

9.1.412 Residential Density Bonus and Incentives.

a. Purpose and Intent. This chapter is intended to provide incentives for the production of housing for lower income housing units or the donation of land within the development if the developer, among other things, agrees to construct a specified percentage of units for very low, low, or moderate income households or qualified residents in accordance with Sections 65915 and 65917 of the California Government Code. In enacting this chapter, it is the intent of the City to facilitate the development of affordable housing and to implement the goals, objectives, and policies of the *City of Oakley Housing Element*. This section shall apply to all parcels that allow for single- or multi-family residential developments.

b. Definitions. Whenever the following terms are used in this chapter, they shall have the meanings established by this section:

- 1) "Additional Incentives" shall mean regulatory concessions as specified in California Government Code Section 65915 to include, but not limited to, the reduction of site development standards or zoning code requirements, direct financial assistance, approval of mixed use zoning in conjunction with the housing development, or any other regulatory incentive which would result in identifiable cost avoidance or reductions that are offered in addition to a density bonus;
- 2) "Affordable Rent" shall mean monthly housing expenses, including a reasonable allowance for utilities, for rental target units reserved for very low or lower income households, not exceeding the following calculations:
 - a) Very Low Income: fifty percent (50%) of the area median income for Contra Costa County, adjusted for household size, multiplied by thirty percent (30%) and divided by twelve (12);
 - b) Lower Income: sixty percent (60%) of the area median income for Contra Costa County, adjusted for household size, multiplied by thirty percent (30%) and divided by twelve (12);
- 3) "Affordable Sales Price" shall mean a sales price at which lower or very low income households can qualify for the purchase of target units, calculated on the basis of underwriting standards of mortgage financing available for the development;
- 4) "Child Care Facility" means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and school-age child care centers;
- 5) "Density Bonus" shall mean a minimum density increase of at least twenty percent (20%)

for most developments and five percent for condominiums and planned developments or as otherwise provided in Government Code Section 65915 over the maximum residential density;

6) "Density Bonus Housing Agreement" shall mean a legally binding agreement between developer and the City of Oakley to ensure that the requirements of this chapter are satisfied. The agreement, among other things, shall establish: the number of target units, their size, location, terms and conditions of affordability, and production schedule. A detailed list of how the target units are distributed between the extremely low, very low, low, and moderate income categories shall also be provided;

7) "Density Bonus Units" shall mean those residential units granted pursuant to the provisions of this chapter and Government Code Section 65915 which exceed the otherwise maximum residential density for the development site;

8) "Development Standard" shall mean a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an on-site open-space 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;

9) "Equivalent Financial Incentive" shall mean a monetary contribution, based upon a land cost per dwelling unit value, equal to one of the following:

- a) A density bonus and an additional incentive(s); or
- b) A density bonus, where an additional incentive(s) is not requested or is determined to be unnecessary;

10) "Housing Cost" shall mean the sum of actual or projected monthly payments for all of the following associated with for-sale target units: principal and interest on a mortgage loan, including any loan insurance fees, property taxes and assessments, fire and casualty insurance, property maintenance and repairs, homeowner association fees, and a reasonable allowance for utilities;

11) "Housing Development," as used in this section, means a development project for five or more residential units. For the purposes of this section, "housing development" also includes a subdivision or a planned unit development or condominium project as defined in Section 1351 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multi-family dwelling, as defined in Government Code Section 65863.4(d), 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.¹ 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;

12) "Lower Income Household" shall mean households whose income does not exceed the lower income limits applicable to Contra Costa County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Section 50079.5 of the California Health and Safety Code;

13) "Maximum Residential Density" shall mean the maximum number of residential units permitted under the zoning ordinance at the time of application, or, if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project at the time of application. Where the density allowed under the zoning ordinance is inconsistent with the density allowed under the Land Use Element of the General Plan, the General Plan density shall prevail;

14) "Moderate Income Household" shall mean households whose income ranges between eighty percent (80%) and one hundred twenty percent (120%) of the limits applicable to Contra Costa County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Section 50079.5 of the California Health and Safety Code;

15) "Target Unit" shall mean a dwelling unit within a housing development which will be reserved for sale or rent to, and affordable to, very low or lower income households. For the purposes of this zoning ordinance, the definitions of "Target Unit" and "Non-restricted Unit" shall be considered the same;

16) "Very Low Income Household" shall mean households whose income does not exceed the very low income limits applicable to Contra Costa County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Section 50105 of the California Health and Safety Code.

c. Development Incentives. The need for incentives will vary for different housing developments. Therefore, the allocation of additional incentives shall be determined on a case-by-case basis. The additional incentives may include, but are not limited to, any of the following:

- 1) A reduction of site development standards or a modification of zoning code or architectural design requirements which exceed the minimum applicable building standards;
- 2) Allow mixed use development so long as it does not conflict with the land use designations in the General Plan land uses;

- 3) Other regulatory incentives or concessions proposed by the developer or the City which result in identifiable cost reductions or avoidance;
- 4) Waived, reduced, or deferred planning, plan check or construction permit fees;
- 5) The City may offer an equivalent financial incentive in lieu of granting a density bonus and an additional incentive(s). The value of the equivalent financial incentive shall equal at least the land cost per dwelling unit savings that would result from a density bonus and must contribute significantly to the economic feasibility of providing the target units pursuant to this chapter.

d. Implementation.

1) The City shall grant one density bonus, the amount of which shall be as specified in subsection (d)(2) of this section, and incentives or concessions, as specified in subsection (d)(5) of this section, when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section:

- a) At least ten percent (10%) of the total units of the housing development as target units affordable to lower income households, as defined in Section 50779.5 of the Health and Safety Code; or
- b) At least five percent of the total units of the housing development as target units affordable to very low income households, as defined in Section 50105 of the Health and Safety Code; or
- c) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or mobile home park that limits residency; or
- d) At least ten percent (10%) of the total dwelling units in a common interest development as defined in Section 1351 of the Civil Code for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code; provided, that all units in the development are offered to the public for purchase; or
- e) As otherwise specified by Government Code Section 65915.

2) In determining the minimum number of density bonus units to be granted pursuant to this section, the minimum residential density for the site shall be multiplied by twenty percent (20%). As per Government Code Section 65915, for each one percent increase above ten percent (10%) in the percentage of units affordable to low income households, the density bonus shall be increased by one and one-half percent up to a maximum of thirty-five percent (35%). For each one percent increase above five percent in the percentage of units affordable

to very low income households, the density bonus shall be increased by two and one-half percent up to a maximum of thirty-five percent (35%). When calculating the number of permitted density bonus units, any fractions of units shall be rounded to the next larger integer. The density bonus shall apply to housing developments consisting of five or more dwelling units;

3) Land Donations. When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to the City in accordance with this section, the applicant shall be entitled to a fifteen percent (15%) increase above the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the General Plan for the entire housing development. As per Government Code Section 65915, for each one percent increase above ten percent (10%) in the percentage of units affordable to very low income households, the density bonus shall be increased by one percent up to a maximum of thirty-five percent (35%). The increase shall be in addition to any increase in density granted pursuant to subsection (d)(1) of this section, up to a maximum combined mandated density increase of thirty-five percent (35%), if an applicant seeks the increases required pursuant to both subsection (d)(1) of this section and this subsection (d)(3). All density calculations resulting in fractional units shall be rounded to the next whole number. Nothing in this section shall be construed to enlarge or diminish the city's authority to require an applicant to donate land as a condition of development.

a) An applicant shall be eligible for the increased density bonus described in this section if all of the following conditions are met:

- (1) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.
- (2) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.
- (3) 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.
- (4) 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 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. 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 if the design is not reviewed by the local government prior to 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 subsection (g)(2) of this section, which shall be recorded on the property at the time of the transfer.

(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 developer.

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

(8) 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.

4) Child Care Facilities. When an applicant proposes to construct a housing development that conforms to the requirements of subsection (d)(1) of this section and includes a child care facility that will be located on the premises of, as part of, or adjacent to the project, the City shall grant either of the following:

a) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.

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

c) A housing development shall be eligible for the density bonus or concession described in this section if the City, as a condition of approving the housing development, requires all of the following occur:

(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 pursuant to subsection (g)(2) of this section;

(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 pursuant to subsection (d)(1) of this section.

(3) Notwithstanding any requirement of this subsection, the City shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

5) Based upon the percentage of units affordable to very low, low and moderate income households, as described below, the applicant will receive at least one incentive. The City may, however, grant multiple additional incentives to facilitate the inclusion of more target units than are required by this section;

a) One incentive or concession for projects that include at least ten percent (10%) of the total units for lower income households, at least five percent for very low income households, or at least ten percent (10%) for persons and families of moderate income in a condominium or planned development;

b) Two incentives or concessions for projects that include at least twenty percent (20%) 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 condominium or planned development;

c) Three incentives or concessions for projects that include at least thirty percent (30%) 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 condominium or planned development.

6) A density bonus housing agreement shall be made in condition of the discretionary planning permits (e.g., tract maps, parcel maps, site plans, planned development, conditional use permits, etc.) for all housing developments pursuant to this chapter. The agreement shall be recorded as a restriction on the parcel or parcels on which the target units will be constructed. The agreement shall be in a form acceptable to the City Council.

e. Development Standards.

1) Target units should be constructed concurrently with non-restricted units unless both the City and the developer/applicant agree within the density bonus housing agreement to an alternative schedule for development;

2) Target units shall remain restricted and affordable to the designated group for a period of

thirty (30) years (or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program);

3) Target units should be dispersed within the housing development or as approved as part of a Master Plan. Where feasible, the number of bedrooms of the target units should be equivalent to the bedroom mix of non-target units of the housing development; except that the developer may include a higher proportion of target units with more bedrooms. The design and appearance of the target units shall be compatible with the design of the total housing development. The housing developments shall comply with all applicable development standards, except those which may be modified as allowed under this code;

4) A density bonus housing agreement shall be made a condition of the discretionary planning permits (e.g., tract maps, parcel maps, site plans, planned development, conditional use permits, etc.) for all housing developments pursuant to this chapter. The agreement shall be recorded as a restriction on the parcel or parcels on which the target units will be constructed.

f. Application Requirements and Review.

1) An application pursuant to this chapter shall be processed concurrently with any other application(s) required for housing development. Final approval or disapproval of an application shall be made by the City Council;

2) An applicant/developer proposing a housing development pursuant to this chapter may submit a preliminary application prior to the submittal of any formal request for approval of a housing development;

3) Applicants are encouraged to schedule a pre-application conference with the Community Development Director (CDD), or designee, to discuss and identify potential application issues, including prospective additional incentives. A preliminary application shall include the following information:

a) A brief description of the proposed housing development, including the total number of units, target units, and density bonus units proposed;

b) The zoning and general plan designations and assessor's parcel number(s) of the project site;

c) A vicinity map and preliminary site plan, drawn to scale, including building footprints, driveway and parking layout;

d) If an additional incentive(s) is requested, the application should describe why the additional incentive(s) is necessary to provide the target units;

4) Within ninety (90) days of receipt of the preliminary application, the City shall provide to an applicant/developer a letter which identifies project issues of concern. The Community Development Director, or designee, shall inform the applicant/developer that the requested additional incentives shall be recommended for consideration with the proposed housing development, or that alternative or modified additional incentives shall be recommended for consideration in lieu of the requested incentives. If alternative or modified incentives are recommended by the Community Development Director, the recommendations shall establish how the alternative or modified incentives can be expected to have an equivalent affordability effect as the requested incentives;

5) The City must grant the requested incentive(s) and any additional requested incentive(s) unless the City Council makes at least one of the following written findings:

a) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subsection (e)(2) of this section.

b) The concession or incentive would have a specific adverse impact upon public health and safety or the physical environment, or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low and moderate income households.

c) The requested concession or incentive would be contrary to state or federal law.

g. Density Bonus Housing Agreement.

1) Applicants/developers requesting a density bonus shall enter into a density bonus housing agreement with the City. Following execution of the agreement by all parties, the completed density bonus housing agreement, or memorandum thereof, shall be recorded and the conditions therefrom filed and recorded on the parcel or parcels designated for the construction of target units. The approval and recordation shall take place prior to final map approval, or, where a map is not being processed, prior to issuance of building permits for such parcels or units. The density bonus housing agreement shall be binding to all future owners and successors in interest;

2) The density bonus housing agreement shall include at least the following:

a) The total number of units approved for the housing development, including the number of target units;

b) A description of the household income group to be accommodated by the housing development and the standards for determining the corresponding affordable rent or

affordable sales price and housing cost;

c) The location, unit sizes (square feet), and number of bedrooms of target units including a detailed list of how the target units are distributed between the extremely low, very low, low, and moderate income categories shall also be provided;

d) Tenure of use restrictions;

e) A schedule for completion and occupancy of target units;

f) A description of the additional incentive(s) or equivalent financial incentives being provided by the City;

g) A description of remedies for breach of the agreement by either party (the City may identify tenants or qualified purchasers as third party beneficiaries under the agreement);

h) Other provisions to ensure implementation and compliance with this chapter, and with Government Code Section 65915 or other applicable state law.

3) In addition to the requirements of subsection (g)(2) of this section, in the case of for-sale housing developments, the density bonus housing agreement shall provide for the following conditions governing the initial sale and use of target units during the applicable use restriction period:

a) Target units shall, upon initial sale, be sold to eligible very low or lower income households at an affordable sales price and housing cost or be used as senior citizen housing as set forth in Government Code Section 65915;

b) Target units shall be initially owner-occupied by eligible very low or lower income households, or be used as senior citizen housing as set forth in Government Code Section 65915;

c) The initial purchaser of each target unit shall execute an instrument or agreement approved by the City restricting the sale of the target unit in accordance with this section during the applicable use restriction period. Such instrument or agreement shall be recorded against the parcel containing the target unit and shall contain such provisions as the City may require to ensure continued compliance with this section and the state density bonus law;

d) A copy of the recorded agreement shall be provided to the City to ensure compliance with this section and state density bonus law.

4) In addition to the requirements of subsection (g)(2) of this section, in the case of rental housing developments, the density bonus housing agreement shall provide for the following

conditions governing the use of target units during the use restriction period:

- a) The rules and procedures for qualifying tenants, establishing affordable rent, filling vacancies, and maintaining target units for qualified tenants;
 - b) Provisions requiring owners to verify tenant incomes and maintain books and records to demonstrate compliance with this chapter;
 - c) Provisions requiring owners to submit an annual report to the City, which includes the name, address, and income of each person occupying target units, and which identifies the bedroom size and monthly rent or cost of each target unit.
- h. No Conflict with State Law.
- 1) Notwithstanding the regulations set forth in this chapter, if any section of this chapter conflicts with Government Code Section 65915 or other applicable state law, state law shall supersede this chapter.

(Sec. 2, Ordinance No. 11-10, adopted September 14, 2010)

Article 5 DISTRICT REGULATIONS: COMMERCIAL