

ORDINANCE NUMBER O- 19689 (NEW SERIES)

DATE OF FINAL PASSAGE DEC 05 2007

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 14, ARTICLE 3, DIVISION 7, BY AMENDING SECTIONS 143.0710, 143.0715, 143.0720, BY RENUMBERING AND AMENDING CURRENT SECTION 143.0730 TO 143.0725, BY CREATING A NEW SECTION 143.0730, AND BY AMENDING SECTIONS 143.0740, AND REPEALING SECTION 143.0760; AND AMENDING CHAPTER 14, ARTICLE 1, DIVISION 3, BY AMENDING SECTION 141.0310(b), ALL RELATING TO THE DENSITY BONUS REGULATIONS.

WHEREAS, the City of San Diego [City] is required by Sections 65915 et seq. of the California Government Code [State Density Bonus Law] to provide a density bonus and other incentives for the production of affordable and senior housing units, or for the donation of land within a proposed housing development, if the developer meets certain requirements [Density Bonus Regulations]; and

WHEREAS, the City Council adopted Density Bonus Regulations Citywide on December 9, 1997 by O-18451; and

WHEREAS, the City Council proposed amendments to its Density Bonus Regulations on June 21, 1999, by O-18654, subject to the approval of the California Coastal Commission for the areas of the City within the Coastal Overlay Zone; and

WHEREAS, on November 13, 2000, the California Coastal Commission failed to approve the June 21, 1999 amendments for the areas of the City within the Coastal Overlay Zone, resulting in two different sets of Density Bonus Regulations, one effective outside the Coastal Overlay Zone (O-18654) and one effective inside the Coastal Overlay Zone (O-18451); and

WHEREAS, the City's Density Bonus Regulations are inconsistent with recent amendments to the state Density Bonus Law; and

WHEREAS, the City desires to update its Density Bonus Regulations to ensure conformance with the State Density Bonus Law; and

WHEREAS, nothing in the adoption of these Housing *Density* Bonus Regulations as now set forth in Chapter 14, Article 3, Division 7 of the San Diego Municipal Code shall be construed, interpreted or applied in any manner to adversely affect the application and validity of the provisions of the Coastal Height Limit Overlay Zone, also known as Proposition D passed by the voters of San Diego on or in 1972; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 14, Article 3, Division 7, is amended by amending Sections 143.0710, 143.0715, and 143.0720, to read as follows:

Article 3: Supplemental Development Regulations

Division 7: Affordable Housing Density Bonus Regulations

§143.0710 Purpose of Affordable Housing Density Bonus Regulations

The purpose of these regulations is to provide increased residential *density* to developers who guarantee that a portion of their residential *development* will be available to *moderate income, low income, very low income*, or senior households. The regulations are intended to materially assist the housing industry in providing adequate and affordable housing for all economic segments of the community and to provide a balance of housing opportunities for *moderate income, low income, very low income*, and senior households throughout the City. It is intended that the affordable

housing *density* bonus and any additional *development* incentive be available for use in all residential *development* of five or more units, using criteria and standards provided in the Progress Guide and General Plan, as defined by the San Diego Housing Commission; that requests be processed by the City of San Diego, and that they be implemented by the President and Chief Executive Officer of the San Diego Housing Commission. It is also intended that these regulations implement the provisions of California Government Code Sections 65915 through 65918.

§143.0715 When Affordable Housing Density Bonus Regulations Apply

This division applies to any residential *development*, located on land where current zoning allows for five or more pre-*density* bonus *dwelling units*, where an *applicant* proposes *density* beyond that permitted by the applicable zone in exchange for either of the following as set forth in this division:

- (a) A portion of the total *dwelling units* in the *development* being reserved for *moderate, low, or very low income* households or for senior citizens through a written agreement with the San Diego Housing Commission; or
- (b) The donation of land, pursuant to the State Density Bonus Law.

§143.0720 Density Bonus in Exchange for Affordable Housing Units

- (a) A *development* shall be entitled to a *density* bonus and incentives as described in this division, for any residential *development* for which a written agreement, and a deed of trust securing the agreement, is entered into by the *applicant* and the President and Chief Executive Officer of the San Diego Housing Commission. The agreement and deed of trust in favor of the San Diego

Housing Commission are to be recorded in the Office of the Recorder of the County of San Diego as an encumbrance against the *development*.

- (b) The *density* bonus units authorized by this division shall be exempt from the Inclusionary Housing Regulations set forth in Chapter 14, Article 2, Division 13.
- (c) A rental affordable housing *density* bonus agreement shall utilize the following qualifying criteria consistent with the procedures established by the San Diego Housing Commission:
 - (1) *Low income* - At least 10 percent of the pre-*density* bonus units in the *development* shall be affordable, including an allowance for utilities, to *low income* households at a rent that does not exceed 30 percent of 60 percent of area median income, as adjusted for assumed household size;
or
 - (2) *Very low income* - At least 5 percent of the pre-*density* bonus units in the *development* shall be affordable, including an allowance for utilities, to *very low income* households at a rent that does not exceed 30 percent of 50 percent of the area median income, as adjusted for assumed household size.
 - (3) The affordable units shall be designated units, be comparable in bedroom mix and amenities to the market-rate units in the *development*, and be dispersed throughout the *development*.

(4) The *dwelling units* shall remain available and affordable for a period of at least 30 years or longer as may be required by other laws.

(d) A for-sale affordable housing *density* bonus agreement shall utilize the following qualifying criteria consistent with the procedures established by the San Diego Housing Commission:

- (1) For-sale *density* bonus shall only be available to common interest *development*, as defined by California Civil Code Section 1351, where at least 10 percent of the pre-*density* bonus units in the *development* shall be initially sold and affordable to *moderate income* households at a price that is affordable to families earning 110 percent of the area median income as adjusted for assumed household size, as determined by the San Diego Housing Commission, and where all of the *dwelling units* are offered to the public for purchase.
- (2) Prior to, or concurrent with, the sale of each *density* bonus affordable unit, the *applicant* shall require the buyer to execute and deliver a promissory note in favor of the San Diego Housing Commission so that the repayment of any initial subsidy is ensured.
- (3) Each for-sale unit shall be occupied by the initial owner at all times until the resale of the unit.
- (4) Upon the first resale of a unit the seller shall comply with all conditions regarding the sale of a unit, as applied by the San Diego Housing

Commission, and as set forth in California Government Code
Section 65915(c)(2).

- (5) The affordable units shall be designated units, be comparable in bedroom mix and amenities to the market-rate units in the *development*, and be dispersed throughout the *development*.
- (e) A *density* bonus agreement for housing for senior citizens shall utilize the following qualifying criteria consistent with the procedures established by the San Diego Housing Commission:
- (1) The *development* consists of housing for senior citizens or qualifying residents as defined under California Civil Code Section 51.3 and 51.12, where at least 35 *dwelling units* are provided; or a *mobilehome* park that limits residency based on age requirements for housing for older persons pursuant to California Civil Code Section 798.76 or 799.5.
- (2) The *dwelling units* shall remain available for a period of at least 30 years or longer as may be required by other laws.
- (f) The *density* bonus units shall have recorded against them a Declaration of Covenants, Conditions and Restrictions in favor of the San Diego Housing Commission that shall enjoy first lien position and shall be secured by a deed of trust that may be recorded against the project or unit, as applicable, prior to construction or permanent financing.

- (g) Provision shall be made by the San Diego Housing Commission for certification of eligible tenants and purchasers, annual certification of property owner compliance, payment of a monitoring fee to the San Diego Housing Commission, as adjusted from time to time, for monitoring of affordable unit requirements, and any other terms that the San Diego Housing Commission determines are needed to implement the provisions and intent of this division and State law.

Section 2. That Chapter 14, Article 3, Division 7, is amended by renumbering and amending the current Section 143.0730 to 143.0725, to read as follows:

§143.0725 Density Bonus Provisions

A *development* proposal requesting an affordable housing *density* bonus is subject to the following:

- (a) For senior citizen housing meeting the criteria of Section 143.0720(e), the *density* bonus shall be 20 percent.
- (b) For *development* meeting the criteria for *low income* in Section 143.0720(c)(1), the *density* bonus shall be calculated as set forth in Table 143-07A. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For *development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable *floor area ratio* applicable to the *development* consistent with Section 156.0309(e).

- (c) For *development* meeting the criteria for *very low income* in Section 143.0720(c)(2), the *density* bonus shall be calculated as set forth in Table 143-07B. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For *development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable floor area ratio applicable to the *development* consistent with Section 156.0309(e).
- (d) For *development* meeting the criteria for *moderate income* in Section 143.0720(d), the *density* bonus shall be calculated as set forth in Table 143-07C. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For *development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable floor area ratio applicable to the *development* consistent with Section 156.0309(e).
- (e) If the *premises* is located in two or more zones, the number of *dwelling units* permitted in the *development* is the sum of the *dwelling units* permitted in each of the zones. Within the *development*, the permitted number of *dwelling units* may be distributed without regard to the zone boundaries.

- (f) Where the *development* consists of two or more specifically identified parcels, whether contiguous or noncontiguous, the maximum number of *dwelling units* permitted on each parcel is calculated based on the area of that parcel.

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

Section 3. That Chapter 14, Article 3, Division 7, is amended by creating a new Section 143.0730, to read as follows:

§143.0730 Density Bonus in Exchange for Donation of Land

An *applicant* for a *tentative map*, *parcel map*, or residential *development* permit, may donate and transfer land to the City for *development* with affordable housing units, in exchange for a *density* bonus, in accordance with this division and pursuant to State Density Bonus Law.

Section 4. That Chapter 14, Article 3, Division 7, is amended by amending Sections 143.0740, and 143.0750, to read as follows:

§143.0740 Development Incentives for Affordable Housing Density Bonus Projects

The City shall process an incentive requested by an *applicant*, consistent with State Density Bonus Law and as set forth in this Section.

- (a) The *applicant* shall demonstrate that the incentive is necessary to make the housing units economically feasible.

- (b) An incentive means any of the following:
 - (1) A deviation to a *development* regulation;

 - (2) Approval of mixed use zoning in conjunction with a residential *development* provided that the commercial, office, or industrial uses:
 - (A) Reduce the cost of the residential *development*; and

 - (B) Are compatible with the proposed residential *development*; and

 - (C) Are compatible with existing or planned *development* in the area where the proposed residential *development* will be located.

 - (3) Any other incentive proposed by the *applicant*, other than those identified in Section 143.0740(c), that results in identifiable, financially sufficient, actual cost reductions.

- (c) Items not considered incentives by the City of San Diego include, but are not limited to the following:
 - (1) A waiver of a required permit;

 - (2) A deviation from the requirements of the Coastal Height Limit Overlay Zone (Chapter 13, Article 2, Division 5);

- (3) A waiver of fees or dedication requirements;
 - (4) A direct financial incentive;
 - (5) A deviation from the requirements of the City of San Diego Building Regulations;
 - (6) For projects required to notice the Federal Aviation Administration, an increase in height that has not received a determination of No Hazard to Air Navigation.
- (d) An incentive requested as part of a *development* meeting the requirements of Sections 143.0720(c) or 143.0720(d) shall be processed according to the following:
- (1) Upon an *applicant's* request, *development* meeting the applicable requirements of Sections 143.0720 and 143.0725 shall be entitled to incentives pursuant to Section 143.0740 unless the City makes a written *finding* of denial based upon substantial evidence, of either of the following:
 - (A) The incentive is not required in order to provide for affordable housing costs, as defined in California Health and Safety Code Sections 50052.5 and 50053.
 - (B) The incentive would have a specific adverse impact upon health and safety or the physical environment or on any real property

that is listed in the California Register of Historical Resources, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the *development* unaffordable to *low* and *moderate income* households.

- (2) Granting an incentive shall not require a General Plan amendment, zoning change, or other discretionary approval.
 - (3) The decision process for a *development* requesting an incentive shall be the same decision process that would be required if the incentive were not a part of the *development* proposal.
 - (4) The *development permit* requirement for a *development* requesting an incentive shall be the same *development permit* that would be required if the incentive were not a part of the *development* proposal.
 - (5) Notwithstanding Sections 143.0740(d)(3) and (4), when a *development permit* is required, the decision to deny a requested incentive shall be made by the decision maker for the *development permit*.
- (e) The number of incentives available are identified in Table 143-07A for *low income*, Table 143-07B for *very low income*, and Table 143-07C for *moderate income* consistent with the percentage of *pre-density* bonus units identified in column one of each table.

Table 143-07A
Low Income Density Bonus
Rental Housing

Percent <i>Low Income</i> units	Percent <i>Density Bonus</i>	Number of Incentives
10	20	1
11	21.5	1
12	23	1
13	24.5	1
14	26	1
15	27.5	1
16	29	1
17	30.5	1
18	32	1
19	33.5	1
20 - 29	35	2
≥ 30	35	3

Table 143-07B
Very Low Income Density Bonus
Rental Housing

Percent <i>Very</i> <i>Low Income</i> Units	Percent <i>Density Bonus</i>	Number of Incentives
5	20	1
6	22.5	1
7	25	1
8	27.5	1
9	30	1
10	32.5	2
11 - 14	35	2
≥ 15	35	3

Table 143-07C
Moderate Income Density Bonus
For-Sale Housing

Percent <i>Moderate</i> <i>Income</i> Units	Percent <i>Density Bonus</i>	Number of Incentives
10	20	1
11	21	1
12	22	1

13	23	1
14	24	1
15	25	1
16	26	1
17	27	1
18	28	1
19	29	1
20	30	2
21	31	2
22	32	2
23	33	2
24	34	2
25 - 29	35	2
≥ 30	35	3

(f) Child Care Center: *Development* that meets the criteria in 143.0720 and includes a child care center as defined in Section 141.0606(a)(2) as part of, or adjacent to, such *development* shall be entitled to an additional *density* bonus or incentive provided that:

- (1) The child care center remains in operation for the greater of 30 years, or the period of time established by Section 143.0720(c)(4);
- (2) The percentage of children from *low, very low, or moderate income* households attending the child care center is equal to or greater than the percentage of those same households required in the residential *development*;
- (3) The additional *density* bonus or incentive requested is either:

- (A) An additional *density* bonus in an amount equal to the amount of square feet in the child care center up to a maximum combined *density* increase of 35 percent; or
 - (B) An additional incentive that contributes significantly to the economic feasibility of the construction of the child care center;
and
 - (4) The City finds, based upon substantial evidence, that the community is inadequately served by child care centers.
- (g) Parking: In addition to any other incentive, and upon the request of an *applicant* that proposes a *development* meeting the criteria of Section 143.0720(c),(d), or (e) the City shall apply the following vehicular parking ratio, inclusive of handicapped and guest parking:
- (1) Zero to one bedroom: one onsite parking space
 - (2) Two to three bedrooms: two onsite parking spaces
 - (3) Four and more bedrooms: two and one-quarter parking spaces
 - (4) Additional reductions to the parking ratios shall be granted for projects within a *transit area*, and for *very low income* households as follows:
 - (A) *Development* that is at least partially within a *transit area* as described in Chapter 13, Article 2, Division 10 (Transit Area Overlay Zone) or that is subject to Chapter 13, Article 2,

Division 11 (Urban Village Overlay Zone), shall receive a 0.25 space per *dwelling unit* reduction in the parking ratio for the entire *development*.

(B) *Development* that includes *dwelling units* limited to occupancy by *very low income* households shall receive a 0.25 space reduction in the parking ratio for each *dwelling unit* that is limited to occupancy by a *very low income* household.

(C) *Development* that includes *dwelling units* limited to occupancy by *very low income* households, and is at least partially within a *transit area*, shall receive the combined reductions in sections 143.0740(g)(4)(A) and (B).

(5) For purposes of this division, a *development* may provide onsite parking through tandem parking or uncovered parking, but not through on-street parking or parking within a required front yard setback.

Section 5. That Chapter 14, Article 3, Division 7, is amended by repealing section 143.0760.

Section 6. That Chapter 14, Article 1, Division 3, is amended by amending Section 141.0310, to read as follows:

§141.0310 Housing for Senior Citizens

Housing for senior citizens may be permitted with a Conditional Use Permit decided in accordance with Process Three in the zones indicated with a "C" in the Use

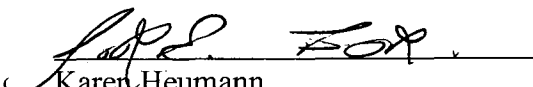
Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

- (a) [No change in text.]
- (b) Housing for senior citizens may be permitted a *density* bonus as provided in Chapter 14, Article 3, Division 7 (Affordable Housing Density Bonus Regulations).
- (c) through (e) [no change]

Section 7. That a full reading of this ordinance is dispensed with prior to passage, since a written copy was made available to the City Council and the public prior to the day of its passage.

Section 8. This ordinance shall take effect and be in force on the thirtieth day from and after its final passage except that the provisions of this ordinance applicable inside the Coastal Overlay Zone, which are subject to California Coastal Commission jurisdiction as a City of San Diego Local Coastal Program amendment, shall not take effect until the date the California Coastal Commission unconditionally certifies those provisions as a local coastal program amendment.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Karen Heumann
Assistant City Attorney

SRE:pev:amt
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Or.Dept:DSD
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I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of NOV 20 2007.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 12-5-07
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor