within one-half mile of a major transit stop and there is unobstructed access to the major transit stop from the development.

(B) The development is a for-rent housing development for individuals who are 55 years of age or older that complies with Sections 51.2 and 51.3 of the Civil Code and the development has either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(C) The development is either a special needs housing development, as defined in Section 51312 of the Health and Safety Code, or a supportive housing development, as defined in Section 50675.14 of the Health and Safety Code. A development that is a special needs housing development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(4) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide onsite parking through tandem parking or uncovered parking, but not through onstreet parking.

(5) This subdivision shall apply to a development that meets the requirements of subdivisions (b) and (c), but only at the request of the applicant. An applicant may request parking incentives or concessions beyond those provided in this subdivision pursuant to subdivision (d).

(6) This subdivision does not preclude a city, county, or city and county from reducing or eliminating a parking requirement for development projects of any type in any location.

(7) Notwithstanding paragraphs (2) and (3), if a city, county, city and county, or an independent consultant has conducted an areawide or jurisdictionwide parking study in the last seven years, then the city, county, or city and county may impose a higher vehicular parking ratio not to exceed the ratio described in paragraph (1), based upon substantial evidence found in the parking study, that includes, but is not limited to, an analysis of parking availability, differing levels of transit access, walkability access to transit services, the potential for shared parking, the effect of parking requirements on the cost of market-rate and subsidized developments, and the lower rates of car ownership for low-income and very low income individuals, including seniors and special needs individuals. The city, county, or city and county shall pay the costs of any new study. The city, county, or city and county shall make findings, based on a parking study completed in conformity with this paragraph, supporting the need for the higher parking ratio.

(8) A request pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(q) Each component of any density calculation, including base density and bonus density, resulting in fractional units shall be separately rounded up to the next whole number. The Legislature finds and declares that this provision is declaratory of existing law.

(r) This chapter shall be interpreted liberally in favor of producing the maximum number of total housing units.

(s) Notwithstanding any other law, if a city, including a charter city, county, or city and county has adopted an ordinance or a housing program, or both an ordinance and a housing program, that incentivizes the development of affordable housing that allows for density bonuses that exceed the density bonuses required by the version of this section effective through December 31, 2020, that city, county, or city and county is not required to amend or otherwise update its ordinance or corresponding affordable housing incentive program to comply with the amendments made to this section by the act adding this subdivision, and is exempt from complying with the incentive and concession calculation amendments made to this section by the act adding this subdivision as set forth in subdivision (d), particularly subparagraphs (B) and (C) of paragraph (2) of that subdivision, and the amendments made to the density tables under subdivision (f).

(t) When an applicant proposes to construct a housing development that conforms to the requirements of subparagraph (A) or (B) of paragraph (1) of subdivision (b) that is a shared housing building, the city, county, or city and county shall not require any minimum unit size requirements or minimum bedroom requirements that are in conflict with paragraph (7) of subdivision (o).

(u) (1) The Legislature finds and declares that the intent behind the Density Bonus Law is to allow public entities to reduce or even eliminate subsidies for a particular project by allowing a developer to include more total units in a project than would otherwise be allowed by the local zoning ordinance in exchange for affordable units. It further reaffirms that the intent is to cover at least some of the financing gap of affordable housing with regulatory incentives, rather than additional public subsidy.

(2) It is therefore the intent of the Legislature to make modifications to the Density Bonus Law by the act adding this subdivision to further incentivize the construction of very low, low-, and moderate-income housing units. It is further the intent of the Legislature in making these modifications to the Density Bonus Law to ensure that any additional benefits conferred upon a developer are balanced with the receipt of a public benefit in the form of adequate levels of affordable housing. The Legislature further intends that these modifications will ensure that the Density Bonus Law creates incentives for the construction of more housing across all areas of the state.

(Amended by Stats. 2022, Ch. 653, Sec. 1.5. (AB 2334) Effective January 1, 2023.)

65915.1. For purposes of Section 65915, affordable housing impact fees, including inclusionary zoning fees and in-lieu fees, shall not be imposed on a housing development's affordable units.

(Added by Stats. 2021, Ch. 346, Sec. 1. (AB 571) Effective January 1, 2022.)

65915.2. If permitted by local ordinance, nothing in Section 65915 shall be construed to prohibit a city, county, or city and county from requiring an affordability period longer than 55 years for any units that qualified the applicant for the award of the density bonus developed in compliance with a local ordinance that requires, as a condition of the development of residential units, that the development include a certain percentage of units that are affordable to, and occupied by, low-income, lower income, very low income, or extremely low income households and that will be financed without low-income housing tax credits.

(Added by Stats. 2021, Ch. 348, Sec. 1. (AB 634) Effective January 1, 2022.)

65915.5. (a) When an applicant for approval to convert apartments to a condominium project agrees to provide at least 33 percent of the total units of the proposed condominium project to persons and families of low or moderate income as defined in Section 50093 of the Health and Safety Code, or 15 percent of the total units of the proposed condominium project to lower income households as defined in Section 50079.5 of the Health and Safety Code, and agrees to pay for the reasonably necessary administrative costs incurred by a city, county, or city and county pursuant to this section, the city, county, or city and county shall either (1) grant a density bonus or (2) provide other incentives of equivalent financial value. A city, county, or city and county may place such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value as it finds appropriate, including, but not limited to, conditions which assure continued affordability of units to subsequent purchasers who are persons and families of low and moderate income or lower income households.

(b) For purposes of this section, "density bonus" means an increase in units of 25 percent over the number of apartments, to be provided within the existing structure or structures proposed for conversion.

(c) For purposes of this section, "other incentives of equivalent financial value" shall not be construed to require a city, county, or city and county to provide cash transfer payments or other monetary compensation but may include the reduction or waiver of requirements which the city, county, or city and county might otherwise apply as conditions of conversion approval.

(d) An applicant for approval to convert apartments to a condominium project may submit to a city, county, or city and county a preliminary proposal pursuant to this section prior to the submittal of any formal requests for subdivision map approvals. The city, county, or city and county shall, within 90 days of receipt of a written proposal, notify the applicant in writing of the manner in which it will comply with this section. The city, county, or city and county shall establish procedures for carrying out this section, which shall include legislative body approval of the means of compliance with this section.

(e) Nothing in this section shall be construed to require a city, county, or city and county to approve a proposal to convert apartments to condominiums.

(f) An applicant shall be ineligible for a density bonus or other incentives under this section if the apartments proposed for conversion constitute a housing development for which a density bonus or other incentives were provided under Section 65915.

(g) An applicant shall be ineligible for a density bonus or any other incentives or concessions under this section if the condominium project is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low income households, unless the proposed condominium project replaces those units, as defined in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65915, and either of the following applies:

(1) The proposed condominium project, inclusive of the units replaced pursuant to subparagraph (B) of paragraph (3) of subdivision (c) of Section 65915, contains affordable units at the percentages set forth in subdivision (a).

(2) Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.

(h) Subdivision (g) does not apply to an applicant seeking a density bonus for a proposed housing development if their application was submitted to, or processed by, a city, county, or city and county before January 1, 2015.

(Amended by Stats. 2014, Ch. 682, Sec. 2. (AB 2222) Effective January 1, 2015.)

65915.7. (a) When an applicant for approval of a commercial development has entered into an agreement for partnered housing described in subdivision (c) to contribute affordable housing through a joint project or two separate projects encompassing affordable housing, the city, county, or city and county shall grant to the commercial developer a development bonus as prescribed in subdivision (b). Housing shall be constructed on the site of the commercial development or on a site that is all of the following:

(1) Within the boundaries of the local government.

(2) In close proximity to public amenities including schools and employment centers.

(3) Located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code.

(b) The development bonus granted to the commercial developer shall mean incentives, mutually agreed upon by the developer and the jurisdiction, that may include, but are not limited to, any of the following:

(1) Up to a 20-percent increase in maximum allowable intensity in the General Plan.

(2) Up to a 20-percent increase in maximum allowable floor area ratio.

(3) Up to a 20-percent increase in maximum height requirements.

(4) Up to a 20-percent reduction in minimum parking requirements.

(5) Use of a limited-use/limited-application elevator for upper floor accessibility.

(6) An exception to a zoning ordinance or other land use regulation.

(c) For purposes of this section, the agreement for partnered housing shall be between the commercial developer and the housing developer, shall identify how the commercial developer will contribute affordable housing, and shall be approved by the city, county, or city and county.

(d) For purposes of this section, affordable housing may be contributed by the commercial developer in one of the following manners:

(1) The commercial developer may directly build the units.

(2) The commercial developer may donate a portion of the site or property elsewhere to the affordable housing developer for use as a site for affordable housing.

(3) The commercial developer may make a cash payment to the affordable housing developer that shall be used towards the costs of constructing the affordable housing project.

(e) For purposes of this section, subparagraph (A) of paragraph (3) of subdivision (c) of Section 65915 shall apply.

(f) Nothing in this section shall preclude any additional allowances or incentives offered to developers by local governments pursuant to law or regulation.

(g) If the developer of the affordable units does not commence with construction of those units in accordance with timelines ascribed by the agreement described in subdivision (c), the local government may withhold certificates of occupancy for the commercial development under construction until the developer has completed construction of the affordable units.

(h) In order to qualify for a development bonus under this section, a commercial developer shall partner with a housing developer that provides at least 30 percent of the total units for low-income households or at least 15 percent of the total units for very low-income households.

(i) Nothing in this section shall preclude an affordable housing developer from seeking a density bonus, concessions or incentives, waivers or reductions of development standards, or parking ratios under Section 65915.

(j) A development bonus pursuant to this section shall not include a reduction or waiver of the requirements within an ordinance that requires the payment of a fee by a commercial developer for the promotion or provision of affordable housing.

(k) A city or county shall submit to the Department of Housing and Community Development, as part of the annual report required by Section 65400, information describing a commercial development bonus approved pursuant to this section, including the terms of the agreements between the commercial developer and the affordable housing developer, and the developers and the local jurisdiction, and the number of affordable units constructed as part of the agreements.

(l) For purposes of this section, "partner" means formation of a partnership, limited liability company, corporation, or other entity recognized by the state in which the commercial development applicant and the affordable housing developer are each partners, members, shareholders or other participants, or a contract or agreement between a commercial development applicant and affordable housing developer for the development of both the commercial and the affordable housing properties.

(m) This section shall remain in effect only until January 1, 2028, and as of that date is repealed.

(Added by Stats. 2022, Ch. 637, Sec. 1. (AB 1551) Effective January 1, 2023. Repealed as of January 1, 2028, by its own provisions.)

65916. Where there is a direct financial contribution to a housing development pursuant to Section 65915 through participation in cost of infrastructure, write-down of land costs, or subsidizing the cost of construction, the city, county, or city and county shall assure continued availability for low- and moderate-income units for 30 years. When appropriate, the agreement provided for in Section 65915 shall specify the mechanisms and procedures necessary to carry out this section.

(Added by Stats. 1979, Ch. 1207.)

65917. In enacting this chapter it is the intent of the Legislature that the density bonus or other incentives offered by the city, county, or city and county pursuant to this chapter shall contribute significantly to the economic feasibility of lower income housing in proposed housing developments. In the absence of an agreement by a developer in accordance with Section 65915, a locality shall not offer a density bonus or any other incentive that would undermine the intent of this chapter.

(Amended by Stats. 2001, Ch. 115, Sec. 14. Effective January 1, 2002.)

65917.2. (a) As used in this section, the following terms shall have the following meanings:

(1) "Eligible housing development" means a development that satisfies all of the following criteria:

(A) The development is a multifamily housing development that contains five or more residential units, exclusive of any other floor area ratio bonus or incentive or concession awarded pursuant to this chapter.

(B) The development is located within one of the following:

(i) An urban infill site that is within a transit priority area.

(ii) One-half mile of a major transit stop.

(C) The site of the development is zoned to allow residential use or mixed-use with a minimum planned density of at least 20 dwelling units per acre and does not include any land zoned for low density residential use or for exclusive nonresidential use.

(D) The applicant and the development satisfy the replacement requirements specified in subdivision (c) of Section 65915.

(E) The development includes at least 20 percent of the units, excluding any additional units allowed under a floor area ratio bonus or other incentives or concessions provided pursuant to this chapter, with an affordable housing cost or affordable rent to, and occupied by, persons with a household income equal to or less than 50 percent of the area median income, as determined pursuant to Section 50093 of the Health and Safety Code, and subject to an affordability restriction for a minimum of 55 years.

(F) The development complies with the height requirements applicable to the underlying zone. A development shall not be eligible to use a floor area ratio bonus or other incentives or concessions provided pursuant to this chapter to relieve the development from a maximum height limitation.

(2) "Floor area ratio" means the ratio of gross building area of the eligible housing development, excluding structured parking areas, proposed for the project divided by the net lot area. For purposes of this paragraph, "gross building area" means the sum of all finished areas of all floors of a building included within the outside faces of its exterior walls.

(3) "Floor area ratio bonus" means an allowance for an eligible housing development to utilize a floor area ratio over the otherwise maximum allowable density permitted under the applicable zoning ordinance and land use elements of the general plan of a city or county, calculated pursuant to paragraph (2) of subdivision (b).

(4) "Major transit stop" has the same meaning as defined in Section 21155 of the Public Resources Code.

(5) "Transit priority area" has the same meaning as defined in Section 21099 of the Public Resources Code.

(b) (1) A city council, including a charter city council or the board of supervisors of a city and county, or county board of supervisors may establish a procedure by ordinance to grant a developer of an eligible housing development, upon the request of the developer, a floor area ratio bonus, calculated as provided in paragraph (2), in lieu of a density bonus awarded on the basis of dwelling units per acre.

(2) In calculating the floor area ratio bonus pursuant to this section, the allowable gross residential floor area in square feet shall be the product of all of the following amounts:

(A) The allowable residential base density in dwelling units per acre.

(B) The site area in square feet, divided by 43,560.

(C) 2,250.

(c) The city council or county board of supervisors shall not impose any parking requirement on an eligible housing development in excess of 0.1 parking spaces per unit that is affordable to persons and families with a household

income equal to or less than 120 percent of the area median income and 0.5 parking spaces per unit that is offered at market rate.

(d) A city or county that adopts a floor area ratio bonus ordinance pursuant to this section shall allow an applicant seeking to develop an eligible residential development to calculate impact fees based on square feet, instead of on a per unit basis.

(e) In the case of an eligible housing development that is zoned for mixed-use purposes, any floor area ratio requirement under a zoning ordinance or land use element of the general plan of the city or county applicable to the nonresidential portion of the eligible housing development shall continue to apply notwithstanding the award of a floor area ratio bonus in accordance with this section.

(f) An applicant for a floor area ratio bonus pursuant to this section may also submit to the city, county, or city and county a proposal for specific incentives or concessions pursuant to subdivision (d) of Section 65915.

(g) (1) This section shall not be interpreted to do either of the following:

(A) Supersede or preempt any other section within this chapter.

(B) Prohibit a city, county, or city and county from providing a floor area ratio bonus under terms that are different from those set forth in this section.

(2) The adoption of an ordinance pursuant to this section shall not be interpreted to relieve a city, county, or city and county from complying with Section 65915.

(Added by Stats. 2018, Ch. 915, Sec. 1. (AB 2372) Effective January 1, 2019.)

65917.5. (a) As used in this section, the following terms shall have the following meanings:

(1) "Child care facility" means a facility installed, operated, and maintained under this section for the nonresidential care of children as defined under applicable state licensing requirements for the facility.

(2) "Density bonus" means a floor area ratio bonus over the otherwise maximum allowable density permitted under the applicable zoning ordinance and land use elements of the general plan of a city, including a charter city, city and county, or county of:

(A) A maximum of five square feet of floor area for each one square foot of floor area contained in the child care facility for existing structures.

(B) A maximum of 10 square feet of floor area for each one square foot of floor area contained in the child care facility for new structures.

For purposes of calculating the density bonus under this section, both indoor and outdoor square footage requirements for the child care facility as set forth in applicable state child care licensing requirements shall be included in the floor area of the child care facility.

(3) "Developer" means the owner or other person, including a lessee, having the right under the applicable zoning ordinance of a city council, including a charter city council, city and county board of supervisors, or county board of supervisors to make an application for development approvals for the development or redevelopment of a commercial or industrial project.

(4) "Floor area" means as to a commercial or industrial project, the floor area as calculated under the applicable zoning ordinance of a city council, including a charter city council, city and county board of supervisors, or county board of supervisors and as to a child care facility, the total area contained within the exterior walls of the facility and all outdoor areas devoted to the use of the facility in accordance with applicable state child care licensing requirements.

(b) A city council, including a charter city council, city and county board of supervisors, or county board of supervisors may establish a procedure by ordinance to grant a developer of a commercial or industrial project, containing at least 50,000 square feet of floor area, a density bonus when that developer has set aside at least 2,000 square feet of floor area and 3,000 outdoor square feet to be used for a child care facility. The granting of a bonus shall not preclude a city council, including a charter city council, city and county board of supervisors, or county board of supervisors from imposing necessary conditions on the project or on the additional square footage. Projects constructed under this section shall conform to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other health, safety, and zoning requirements generally applicable to construction in the

zone in which the property is located. A consortium with more than one developer may be permitted to achieve the threshold amount for the available density bonus with each developer's density bonus equal to the percentage participation of the developer. This facility may be located on the project site or may be located offsite as agreed upon by the developer and local agency. If the child care facility is not located on the site of the project, the local agency shall determine whether the location of the child care facility is appropriate and whether it conforms with the intent of this section. The child care facility shall be of a size to comply with all state licensing requirements in order to accommodate at least 40 children.

(c) The developer may operate the child care facility itself or may contract with a licensed child care provider to operate the facility. In all cases, the developer shall show ongoing coordination with a local child care resource and referral network or local governmental child care coordinator in order to qualify for the density bonus.

(d) If the developer uses space allocated for child care facility purposes, in accordance with subdivision (b), for purposes other than for a child care facility, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. If the developer fails to have the space allocated for the child care facility within three years, from the date upon which the first temporary certificate of occupancy is granted, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors in accordance with procedures to be developed by the legislative body of the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. A penalty levied against a consortium of developers shall be charged to each developer in an amount equal to the developer's percentage square feet participation. Funds collected pursuant to this subdivision shall be deposited by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors into a special account to be used for child care services or child care facilities.

(e) Once the child care facility has been established, prior to the closure, change in use, or reduction in the physical size of, the facility, the city, city council, including a charter city council, city and county board of supervisors, or county board of supervisors shall be required to make a finding that the need for child care is no longer present, or is not present to the same degree as it was at the time the facility was established.

(f) The requirements of Chapter 5 (commencing with Section 66000) and of the amendments made to Sections 53077, 54997, and 54998 by Chapter 1002 of the Statutes of 1987 shall not apply to actions taken in accordance with this section.

(g) This section shall not apply to a voter-approved ordinance adopted by referendum or initiative.

(Amended by Stats. 2008, Ch. 179, Sec. 112. Effective January 1, 2009.)

65918. The provisions of this chapter shall apply to charter cities.

(Added by Stats. 1979, Ch. 1207.)