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11/6/07

Office of
The City Attorney
City of San Diego

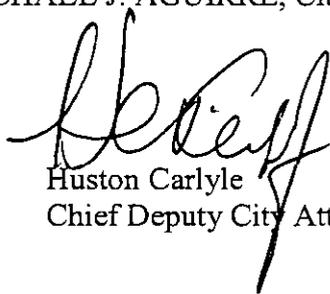
MEMORANDUM
MS 59

(619) 533-5800

DATE: November 1, 2007
TO: Elizabeth Maland, City Clerk
FROM: City Attorney
SUBJECT: Item 334, November 6, 2007, City Attorney's Proposed Alternative Density Bonus Ordinance

Because the City's Development Services Department declines to include the City Attorney's proposed Density Bonus Ordinance with the 1472 package submitted for Agenda Item 334 scheduled for hearing on Tuesday, November 6, 2007, the City Attorney is submitting this memo and the attached proposed Alternative Density Bonus Ordinance to be included for consideration by Council as a part of the administrative record for this agenda item.

MICHAEL J. AGUIRRE, City Attorney

By 
Huston Carlyle
Chief Deputy City Attorney

SRE:HC:pev
Attachments

- cc: Mayor Jerry Sanders
- Councilmember Scott Peters
- Councilmember Kevin Faulconer
- Councilmember Toni Atkins
- Councilmember Anthony Young
- Councilmember Brian Maienschein
- Councilmember Donna Frye
- Councilmember Jim Madaffer
- Councilmember Ben Hueso

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(O-2008-19)

Alternative State Mandated Density Bonus Ordinance

CITY ATTORNEY DIGEST

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

EFFECTIVE DATE _____

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 143.0750, 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.

This is an ordinance which amends Chapter 14, Article 3, Division 7, by amending Sections 143.0710, 143.0715, 143.0720, 143.0725, 143.0730, 143.0740 and 143.0750; and repealing Section 143.0760; and amends Chapter 14, Article 1, Division 3, by amending Section 141.0310(b), all relating to the Density Bonus Regulations.

This ordinance contains a notice that a full reading of this ordinance is dispensed with prior to its final passage, since a written or printed copy will be available to the City Council and the public a day prior to its final passage.

This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

Alternative State Mandated Density Bonus Ordinance

A complete copy of the Ordinance is available for inspection in the Office of the City Clerk of the City of San Diego, 2nd Floor, City Administration Building, 202 C Street, San Diego, CA 92101.

SMT:SRE:als:pev

01/08/07

02/23/07

03/23/07 Alternative Density Bonus Ordinance Cor.Copy

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10/11/07

Or.Dept:DSD

O-2008-19

MMS#5457

Alternative State Mandated Density Bonus Ordinance

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

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 143.0750, 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; and

WHEREAS, this is not a project as that term is used in the California Environmental Quality Act [CEQA] [Public Resources Code Section 21080]; 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, 143.0720, so as to now read as follows:

Article 3: Supplemental Housing *Development* Regulations

Division 7: *Density* Bonus Regulations

§ 143.0710 Purpose of *Density* Bonus Regulations

- (a) The purpose of the *Density* Bonus Regulations is to provide opportunities for increased residential *density* to housing developers who guarantee that a portion of their housing *development* will be available to *moderate income, low income, very low-income*, or senior households. The intent of the *Density*

Bonus Regulations is that the *density* bonus or other incentives offered by the City shall contribute significantly to the economic feasibility of lower income housing in proposed housing *developments*. It is intended that the affordable housing *density* bonus and any additional housing *development* incentives be available for use in housing *developments* as provided herein where allowed by applicable law and that requests be processed by the City of San Diego. The responsibilities of the President and Chief Executive Officer of the San Diego Housing Commission are provided for herein and are not intended in any way to limit the San Diego Housing Commission's other duties or responsibilities under existing law.

- (b) It is also intended that the City's *Density* Bonus Regulations implement the provisions of California Government Code Sections 65915 through 65918 [State *Density* Bonus Law]. For purposes of the City's *Density* Bonus Regulations, to the extent the provisions, requirements or definitions found in the San Diego Municipal Code differ from, are contrary to or are inconsistent with the provisions, requirements or definitions found in or referred to in the State *Density* Bonus Law, the provisions, requirements and definitions in State *Density* Bonus Law shall prevail. The words and terms housing *development*, *density* bonus, maximum allowable residential *density*, *development* standard, *low income*, *very low income*, *moderate income*, common interest *development* and *child care facility* as used herein, have the same meaning and use as provided for in the State *Density* Bonus Law.

- (c) Nothing in the adoption of these *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 in 1972.

§ 143.0715 When *Density Bonus Regulations* Apply

This division applies to any housing *development applicant* proposing to develop housing on a *lot*, parcel or area of land entirely zoned for five or more pre-*density bonus dwelling units*. If the housing *development* project is situated on land which includes more than one *lot*, parcel or area of land, then each such *lot*, parcel or area of land must also be zoned for five or more pre-*density bonus dwelling units* in order to qualify under the *Density Bonus Regulations*. A *density bonus* means an increase over the otherwise maximum allowable residential *density* under the applicable zoning ordinance and land use element of the General Plan as of the date the housing *development* application is submitted to the City. The amount of *density bonus* to which the *applicant* is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in Section 65915(b) of the California Government Code. The City may consider and approve the granting of a *density bonus* or incentives where a housing *development applicant* proposes *density* on said land, *lot* or parcel beyond that permitted by the applicable zoning ordinance in exchange for compliance with the *Density Bonus Regulations* as fully set forth herein and for providing either of the following:

- (a) A portion of the total *dwelling units* in the housing *development* project shall be reserved for *moderate, low, or very low-income* households or for senior citizens through a written agreement with the San Diego Housing Commission and in accordance with this division and applicable law; or
- (b) The housing *development applicant* donates land, in accordance with this division and pursuant to the State *Density Bonus Law*.

§ 143.0720 Density Bonus in Exchange for Affordable Housing Units

- (a) After meeting all requirements of this division, a housing *development applicant* shall qualify for a *density* bonus, as described in this division, for any housing *development* project as provided for herein and as allowed by applicable law, for which a written agreement and a deed of trust securing the agreement is entered into by the housing *development applicant* and the San Diego Housing Commission. The written 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 housing *development* project.
- (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 of the San Diego Municipal Code.

- (c) A rental unit *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 housing *development* shall be affordable, to *low income* households at a rent, including an allowance for utilities, that does not exceed 30 percent of 80 percent of area median income, as adjusted for household size appropriate for the size of the rental unit; or
 - (2) *Very low income* – At least 5 percent of the pre-*density* bonus units in the housing *development* shall be affordable to *very low income* households at a rent, including an allowance for utilities, that does not exceed 30 percent of 50 percent of the area median income, as adjusted for household size appropriate for the size of the rental unit.
 - (3) The *density* bonus *affordable rental units* shall be designated as such in the chain of title for the units, be comparable in bedroom mix and amenities to the market-rate units in the housing *development*, and be dispersed in a non-discriminatory manner throughout the housing *development*.
 - (4) The *density* bonus *affordable rental units* shall remain available and affordable for a period of at least 30 years from the date the *affordable*

rental units are first made available to the public for rent, or longer if required by other laws.

- (d) A for-sale unit *density* bonus agreement shall utilize the following qualifying criteria and be consistent with State *Density* Bonus Law and the procedures established by the San Diego Housing Commission, including re-sale requirements:
- (1) For-sale unit *density* bonus shall be available only to a common interest *development*, as defined by California Civil Code § 1351, where at least 10 percent of the *pre-density* bonus units in the common interest *development* shall be initially sold and affordable to *moderate income* households at a price that is affordable to *families* earning the requisite percent of the area median income as adjusted or assumed for 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 housing *development 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.

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- (3) Each for-sale *density* bonus affordable unit shall be occupied by the initial owner at all times until the resale of the unit.
 - (4) Upon the resale of the unit, the seller shall comply with all conditions applied by the San Diego Housing Commission regarding the sale of a unit and as set forth in California Government Code Section 65915(c)(2).
 - (5) The for-sale *density* bonus affordable units shall be designated as such in the chain of title for the units, be comparable in bedroom mix and amenities to any market-rate units in the common interest *development*, and be dispersed in a non-discriminatory manner throughout the common interest *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 housing development consists of housing for senior citizens or qualifying residents as defined under California Civil Code Section 51.3, where at least 35 dwelling units are provided; or a mobilehome park that limits residency based on age requirements for housing for senior citizens 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. The San Diego Housing Commission shall not subordinate this deed of trust to any lien or other encumbrance.
- (g) Provisions 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, so as to now read as follows:

§ 143.0725 Other *Density* Bonus Provisions

If a housing *development applicant* intends to qualify for a *density* bonus and requests one or more incentives described in Section 143.0740, then the items identified by the *applicant* as the incentive(s) shall be specifically described as such in the application(s) for the housing *development* project before the application(s) may be

deemed complete. The application(s) shall be processed in accordance with Sections 112.0103 et seq. and 112.0501 et seq. of the San Diego Municipal Code. If there is more than one application for a housing *development* project, they shall be consolidated and processed together for simultaneous approval by a single decision maker. The application(s) for the housing *development* project shall be processed in accordance with the highest level of review applicable to the subject matter of the application(s), consistent with the requirements of Section 112.0501 et seq. of the San Diego Municipal Code. The decision maker shall act on the consolidated applications at the highest level of authority for that housing *development* project but the *findings* for each approval shall be considered individually by that decision maker according to law. If the housing *development applicant* requests incentive(s) after the application has been deemed complete and/or approved, the incentive(s) shall be processed and reviewed as if they had been submitted with the initial housing *development* application.

- (a) A housing *development* project situated entirely on land, as characterized in Section 143.0175, for which a housing *development applicant* is seeking a *density* bonus is subject to the following:
 - (1) For senior citizen housing meeting the criteria of Section 143.0720(e)(1), (2), the *density* bonus shall be 20 percent.
 - (2) For a housing *development* project 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

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any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For a housing *development* project meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable *floor area ratio* applicable to the housing *development* consistent with Section 151.0309(e).

- (3) For a housing *development* project 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 a housing *development* project meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable *floor area ratio* applicable to the housing *development* consistent with Section 151.0309(e).

- (4) For a housing *development* project 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 a housing *development* project meeting the same criteria within the Centre City Planned District, the *density* bonus shall apply to the maximum allowable *floor*

area ratio applicable to the housing *development* consistent with Section 151.0309(e).

- (5) If the *premises* are located in two or more zones, the number of *dwelling units* permitted in the housing *development* is the sum of the *dwelling units* permitted in each of the zones. Within the housing *development* project, the permitted number of *dwelling units* may be distributed without regard to the zone boundaries.
- (6) Where a housing *development* project consists of two or more specifically identified *lots* or parcels, whether contiguous or noncontiguous, the maximum number of *dwelling units* permitted on each lot or parcel is calculated based on the area of that *lot* or parcel.
- (7) Where a housing *development* project consists of two or more noncontiguous *lots* or 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 housing *development*.

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

§ 143.0730 **Density Bonus in Exchange for Donation of Land**

A housing *development applicant* for a *tentative map, parcel map, or other housing development* approval may donate and transfer land to the City for housing *development* with affordable housing units, in exchange for a *density* bonus, in accordance with California Government Code Section 65915, provided the land to be transferred meets all of the following criteria:

- (a) The housing *development applicant* donates and transfers the land no later than the date of approval of the *final map, parcel map, or housing development* application;
- (b) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to *very low income* households in an amount not less than 10 percent of the number of residential units of the proposed *development*;
- (c) The transferred land is at least one acre in size or of sufficient size to permit housing *development* of at least 40 units;
- (d) The transferred land has the appropriate General Plan designation;
- (e) The transferred land is appropriately zoned for *development as affordable* housing;
- (f) The transferred land is or will be served by adequate public facilities and infrastructure;

- (g) The transferred land has appropriate zoning and *development* standards to make the housing *development* of the affordable units feasible;
- (h) No later than the date of approval of the *final map, parcel map*, or of the housing *development* approval, the transferred land has all of the permits and approvals, other than building permits, necessary for the housing *development* of the *very low income* housing units on the transferred land, except that the City may subject the proposed housing *development* to subsequent design review to the extent authorized by subdivision (i) of Section 65584.3 of the California Government Code if the design is not reviewed by the City prior to the time of transfer;
- (i) The land to be transferred is within the boundary of the proposed housing *development* or, if the City agrees, within one-quarter mile of the boundary of the proposed housing *development*;
- (j) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c) of Section 65915 of the California Government Code, which shall be recorded on the property at the time of *dedication*; and,
- (k) The land shall be transferred to the City or to a housing developer approved by the City. The City may require the housing *development applicant* to identify and transfer the land to the housing developer.

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

§ 143.0740 Housing Development Incentives for Affordable Housing Density Bonus Projects

(a) The City shall determine whether to grant an incentive requested by a housing *development applicant*, to the extent allowed by State law and as set forth in this Section.

(1) An incentive means any of the following:

(A) A deviation to a *development* standard applicable to a housing *development* as further described in Section 65915(k)(1) of the California Government Code.

(B) Approval of mixed use zoning in conjunction with the housing *development* project, as further described in Section 65915(k)(2) of the California Government Code, if the

(i) commercial, office, industrial, or other land uses will reduce the cost of the housing *development*; and

(ii) the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned housing *development* in the area where the proposed housing project will be located;

- (C) Any other regulatory incentive proposed by the housing *development applicant* or the City, other than those identified in Section 143.0740(a)(3), which results in identifiable, financially sufficient, and actual cost reductions.

- (2) The City shall process the request for incentive(s) as a part of the housing *development* application consistent with Section 143.0725(a).

- (3) Nothing in this division shall be construed to require the City or any of its related legal entities, including the San Diego Housing Commission, to provide a direct financial incentive, including the provision of land, or the waiver of fees or *dedication* requirements. Items not considered incentives by the City of San Diego include, but are not limited to the following:
 - (A) A waiver of a required permit;

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

 - (C) A waiver of fees or dedication requirements;

 - (D) A direct financial incentive;

 - (E) A deviation from the requirements of the City of San Diego Building Regulations;

(F) For projects required to notice the Federal Aviation Administration, an increase in height that has not received a determination of Ho Hazard to Air Navigation

(4) The City shall determine whether to grant or deny any incentives as stated in this division. A housing *development applicant* seeking a *density* bonus may submit a proposal to the City for specific incentive(s) as identified in 143.0740(b), and may request a meeting with the City, where the housing *development* meets the requirements of Section 143.0720. In order to qualify for incentive(s), the housing *development applicant* shall first demonstrate with substantial evidence that the requested incentive(s) result in identifiable, financially sufficient and actual cost reductions and that the housing *development applicant* has met all other qualifications for a *density* bonus and incentives pursuant to this division. Requested incentives meeting the basic qualifications as specified herein may still be denied by the City where the City makes a written *finding* 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, or for rents for the targeted units to be set as specified in California Government Code Section 65915(c); or,

- (B) The incentive would have a specific adverse impact, as defined in California Government Code Section 65589.5(d)(2), 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 housing *development* unaffordable to *low- and moderate income* households.
- (5) Any housing *development* project eligible for an incentive within the Coastal Overlay Zone and any housing *development* within the area identified on Map C-380 shall be subject to the regulations of Chapter 13, Article 2, Division 5, Coastal Height Limit Overlay Zone in accordance with the certified *Local Coastal Program*. Nothing herein shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).
- (b) The following incentives are available consistent with Table 143-07A, Table 143-07B and Table 143-07C:
- (1) One incentive for a housing *development* project that includes any of the following:

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- (A) At least 10 percent of the total units for *low income* households;
or
 - (B) At least 5 percent of the total units for *very low income* households; or
 - (C) At least 10 percent of the total units for *moderate income* households in a Common Interest *Development*.
- (2) Two incentives for a housing *development* project that includes any of the following:
- (A) At least 20 percent of the total units for *low income* households;
or
 - (B) At least 10 percent of the total unit for *very low income* households; or
 - (C) At least 20 percent of the total units for *moderate income* households in a Common Interest *Development*.
- (3) Three incentives for a housing *development* project that includes any of the following:
- (A) At least 30 percent of the total units for *low income* households;
or

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(B) At least 15 percent of the total units for *very low income* households; or

(C) At least 30 percent of the total units for *moderate income* households in common interest *development*.

Low Income Density Bonus Table 143-07A—Rental Units

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

Very Low Income Density Bonus Table 143-07B—Rental Units

Percent <i>Very 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

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Moderate Income Density Bonus Table 143-07C—For Sale Units

<i>Percent Moderate Income Units</i>	<i>Percent Density Bonus</i>	<i>Number of Incentives</i>
10	5	1
11	6	1
12	7	1
13	8	1
14	9	1
15	10	1
16	11	1
17	12	1
18	13	1
19	14	1
20	15	2
21	16	2
22	17	2
23	18	2
24	19	2
25	20	2
26	21	2
27	22	2
28	23	2
29	24	2
30	25	3
31	26	3
32	27	3
33	28	3
34	29	3
35	30	3
36	31	3
37	32	3
38	33	3
39	34	3
40+	35	3

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

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- (1) The *child care facility* 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 facility* is equal to or greater than the percentage of those same households required in the housing *development*;
 - (3) The additional *density* bonus or incentive required is either:
 - (A) An additional *density* bonus in an amount equal to the amount of square feet in the *child care facility* 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 facility*; and
 - (4) The City finds, based upon substantial evidence, that the community is inadequately served by *child care facilities*.
- (d) Parking: In addition to any other incentive, and upon the request of a housing *development applicant* that proposes a housing *development* meeting the *density* bonus criteria of this division, 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-half parking spaces
- (4) Reductions to the parking ratios shall be granted as follows:
 - (A) A housing *development* project 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) A housing *development* project 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) A housing *development* project that includes *dwelling units* limited to occupancy by *very low income* households, and is at least partially within *transit area*, shall receive a 0.50 space reduction in the parking ratio for each *dwelling unit* that is limited to occupancy by a *very low income* household.

- (5) For purposes of this division, a housing *development* project may provide onsite parking through tandem parking or uncovered parking, but not through on-street parking or parking within a required front yard setback.
- (6) If the total number of parking spaces required for a *development* is other than a whole number, the number shall be rounded up to the next whole number.

§ 143.0750 Housing Development in the Coastal Overlay Zone

A housing *development* project within the Coastal Overlay Zone that proposes to use the *Density* Bonus Regulations of this division shall be subject to the applicable certified land use plan and implementing ordinances, including a *Coastal Development* Permit (Chapter 12, Article 6, Division 7), as described in Chapter 13, Article 2, Division 4.

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, so as to now 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].

(b) Housing for Senior Citizens may be permitted a *density* bonus as provided in Chapter 14, Article 3, Division 7 (*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

SMT:SRE:HC:kat:pev

01/08/07

01/22/07/COR.COPY;

01/30/07 COR.COPY 1

02/23/07 Alternative State Mandated Density Bonus

03/23/07 Alternative State Mandated Density Bonus Cor.Copy

06/25/07 Alternative State Mandated Density Bonus Cor.Copy1

10/11/07

Or.Dept:City Attorney

O-2008-19

MMS#5457

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

Passed by the Council of The City of San Diego on _____, by the following vote:

Council Members	Yeas	Nays	Not Present	Recused
Scott Peters	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Toni Atkins	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Anthony Young	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brian Maienschein	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Donna Frye	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jim Madaffer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ben Hueso	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage _____

AUTHENTICATED BY:

JERRY SANDERS
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By _____, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

_____, and on _____.

I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.

I FURTHER CERIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

(Seal)

By _____, Deputy

Office of the City Clerk, San Diego, California
Ordinance Number _____

334
11/6/07

O-2008-19

Alternative State Mandated Density Bonus Ordinance

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~
NEW LANGUAGE: Double Underlined

ORDINANCE NUMBER O- _____ (NEW SERIES)

ADOPTED ON _____

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 143.0750, 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.

Article 3: Supplemental Housing Development Regulations

Division 7: ~~Affordable Housing~~ Density Bonus Regulations

§ 143.0710 Purpose of ~~Affordable Housing~~ Density Bonus Regulations

(a) The purpose of these ~~r~~ Density Bonus Regulations is to provide opportunities for increased residential densities to housing developers who guarantee that a portion of their ~~residential~~ housing 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 shelter for all economic segments of the community and to provide a balance of housing opportunities for low income, very low income, and senior households~~

Alternative State Mandated Density Bonus Ordinance

~~throughout the City. intent of the *Density Bonus Regulations* is that the *density bonus* or other incentives offered by the City shall contribute significantly to the economic feasibility of lower income housing in proposed housing *developments*. It is intended that the affordable housing *density* bonus and any additional *housing development* incentives be available for use in all residential developments, using criteria and standards provided in the *Progress Guide and General Plan*, as defined by the San Diego Housing Commission. *housing developments* as provided herein where allowed by applicable law and that requests be processed by the City of San Diego. The responsibilities of the President and Chief Executive Officer of the San Diego Housing Commission are provided for herein and are not intended in any way to limit the San Diego Housing Commission's other duties or responsibilities under existing law.~~

- (b) ~~It is also intended that these regulations~~the City's *Density Bonus Regulations* implement the provisions of California Government Code Sections 65915 through 65918 [State *Density Bonus* Law]. For purposes of the City's *Density Bonus Regulations*, to the extent the provisions, requirements or definitions found in the San Diego Municipal Code differ from, are contrary to or are inconsistent with the provisions, requirements or definitions found in or referred to in the State *Density Bonus* Law, the provisions, requirements and definitions in State *Density Bonus* Law shall prevail. The words and terms *housing development*, *density bonus*, *maximum allowable residential density*, *development standard*, *low*

Alternative State Mandated Density Bonus Ordinance

income, very low income, moderate income, common interest development and child care facility as used herein, have the same meaning and use as provided for in the State Density Bonus Law.

- (c) Nothing in the adoption of these 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 in 1972.

§ 143.0715 ~~When Affordable Housing~~ Density Bonus Regulations Applies

This division applies to any housing development applicant proposing to develop housing on a lot, parcel or area of land entirely zoned for five or more pre-density bonus dwelling units. If the housing development project is situated on land which includes more than one lot, parcel or area of land, then each such lot, parcel or area of land must also be zoned for five or more pre-density bonus dwelling units in order to qualify under the Density Bonus Regulations. A density bonus means an increase over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the General Plan as of the date the housing development application is submitted to the City. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in Section 65915(b) of the California

Alternative State Mandated Density Bonus Ordinance

Government Code. The City may consider and approve the granting of a density bonus or incentives where a housing development applicant proposes density on said land, lot or parcel beyond that permitted by the applicable zoning ordinance in exchange for compliance with the Density Bonus Regulations as fully set forth herein and for providing either of the following:

(a) ~~This division applies to any residential development of five or more dwelling units where an applicant proposes density beyond that permitted by the applicable zone in exchange for a portion of the total dwelling units in the development being reserved for low housing development project shall be reserved for moderate, low, or very low-income households or for senior citizens or qualified residents through a written agreement.~~ with the San Diego Housing Commission and in accordance with this division and applicable law; or

~~(b) An applicant proposing development as provided in Section 143.0715(a) shall be entitled to a density bonus as provided in Sections 143.0720 and 143.0730 and may be granted an additional development incentive as provided in Section 143.0740.~~

(b) The housing development applicant donates land, in accordance with this division and pursuant to Government Code Sections 65915 through 65918.

§ 143.0720 Density Bonus in Exchange for Affordable Housing Density Bonus Agreement Units

- (a) After meeting all requirements of this division, a housing development applicant shall be entitled to a density bonus for any residential development for which an applicant qualifies for a density bonus, as described in this division, for any housing development project as provided for herein and as allowed by applicable law, for which a written agreement and a deed of trust securing the agreement is entered into by the housing development applicant and the Chief Executive Officer of the San Diego Housing Commission as provided in Section 143.0720(b). The written 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 housing development project.
- (b) The density bonus agreement shall include the following provisions: units authorized by this division shall be exempt from the Inclusionary Housing Regulations set forth in Chapter 14, Article 2, Division 13 of the San Diego Municipal Code.
- (c) A rental unit density bonus agreement shall utilize the following qualifying criteria consistent with the procedures established by the San Diego Housing Commission:
- (1) With respect to rental housing affordable units:

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~~(A) — At least 20 percent of the pre-bonus units in the development will 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~~

~~(B) — At least 10 percent of the pre-bonus units in the development will 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; or~~

~~(C) — At least 50 percent of the total units will be available to senior citizens or qualifying residents as defined under California Civil Code Section 51.3.~~

~~(2) — With respect to “for sale” housing affordability shall be determined based on prevailing underwriting standards of mortgage financing available for the development, which shall include a forgivable second, silent mortgage, as administered by the Housing Commission. At least 20 percent of the pre-bonus units in the development shall be available to low-income purchasers or 10 percent of the pre-bonus units shall be available to very low-income purchasers or at least 50 percent of the pre-bonus units in~~

Alternative State Mandated Density Bonus Ordinance

~~the *development* shall be available to senior citizens or qualifying residents as defined under California Civil Code Section 51.3.~~

~~(3) The~~

(1) *Low income* – At least 10 percent of the pre-density bonus units in the housing *development* shall be affordable, to *low income* households at a rent, including an allowance for utilities, that does not exceed 30 percent of 80 percent of area median income, as adjusted for household size appropriate for the size of the rental unit; or

(2) *Very low income* – At least 5 percent of the pre-density bonus units in the housing *development* shall be affordable to *very low income* households at a rent, including an allowance for utilities, that does not exceed 30 percent of 50 percent of the area median income, as adjusted for household size appropriate for the size of the rental unit.

(3) The *density bonus affordable rental units* shall be designated as such in the chain of title for the units, be comparable in bedroom mix and amenities to the market-rate units in the housing *development*, and be dispersed in a non-discriminatory manner throughout the housing *development*.

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(4) The density bonus affordable rental units willshall remain available and affordable as provided in Section 143.0720 for a period of at least 30 years if an additional development incentive is granted to the *applicant* as provided in Section 143.0740 or 10 years if an additional development incentive is not granted. If an *applicant* does not request an additional development incentive, the *applicant* shall submit a pro forma analysis for the Chief Executive Officer of the Housing Commission to document project feasibility, from the date the affordable rental units are first made available to the public for rent, or longer if required by other laws.

(d) A for-sale unit density bonus agreement shall utilize the following qualifying criteria and be consistent with State Density Bonus Law and the procedures established by the San Diego Housing Commission, including re-sale requirements:

(1) For-sale unit density bonus shall be available only to a common interest development, as defined by California Civil Code § 1351, where at least 10 percent of the pre-density bonus units in the common interest development shall be initially sold and affordable to moderate income households at a price that is affordable to families earning the requisite percent of the area median income as adjusted or assumed for household size, as determined by the San

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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 housing *development 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 *density* bonus affordable unit shall be occupied by the initial owner at all times until the resale of the unit.
- (4) Upon the resale of the unit, the seller shall comply with all conditions applied by the San Diego Housing Commission regarding the sale of a unit and as set forth in California Government Code Section 65915©(2).
- ~~(4)~~(5) The for-sale *density* bonus affordable units shall be designated units which areas such in the chain of title for the units, be comparable in bedroom mix and amenities to the any market-rate units in the common interest development, and are be dispersed in a non-discriminatory manner throughout the common interest development.

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(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 housing development consists of housing for senior citizens or qualifying residents as defined under California Civil Code Section 51.3, where at least 35 dwelling units are provided; or a mobilehome park that limits residency based on age requirements for housing for senior citizens 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. The San Diego Housing Commission shall not subordinate this deed of trust to any lien or other encumbrance.

(g) (5) Provisions shall be made by the San Diego Housing Commission for certification of eligible tenants and purchasers, annual certification of property owner compliance, and payment of a monitoring

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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.

§ 143.0730-25 Other Density Bonus Provisions:

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

- ~~(a) — The *development* shall be permitted a *density* bonus of the amount of units requested by the *applicant*, up to a total project dwelling unit count of 125 percent of the units permitted by the *density* regulations of the applicable base zone. If a housing *development applicant* intends to qualify for a *density* bonus and requests one or more incentives described in Section 143.0740, then the items identified by the *applicant* as the incentive(s) shall be specifically described as such in the application(s) for the housing *development* project before the application(s) may be deemed complete. The application(s) shall be processed in accordance with Sections 112.0103 et seq. and 112.0501 et seq. of the San Diego Municipal Code. If there is more than one application for a housing *development* project, they shall be consolidated and processed together for simultaneous approval by a single decision maker. The application(s) for the housing *development* project shall be processed in accordance with the highest level of review applicable to the subject matter of the application(s), consistent with the requirements of Section 112.0501 et seq. of the San Diego Municipal Code. The decision maker shall act on the~~

Alternative State Mandated Density Bonus Ordinance

consolidated applications at the highest level of authority for that housing development project but the findings for each approval shall be considered individually by that decision maker according to law. If the housing development applicant requests incentive(s) after the application has been deemed complete and/or approved, the incentive(s) shall be processed and reviewed as if they had been submitted with the initial housing development application.

(a) ~~Where the applicable zone requires that each lot be occupied by no more than one dwelling unit, the development requires a Site Development Permit. If any deviation from the development regulations of the applicable zone is proposed, a Planned Development Permit is required.~~ A housing development project situated entirely on land, as characterized in Section 143.0175, for which a housing development applicant is seeking a density bonus is subject to the following:

(1) For senior citizen housing meeting the criteria of Section 143.0720(e)(1), (2), the density bonus shall be 20 percent.

(2) For a housing development project 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 a housing development project meeting the same criteria within the Centre City Planned District, the bonus shall

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apply to the maximum allowable floor area ratio applicable to the housing development consistent with Section 151.0309(e).

(3) For a housing development project 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 a housing development project meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable floor area ratio applicable to the housing development consistent with Section 151.0309(e).

(4) For a housing development project 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 a housing development project meeting the same criteria within the Centre City Planned District, the density bonus shall apply to the maximum allowable floor area ratio applicable to the housing development consistent with Section 151.0309(e).

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~~(e)-(5)~~ If the *premises* ~~is~~are located in two or more zones, the number of *dwelling units* permitted in the housing development is the sum of the *dwelling units* permitted in each of the zones. Within the housing development project, the permitted number of *dwelling units* may be distributed without regard to the zone boundaries.

~~(d)-(6)~~ Where ~~the~~a housing development project consists of two or more specifically identified lots or parcels, whether contiguous or noncontiguous, the maximum number of *dwelling units* permitted on each lot or parcel ~~property~~ is calculated based on the area of that property. ~~Within the development, if any portion of the density is to be transferred between two or more separate parcels, the regulations of Section 143.0750 apply.~~lot or parcel.

~~(e)-(7)~~ Where ~~the~~a housing development project consists of two or more noncontiguous lots or 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 housing development.

§ 143.0730 Density Bonus in Exchange for Donation of Land

A housing development applicant for a tentative map, parcel map, or other housing development approval may donate and transfer land to the City for

housing development with affordable housing units, in exchange for a density bonus, in accordance with California Government Code Section 65915, provided the land to be transferred meets all of the following criteria:

- (a) The housing development applicant donates and transfers the land no later than the date of approval of the final map, parcel map, or housing development application;
- (b) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development;
- (c) The transferred land is at least one acre in size or of sufficient size to permit housing development of at least 40 units;
- (d) The transferred land has the appropriate General Plan designation;
- (e) The transferred land is appropriately zoned for development as affordable housing;
- (f) The transferred land is or will be served by adequate public facilities and infrastructure;
- (g) The transferred land has appropriate zoning and development standards to make the housing development of the affordable units feasible;

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- (h) No later than the date of approval of the *final map, parcel map, or of the housing development approval, the transferred land has all of the permits and approvals, other than building permits, necessary for the housing development of the very low income housing units on the transferred land, except that the City may subject the proposed housing development to subsequent design review to the extent authorized by subdivision (i) of Section 65584.3 of the California Government Code if the design is not reviewed by the City prior to the time of transfer;*
- (i) The land to be transferred is within the boundary of the proposed housing development or, if the City agrees, within one-quarter mile of the boundary of the proposed housing development;
- (j) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c) of Section 65915 of the California Government Code, which shall be recorded on the property at the time of dedication; and,
- (k) The land shall be transferred to the City or to a housing developer approved by the City. The City may require the housing development applicant to identify and transfer the land to the housing developer.

§ 143.0740 ~~Additional Development Incentive for Affordable Housing~~Housing
Development Incentives for Affordable Housing Density Bonus Projects

~~In accordance with the provisions of Government Code Section 65915, the City may grant a development incentive in addition to the 25 percent density bonus.~~

~~The additional development incentive may consist of the following:~~

(a) ~~A density bonus of more than 25 percent.~~The City shall determine whether to grant an incentive requested by a housing *development applicant*, to the extent allowed by State law and as set forth in this Section.

(1) An incentive means any of the following:

(A) A deviation to a *development* standard applicable to a housing *development* as further described in Section 65915(k)(1) of the California Government Code.

(B) Approval of mixed use zoning in conjunction with the housing *development* project, as further described in Section 65915(k)(2) of the California Government Code, if the

(i) commercial, office, industrial, or other land uses will reduce the cost of the housing *development*;
and

(ii) the commercial, office, industrial, or other land uses are compatible with the housing project and the

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existing or planned housing development in the area
where the proposed housing project will be located;

- (C) Any other regulatory incentive proposed by the housing development applicant or the City, other than those identified in Section 143.0740(a)(3), which results in identifiable, financially sufficient, and actual cost reductions.
- (2) The City shall process the request for incentive(s) as a part of the housing development application consistent with Section 143.0725(a).
- (3) Nothing in this division shall be construed to require the City or any of its related legal entities, including the San Diego Housing Commission, to provide a direct financial incentive, including the provision of land, or the waiver of fees or dedication requirements. Items not considered incentives by the City of San Diego include, but are not limited to the following:
- (A) A waiver of a required permit;
- (B) A deviation from the requirements of the Coastal Height Limit Overlay Zone (Chapter 13, Article 2, Division 5);
- (C) A waiver of fees or dedication requirements;

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- (D) A direct financial incentive;
- (E) A deviation from the requirements of the City of San Diego Building Regulations;
- (F) For projects required to notice the Federal Aviation Administration, an increase in height that has not received a determination of Ho Hazard to Air Navigation.
- (4) The City shall determine whether to grant or deny any incentives as stated in this division. A housing *development applicant* seeking a *density* bonus may submit a proposal to the City for specific incentive(s) as identified in 143.0740(b), and may request a meeting with the City, where the housing *development* meets the requirements of Section 143.0720. In order to qualify for incentive(s), the housing *development applicant* shall first demonstrate with substantial evidence that the requested incentive(s) result in identifiable, financially sufficient and actual cost reductions and that the housing *development applicant* has met all other qualifications for a *density* bonus and *incentives* pursuant to this division. Requested *incentives* meeting the basic qualifications as specified herein may still be denied by the City where the City makes a written *finding* based upon substantial evidence, of either of the following:

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- (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, or for rents for the targeted units to be set as specified in California Government Code Section 65915(c); or,
- (B) The incentive would have a specific adverse impact, as defined in California Government Code Section 65589.5(d)(2), 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 housing development unaffordable to low- and moderate income households.
- (5) Any housing development project eligible for an incentive within the Coastal Overlay Zone and any housing development within the area identified on Map C-380 shall be subject to the regulations of Chapter 13, Article 2, Division 5, Coastal Height Limit Overlay Zone in accordance with the certified Local Coastal Program. Nothing herein shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act

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(Division 20 (commencing with Section 30000) of the Public Resources Code).

- (b) ~~A financial incentive consisting of:~~The following *incentives* are available consistent with Table 143-07A, Table 143-07B and Table 143-07C:
- (1) ~~Fee reductions or deferrals as authorized for affordable housing in the Municipal Code; or~~One incentive for a housing *development* project that includes any of the following:
- (A) At least 10 percent of the total units for *low income* households; or
- (B) At least 5 percent of the total units for *very low income* households; or
- (C) At least 10 percent of the total units for *moderate income* households in a Common Interest *Development*.
- (2) ~~Direct financing assistance from the Housing Commission, Redevelopment Agency, or other public funds, if authorized by the applicable agency on a case-by-case basis; or~~Two *incentives* for a housing *development* project that includes any of the following:
- (A) At least 20 percent of the total units for *low income* households; or

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- (B) At least 10 percent of the total unit for *very low income* households; or
 - (C) At least 20 percent of the total units for *moderate income* households in a Common Interest *Development*.
- (3) Three *incentives* for a housing *development* project that includes any of the following:
- (A) At least 30 percent of the total units for *low income* households; or
 - (B) At least 15 percent of the total units for *very low income* households; or
 - (C) At least 30 percent of the total units for *moderate income* households in common interest *development*.

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Low Income Density Bonus Table 143-07A—Rental Units

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

Very Low Income Density Bonus Table 143-07B—Rental Units

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

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Moderate Income Density Bonus Table 143-07C—For Sale Units

<u>Percent Moderate Income Units</u>	<u>Percent Density Bonus</u>	<u>Number of Incentives</u>
<u>10</u>	<u>5</u>	<u>1</u>
<u>11</u>	<u>6</u>	<u>1</u>
<u>12</u>	<u>7</u>	<u>1</u>
<u>13</u>	<u>8</u>	<u>1</u>
<u>14</u>	<u>9</u>	<u>1</u>
<u>15</u>	<u>10</u>	<u>1</u>
<u>16</u>	<u>11</u>	<u>1</u>
<u>17</u>	<u>12</u>	<u>1</u>
<u>18</u>	<u>13</u>	<u>1</u>
<u>19</u>	<u>14</u>	<u>1</u>
<u>20</u>	<u>15</u>	<u>2</u>
<u>21</u>	<u>16</u>	<u>2</u>
<u>22</u>	<u>17</u>	<u>2</u>
<u>23</u>	<u>18</u>	<u>2</u>
<u>24</u>	<u>19</u>	<u>2</u>
<u>25</u>	<u>20</u>	<u>2</u>
<u>26</u>	<u>21</u>	<u>2</u>
<u>27</u>	<u>22</u>	<u>2</u>
<u>28</u>	<u>23</u>	<u>2</u>
<u>29</u>	<u>24</u>	<u>2</u>
<u>30</u>	<u>25</u>	<u>3</u>
<u>31</u>	<u>26</u>	<u>3</u>
<u>32</u>	<u>27</u>	<u>3</u>
<u>33</u>	<u>28</u>	<u>3</u>
<u>34</u>	<u>29</u>	<u>3</u>
<u>35</u>	<u>30</u>	<u>3</u>
<u>36</u>	<u>31</u>	<u>3</u>
<u>37</u>	<u>32</u>	<u>3</u>
<u>38</u>	<u>33</u>	<u>3</u>
<u>39</u>	<u>34</u>	<u>3</u>
<u>40+</u>	<u>35</u>	<u>3</u>

- (c) A deviation from applicable *development* regulations of the underlying zone pursuant to Section 143.0750. Child Care Facility: A housing development project that meets the criteria in Section 143.0720 and includes a child care center as defined in Section 141.0606(a)(2) as part of

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or adjacent to, such housing development shall be entitled to an additional density bonus or incentive provided that:

- (1) The child care facility 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 facility is equal to or greater than the percentage of those same households required in the housing development;
 - (3) The additional density bonus or incentive required is either:
 - (A) An additional density bonus in an amount equal to the amount of square feet in the child care facility 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 facility; and
 - (4) The City finds, based upon substantial evidence, that the community is inadequately served by child care facilities.
- (d) Parking: In addition to any other incentive, and upon the request of a housing development applicant that proposes a housing development meeting the density bonus criteria of this division, the City shall apply the

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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-half parking spaces
- (4) Reductions to the parking ratios shall be granted as follows:
 - (A) A housing development project 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) A housing development project 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) A housing development project that includes dwelling units limited to occupancy by very low income households, and is at least partially within transit area, shall receive a 0.50

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space reduction in the parking ratio for each dwelling unit that is limited to occupancy by a very low income household.

- (5) For purposes of this division, a housing development project may provide onsite parking through tandem parking or uncovered parking, but not through on-street parking or parking within a required front yard setback.
- (6) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number.

§ 143.0750 ~~Deviation to Allow for Additional Development Incentive~~ Housing Development in the Coastal Overlay Zone

~~An applicant may request a deviation from the applicable development regulations as an additional development incentive for affordable housing pursuant to a Site Development Permit decided in accordance with Process Four provided that the findings in Section 126.0504(a) and the supplemental findings in Section 126.0504(1) are made.~~

A housing development project within the Coastal Overlay Zone that proposes to use the Density Bonus Regulations of this division shall be subject to the applicable certified land use plan and implementing ordinances, including a Coastal Development Permit (Chapter 12, Article 6, Division 7), as described in Chapter 13, Article 2, Division 4.

~~143.0760 — Deviations from Density Bonus and Affordable Housing Provisions~~

~~(a) — A deviation from the provisions of either Section 143.0730 or Section 143.0740 may be requested in accordance with a Site Development Permit and shall require that the *findings* in Section 126.0504(m) be made.~~

~~(b) — Deviations may only be considered as follows:~~

~~(1) — An increase in the affordable housing density bonus provisions of Section 143.0730(a) and/or decrease in the affordable housing provisions of Section 143.0740(a), may be granted where the *development* provides for the inclusion of dwelling units affordable by persons of *very low income*. The total *density* bonus shall not result in a *development* containing more than 150 percent of the units permitted by the *density* regulations of the base zone nor shall the affordable housing requirement provide that less than 10 percent of the total *development* be affordable by persons and *families of very low income*.~~

~~(2) — An increase in the affordable housing density bonus provisions of Section 143.0730(a), and/or decrease in the affordable housing provisions of Section 143.0740(a), may be granted where the *development* is located within a census tract where the median household income exceeds 120 percent of the citywide median household income as measured by the most recent U.S. Bureau of~~

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~~Census survey and the *development* provides for the inclusion of dwelling units affordable by persons of *low income*. The total *density* bonus shall not result in a *development* containing more than 150 percent of the units permitted by the *density* regulations of the applicable zone nor shall the affordable housing requirement provide that less than 10 percent of the total *development* be affordable by persons and *families of low income*.~~

~~§~~ § 141.0310 **Housing for Senior Citizens**

Housing for ~~s~~Senior ~~e~~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].
- (b) ~~Housing for s~~Senior ~~e~~Citizens may be permitted an affordable housing ~~a~~ *density* bonus and an additional development incentive as provided in Chapter 14, Article 3, Division 7 (~~Affordable Housing~~ *Density* Bonus Regulations). ~~All *density* bonus units in excess of 25 percent of the allowable *density* of the base zone shall be for occupancy by very low-income Senior Citizens or very low-income qualifying residents at a rent that does not exceed 30 percent of 50 percent of area median income, as adjusted for assumed household size. Proposed *developments* that provide~~

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~~daily meals in a common cooking and dining facility, and provide and maintain a common transportation service for residents, may be exempt from the affordability requirement of Chapter 14, Article 3, Division 7.~~

(c) through (e) [No change.]

SMT:SRE:HC:kat:pev

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01/22/07 COR.COPY

01/30/07 COR.COPY.1

02/03/07 Alternative State Mandated Density Bonus

03/23/07 Alternative State Mandated Density Bonus COR.COPY

06/25/07 Alternative State Mandated Density Bonus COR.COPY1

10/11/07

Or.Dept:City Attorney

O-2008-19

MMS #5457

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

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 143.0750, 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; and

WHEREAS, this is not a project as that term is used in the California Environmental Quality Act [CEQA] [Public Resources Code Section 21080]; 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, 143.0720, so as to now read as follows:

Article 3: Supplemental Housing *Development* Regulations

Division 7: *Density* Bonus Regulations

§ 143.0710 Purpose of *Density* Bonus Regulations

- (a) The purpose of the *Density* Bonus Regulations is to provide opportunities for increased residential *density* to housing developers who guarantee that a portion of their housing *development* will be available to *moderate income, low income, very low-income*, or senior households. The intent of the *Density*

Bonus Regulations is that the *density* bonus or other incentives offered by the City shall contribute significantly to the economic feasibility of lower income housing in proposed housing *developments*. It is intended that the affordable housing *density* bonus and any additional housing *development* incentives be available for use in housing *developments* as provided herein where allowed by applicable law and that requests be processed by the City of San Diego. The responsibilities of the President and Chief Executive Officer of the San Diego Housing Commission are provided for herein and are not intended in any way to limit the San Diego Housing Commission's other duties or responsibilities under existing law.

- (b) It is also intended that the City's *Density* Bonus Regulations implement the provisions of California Government Code Sections 65915 through 65918 [State *Density* Bonus Law]. For purposes of the City's *Density* Bonus Regulations, to the extent the provisions, requirements or definitions found in the San Diego Municipal Code differ from, are contrary to or are inconsistent with the provisions, requirements or definitions found in or referred to in the State *Density* Bonus Law, the provisions, requirements and definitions in State *Density* Bonus Law shall prevail. The words and terms housing *development*, *density* bonus, maximum allowable residential *density*, *development* standard, *low income*, *very low income*, *moderate income*, common interest *development* and *child care facility* as used herein, have the same meaning and use as provided for in the State *Density* Bonus Law.

- (c) Nothing in the adoption of these *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 in 1972.

§ 143.0715 When *Density Bonus Regulations* Apply

This division applies to any housing *development applicant* proposing to develop housing on a *lot*, parcel or area of land entirely zoned for five or more pre-*density bonus dwelling units*. If the housing *development* project is situated on land which includes more than one *lot*, parcel or area of land, then each such *lot*, parcel or area of land must also be zoned for five or more pre-*density bonus dwelling units* in order to qualify under the *Density Bonus Regulations*. A *density bonus* means an increase over the otherwise maximum allowable residential *density* under the applicable zoning ordinance and land use element of the General Plan as of the date the housing *development* application is submitted to the City. The amount of *density bonus* to which the *applicant* is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in Section 65915(b) of the California Government Code. The City may consider and approve the granting of a *density bonus* or incentives where a housing *development applicant* proposes *density* on said land, *lot* or parcel beyond that permitted by the applicable zoning ordinance in exchange for compliance with the *Density Bonus Regulations* as fully set forth herein and for providing either of the following:

- (a) A portion of the total *dwelling units* in the housing *development* project shall be reserved for *moderate, low, or very low-income* households or for senior citizens through a written agreement with the San Diego Housing Commission and in accordance with this division and applicable law; or
- (b) The housing *development applicant* donates land, in accordance with this division and pursuant to the State *Density Bonus Law*.

§ 143.0720 Density Bonus in Exchange for Affordable Housing Units

- (a) After meeting all requirements of this division, a housing *development applicant* shall qualify for a *density* bonus, as described in this division, for any housing *development* project as provided for herein and as allowed by applicable law, for which a written agreement and a deed of trust securing the agreement is entered into by the housing *development applicant* and the San Diego Housing Commission. The written 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 housing *development* project.
- (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 of the San Diego Municipal Code.

- (c) A rental unit *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 housing *development* shall be affordable, to *low income* households at a rent, including an allowance for utilities, that does not exceed 30 percent of 80 percent of area median income, as adjusted for household size appropriate for the size of the rental unit; or
 - (2) *Very low income* – At least 5 percent of the pre-*density* bonus units in the housing *development* shall be affordable to *very low income* households at a rent, including an allowance for utilities, that does not exceed 30 percent of 50 percent of the area median income, as adjusted for household size appropriate for the size of the rental unit.
 - (3) The *density* bonus *affordable rental units* shall be designated as such in the chain of title for the units, be comparable in bedroom mix and amenities to the market-rate units in the housing *development*, and be dispersed in a non-discriminatory manner throughout the housing *development*.
 - (4) The *density* bonus *affordable rental units* shall remain available and affordable for a period of at least 30 years from the date the *affordable*

rental units are first made available to the public for rent, or longer if required by other laws.

- (d) A for-sale unit *density* bonus agreement shall utilize the following qualifying criteria and be consistent with State *Density* Bonus Law and the procedures established by the San Diego Housing Commission, including re-sale requirements:
- (1) For-sale unit *density* bonus shall be available only to a common interest *development*, as defined by California Civil Code § 1351, where at least 10 percent of the pre-*density* bonus units in the common interest *development* shall be initially sold and affordable to *moderate income* households at a price that is affordable to *families* earning the requisite percent of the area median income as adjusted or assumed for 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 housing *development 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 *density* bonus affordable unit shall be occupied by the initial owner at all times until the resale of the unit.
 - (4) Upon the resale of the unit, the seller shall comply with all conditions applied by the San Diego Housing Commission regarding the sale of a unit and as set forth in California Government Code Section 65915(c)(2).
 - (5) The for-sale *density* bonus affordable units shall be designated as such in the chain of title for the units, be comparable in bedroom mix and amenities to any market-rate units in the common interest *development*, and be dispersed in a non-discriminatory manner throughout the common interest *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 housing development consists of housing for senior citizens or qualifying residents as defined under California Civil Code Section 51.3, where at least 35 dwelling units are provided; or a mobilehome park that limits residency based on age requirements for housing for senior citizens 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. The San Diego Housing Commission shall not subordinate this deed of trust to any lien or other encumbrance.
- (g) Provisions 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, so as to now read as follows:

§ 143.0725 Other *Density* Bonus Provisions

If a housing *development applicant* intends to qualify for a *density* bonus and requests one or more incentives described in Section 143.0740, then the items identified by the *applicant* as the incentive(s) shall be specifically described as such in the application(s) for the housing *development* project before the application(s) may be

deemed complete. The application(s) shall be processed in accordance with Sections 112.0103 et seq. and 112.0501 et seq. of the San Diego Municipal Code. If there is more than one application for a housing *development* project, they shall be consolidated and processed together for simultaneous approval by a single decision maker. The application(s) for the housing *development* project shall be processed in accordance with the highest level of review applicable to the subject matter of the application(s), consistent with the requirements of Section 112.0501 et seq. of the San Diego Municipal Code. The decision maker shall act on the consolidated applications at the highest level of authority for that housing *development* project but the *findings* for each approval shall be considered individually by that decision maker according to law. If the housing *development applicant* requests incentive(s) after the application has been deemed complete and/or approved, the incentive(s) shall be processed and reviewed as if they had been submitted with the initial housing *development* application.

- (a) A housing *development* project situated entirely on land, as characterized in Section 143.0175, for which a housing *development applicant* is seeking a *density* bonus is subject to the following:
- (1) For senior citizen housing meeting the criteria of Section 143.0720(e)(1), (2), the *density* bonus shall be 20 percent.
 - (2) For a housing *development* project 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 a housing *development* project meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable *floor area ratio* applicable to the housing *development* consistent with Section 151.0309(e).

- (3) For a housing *development* project 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 a housing *development* project meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable *floor area ratio* applicable to the housing *development* consistent with Section 151.0309(e).
- (4) For a housing *development* project 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 a housing *development* project meeting the same criteria within the Centre City Planned District, the *density* bonus shall apply to the maximum allowable *floor*

area ratio applicable to the housing *development* consistent with Section 151.0309(e).

- (5) If the *premises* are located in two or more zones, the number of *dwelling units* permitted in the housing *development* is the sum of the *dwelling units* permitted in each of the zones. Within the housing *development* project, the permitted number of *dwelling units* may be distributed without regard to the zone boundaries.
- (6) Where a housing *development* project consists of two or more specifically identified *lots* or parcels, whether contiguous or noncontiguous, the maximum number of *dwelling units* permitted on each lot or parcel is calculated based on the area of that *lot* or parcel.
- (7) Where a housing *development* project consists of two or more noncontiguous *lots* or 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 housing *development*.

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

§ 143.0730 Density Bonus in Exchange for Donation of Land

A housing *development applicant* for a *tentative map, parcel map*, or other housing *development* approval may donate and transfer land to the City for housing *development* with affordable housing units, in exchange for a *density* bonus, in accordance with California Government Code Section 65915, provided the land to be transferred meets all of the following criteria:

- (a) The housing *development applicant* donates and transfers the land no later than the date of approval of the *final map, parcel map*, or housing *development* application;
- (b) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to *very low income* households in an amount not less than 10 percent of the number of residential units of the proposed *development*;
- (c) The transferred land is at least one acre in size or of sufficient size to permit housing *development* of at least 40 units;
- (d) The transferred land has the appropriate General Plan designation;
- (e) The transferred land is appropriately zoned for *development* as affordable housing;
- (f) The transferred land is or will be served by adequate public facilities and infrastructure;

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- (g) The transferred land has appropriate zoning and *development* standards to make the housing *development* of the affordable units feasible;
- (h) No later than the date of approval of the *final map, parcel map*, or of the housing *development* approval, the transferred land has all of the permits and approvals, other than building permits, necessary for the housing *development* of the *very low income* housing units on the transferred land, except that the City may subject the proposed housing *development* to subsequent design review to the extent authorized by subdivision (i) of Section 65584.3 of the California Government Code if the design is not reviewed by the City prior to the time of transfer;
- (i) The land to be transferred is within the boundary of the proposed housing *development* or, if the City agrees, within one-quarter mile of the boundary of the proposed housing *development*;
- (j) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c) of Section 65915 of the California Government Code, which shall be recorded on the property at the time of *dedication*; and,
- (k) The land shall be transferred to the City or to a housing developer approved by the City. The City may require the housing *development applicant* to identify and transfer the land to the housing developer.

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

§ 143.0740 Housing *Development* Incentives for Affordable Housing *Density* Bonus Projects

(a) The City shall determine whether to grant an incentive requested by a housing *development applicant*, to the extent allowed by State law and as set forth in this Section.

(1) An incentive means any of the following:

(A) A deviation to a *development* standard applicable to a housing *development* as further described in Section 65915(k)(1) of the California Government Code.

(B) Approval of mixed use zoning in conjunction with the housing *development* project, as further described in Section 65915(k)(2) of the California Government Code, if the

(i) commercial, office, industrial, or other land uses will reduce the cost of the housing *development*; and

(ii) the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned housing *development* in the area where the proposed housing project will be located;

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(C) Any other regulatory incentive proposed by the housing *development applicant* or the City, other than those identified in Section 143.0740(a)(3), which results in identifiable, financially sufficient, and actual cost reductions.

(2) The City shall process the request for incentive(s) as a part of the housing *development* application consistent with Section 143.0725(a).

(3) Nothing in this division shall be construed to require the City or any of its related legal entities, including the San Diego Housing Commission, to provide a direct financial incentive, including the provision of land, or the waiver of fees or *dedication* requirements. Items not considered incentives by the City of San Diego include, but are not limited to the following;

(A) A waiver of a required permit;

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

(C) A waiver of fees or dedication requirements;

(D) A direct financial incentive;

(E) A deviation from the requirements of the City of San Diego Building Regulations;

(F) For projects required to notice the Federal Aviation Administration, an increase in height that has not received a determination of Ho Hazard to Air Navigation

(4) The City shall determine whether to grant or deny any incentives as stated in this division. A housing *development applicant* seeking a *density* bonus may submit a proposal to the City for specific incentive(s) as identified in 143.0740(b), and may request a meeting with the City, where the housing *development* meets the requirements of Section 143.0720. In order to qualify for incentive(s), the housing *development applicant* shall first demonstrate with substantial evidence that the requested incentive(s) result in identifiable, financially sufficient and actual cost reductions and that the housing *development applicant* has met all other qualifications for a *density* bonus and incentives pursuant to this division. Requested incentives meeting the basic qualifications as specified herein may still be denied by the City where the City makes a written *finding* 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, or for rents for the targeted units to be set as specified in California Government Code Section 65915(c); or,

- (B) The incentive would have a specific adverse impact, as defined in California Government Code Section 65589.5(d)(2), 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 housing *development* unaffordable to *low- and moderate income* households.
- (5) Any housing *development* project eligible for an incentive within the Coastal Overlay Zone and any housing *development* within the area identified on Map C-380 shall be subject to the regulations of Chapter 13, Article 2, Division 5, Coastal Height Limit Overlay Zone in accordance with the certified *Local Coastal Program*. Nothing herein shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).
- (b) The following incentives are available consistent with Table 143-07A, Table 143-07B and Table 143-07C:
- (1) One incentive for a housing *development* project that includes any of the following:

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- (A) At least 10 percent of the total units for *low income* households;
or
 - (B) At least 5 percent of the total units for *very low income* households; or
 - (C) At least 10 percent of the total units for *moderate income* households in a Common Interest *Development*.
- (2) Two incentives for a housing *development* project that includes any of the following:
- (A) At least 20 percent of the total units for *low income* households;
or
 - (B) At least 10 percent of the total unit for *very low income* households; or
 - (C) At least 20 percent of the total units for *moderate income* households in a Common Interest *Development*.
- (3) Three incentives for a housing *development* project that includes any of the following:
- (A) At least 30 percent of the total units for *low income* households;
or

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(B) At least 15 percent of the total units for *very low income* households; or

(C) At least 30 percent of the total units for *moderate income* households in common interest *development*.

Low Income Density Bonus Table 143-07A—Rental Units

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

Very Low Income Density Bonus Table 143-07B—Rental Units

Percent <i>Very 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

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Moderate Income Density Bonus Table 143-07C—For Sale Units

<i>Percent Moderate Income Units</i>	<i>Percent Density Bonus</i>	<i>Number of Incentives</i>
10	5	1
11	6	1
12	7	1
13	8	1
14	9	1
15	10	1
16	11	1
17	12	1
18	13	1
19	14	1
20	15	2
21	16	2
22	17	2
23	18	2
24	19	2
25	20	2
26	21	2
27	22	2
28	23	2
29	24	2
30	25	3
31	26	3
32	27	3
33	28	3
34	29	3
35	30	3
36	31	3
37	32	3
38	33	3
39	34	3
40+	35	3

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

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- (1) The *child care facility* 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 facility* is equal to or greater than the percentage of those same households required in the housing *development*;
 - (3) The additional *density* bonus or incentive required is either:
 - (A) An additional *density* bonus in an amount equal to the amount of square feet in the *child care facility* 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 facility*; and
 - (4) The City finds, based upon substantial evidence, that the community is inadequately served by *child care facilities*.
- (d) Parking: In addition to any other incentive, and upon the request of a housing *development applicant* that proposes a housing *development* meeting the *density* bonus criteria of this division, the City shall apply the following vehicular parking ratio, inclusive of handicapped and guest parking:
- (1) Zero to one bedroom: one onsite parking space

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- (2) Two to three bedrooms: two onsite parking spaces
- (3) Four and more bedrooms: two and one-half parking spaces
- (4) Reductions to the parking ratios shall be granted as follows:
 - (A) A housing *development* project 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) A housing *development* project 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) A housing *development* project that includes *dwelling units* limited to occupancy by *very low income* households, and is at least partially within *transit area*, shall receive a 0.50 space reduction in the parking ratio for each *dwelling unit* that is limited to occupancy by a *very low income* household.

- (5) For purposes of this division, a *housing development* project may provide onsite parking through tandem parking or uncovered parking, but not through on-street parking or parking within a required front yard setback.
- (6) If the total number of parking spaces required for a *development* is other than a whole number, the number shall be rounded up to the next whole number.

§ 143.0750 Housing Development in the Coastal Overlay Zone

A *housing development* project within the Coastal Overlay Zone that proposes to use the *Density Bonus* Regulations of this division shall be subject to the applicable certified land use plan and implementing ordinances, including a *Coastal Development Permit* (Chapter 12, Article 6, Division 7), as described in Chapter 13, Article 2, Division 4.

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, so as to now 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].
- (b) Housing for Senior Citizens may be permitted a *density* bonus as provided in Chapter 14, Article 3, Division 7 (*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

SMT:SRE:HC:kat:pev
01/08/07
01/22/07/COR.COPY;
01/30/07 COR.COPY 1
02/23/07 Alternative State Mandated Density Bonus
03/23/07 Alternative State Mandated Density Bonus Cor.Copy
06/25/07 Alternative State Mandated Density Bonus Cor.Copy1
10/11/07
Or.Dept:City Attorney
O-2008-19
MMS#5457

Alternative State Mandated Density Bonus Ordinance

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

Passed by the Council of The City of San Diego on _____, by the following vote:

Council Members	Yeas	Nays	Not Present	Recused
Scott Peters	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Toni Atkins	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Anthony Young	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brian Maienschein	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Donna Frye	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jim Madaffer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ben Hueso	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage _____.

AUTHENTICATED BY:

JERRY SANDERS
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By _____, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

_____, and on _____.

I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.

I FURTHER CERIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

(Seal)

By _____, Deputy

Office of the City Clerk, San Diego, California
Ordinance Number _____

CITY ATTORNEY DIGEST

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

EFFECTIVE DATE _____

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 143.0750, 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.

This is an ordinance which amends Chapter 14, Article 3, Division 7, by amending Sections 143.0710, 143.0715, 143.0720, 143.0725, 143.0730, 143.0740 and 143.0750; and repealing Section 143.0760; and amends Chapter 14, Article 1, Division 3, by amending Section 141.0310(b), all relating to the Density Bonus Regulations.

This ordinance contains a notice that a full reading of this ordinance is dispensed with prior to its final passage, since a written or printed copy will be available to the City Council and the public a day prior to its final passage.

This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

Alternative State Mandated Density Bonus Ordinance

A complete copy of the Ordinance is available for inspection in the Office of the City Clerk of the City of San Diego, 2nd Floor, City Administration Building, 202 C Street, San Diego, CA 92101.

SMT:SRE:als:pev

01/08/07

02/23/07

03/23/07 Alternative Density Bonus Ordinance Cor.Copy

06/25/07 Alternative Density Bonus Ordinance Cor.Copy.1

10/11/07

Or.Dept:DSD

O-2008-19

MMS#5457

STRIKEOUT ORDINANCE**OLD LANGUAGE: ~~Struck Out~~****NEW LANGUAGE: Double Underlined**

ORDINANCE NUMBER O-_____ (NEW SERIES)

ADOPTED ON _____

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 143.0750, 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.

Article 3: Supplemental Housing Development Regulations**Division 7: ~~Affordable Housing~~ Density Bonus Regulations****§ 143.0710 Purpose of ~~Affordable Housing~~ Density Bonus Regulations**

- (a) The purpose of these ~~Density Bonus~~ Density Bonus Regulations is to provide opportunities for increased residential densities to housing developers who guarantee that a portion of their ~~residential~~ housing 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 shelter for all economic segments of the community and to provide a balance of housing opportunities for low income, very low income, and senior households

Alternative State Mandated Density Bonus Ordinance

throughout the City; intent of the *Density Bonus Regulations* is that the *density bonus* or other incentives offered by the City shall contribute significantly to the economic feasibility of lower income housing in proposed housing *developments*. It is intended that the affordable housing *density bonus* and any additional *housing development* incentives be available for use in all residential developments, using criteria and standards provided in the Progress Guide and General Plan, as defined by the San Diego Housing Commission. *housing developments* as provided herein where allowed by applicable law and that requests be processed by the City of San Diego. The responsibilities of the President and Chief Executive Officer of the San Diego Housing Commission are provided for herein and are not intended in any way to limit the San Diego Housing Commission's other duties or responsibilities under existing law.

- (b) It is also intended that these regulations the City's *Density Bonus Regulations* implement the provisions of California Government Code Sections 65915 through 65918 [*State Density Bonus Law*]. For purposes of the City's *Density Bonus Regulations*, to the extent the provisions, requirements or definitions found in the San Diego Municipal Code differ from, are contrary to or are inconsistent with the provisions, requirements or definitions found in or referred to in the State *Density Bonus Law*, the provisions, requirements and definitions in State *Density Bonus Law* shall prevail. The words and terms *housing development*, *density bonus*, *maximum allowable residential density*, *development standard*, *low*

Alternative State Mandated Density Bonus Ordinance

income, very low income, moderate income, common interest development and child care facility as used herein, have the same meaning and use as provided for in the State Density Bonus Law.

- (c) Nothing in the adoption of these 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 in 1972.

§ 143.0715 When Affordable Housing Density Bonus Regulations Applies

This division applies to any housing development applicant proposing to develop housing on a lot, parcel or area of land entirely zoned for five or more pre-density bonus dwelling units. If the housing development project is situated on land which includes more than one lot, parcel or area of land, then each such lot, parcel or area of land must also be zoned for five or more pre-density bonus dwelling units in order to qualify under the Density Bonus Regulations. A density bonus means an increase over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the General Plan as of the date the housing development application is submitted to the City. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in Section 65915(b) of the California

Alternative State Mandated Density Bonus Ordinance

Government Code. The City may consider and approve the granting of a density bonus or incentives where a housing development applicant proposes density on said land, lot or parcel beyond that permitted by the applicable zoning ordinance in exchange for compliance with the Density Bonus Regulations as fully set forth herein and for providing either of the following:

- (a) ~~This division applies to any residential development of five or more dwelling units where an applicant proposes density beyond that permitted by the applicable zone in exchange for a portion of the total dwelling units in the development being reserved for low housing development project shall be reserved for moderate, low, or very low-income households or for senior citizens or qualified residents through a written agreement with the San Diego Housing Commission and in accordance with this division and applicable law; or~~
- ~~(b) An applicant proposing development as provided in Section 143.0715(a) shall be entitled to a density bonus as provided in Sections 143.0720 and 143.0730 and may be granted an additional development incentive as provided in Section 143.0740.~~
- (b) The housing development applicant donates land, in accordance with this division and pursuant to Government Code Sections 65915 through 65918.

§ 143.0720 Density Bonus in Exchange for Affordable Housing Density Bonus AgreementUnits

- (a) ~~An~~After meeting all requirements of this division, a housing development applicant shall be entitled to a density bonus for any residential development for which anqualify for a density bonus, as described in this division, for any housing development project as provided for herein and as allowed by applicable law, for which a written agreement and a deed of trust securing the agreement is entered into by the housing development applicant and the Chief Executive Officer of the San Diego Housing Commission as provided in Section 143.0720(b). The written 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 housing development project.
- (b) ~~The density bonus agreement shall include the following provisions:~~units authorized by this division shall be exempt from the Inclusionary Housing Regulations set forth in Chapter 14, Article 2, Division 13 of the San Diego Municipal Code.
- (c) A rental unit density bonus agreement shall utilize the following qualifying criteria consistent with the procedures established by the San Diego Housing Commission:
- (1) ~~With respect to rental housing affordable units:~~

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~~(A) — At least 20 percent of the pre-bonus units in the development will 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~~

~~(B) — At least 10 percent of the pre-bonus units in the development will 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; or~~

~~(C) — At least 50 percent of the total units will be available to senior citizens or qualifying residents as defined under California Civil Code Section 51.3.~~

~~(2) — With respect to “for sale” housing affordability shall be determined based on prevailing underwriting standards of mortgage financing available for the development, which shall include a forgivable second, silent mortgage, as administered by the Housing Commission. At least 20 percent of the pre-bonus units in the development shall be available to low-income purchasers or 10 percent of the pre-bonus units shall be available to very low-income purchasers or at least 50 percent of the pre-bonus units in~~

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~~the development shall be available to senior citizens or qualifying residents as defined under California Civil Code Section 51.3.~~

~~(3) The~~

(1) Low income – At least 10 percent of the pre-density bonus units in the housing development shall be affordable, to low income households at a rent, including an allowance for utilities, that does not exceed 30 percent of 80 percent of area median income, as adjusted for household size appropriate for the size of the rental unit; or

(2) Very low income – At least 5 percent of the pre-density bonus units in the housing development shall be affordable to very low income households at a rent, including an allowance for utilities, that does not exceed 30 percent of 50 percent of the area median income, as adjusted for household size appropriate for the size of the rental unit.

(3) The density bonus affordable rental units shall be designated as such in the chain of title for the units, be comparable in bedroom mix and amenities to the market-rate units in the housing development, and be dispersed in a non-discriminatory manner throughout the housing development.

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(4) The *density bonus affordable rental units* will shall remain available and affordable as provided in Section 143.0720 for a period of at least 30 years if an additional development incentive is granted to the *applicant* as provided in Section 143.0740 or 10 years if an additional development incentive is not granted. If an *applicant* does not request an additional development incentive, the *applicant* shall submit a pro forma analysis for the Chief Executive Officer of the Housing Commission to document project feasibility, from the date the *affordable rental units* are first made available to the public for rent, or longer if required by other laws.

(d) A for-sale unit *density* bonus agreement shall utilize the following qualifying criteria and be consistent with State *Density Bonus Law* and the procedures established by the San Diego Housing Commission, including re-sale requirements:

(1) For-sale unit *density* bonus shall be available only to a *common interest development*, as defined by California Civil Code § 1351, where at least 10 percent of the *pre-density* bonus units in the *common interest development* shall be initially sold and affordable to *moderate income* households at a price that is affordable to *families* earning the requisite percent of the area median income as adjusted or assumed for household size, as determined by the San

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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 housing *development 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 *density* bonus affordable unit shall be occupied by the initial owner at all times until the resale of the unit.

(4) Upon the resale of the unit, the seller shall comply with all conditions applied by the San Diego Housing Commission regarding the sale of a unit and as set forth in California Government Code Section 65915©(2).

(4)(5) The for-sale *density* bonus affordable units shall be designated units which areas such in the chain of title for the units, be comparable in bedroom mix and amenities to the any market-rate units in the common interest development, and are be dispersed in a non-discriminatory manner throughout the common interest development.

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- (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 housing development consists of housing for senior citizens or qualifying residents as defined under California Civil Code Section 51.3, where at least 35 dwelling units are provided; or a mobilehome park that limits residency based on age requirements for housing for senior citizens 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. The San Diego Housing Commission shall not subordinate this deed of trust to any lien or other encumbrance.
- (g) (5) Provisions shall be made by the San Diego Housing Commission for certification of eligible tenants and purchasers, annual certification of property owner compliance, and payment of a monitoring

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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.

§ 143.0730-25 Other Density Bonus Provisions

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

- (a) ~~The *development* shall be permitted a *density* bonus of the amount of units requested by the *applicant*, up to a total project dwelling unit count of 125 percent of the units permitted by the *density* regulations of the applicable base zone. If a housing *development applicant* intends to qualify for a *density* bonus and requests one or more incentives described in Section 143.0740, then the items identified by the *applicant* as the incentive(s) shall be specifically described as such in the application(s) for the housing *development* project before the application(s) may be deemed complete. The application(s) shall be processed in accordance with Sections 112.0103 et seq. and 112.0501 et seq. of the San Diego Municipal Code. If there is more than one application for a housing *development* project, they shall be consolidated and processed together for simultaneous approval by a single decision maker. The application(s) for the housing *development* project shall be processed in accordance with the highest level of review applicable to the subject matter of the application(s), consistent with the requirements of Section 112.0501 et seq. of the San Diego Municipal Code. The decision maker shall act on the~~

consolidated applications at the highest level of authority for that housing development project but the findings for each approval shall be considered individually by that decision maker according to law. If the housing development applicant requests incentive(s) after the application has been deemed complete and/or approved, the incentive(s) shall be processed and reviewed as if they had been submitted with the initial housing development application.

(a) ~~Where the applicable zone requires that each lot be occupied by no more than one dwelling unit, the development requires a Site Development Permit. If any deviation from the development regulations of the applicable zone is proposed, a Planned Development Permit is required. A housing development project situated entirely on land, as characterized in Section 143.0175, for which a housing development applicant is seeking a density bonus is subject to the following:~~

(1) For senior citizen housing meeting the criteria of Section 143.0720(e)(1), (2), the density bonus shall be 20 percent.

(2) For a housing development project 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 a housing development project meeting the same criteria within the Centre City Planned District, the bonus shall

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apply to the maximum allowable floor area ratio applicable to the housing development consistent with Section 151.0309(e).

- (3) For a housing development project 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 a housing development project meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable floor area ratio applicable to the housing development consistent with Section 151.0309(e).
- (4) For a housing development project 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 a housing development project meeting the same criteria within the Centre City Planned District, the density bonus shall apply to the maximum allowable floor area ratio applicable to the housing development consistent with Section 151.0309(e).

~~(e)-(5)~~ If the premises ~~is~~are located in two or more zones, the number of *dwelling units* permitted in the housing development is the sum of the *dwelling units* permitted in each of the zones. Within the housing development project, the permitted number of *dwelling units* may be distributed without regard to the zone boundaries.

~~(d)-(6)~~ Where ~~the~~ housing development project consists of two or more specifically identified lots or parcels, whether contiguous or noncontiguous, the maximum number of *dwelling units* permitted on each lot or parcel ~~property~~ is calculated based on the area of that property. Within the ~~development~~, if any portion of the *density* is to be transferred between two or more separate parcels, the regulations of Section 143.0750 apply ~~lot or parcel~~.

~~(e)-(7)~~ Where ~~the~~ housing development project consists of two or more noncontiguous lots or 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 housing development.

§ 143.0730 Density Bonus in Exchange for Donation of Land

A housing development applicant for a tentative map, parcel map, or other housing development approval may donate and transfer land to the City for

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housing development with affordable housing units, in exchange for a density bonus, in accordance with California Government Code Section 65915, provided the land to be transferred meets all of the following criteria:

- (a) The housing development applicant donates and transfers the land no later than the date of approval of the final map, parcel map, or housing development application;
- (b) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development;
- (c) The transferred land is at least one acre in size or of sufficient size to permit housing development of at least 40 units;
- (d) The transferred land has the appropriate General Plan designation;
- (e) The transferred land is appropriately zoned for development as affordable housing;
- (f) The transferred land is or will be served by adequate public facilities and infrastructure;
- (g) The transferred land has appropriate zoning and development standards to make the housing development of the affordable units feasible;

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- (h) No later than the date of approval of the *final map, parcel map, or of the housing development approval*, the transferred land has all of the permits and approvals, other than building permits, necessary for the housing *development of the very low income housing units on the transferred land*, except that the City may subject the proposed housing *development to subsequent design review to the extent authorized by subdivision (i) of Section 65584.3 of the California Government Code if the design is not reviewed by the City prior to the time of transfer*;
- (i) The land to be transferred is within the boundary of the proposed housing *development or, if the City agrees, within one-quarter mile of the boundary of the proposed housing development*;
- (j) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c) of Section 65915 of the California Government Code, which shall be recorded on the property at the time of *dedication*; and
- (k) The land shall be transferred to the City or to a housing developer approved by the City. The City may require the housing *development applicant to identify and transfer the land to the housing developer*.

§ 143.0740 ~~Additional Development Incentive for Affordable Housing~~Housing
Development Incentives for Affordable Housing Density Bonus Projects

In accordance with the provisions of Government Code Section 65915, the City may grant a development incentive in addition to the 25 percent density bonus.

The additional development incentive may consist of the following:

(a) ~~A density bonus of more than 25 percent.~~The City shall determine whether to grant an incentive requested by a housing development applicant, to the extent allowed by State law and as set forth in this Section.

(1) An incentive means any of the following:

(A) A deviation to a development standard applicable to a housing development as further described in Section 65915(k)(1) of the California Government Code.

(B) Approval of mixed use zoning in conjunction with the housing development project, as further described in Section 65915(k)(2) of the California Government Code, if the

(i) commercial, office, industrial, or other land uses will reduce the cost of the housing development;

and

(ii) the commercial, office, industrial, or other land uses are compatible with the housing project and the

existing or planned housing development in the area
where the proposed housing project will be located;

- (C) Any other regulatory incentive proposed by the housing
development applicant or the City, other than those
identified in Section 143.0740(a)(3), which results in
identifiable, financially sufficient, and actual cost
reductions.
- (2) The City shall process the request for incentive(s) as a part of the
housing development application consistent with Section
143.0725(a).
- (3) Nothing in this division shall be construed to require the City or
any of its related legal entities, including the San Diego Housing
Commission, to provide a direct financial incentive, including the
provision of land, or the waiver of fees or dedication requirements.
Items not considered incentives by the City of San Diego include,
but are not limited to the following:
- (A) A waiver of a required permit;
- (B) A deviation from the requirements of the Coastal Height
Limit Overlay Zone (Chapter 13, Article 2, Division 5);
- (C) A waiver of fees or dedication requirements;

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- (D) A direct financial incentive;
- (E) A deviation from the requirements of the City of San Diego Building Regulations;
- (F) For projects required to notice the Federal Aviation Administration, an increase in height that has not received a determination of Ho Hazard to Air Navigation.
- (4) The City shall determine whether to grant or deny any incentives as stated in this division. A housing development applicant seeking a density bonus may submit a proposal to the City for specific incentive(s) as identified in 143.0740(b), and may request a meeting with the City, where the housing development meets the requirements of Section 143.0720. In order to qualify for incentive(s), the housing development applicant shall first demonstrate with substantial evidence that the requested incentive(s) result in identifiable, financially sufficient and actual cost reductions and that the housing development applicant has met all other qualifications for a density bonus and incentives pursuant to this division. Requested incentives meeting the basic qualifications as specified herein may still be denied by the City where the City makes a written finding based upon substantial evidence, of either of the following:

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- (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, or for rents for the targeted units to be set as specified in California Government Code Section 65915(c); or,
- (B) The incentive would have a specific adverse impact, as defined in California Government Code Section 65589.5(d)(2), 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 housing development unaffordable to low- and moderate income households.
- (5) Any housing development project eligible for an incentive within the Coastal Overlay Zone and any housing development within the area identified on Map C-380 shall be subject to the regulations of Chapter 13, Article 2, Division 5, Coastal Height Limit Overlay Zone in accordance with the certified Local Coastal Program. Nothing herein shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act

(Division 20 (commencing with Section 30000) of the Public Resources Code).

(b) ~~A financial incentive consisting of:~~ The following incentives are available consistent with Table 143-07A, Table 143-07B and Table 143-07C:

(1) ~~Fee reductions or deferrals as authorized for affordable housing in the Municipal Code; or~~ One incentive for a housing development project that includes any of the following:

(A) At least 10 percent of the total units for low income households; or

(B) At least 5 percent of the total units for very low income households; or

(C) At least 10 percent of the total units for moderate income households in a Common Interest Development.

(2) ~~Direct financing assistance from the Housing Commission, Redevelopment Agency, or other public funds, if authorized by the applicable agency on a case by case basis, or~~ Two incentives for a housing development project that includes any of the following:

(A) At least 20 percent of the total units for low income households; or

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- (B) At least 10 percent of the total unit for *very low income* households; or
 - (C) At least 20 percent of the total units for *moderate income* households in a *Common Interest Development*.
- (3) Three *incentives* for a housing *development* project that includes any of the following:
- (A) At least 30 percent of the total units for *low income* households; or
 - (B) At least 15 percent of the total units for *very low income* households; or
 - (C) At least 30 percent of the total units for *moderate income* households in *common interest development*.

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Low Income Density Bonus Table 143-07A—Rental Units

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

Very Low Income Density Bonus Table 143-07B—Rental Units

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

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Moderate Income Density Bonus Table 143-07C—For Sale Units

<u>Percent Moderate Income Units</u>	<u>Percent Density Bonus</u>	<u>Number of Incentives</u>
<u>10</u>	<u>5</u>	<u>1</u>
<u>11</u>	<u>6</u>	<u>1</u>
<u>12</u>	<u>7</u>	<u>1</u>
<u>13</u>	<u>8</u>	<u>1</u>
<u>14</u>	<u>9</u>	<u>1</u>
<u>15</u>	<u>10</u>	<u>1</u>
<u>16</u>	<u>11</u>	<u>1</u>
<u>17</u>	<u>12</u>	<u>1</u>
<u>18</u>	<u>13</u>	<u>1</u>
<u>19</u>	<u>14</u>	<u>1</u>
<u>20</u>	<u>15</u>	<u>2</u>
<u>21</u>	<u>16</u>	<u>2</u>
<u>22</u>	<u>17</u>	<u>2</u>
<u>23</u>	<u>18</u>	<u>2</u>
<u>24</u>	<u>19</u>	<u>2</u>
<u>25</u>	<u>20</u>	<u>2</u>
<u>26</u>	<u>21</u>	<u>2</u>
<u>27</u>	<u>22</u>	<u>2</u>
<u>28</u>	<u>23</u>	<u>2</u>
<u>29</u>	<u>24</u>	<u>2</u>
<u>30</u>	<u>25</u>	<u>3</u>
<u>31</u>	<u>26</u>	<u>3</u>
<u>32</u>	<u>27</u>	<u>3</u>
<u>33</u>	<u>28</u>	<u>3</u>
<u>34</u>	<u>29</u>	<u>3</u>
<u>35</u>	<u>30</u>	<u>3</u>
<u>36</u>	<u>31</u>	<u>3</u>
<u>37</u>	<u>32</u>	<u>3</u>
<u>38</u>	<u>33</u>	<u>3</u>
<u>39</u>	<u>34</u>	<u>3</u>
<u>40+</u>	<u>35</u>	<u>3</u>

- (c) A deviation from applicable *development* regulations of the underlying zone pursuant to Section 143.0750-Child Care Facility: A housing development project that meets the criteria in Section 143.0720 and includes a child care center as defined in Section 141.0606(a)(2) as part of,

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or adjacent to, such housing development shall be entitled to an additional density bonus or incentive provided that:

- (1) The child care facility 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 facility is equal to or greater than the percentage of those same households required in the housing development:
 - (3) The additional density bonus or incentive required is either:
 - (A) An additional density bonus in an amount equal to the amount of square feet in the child care facility 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 facility; and
 - (4) The City finds, based upon substantial evidence, that the community is inadequately served by child care facilities.
- (d) Parking: In addition to any other incentive, and upon the request of a housing development applicant that proposes a housing development meeting the density bonus criteria of this division, the City shall apply the

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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-half parking spaces
- (4) Reductions to the parking ratios shall be granted as follows:
 - (A) A housing *development* project 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) A housing *development* project 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) A housing *development* project that includes *dwelling units* limited to occupancy by *very low income* households, and is at least partially within *transit area*, shall receive a 0.50

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space reduction in the parking ratio for each dwelling unit that is limited to occupancy by a very low income household.

- (5) For purposes of this division, a housing development project may provide onsite parking through tandem parking or uncovered parking, but not through on-street parking or parking within a required front yard setback.
- (6) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number.

§ 143.0750 ~~Deviation to Allow for Additional Development Incentive~~ Housing Development in the Coastal Overlay Zone

~~An applicant may request a deviation from the applicable development regulations as an additional development incentive for affordable housing pursuant to a Site Development Permit decided in accordance with Process Four provided that the findings in Section 126.0504(a) and the supplemental findings in Section 126.0504(1) are made.~~

A housing development project within the Coastal Overlay Zone that proposes to use the Density Bonus Regulations of this division shall be subject to the applicable certified land use plan and implementing ordinances, including a Coastal Development Permit (Chapter 12, Article 6, Division 7), as described in Chapter 13, Article 2, Division 4.

~~143.0760 — Deviations from Density Bonus and Affordable Housing Provisions~~

~~(a) — A deviation from the provisions of either Section 143.0730 or Section 143.0740 may be requested in accordance with a Site Development Permit and shall require that the *findings* in Section 126.0504(m) be made.~~

~~(b) — Deviations may only be considered as follows:~~

~~(1) — An increase in the affordable housing density bonus provisions of Section 143.0730(a) and/or decrease in the affordable housing provisions of Section 143.0740(a), may be granted where the *development* provides for the inclusion of dwelling units affordable by persons of *very low income*. The total *density* bonus shall not result in a *development* containing more than 150 percent of the units permitted by the *density* regulations of the base zone nor shall the affordable housing requirement provide that less than 10 percent of the total *development* be affordable by persons and *families of very low income*.~~

~~(2) — An increase in the affordable housing density bonus provisions of Section 143.0730(a), and/or decrease in the affordable housing provisions of Section 143.0740(a), may be granted where the *development* is located within a census tract where the median household income exceeds 120 percent of the citywide median household income as measured by the most recent U.S. Bureau of~~

~~Census survey and the *development* provides for the inclusion of dwelling units affordable by persons of *low income*. The total *density* bonus shall not result in a *development* containing more than 150 percent of the units permitted by the *density* regulations of the applicable zone nor shall the affordable housing requirement provide that less than 10 percent of the total *development* be affordable by persons and *families of low income*.~~

§ 141.0310 Housing for Senior Citizens

Housing for sSenior eCitizens 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].
- (b) Housing for sSenior eCitizens may be permitted ~~an affordable housing~~ a *density* bonus and an additional development incentive as provided in Chapter 14, Article 3, Division 7 (~~Affordable Housing~~ *Density* Bonus Regulations). ~~All *density* bonus units in excess of 25 percent of the allowable *density* of the base zone shall be for occupancy by very low-income Senior Citizens or very low-income qualifying residents at a rent that does not exceed 30 percent of 50 percent of area median income, as adjusted for assumed household size. Proposed *developments* that provide~~

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~~daily meals in a common cooking and dining facility, and provide and maintain a common transportation service for residents, may be exempt from the affordability requirement of Chapter 14, Article 3, Division 7.~~

(c) through (e) [No change.]

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Or.Dept:City Attorney

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