

Ordinance No. _____

Ordinance of the Council of the City of Palo Alto Amending Chapter 18.15
(Density Bonus) of Title 18 (Zoning) of the Palo Alto Municipal Code
to Incorporate Changes in State Density Bonus Law and Revising

SECTION 1. Findings and Declarations. The City Council finds and declares as follows:

- A. On October 11, 2023, the Governor approved AB 1287, which substantially revised the provisions of State Density Bonus law (Government Code Section 65915), which requires a city to provide a developer that proposes a housing development within the jurisdictional boundaries of that city with a density bonus and other incentives or concessions for the production of lower income housing units, or for the donation of land within the development, if the developer agrees to construct a specified percentage of units for very low income, low-income, or moderate-income households or qualifying residents and meets other requirements.
- B. In 2023 and previous years, the Governor has approved additional revisions to State Density Bonus Law, including AB 323, SB 713, AB 682, AB 2334, SB 290, and SB 728.
- C. The City Council is therefore updating Chapter 18.15 (Density Bonus) of Title 18 (Zoning) of the Palo Alto Municipal Code to incorporate these revisions in state law.

SECTION 2. Chapter 18.15 (Density Bonus) of Title 18 (Zoning) of the Palo Alto Municipal Code is amended to read as follows [additions are underlined and deletions ~~struck through~~].

18.15.010 Purpose and Applicability

(a) The purpose of this chapter is to:

- ~~(a1)~~ Comply with the state density bonus law under California Government Code s Section 65915. To the extent this chapter conflicts with California Government Code Section 65915, the provisions of Section 65915 shall prevail.
- ~~(b2)~~ Establish procedures for implementing state density bonus requirements as set forth in California Government Code Section 65915, as amended.
- ~~(c3)~~ Facilitate the development of affordable housing consistent with the goals, objectives, and policies of the City's Comprehensive Plan Housing Element.

(b) This chapter applies to all development applications, as defined herein, except:

- (1) Developments proposed in conjunction with a rezoning to the Planned Community zone district, which shall be entitled to densities and specific development plans

approved as part of the rezoning and shall not be entitled to a density bonus in addition to the units entitled by the rezone.

(2) Developments proposed in conjunction with a development agreement, pursuant to Government Code section 65864-65869.5, where the development agreement specifies the densities and/or development standards permitted thereunder.

(c) Utilization of the benefits afforded by this chapter will preclude an applicant from taking advantage of some local alternatives to state density bonus law, such as the Housing Incentive Program or El Camino Real Focus Area standards set forth in Chapter 18.14.

18.15.020 Definitions

Whenever the following terms are used in this chapter, they shall have the meaning established by this section. To the extent these terms are defined in California Government Code Section 65915, the definitions provided therein shall govern and the following definitions are provided for convenience only:

(a) “Affordable rent” means monthly rent, including a reasonable allowance for utilities and all fees for housing services, for rental restricted affordable units reserved for very low or lower income households, as further defined in the California Health and Safety Code Section 50053.
~~that does not exceed the following:~~

~~—(i) Very low income: 50% of the area median income for Santa Clara County, adjusted for presumed household size, multiplied by 30% and divided by 12.~~

~~—(ii) Lower income: 60% of the area median income for Santa Clara County, adjusted for presumed household size, multiplied by 30% and divided by 12.~~

(b) “Affordable sales price” means the maximum sales price at which very low, lower and moderate income households can qualify for the purchase of restricted affordable units as set forth in the City of Palo Alto’s Below Market Rate Housing Program. The sales price shall be considered affordable only if it is based on a reasonable down payment, and monthly housing payments (including interest, principal, mortgage insurance, property taxes and assessments, fire and casualty insurance, homeowners association fees, property maintenance and repairs, and a reasonable allowance for utilities), all as determined by the city, that are equal to or less than the monthly housing costs provided in Health and Safety Code Section 50052.5:

~~—(i) Very low income: 50% of the area median income for Santa Clara County, adjusted for presumed household size, multiplied by 30% and divided by 12.~~

~~—(ii) Lower income: 80% of the area median income for Santa Clara County, adjusted for presumed household size, multiplied by 30% and divided by 12.~~

~~—(iii) Moderate income: 120% of the area median income for Santa Clara County, adjusted for presumed household size, multiplied by 30% and divided by 12.~~

(c) “Applicant” means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities who seeks development permits or approvals from the City of Palo Alto.

(d) “Approval authority” means the person or body that is authorized to approve a development as specified in the City of Palo Alto Municipal Code. ~~Approval Authority shall also include recommending bodies such as the Architectural Review Board and the Planning and Transportation Commission.~~

(e) “Below market rate housing program” means Chapter ~~18.14~~ 16.65 of the Palo Alto Municipal Code and the Administrative Guidelines adopted thereunder ~~for the below market rate program.~~

(f) “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.

(g) “Concession or incentive” as used interchangeably means such regulatory concessions as specified in Government Code Section 65915(k) to include:

~~(i)~~ (1) A reduction of site 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, including, but not limited to, a reduction in setback, coverage, and/or parking requirements which result in identifiable, ~~financially sufficient~~ and actual cost reductions;

~~(ii)~~ (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 development in the area where the development will be located; and

~~(iii)~~ (3) Other regulatory concessions proposed by the applicant or the city which result in identifiable ~~financially sufficient~~, and actual cost reductions.

(h) “Density bonus” means a density increase, granted pursuant to Government Code Section 65915 and this ordinance, over the otherwise maximum allowable gross residential density as of the date of application ~~granted pursuant to Government Code Section 65915 and this ordinance~~, or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density.

(i) “Density bonus units” means those dwelling units granted pursuant to the provisions of this chapter which exceed the otherwise maximum allowable gross residential density for the development site.”

(j) “Development” means all developments pursuant to a single application ~~proposal~~ to construct or place five (5) or more ~~additional~~ dwelling units on a lot or contiguous lots including, without limitation, a planned unit development, site plan, subdivision, ~~or~~ conversion

of a non-residential building to dwelling units, or substantial rehabilitation of an existing multifamily building where the result of the rehabilitation would be a net increase in available residential units.

(k) “Development standard” means a site or construction condition, other than a control on maximum density, such as a height limitation, a setback, ~~or~~ a floor-area ratio, an onsite open-space requirement, a minimum lot area per unit requirement, or a parking ratio that applies to a development pursuant to any ordinance, general plan element, specific plan, charter, or other city condition, law, policy, resolution, or regulation, including regulations enacted by the electorate exercising the local initiative or referendum power. In zones lacking a dwelling-units-per-acre standard, Floor Area Ratio or FAR acts as a limitation on density and is therefore not considered a development standard subject to waiver, incentive, or concession. ~~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 development.~~

(l) “Discretionary permit” means any permit issued for the development which requires the exercise of judgment or deliberation from the Approval Authority, including but not limited to conditional use permits, variances, site plans, design review, planned development permits, general and specific plan approvals and amendments, zoning amendments, and tentative and parcel maps.

(m) “Lower, very low, or moderate income” means annual income of a household that does not exceed the maximum income limits for the income category, as adjusted for household size, applicable to Santa Clara County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Sections 50079.5, 50105, or 50093 of the California Health and Safety Code.

(n) “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 Section 69432.7(k) of the Education Code. The eligibility of 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.

(o) “Major transit stop” has the same meaning as defined in subdivision (b) of Section 21155 of the California Public Resources Code.

(1) “Located within one-half mile of a major transit stop” means that any point on a proposed development 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.

~~(n-p)~~ “Maximum allowable residential density” or “base density” means the maximum greatest number of dwelling units permitted in the development by the city’s Comprehensive

Plan Land Use Element, a specific plan, an area plan, or ~~and~~ Zoning Ordinance at the time of application, excluding the provisions of this chapter. If a range of density is permitted, the greatest number of units allowed by the specific zoning range, specific plan, or Comprehensive Plan Land Use Element shall apply. ~~If the maximum density allowed by the zoning ordinance is inconsistent with the density allowed by the land use element of the city's Comprehensive Plan, the land use element density shall prevail.~~ However, if the applicable zoning ordinance, specific plan, or land use element does not provide a dwelling-units-per-acre standard for density, then the maximum allowable residential density shall be calculated by:

- (1) 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.
- (2) 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.

(~~e~~g) “Non-restricted unit” means all dwelling units within a development excluding the restricted affordable units.

(~~p-r~~) “Qualifying mobilehome park” means a mobilehome park that limits residency based on age requirements for housing older persons pursuant to Section 798.76 and 799.5 of the Civil Code.

(~~e-s~~) “Qualifying resident” means senior citizens or other persons eligible to reside in a senior citizen housing development or qualifying mobilehome park.

(~~r-t~~) “Regulatory agreement” means a recorded and legally binding agreement between an applicant and the city to ensure that the requirements of this chapter are satisfied. The regulatory agreement, among other things, shall establish: the number of restricted affordable units, their size, location, terms and conditions of affordability, and production schedule.

(~~s-u~~) “Replace” means either of the following:

- (~~t~~1) If any dwelling units described in Section 18.15.030(i) are occupied on the date that the application is submitted to the City, 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. For unoccupied dwelling units described in Section 18.15.030(i) in a development with occupied units, the proposed housing development shall provide units of equivalent size or type, or

both, 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 in the same proportion of affordability as the occupied units. 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 California Government Code Section 65915(c)(2). For purposes of this subsection (s) of Section 18.15.020, "equivalent size" means that the replacement units contain at least the same total number of bedrooms as the units being replaced.

(#2) If all dwelling units described in Section 18.15.030(i) 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. ~~then one-half of the required units shall be made available at affordable rent or affordable housing cost to, and occupied by, very low income persons and families and one-half of the required units shall be made available for rent at affordable housing costs to, and occupied by, low-income persons and families.~~ 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 California Government Code Section 65915(c)(2).

(~~t~~-v) "Restricted affordable unit" means a dwelling unit within a development which will be available at an affordable rent or affordable sales price for sale or rent to very low, lower or moderate income households.

(~~u~~-w) "Senior citizen housing development" means a Development consistent with the California Fair Employment and Housing Act (Government Code Section 12900 et. seq., including 12955.9 in particular), which has been "designed to meet the physical and social

needs of senior citizens,” and which otherwise qualifies as “housing for older persons” as that phrase is used in the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and implementing regulations (24 CFR, part 100, subpart E), and as ~~that phrase is~~ these phrases are used in California Civil Code Sections 51.2, and 51.3, and 51.12.

(x) “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.

(y) “Total units” or “total dwelling units” means a calculation of the number of units that:

(1) Excludes a unit added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

(2) Includes a unit designated to satisfy an inclusionary zoning requirement of a city, county, or city and county.

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.

(z) “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.

18.15.030 Density Bonuses

This section describes the density bonuses that will be provided, at the request of an applicant, when that applicant provides restricted affordable units as described below.

(a) The city shall grant a twenty percent (20%) density bonus when an applicant for a development of five (5) or more dwelling units seeks and agrees to construct at least any one of the following in accordance with the requirements of this Section and Government Code Section 65915:

(1) A rental or for-sale development, including a shared housing building, that provides at least ten percent (10%) of the total dwelling units of the development as restricted affordable units affordable to lower income households. ~~Between ten and~~

~~twenty percent (10-20%), f~~ For each one percent (1%) increase in the percentage of restricted lower income units up to twenty percent (20%) of total units, a development will receive an additional one and one-half percent (1.5%) density bonus up to thirty-five percent (35%) ~~density bonus of the maximum residential density~~. For each one percent (1%) increase in the percentage of restricted lower income units exceeding twenty percent (20%) of total units, a development will receive an additional three and three-quarters percent (3.75%) density bonus up to fifty percent (50%) ~~density bonus of the maximum residential density~~; or

~~(ii 2)~~ A rental or for-sale development, including a shared housing building, that provides at least five percent (5%) of the total dwelling units of the development as restricted affordable units affordable to very low income households. ~~Between five and eleven percent (5-11%), f~~ For each one percent (1%) increase in the percentage of restricted very low income units up to eleven percent (11%) of total units, a development will receive an additional two and one-half percent (2.5%) density bonus up to thirty-five percent (35%) ~~density bonus of the maximum residential density~~. For each one percent (1%) increase in the percentage of restricted very low income units exceeding eleven percent (11%) of total units, a development will receive an additional three and three-quarters percent (3.75%) density bonus up to fifty percent (50%) ~~density bonus of the maximum residential density~~; or

~~(iii 3)~~ A senior citizen housing development; or

~~(iv 4)~~ A qualifying mobilehome park; or

~~(v 5)~~ At least ten percent (10%) of the total dwelling units of the development 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. Sec. 11301 et seq.). The units described in this subsection 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.

(b) The city shall grant a five percent (5%) density bonus when an applicant for a development of five (5) or more ~~additional~~ dwelling units seeks and agrees to construct a development, in accordance with the requirements of this Section and Government Code Section 65915, in which at least 10 percent (10%) of the total dwelling units of a housing development are sold to ~~persons and families of low or~~ moderate income households, provided that all dwelling units in the development are offered to the public for purchase. For each one percent (1%) increase in the percentage of restricted moderate income units between ten and forty percent (10-40%) of total units, a development will receive an additional one percent (1%) density bonus up to thirty-five percent (35%) ~~density bonus of the maximum residential density~~. For each one percent (1%) increase in the percentage of total dwelling units restricted for moderate income households exceeding forty percent (40%), a development will receive an additional three and three-quarters percent (3.75%) density bonus up to fifty percent (50%) of the maximum residential density.

(c) The city shall grant a thirty-five percent (35%) density bonus when an applicant for a student housing development of five (5) or more ~~additional~~ dwelling units seeks and agrees to construct in accordance with the requirements of this section and Government Code Section 65915:

~~(i-1)~~ At least twenty percent (20%) of the total dwelling units will be restricted and used for lower income students.

~~(ii-2)~~ For purposes of calculating a density bonus granted pursuant to this subparagraph, the term "unit" as used in this subparagraph means one rental bed and its pro rata share of the associated common area facilities. The units described in this subparagraph shall be subject to an affordability restriction of 55 years.

~~(iii-3)~~ All units 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.

~~(iv-4)~~ The applicant submits evidence that the applicant entered into an operating agreement or master lease with one or more institutions of higher education for the institution(s) to occupy all units of the student housing development with students from that institution(s).

~~(v-5)~~ The rent provided in the applicable units of the development for lower income students shall be calculated at thirty percent (30%) of sixty-five percent (65%) of the area median income for Santa Clara County for a single-room occupancy unit type.

~~(vi-6)~~ The applicant 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.

(d) The city shall grant an eighty percent (80%) density bonus to a development if the following criteria apply: one hundred percent (100%) of all units in the development, including total units and density bonus units, but exclusive of manager's unit or units, are for lower income households, as defined by Section 50079.5 of the Health and Safety Code, except that 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 Section 50053 of the Health and Safety Code. For rental units, rents shall be restricted as set forth in Government Code section 65915(c)(1)(B)(ii). The city will not impose any maximum controls on density if either of the following apply:

~~(i-1) Except as otherwise provided in clause (ii), the city will grant a density bonus of eighty percent (80%) of the number of units for lower income households. The housing development is located in a very low vehicle travel area within a designated county.~~

~~(ii-2) If the~~ The development is located within one-half mile of a major transit stop, ~~the city will not impose any maximum controls on density.~~

~~(e) When calculating the number of permitted density bonus units, any fractions of units shall be rounded to the next highest number.~~ 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. An applicant may elect to receive a density bonus that is less than the amount permitted by this section; however, the city shall not be required to similarly reduce the number of restricted affordable units required to be dedicated pursuant to this section and Government Code Section 65915(b).

(f) Each development is entitled to only one density bonus, which shall be selected by the applicant based on the percentage of very low, low, or moderate-income restricted affordable units, ~~lower income restricted affordable units, or moderate income restricted affordable units,~~ or the development's status as a senior citizen housing development or qualifying mobilehome park, or the development's provision of restricted affordable units for transitional foster youth, disabled veterans, lower income students, or homeless persons. Density bonuses from more than one category may not be combined. Except as provided for in [18.15.030\(d\)](#) and [18.15.035](#), in no case shall a development be entitled to a density bonus of more than fifty percent (50%).

(g) The density bonus units shall not be included when determining the number of restricted affordable units required to qualify for a density bonus. When calculating the required number of restricted affordable units, any resulting decimal or fraction shall be rounded to the next larger integer.

(h) Any restricted affordable unit provided pursuant to the city's below market rate housing program shall be included when determining the number of restricted affordable units required to qualify for a density bonus or other entitlement under this chapter. However, the payment of a housing impact or in lieu fee shall not qualify for a density bonus or other entitlement under this chapter.

(i) An applicant (or project) shall be ineligible for a density bonus or any other incentives or concessions under this chapter if the housing development is proposed on any property that includes a parcel or parcels on which rental dwelling units are located 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 the City'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-1)~~ The proposed housing development, inclusive of the units replaced pursuant to this paragraph, contains affordable units at the percentages set forth in Section [18.15.030](#).

(ii-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.

(j) Certain other types of development activities are specifically eligible for a density bonus pursuant to state law:

(i-1) A development may be eligible for a density bonus in return for land donation pursuant to the requirements set forth in Government Code Section 65915(g).

(ii-2) A condominium conversion may be eligible for a density bonus or concession pursuant to the requirements set forth in Government Code Section 65915.5.

(iii-3) An applicant for a commercial development who has entered into an agreement for partnered housing may be eligible for a density bonus pursuant to the requirements set forth in Government Code Section 65915.7.

~~—(k) As provided in Section 18.15.080(c), development proposed with rezoning to the Planned Community zone district are entitled to densities approved as part of the rezoning and shall not be entitled to a density bonus in addition to the units entitled by the rezoning.~~

(l-k) Notwithstanding any provision of this chapter, all developments must satisfy all applicable requirements of the city's Below Market Rate Housing Program in Chapter 16.65, which may impose requirements for restricted affordable units in addition to those required to receive a density bonus or concessions.

(l) For sites where Title 18, a Specific Plan, or the Comprehensive Plan do not expressly prescribe a maximum number of dwelling units per acre and FAR therefore acts as the limitation on density, the base density shall be calculated by estimating the realistic development capacity, as described in Section 18.15.020(p). In such circumstances, the density bonus shall be granted as additional floor area in proportion to the number of bonus units proposed. The Director of Planning and Development Services may issue additional guidance on the application of this section.

Table 1 summarizes the density bonus provisions described in this Section.

Table 1
Density Bonus Summary Table

Restricted Affordable Units (RAUs) or Category	Minimum Percentage of RAUs	Percentage of Density Bonus Granted	Additional Bonus for Each 1% Increase in RAUs	Percentage of RAUs Required for 35% Density Bonus	Percentage of RAUs Required for Maximum 50% Density Bonus
Very Low Income	5%	20%	2.50% (3.75% bonus)	11%	15%

NOT YET APPROVED

			for increases above 11% RAU)		
Lower Income	10%	20%	1.50% (3.75% bonus for increases above 20% RAU)	20%	24%
Moderate Income	10%	5%	1% (3.75% bonus for increases above 40% RAU)	40%	44%
Lower Income Student Housing	20%	35%	-----	-----	-----
Senior Citizen Housing	100%	20%	-----	-----	-----
Qualifying Mobile Park	100%	20%	-----	-----	-----
100% Affordable Units	100%	80% (or no maximum density)	-----	-----	-----

Note: A density bonus may be selected from only one category.

18.15.035 Additional Density Bonus

(a) Provided that the resulting housing development would not restrict more than 50 percent of the total units to moderate-income, lower income, or very low income households, the city shall grant one additional density bonus calculated pursuant to paragraph (b) when an applicant proposes to construct a housing development that conforms to the requirements of section 18.15.030, agrees to include additional rental or for-sale units affordable to very low income households or moderate income households, and meets any of the following requirements:

- (1) The housing development conforms to Section 18.15.030(a)(1) and provides twenty-four percent (24%) of the total units for lower income households.

(2) The housing development conforms to Section 18.15.030(a)(2) and provides fifteen percent (15%) of the total units for very low income households.

(3) The housing development conforms to Section 18.15.030(b) and provides forty-four percent (44%) of the total units for moderate income households.

(b) The additional density bonus granted under this Section shall be calculated as follows:

Table 2

Additional Density Bonus

<u>Percentage Very Low Income Units</u>	<u>Percentage Density Bonus</u>	<u>Percentage Moderate Income Units</u>	<u>Percentage Density Bonus</u>
<u>5</u>	<u>20</u>	<u>5</u>	<u>20</u>
<u>6</u>	<u>23.75</u>	<u>6</u>	<u>22.5</u>
<u>7</u>	<u>27.5</u>	<u>7</u>	<u>25</u>
<u>8</u>	<u>31.25</u>	<u>8</u>	<u>27.5</u>
<u>9</u>	<u>35</u>	<u>9</u>	<u>30</u>
<u>10</u>	<u>38.75</u>	<u>10</u>	<u>32.5</u>
		<u>11</u>	<u>35</u>
		<u>12</u>	<u>38.75</u>
		<u>13</u>	<u>42.5</u>
		<u>14</u>	<u>46.25</u>
		<u>15</u>	<u>50</u>

18.15.040 Development Standards for Affordable Units

(a) Restricted affordable units shall be constructed concurrently with non-restricted units unless both the city and the applicant agree within the regulatory agreement to an alternative schedule for development.

(b) Moderate income restricted affordable units shall remain restricted and affordable to the designated income group for a minimum period of 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). Very low and lower restricted affordable units shall remain restricted and affordable to the designated income group for a period of 55 years for both rental and for-sale units (or a longer period of time if required by a construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program).

(c) In determining the maximum affordable rent or affordable sales price of restricted affordable units, the presumed household size as set forth in the city's Below Market Rate Housing Program shall be used, unless the development is subject to different assumptions imposed by other governmental regulations.

(d) Restricted affordable units shall be built on-site and be dispersed within the development, except as permitted in the city's Below Market Rate Housing Program guidelines ~~in subsection (e) of this section~~. The number of bedrooms of the restricted affordable units shall be equivalent to the bedroom mix of the non-restricted units in the development; except that the applicant may include a higher proportion of restricted affordable units with more bedrooms. The design, square footage, appearance and general quality of the restricted affordable units shall be compatible with the design of the non-restricted units in the development. The development shall comply with all applicable development standards, except those which may be modified as provided by this chapter.

(e) A regulatory agreement, as described in Section 18.15.100, shall be made a condition of the discretionary permits for all developments pursuant to this chapter. The regulatory agreement shall be recorded as a restriction on the development. The regulatory agreement shall be consistent with the city's Below Market Rate Housing Program guidelines.

18.15.050 Development Concessions and Incentives

This section includes provisions for providing concessions or incentives pursuant to Government Code Section 65915.

(a) *By right parking incentives.* Upon request by the applicant, a development that is eligible for a density bonus may provide parking as provided in this subsection (a), consistent with Government Code Section 65915(p), inclusive of parking for persons with a disability and guests:

- (~~i~~1) Zero to one bedroom unit: one on-site parking space;
- (~~ii~~2) Two to three bedroom unit: one and one-half on-site parking spaces;
- (~~iii~~3) Four or more bedroom unit: two and one-half parking spaces.

If the total number of spaces required results in a fractional number, it shall be rounded up to the next whole number. For purposes of this subsection, this parking may be provided through tandem parking or uncovered parking, but not through on-street parking.

(b) *Additional parking incentives for transit oriented project.*

- (~~i~~1) For purposes of this subdivision, a development shall have unobstructed access to a major transit stop if a resident is able to access the major transit stop without encountering natural or constructed impediments. For purposes of this subdivision, "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.

(A) Notwithstanding subdivision (a) above, if a development includes at least twenty percent (20%) of low-income or at least eleven percent (11%) of very low income units provided for in section 18.15.030(a)(i-1) or ~~(ii-2)~~, or at least forty percent (40%) moderate-income units provided for in section 18.15.030(b), and is located within one-half mile of a major transit stop, as defined in subdivision (o) of Section 65915 of the Government Code, and there is unobstructed access to the major transit stop from the development, then, upon request of the applicant, the city shall not impose a vehicular parking ratio, inclusive of parking for persons with a disability and guests, that exceeds 0.5 spaces per unit.

~~(ii-2)~~ Notwithstanding subdivision (a) above, if a development consists solely of rental units, exclusive of a manager's unit, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health and Safety Code, then, upon the request of the applicant, the city shall not impose vehicular parking standards if the development meets one of the following criteria:

(A) The development is located within one-half mile of a major transit stop, as defined in subdivision (o) of Section 65915 of the Government Code, and there is unobstructed access to the major transit stop from the development, the ratio shall not exceed 0.5 spaces per unit.

(B) The development is a for-rent housing development for individuals who are 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 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 must have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

~~(iii-3)~~ Notwithstanding paragraphs (b)(i), (b)(ii)(A), and (b)(ii)(B), the city may impose a higher vehicular parking ratio not to exceed the ratio described in subdivision (a) if the city has conducted an area wide or citywide parking study in compliance with Government Code Section 65915(p)(8).

(c) *Other incentives and concessions.* A development is eligible for other concessions or incentives as follows:

~~(i-1)~~ One concession or incentive for a development that makes at least ten percent (10%) of the total dwelling units affordable to lower income households; or at least five percent (5%) of the total dwelling units affordable to very low income households; or at least ten percent (10%) of the total dwelling units affordable to moderate income

households in a development in which the units are for sale; or at least twenty percent (20%) of the total units in a student housing development for low income students, as provided for in [18.15.030\(c\)](#).

(~~ii~~-2) Two concessions or incentives for a development that makes at least seventeen percent (17%) of the total dwelling units affordable to lower income households; or at least ten percent (10%) of the total dwelling units affordable to very low income households; or at least twenty percent (20%) of the total dwelling units affordable to moderate income households in a development in which the units are for sale.

(~~iii~~-3) Three concessions or incentives for a development that makes at least twenty-four percent (24%) of the total dwelling units affordable to lower income households; or at least fifteen percent (15%) of the total dwelling units affordable to very low income households, or at least thirty percent (30%) of the total dwelling units affordable to moderate income households in a development in which the units are for sale.

(4) Four incentives or concessions for least 16 percent (16%) of the units for very low income households or at least 45 percent (45%) for persons and families of moderate income in a development in which the units are for sale.

(~~iv~~-5) ~~Four~~ Five concessions or incentives for a development that provides one hundred percent (100%) of the total units, exclusive of a manager's unit or units, ~~are~~ for lower income households, as described in Section [18.15.030](#), subdivision (d). 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 ~~Such~~ development may additionally receive a height increase of three stories or thirty-three (33) feet.

Table ~~2-3~~ summarizes the provisions of Concessions or Incentives described in subsection (a).

Table ~~3-2~~ 3

Concessions and Incentives Summary Table

Target Group	Restricted Affordable Units				
	5%	10%	15%	16%	---
Very Low Income	5%	10%	15%	16%	---
Lower Income	10%	17%	24%	---	100%
Moderate Income (Applicable to For-Sale Units Only)	10%	20%	30%	45%	---
Lower Income Student Housing	20%	---	---	---	---
Maximum Incentive(s)/Concession(s)	1	2	3	4	5

Notes:

1. Concessions or incentives may be selected from only one category (very low, lower, moderate, low income student development)
2. No concessions or incentives are available for land donation, or for senior citizen housing developments and qualifying mobilehome parks that do not contain restricted affordable units.
3. In a student development, a “unit” is defined according to [18.15.030\(c\)\(ii\)](#).

~~—(d) In submitting a request for concessions or incentives, an applicant may request the specific concessions set forth below. The concessions and incentives are deemed not to have a specific adverse impact as defined in Section [18.15.090 \(b\)\(ii\)](#).~~

~~—(i) Up to a 25% average reduction of a side yard setback requirement if the design is consistent with the applicable design standards and guidelines, unless adjacent to R-1, R-2, RMD and other low density residential zones;~~

~~—(ii) Up to a 25% average reduction of the rear yard setback requirements so long as the setback is consistent with the applicable design standards and guidelines, unless adjacent to R-1, R-2, RMD and other low density residential zones;~~

~~—(iii) A percentage increase in the height limit equal to the Density Bonus percentage for which the development is eligible if necessary to accommodate the restricted affordable units, with a maximum increase of one foot per affordable unit, unless adjacent to R-1, R-2, RMD and other low density residential zones, and no event to exceed fifty (50) feet;~~

~~—(iv) An increase in the floor area ratio (FAR) up to 25% or up to the square footage of the restricted affordable units, whichever is less. Any FAR bonus under this section shall be consistent with the applicable height requirements and only apply to the residential portion of the mixed use project;~~

~~—(v) Reduction in daylight plane requirements not to exceed 25% of the length of the adjacent lot line, so long as the intrusion is consistent with applicable design standards and guidelines, unless adjacent to R-1, R-2, RMD and other low density residential zones;~~

~~—(vi) Up to fifty percent (50%) increase over the maximum site coverage requirement or up to the square footage of the restricted affordable units, whichever is less;~~

~~—(e) The setbacks referenced in this section shall not include special setbacks as defined in Section [20.08.020](#).~~

~~—(f) The setbacks referenced in this section shall only apply to the residential portion of any mixed use (residential and non-residential) development where it is feasible to setback portions of the development differently.~~

(d) The city shall not require, as a condition of granting a concession or incentive the preparation of an additional report or study that is not otherwise required by state law. The

city may, however, request reasonable documentation to demonstrate that the incentive or concession meets the definition set forth in Section 18.15.020.

~~(g-e)~~ Nothing in this chapter shall be construed to require the provision of direct financial concessions for the development, including the provision of publicly owned land by the city or the waiver of fees or dedication requirements.

18.15.060 Waiver/Modification of Development Standards

(a) An applicant may apply for ~~a~~the waiver or modification of development standards that will have the effect of physically precluding the construction of a development at the densities or with the concessions or incentives permitted by this chapter. ~~The developer must demonstrate that development standards that are requested to be waived or modified will have the effect of physically precluding the construction of a development meeting the criteria of subsection (a) of Section 18.15.030 at the densities or with the concessions or incentives permitted by this chapter.~~ A development that receives a waiver from any maximum controls on density pursuant to Section [18.15.030\(d\)\(1\)](#) and [\(d\)\(2\)](#) shall not be eligible for waivers or modifications to development standards pursuant to this Section.

(b) For sites on which floor area acts as the limitation on density, additional floor area shall be permitted to accommodate bonus units proposed, as set forth in Section 18.15.030(l), and no additional waiver of floor area is permitted.

18.15.070 Child Care Facilities

(a) When an applicant proposes to construct a development that is eligible for a density bonus under Section 18.15.030 and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the development, the city shall grant either:

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

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

(b) The city shall require, as a condition of approving the development, that the following occur:

~~(i-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 restricted affordable units are required to remain affordable pursuant to Section [18.15.040](#). In the event the childcare operations cease to exist, the Director of Planning and Development Services may approve an alternative community service use for the child care facility.

~~(ii-2)~~ Of the children who attend the child care facility, the children of very low, lower and moderate income households shall equal a percentage that is equal to or greater than the percentage of restricted affordable units in the development that are required for very low, lower and moderate income households pursuant to Section [18.15.030](#).

(c) Notwithstanding subsections (a) and (b) above, the city shall not be required to provide a density bonus or a concession or incentive for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

18.15.080 Application Requirements

An Application for a density bonus, incentive, concession, waiver, modification or revised parking standard shall be made as follows:

(a) All applications for a density bonus, incentive, concession, waiver, modification or revised parking standard shall be submitted with the first application for a discretionary permit for a development and shall be processed concurrently with those discretionary permits. The application shall be on a form prescribed by the city and shall include the following information:

(i-1) A brief description of the proposed development, including the total number of dwelling units, restricted affordable units, and density bonus units proposed.

(ii-2) The zoning and comprehensive plan designations and assessor's parcel number(s) of the project site, and a description of any density bonus, concession or incentive, waiver or modification, or revised parking standard requested

(iii-3) A vicinity map and preliminary site plan, drawn to scale, including building footprints, driveway and parking layout.

(iv-4) Site plan showing location of market-rate units, restricted affordable units, and density bonus units within the proposed development;

(v-5) Level of affordability of the restricted affordable units and proposed method to ensure affordability;

~~(b) (6) If a concession or incentive is requested, the following information must be included in the application:~~

~~—(i) A brief explanation as to the actual cost reduction achieved through the concession or incentive.~~

~~—(ii) For concessions and incentives that are not included within the menu of incentives/concessions set forth in subsection (c) of Section 18.15.050, the application requires the submittal of the project proforma or other comparable documentation (referred to herein as the "proforma information") to the Director, providing evidence that the requested concessions and incentives result in identifiable and actual cost reductions. The cost of reviewing the project proforma information, including, but not limited to, the cost to the city of hiring a consultant to review the financial data, shall be borne by the applicant. The proforma information shall include all of the following items:~~

~~—(A) The actual cost reduction achieved through the concession;~~

~~—(B) Other information requested by the Planning Director. The Planning Director may require additional information as is required to evaluate the proforma information;~~

~~(e)~~ (7) If a waiver or modification of development standards is requested, ~~the following information must be included in the application:~~

~~—(i) A~~ a brief explanation of why the development standard would physically preclude the construction of the development with the density bonus, incentives, and concessions requested.

~~—(ii) Evidence that the development standard for which the waiver is requested will have the effect of physically precluding the construction of the development with the density bonus and concessions requested;~~

~~(d)~~ b If a density bonus or concession is requested for a land donation, the application shall show the location of the land to be dedicated, provide proof of site control, and provide evidence that all of the requirements and each of the findings included in Government Code Section 65915(g) can be made;

~~(e)~~ c If a density bonus or concession is requested for a child care facility, the application shall show the location and square footage of the child care facilities and provide evidence that all of the requirements and each of the findings included in Government Code Section 65915(h) can be made.

~~(f)~~ d If a density bonus or concession is requested for a condominium conversion, the applicant shall provide evidence that all of the requirements found in Government Code Section 65915.5 can be met.

~~(g)~~ e In accordance with state law, neither the granting of a concession, incentive, waiver, modification, or revised parking standard, nor the granting of a density bonus, shall be interpreted, in and of itself, to require a general plan amendment, zoning change, variance, or other discretionary approval.

~~—(h) The Planned Community (PC) zone district is intended to accommodate developments requiring flexibility under controlled conditions not attainable under other zoning districts. Because of the flexible nature of the PC zone, which determines site specific requirements including density, the chapter does not apply to this zoning district.~~

~~—(i) This chapter implements state density bonus law. Any density bonus, incentive, concession, revised parking standard, waiver, or modification sought by an applicant shall be made pursuant to this chapter and may not be combined with similar requests under state density bonus law.~~

18.15.090 Review Procedures

An application for a density bonus, incentive, concession, waiver, modification or revised parking standard shall be acted upon by the Approval Authority concurrently with the application for the first Discretionary permit. The granting of a density bonus shall not be deemed approval of the entire Project or approval of any subsequent discretionary permit.

(a) Before approving an application for a density bonus, incentive, concession, waiver, modification or revised parking standard, the Approval Authority shall make the following findings, as applicable:

(~~i~~1) The development is eligible for the density bonus and any concessions, waivers, modifications, or revised parking standards requested.

(~~ii~~2) Any requested concession or incentive will result in identifiable and actual cost reductions based upon the financial analysis and documentation provided. The city finds that the concessions and incentives included in Section 18.15.050(c) will result in identifiable and actual cost reductions.

(~~iii~~3) If the density bonus is based all or in part on donation of land, a finding that all the requirements included in Government Code Section 65915(g) have been met.

(~~iv~~4) If the density bonus, concession or incentive is based all or in part on the inclusion of a child care facility, a finding that all the requirements included in Government Code Section 65915(h) have been met.

(~~v~~5) If the concession or incentive includes mixed-use development, a finding that all the requirements included in Government Code Section 65915(k)(2) have been met.

(~~vi~~6) If a waiver or modification is requested, a finding that the development standards for which the waiver is requested would have the effect of physically precluding the construction of the development with the density bonus and concessions permitted.

(b) Any granted density bonus and/or concession(s) shall terminate with the demolition, destruction or other removal of the structure receiving the density bonus and/or concession.

(c) If the findings required by subsection (a) for a concession, incentive or waiver of this Section cannot be made, the Approval Authority may deny an application for a concession, incentive, waiver or modification only if it makes one of the following written findings, supported by substantial evidence:

(~~i~~1) The concession or incentive does not result in identifiable and actual cost reductions required to provide for affordable rents or affordable sales prices; or

(~~ii~~2) The concession, incentive, waiver or modification would have a specific, adverse impact upon public health or safety or the physical environment or on real property 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 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 for the development was deemed complete; or

~~(iii-3)~~ The concession, incentive, waiver or modification is contrary to state or federal law.

(d) If the Approval Authority is not the City Council, any decision denying a density bonus, incentive, concession, waiver, modification or revised parking standard may be appealed to the City Council within fourteen days of the date of the decision.

18.15.100 Regulatory Agreement

(a) ~~AA~~Applicants for a density bonus, incentive, concession, waiver, modification or revised parking standard shall enter into a regulatory agreement with the city in a form acceptable to the City Attorney. ~~The terms of the draft agreement shall be approved as to form by the City Attorney and reviewed and revised as appropriate by the Director of Planning and Development Services, who shall formulate a recommendation to the Approval Authority for final approval.~~

(b) Following execution of the agreement by all parties, the completed density bonus regulatory agreement, or memorandum thereof, shall be recorded and the conditions filed and recorded on the development.

~~(c) The approval of the regulatory agreement shall take place prior to tentative map approval, and recordation shall take place prior to final map approval.~~ The executed regulatory agreement shall be recorded on the development prior to approval of a final map, or, where a map is not being processed, prior to approval of the final discretionary permit issuance of a building permit. The regulatory agreement shall be binding to all future owners and successors in interest.

(d) The regulatory agreement shall be consistent with the guidelines of the city's Below Market Rate Program and shall include at a minimum the following:

~~(i-1)~~ The total number of dwelling units approved for the development, including the number of restricted affordable units;

~~(ii-2)~~ A description of the household income group to be accommodated by the restricted affordable units, and the standards for determining the corresponding affordable rent or affordable sales price;

~~(iii-3)~~ The location, dwelling unit sizes (square feet), and number of bedrooms of the restricted affordable units;

~~(iv-4)~~ Term of use restrictions for restricted affordable units of at least 55 years for moderate income units and at least 55 years for low and very low units;

~~(v-5)~~ A schedule for completion and occupancy of restricted affordable units;

~~(vi-6)~~ A description of any concession, incentive, waiver, modification, or revised parking standard, if any, being provided by the city;

~~(vii-7)~~ A description of remedies for breach of the agreement (the city may identify tenants or qualified purchasers as third party beneficiaries under the agreement);

(8) That any restricted affordable unit offered for sale: is initially sold to and occupied by a person of family of very low, low, or moderate income, or, if not purchased by an income-qualified household within 180 days after the issuance of a certificate of occupancy, the unit is purchased by a qualified non-profit housing corporation, in accordance with Government Code section 65915(c)(2); and

~~(viii-8)~~ Other provisions to ensure implementation and compliance with this section.

SECTION 3. As provided in Section 16.65.080(C)(1) of the Palo Alto Municipal Code, the City Council hereby determines that the following percentages of rental affordable units that are equivalent to provision of on-site for-sale affordable units or payment of housing impact fees. This supersedes Section 5 of Ordinance No. 5409.

Required Affordable Rental Units (Where rental alternative requested under 16.65.080(C))		
Income Category	Rental Alternative to For-Sale Units (Sites Less than 5 Acres)*	On-Site Alternative for Rental Residential (no condo map)
Very Low Income		9%
Low Income	15%	15%
Moderate Income	N/A	N/A
Total	15%	9% VLI or 15% LI**

*Rental alternative equivalents for projects over 5 acres will be subject to Council approval on a case by case basis.

** For Residential Rental Projects, the Director of Planning and Development Services or City Council may approve the provision of a lesser amount of affordable rental units, provided that the remainder of the housing obligation is paid in housing impact fees. For example, if a project may propose to restrict 6% of its dwelling units at rents affordable to very low income households, these units would represent 75% of the project's affordability obligations and the remaining 25% could be paid in impact fees; housing impact fees due would be calculated by taking 25% of the impact fee that would otherwise apply to the project.

SECTION 4. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 5. The Council finds that the Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that updating the municipal code to incorporate existing changes in State Density Bonus Law will not have a significant effect on the environment.

SECTION 6. This Ordinance shall be effective on the thirty-first date after the date of its adoption.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

Assistant City Attorney

City Manager

Director of Planning and
Development Services