

Article 30. Density Bonus

9-3.801 Purpose.

The purpose of this Article is to establish a program in accordance with California Government Code Section 65915 et seq. to provide both density increases and other incentives to encourage the creation of housing affordable to moderate-, low-, and very low-income households, seniors, and other qualifying households under State law, comply with State Density Bonus Law (California Government Code (GC) Sections 65915 through 65918), by providing increased residential densities for projects that guarantee that a portion of the housing units will be affordable to very low-, low-, or moderate-income households, senior citizens, or include childcare facilities.

- (a) Projects that utilize the density bonus are not required to implement the City's Inclusionary Housing Policy or other inclusionary housing ordinance in effect at the time of issuance of building permit. (Ord. 570 § 1, 2013)

9-3.802 Applicability.

- (a) General. All proposed housing developments that qualify under California Government Code Section 65915 for a density increase and other incentives, and any qualified land transfer under California Government Code Section 65915 shall be eligible to apply for a density bonus (including incentives and/or concessions) consistent with the requirements, provisions and obligations set forth in California Government Code Section 65915, as it may be amended from time to time. The provisions of this section apply to the construction of five (5) or more housing units as a part of any tentative subdivision map, master plan of development (conditional use permit) or other development application that satisfy one (1) or more of the following criteria:
- (b) Compliance. The applicant shall comply with all requirements stated in California Government Code Sections 65915 through 65918. The requirements of California Government Code Section 65915 through 65918, and any amendments thereto, shall prevail over any conflicting provision of this Code.
- (c) Excluded development. An applicant shall not receive a density bonus or any other incentive or concession if the housing development would be excluded under California Government Code Section 65915.
- (d) Interpretation. The provisions of this subdivision shall be interpreted to implement and be consistent with the requirements of California Government Code Section 65915. Any changes to California Government Code Section 65915 shall be deemed to supersede and govern over any conflicting provisions contained herein. If any portion of this Article conflicts with State Density Bonus Law or other applicable State law, State law shall supersede this Section. Any ambiguities in this Section shall be interpreted to be consistent with State Density Bonus Law.
- (e) Replacement Housing Requirement. Pursuant to subdivision (c)(3) of California Government Code Section 65915, an applicant will be ineligible for a density bonus or other incentives unless the applicant complies with the replacement housing requirements therein, including in the following circumstances:

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- (1) The housing development is proposed on any parcel(s) on which rental dwelling units are subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income;
- (2) The housing development is proposed on any parcel(s) on which rental dwelling units that were subject to a recorded covenant, ordinance, or law that restricted rents to levels affordable to persons and families of lower or very low income have been vacated or demolished in the five-year period preceding the application;
- (3) The housing development is proposed on any parcel(s) on which the dwelling units are occupied by lower- or very low-income households; or
- (4) The housing development is proposed on any parcel(s) on which the dwelling units that were occupied by lower- or very low-income households have been vacated or demolished in the five-year period preceding the application.

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(a) At least ten (10) percent of the units are designated for low-income households.

(b) At least five (5) percent of the units are designated for very low-income households.

(c) One hundred (100) percent of the units are designated for senior citizens as defined in Sections 51.3 and 51.12 of the Civil Code or mobile home 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.

(d) At least ten (10) percent of the units in a common interest development are designated for moderate-income households, provided that all units in the development are offered to the public for purchase. (Ord. 570 § 1, 2013)

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9-3.803 Calculating the density bonus. Density Increase and Other Incentives.

(a) **General.** If a qualifying affordable housing project or land transfer/cash payment meets the criteria of California Government Code Section 65915 et seq., the project shall be granted a density bonus, the amount of which shall be as specified in California Government Code Section 65915 et seq., and incentives or concessions also as described in California Government Code Section 65915 et seq.

(b) **Density Bonus Units.** Except as otherwise required by California Government Code Section 65915, the density bonus units shall not be included when calculating the total number of housing units that qualifies the housing development for a density bonus.

(c) **Market-rate senior citizen housing developments.** Market-rate senior citizen housing developments that qualify for a density bonus shall not receive any other incentives or concessions, unless California Government Code Section 65915 is amended to specifically require that local agencies grant incentives or concessions for senior citizen housing developments.

9-3.804 Physical Constraints and Parking Waivers.

(a) **Physical Constraints.** Except as restricted by California Government Code Section 65915, the applicant for a density bonus may submit a proposal for the waiver or reduction of development standards that have the effect of physically precluding the construction of

a housing development incorporating the density bonus and any incentives or concessions granted to the applicant. A request for a waiver or reduction of development standards shall be accompanied by documentation demonstrating that the waiver or reduction is physically necessary to construct the housing development with the additional density allowed pursuant to the density bonus and incorporating any incentives or concessions required to be granted. The City shall approve a waiver or reduction of a development standard, unless it finds that:

- (1) The application of the development standard does not have the effect of physically precluding the construction of a housing development at the density allowed by the density bonus and with the incentives or concessions granted to the applicant;
- (2) The waiver or reduction of the development standard would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact;
- (3) The waiver or reduction of the development standard would have an adverse impact on any real property that is listed in the California Register of Historical Resources; or
- (4) The waiver or reduction of the development standard would be contrary to state or federal law.

(b) **Parking.** The applicant may request, and the City shall grant, a reduction in parking requirements in accordance with California Government Code Section 65915(p), as that section may be amended from time to time.

[^]The density bonus shall be calculated as shown in the table below for very low-, low-, and moderate-income households. For housing developments meeting the criteria of Section 9-3.802(c), the density bonus shall be twenty (20) percent of the total number of senior housing units. All density calculations resulting in fractional units shall be rounded consistent with the City's Municipal Code Section 9-1.109.

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Percentage of Affordable Units and Corresponding Density Bonus

[insert table]

9-3.804 Developer incentives.

- (a) ~~Restrictions. When an applicant seeks a density bonus as prescribed by GC Section 65915, the City will grant developer incentives as required, unless it makes any of the following findings:~~
- ~~(1) The developer incentives are not required in order to provide affordable housing, as defined in Section 50052.3 of the Health and Safety Code, or for rents for the targeted units to be set as specified in GC Section 65915(c);~~
 - ~~(i) The developer incentives would have a specific adverse impact, as defined in paragraph (2) of Subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households;~~
 - ~~(ii) The developer incentives would be contrary to State or Federal law.~~
- (b) ~~Number of Developer Incentives. The number of developer incentives shall be in compliance with the table as shown below:~~

Number of Developer Incentives

[insert table]

- (c) ~~Developer Incentives Defined. For the purposes of this section, concession or incentive means any of the following that results in identifiable, financially sufficient, and actual cost reductions:~~
- ~~(1) Reduced site development standards;~~
 - ~~(2) Modified zoning code;~~
 - ~~(3) 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;~~
 - ~~(4) A reduction in setback requirements;~~
 - ~~(5) Reduction of vehicular parking standards;~~
 - ~~(6) Approval of mixed-use zoning 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;~~
 - ~~(7) Other regulatory developer incentives proposed by the developer;~~
 - ~~(8) Other regulatory developer incentives proposed by the City. (Ord. 570 §1, 2013)~~

9-3.805 Retention of Density Bonus Units.

Consistent with the provisions of California Government Code Section 65915 et seq., prior to a density increase or other incentives being approved for a project, the City of Atascadero and the applicant shall agree to an appropriate method of ensuring the continued availability of the density bonus units.

~~Waivers and modifications of development standards.~~

~~(a) Proposal. In accordance with Government Code Section 65915(e), an applicant may propose a waiver or modification of development standards if it would physically preclude the construction of a development project under the criteria Section 9-3.802 at the densities or with the developer incentives permitted by this section. A waiver or modification of standards shall be reviewed by the City's Design Review Committee and approved by the Planning Commission and/or City Council.~~

~~(b) A proposal for the waiver or reduction of development standards pursuant to this subsection shall neither reduce nor increase the number of developer incentives to which the applicant is entitled pursuant to Section 9-3.804(b).~~

~~(c) Grounds for Denial. In accordance with Government Code Section 65915(e), the City may deny an applicant's request to waive or modify the City's development standards in any of the following circumstances:~~

~~(1) The application does not conform with the requirements of this section or Government Code Sections 65915 through 65918.~~

~~(2) The applicant fails to demonstrate that the City's development standards physically preclude the utilization of a density bonus on a specific site. The City's Design Review Committee or Planning Commission shall make the appropriate finding.~~

~~(3) The 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 there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.~~

~~(4) The waiver or reduction would have an adverse impact on any real property that is listed in the California Register of Historical Resources.~~

~~(5) The waiver or reduction would be contrary to State or Federal law. (Ord. 570 § 1, 2013)~~

9-3.806 Application Procedure for Density Increase or Other Incentives.

(a) Application Requirements. An application for a density increase or other incentives under this Article for a housing development shall be submitted in writing to the Planning Division to be processed concurrently with all other entitlements of the proposed housing development. The application for a housing development shall contain information sufficient to fully evaluate the request under the requirements of this Article, and in connection with the project for which the request is made, including, but not limited to, the following:

(1) A brief description of the proposed housing development;

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- (2) The total number of housing units and/or shared housing units (as defined in California Government Code Section 65915(o)(6)), proposed in the development project, including unit sizes and number of bedrooms;
- (3) The total number of units proposed to be granted through the density increase and incentive program over and above the otherwise maximum density for the project site;
- (4) The total number of units to be made affordable to or reserved for sale, or rental to, very low-, low- or moderate-income households, or senior citizens, or other qualifying residents;
- (5) The zoning, general plan designations, and assessor's parcel number(s) of the project site;
- (6) A vicinity map and preliminary site plan, drawn to scale, including building footprints, driveway(s) and parking layout;
- (7) The proposed method of ensuring the continued availability of the density bonus units; and
- (8) A list of any concession(s) or incentive(s) being requested to facilitate the development of the project, and a description of why the concession(s) or incentive(s) is needed.

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Commented [G51]: Staff: a new law (AB 2334 - Wicks) clarifies form based codes. I don't think we have any in atascadero, but if you did in the future, you might add something like this to this list:

Within zones that rely on a form based code, a base density study that identifies the density feasible on the site without incentives, concessions or density bonuses;

(b) Application Processing. The application shall be considered by the Planning Commission and/or the City Council at the same time each considers the project for which the request is being made. If the project is not to be otherwise considered by the Planning Commission or the City Council, the request being made under this Article shall be considered by the Community Development Director or designee, separately. The request shall be approved if the applicant complies with the provisions of California Government Code Section 65915 et seq. An application for a density bonus, developer incentive, or waiver or modification of development standards shall include the following information:

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~~(a) Site plan;~~

~~(b) Preliminary architectural elevations;~~

~~(c) Preliminary floor plans;~~

~~(d) Preliminary landscaping plan;~~

~~(e) The total number of base units;~~

~~(f) The number and location of proposed affordable housing units;~~

~~(g) The specific developer incentive(s) sought, if any;~~

~~(h) The specific waiver or modification to development standards sought, if any;~~

~~(i) If seeking a developer incentive, documentation regarding the necessity of the developer incentive in order to provide affordable housing costs or rents;~~

~~(j) If seeking a waiver or modification of development standards, documentation regarding the necessity of the waiver or modification, including documentation demonstrating that the City's development standards physically preclude the utilization of a density bonus;~~

~~(k) If requesting a density bonus based on land donation in accordance with Government Code Section 65915(g), information sufficient to permit the City to determine that the proposed donation conforms with the requirements of Section 65915 and this code; and~~

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~~(l) If requesting a density bonus based on the provision of a child day care facility in accordance with Government Code Section 65915(h), the application must:~~

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~~(1) Provide the location of the proposed child day care facility and the proposed operator,
(2) Agree to operate the child day care facility 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,~~

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~~(3) Agree to have contracted with a child day care facility operator for operation of the child day care facility before the first building permit is issued, and~~

~~(4) Agree that the child day care facility will be in operation when the first certificate of occupancy is issued. (Ord. 570 § 1, 2013)~~

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