

DRAFT #5 (3/24/05)

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck-Out~~

NEW LANGUAGE: Underline

(O-2004-48)

ORDINANCE NUMBER O-_____ (New Series)

ADOPTED ON _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 14, ARTICLE 2, DIVISION 13, OF THE SAN DIEGO MUNICIPAL CODE BY ADDING SECTION 142.1320, ENTITLED “AFFORDABLE HOUSING ON-SITE BUILDING BONUS;” AND AMENDING CHAPTER 14, ARTICLE 3, DIVISION 7, BY AMENDING SECTIONS 143.0710, 143.0715, 143.0720, 143.0730, AND 143.0740; REPEALING SECTIONS 143.0750 AND 143.0760; AND BY ADDING NEW SECTIONS 143.0718, 143.0735, 143.0750, 143.0760, 143.0770 AND 143.0780, ALL RELATING TO AFFORDABLE HOUSING DENSITY BONUS REGULATIONS.

§ 142.1320 Affordable Housing On-Site Building Bonus

(a) Outside the Coastal Overlay Zone:

Residential development in accordance with Section 142.1306(b)(1), shall be permitted an on-site building bonus subject to Sections 143.0718 and 143.0735.

(b) Outside the Coastal Overlay Zone:

Residential development in accordance with Section 142.1306(b)(1), shall be permitted an on-site building bonus subject to Sections 143.0718 and 143.0735.

§ 143.0710 Purpose of Affordable Housing Density Bonus Regulations

The purpose of these regulations is to provide increased residential densities to developers who guarantee that a portion of their residential *development* will be available to *low income, very low-income, or senior households* to moderate income condominium or planned development owners, as condominium and planned development are defined in Civil Code section 1351(k). 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, and moderate income owners of condominium or planned developments* as defined in Civil Code section 1351(k), throughout the City of San Diego. It is intended that the affordable housing *density* bonus and any additional *development* incentive 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~~ of a size that allows for actual construction of the respective percentage of affordable units described in Section 143.0720(b). It is also intended that these regulations implement the provisions of California Government Code sections 65915 through 65918. It is further intended that these regulations will allow for an increase to residential units where, in accordance with the inclusionary zoning regulations, developers construct affordable housing within the same *development* site as the market rate housing; however, in no event shall the number of residential units constructed exceed 135 percent of the *density* permitted by the applicable zone.

§ 143.0715 When Affordable Housing Density Bonus Regulations Applies

(a) Outside the Coastal Overlay Zone:

~~(a)(1)~~ This ~~d~~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* or *very low-income* households ~~or for~~, *senior citizens*, or ~~qualified residents through a written agreement.~~ *moderate income condominium, or planned development* as defined in Civil Code section 1351(k) owners.

~~(b)(2)~~ 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~~ shall be granted ~~an additional a~~ *development* incentive as provided in ~~Section 143.0740.~~ Sections 143.0740 and 143.0750.

(b) Within the Coastal Overlay Zone:

~~This division applies to any residential *development* where *density* beyond that permitted by the applicable zone is proposed in exchange for a portion of the total *dwelling units* being reserved through a formal agreement for persons or families of *low income* or *moderate income*.~~

(1) 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* or *very low-income* households, *senior citizens*, or *moderate income condominium*,

or planned *development* as defined in Civil Code section 1351(k) owners.

(2) 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 shall be granted a *development* incentive as provided in Sections 143.0740 _____ and 143.0750.

§ 143.0718 When Onsite Building Bonus Regulations Apply

(a) Outside the Coastal Overlay Zone:

Section 143.0735 applies to any residential *development* that contains affordable housing as required by Chapter 14, Article 2, Division 13 and is constructed on the same site as the proposed project site.

(b) Inside the Coastal Overlay Zone:

Section 143.0735 applies to any residential *development* that contains affordable housing as required by Chapter 14, Article 2, Division 13 and is constructed on the same site as the proposed project site.

§143.0720 Affordable Housing Density Bonus Agreement

(a) Outside the Coastal Overlay Zone:

~~(a)~~(1) An *applicant* shall be entitled to a *density* bonus for any residential *development* for which an agreement is entered into by the *applicant* and the ~~Chief Executive Officer of the~~ San Diego Housing Commission as provided in Section 143.0720(a)(2).

~~(b)~~(2) The *density* bonus agreement shall include the following provisions:

~~(1)(A)~~ ~~With respect to rental housing~~ Number of affordable units
provided and Level of Affordability:

~~(A)~~(i) At least 10 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)~~(ii) At least ~~10~~ 5 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)~~(iii)~~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. A senior citizen~~
~~housing development as defined in Civil Code sections~~
~~51.3 and 51.12; or~~

(iv) At least 10 percent of the pre-bonus units in a
condominium project will be available for sale to
moderate income households.

~~(2)(B)~~ ~~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 the *development* shall be available to *senior citizens* or qualifying residents as defined under California Civil Code Section 51.3. In lieu of complying with Section 143.0720(a)(1) and (2), an *applicant* for a tentative map, parcel map, or *development permit* may donate land to the San Diego Housing Commission in accordance with the following requirements:~~

- ~~(i) The *applicant* donates and transfers the land no later than the date of approval of the final map, parcel map, or residential *development permit* application.~~
- ~~(ii) 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*.~~
- ~~(iii) The transferred land is at least 1 acre in size or of sufficient size to permit development of at least 40 units,~~

has the appropriate general plan designation, is appropriately zoned for *development* as affordable housing, and is or will be served by adequate public facilities and infrastructure. The land shall have appropriate zoning and *development* standards to make the development of the affordable units feasible. No later than the date of approval of the final map, parcel map, or of the residential *development permit*, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the *very low income* housing units on the transferred land, except that the City of San Diego may subject the proposed *development* to subsequent design review to the extent authorized by California Government Code section 65583.2(i) if the design is not reviewed by the City of San Diego prior to the time of transfer.

- (iv) The transferred land and the affordable units shall be subject to a deed restriction, approved by the San Diego Housing Commission ensuring continued affordability of the units in accordance with Sections 143.0720(a)(2)(D) or 143.0720(a)(2)(E) and shall be recorded on the property at the time of dedication.

(v) The land is transferred to the San Diego Housing Commission or to a housing developer approved by the San Diego Housing Commission. The San Diego Housing Commission may require the applicant to identify and transfer the land to the developer.

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

~~(3)(C) The affordable units will 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. With respect to “for sale” housing:~~

(i) Affordability for the moderate income condominium or planned development units shall be comprised of both initial occupancy restrictions on the purchasers as well as initial restricted sales prices. Initial moderate income density bonus units shall be initially sold to and occupied

by persons and families of moderate income. The initial moderate income restricted sales price shall be established at a maximum sales price that does not exceed a price that generates a monthly housing cost as defined in Health and Safety Code section 50052.5, for moderate income purchasers, assuming a down payment of 5 percent of the restricted sales price and utilizing standard underwriting criteria at the date of initial sale and assuming prevailing interest rates for the moderate income restricted density bonus units.

(ii) Density bonus units shall be owner occupied by the initial purchaser of the units at all times until the resale of the density bonus unit(s) by the initial moderate income purchaser.

(iii) Upon the resale of the moderate income restricted density bonus unit by the initial moderate income purchaser, the San Diego Housing Commission shall be entitled to its share of appreciation and payoff of its note. Resale for the purposes of Section 143.0720 shall mean the sale, transfer, conveyance, hypothecation, pledging, refinancing with cash out (refinancing without cash out to reduce interest rates shall not be deemed a resale), further encumbrance, leasing of the property, failure to occupy

the property as a primary place of residence, or other similar action or disposition of the moderate income restricted density bonus unit, or any portion thereof, without the express, advance written consent of the San Diego Housing Commission. Fair market values and restricted market values, if and when required to calculate and determine shares of appreciation, shall be determined by state certified real estate appraisals selected by the San Diego Housing Commission, in their sole discretion.

(D) The density bonus units affordable to low income, very low income residents, or senior citizens shall remain available and affordable as provided in Section 143.0720(a)(2)(A)(i) – (iii) for a period of thirty years, or longer if required by a construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy programs.

(E) The density bonus units affordable to moderate income condominium or planned development owners shall be sold initially to and occupied by a person or families meeting the income requirements of subsection 143.0720 (a)(2)(C)(i). Upon the resale of the density bonus units affordable to moderate income condominium or planned development unit owners, as resale is defined in Section 143.0720(a)(2)(C)(iii), the initial seller shall retain the value of

any down payments, any San Diego Housing Commission approved improvements to the property, and the initial seller's proportionate share of the appreciation. The San Diego Housing Commission shall recapture its proportionate share of appreciation, which shall be used by the San Diego Housing Commission within three years of the resale for any of the purposes described within Health and Safety Code section 33334.2(e) that promote homeownership.

- (i) For purposes of Section 143.0720(a)(2)(E), the City of San Diego's proportionate share of appreciation shall be equal to the percentage by which the initial sale price to the *moderate-income* household was less than the fair market value of the unit at the time of initial sale.
- (ii) For purposes of Section 143.0720(a)(2)(E), appreciation shall mean the amount of increase, if any, in the fair market unrestricted value of the *density* bonus unit on the date of the resale of the *density* bonus unit less the initial fair market unrestricted value of the *density* bonus unit at the time of the initial sale, less the value of any San Diego Housing Commission approved permanent improvements in the *density* bonus unit. In addition to the share in the appreciation to be received by the San Diego Housing Commission, the San Diego Housing

Commission shall be entitled to retain the sum of money which is equal to the difference in the initial *moderate income* restricted sales price and the initial fair market sales price at the time of the initial sale, which difference shall be evidence by a note, secured by a deed of trust, in favor of the San Diego Housing Commission at the time of the initial sale.

(iii) For purposes of Section 143.0720(a)(2)(E), value shall mean the actual written documented cost of such permanent improvements, but only when the owner of the *density* bonus unit has given advance written notice of the improvements to the San Diego Housing Commission of said owner's intention of making a permanent improvement in the *density* bonus unit and, provided, further, that such permanent improvement(s) have been approved by the San Diego Housing Commission in advance of such improvement.

~~(4)~~(F) The affordable density bonus units shall be designated units which are comparable in size, bedroom mix and amenities, location, and other similar characteristics, to the market-rate units in the *development* and are dispersed throughout the *development*.

~~(5)~~(G) Provision shall be made for certification of eligible tenants and purchasers, annual certification of property owner compliance by the San Diego Housing Commission, and payment of a monitoring fee, as adjusted from time to time, for monitoring of affordable unit requirements by the San Diego Housing Commission.

(H) Where the *applicant* seeks a *density* bonus as provided in Section 143.0750:

(i) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the *density* bonus units are required to remain affordable pursuant to this Division; and

(ii) Of the children who attend the child care facility, the children of *very low income* households, *low income* households, or *families of moderate income* shall equal a percentage that is equal to or greater than the percentage that is equal to or greater than the percentage of *dwelling units* that are required for *very low income* households, *low income* households, or *families of moderate income*.

(I) Any other term necessary to implement the provisions and intent of this Division and State law.

(3) The *applicant* shall submit a pro forma analysis to the San Diego Housing Commission that documents project feasibility on a form

acceptable to the San Diego Housing Commission, which shall be approved in the reasonable discretion of the San Diego Housing Commission. The analysis also shall include information explaining why the concession or incentive is necessary to meet recognized affordability standards.

(b) Inside the Coastal Overlay Zone :

(NOTE TO THE CLERK: The ~~strikeout~~ portion of this section was applicable Inside the coastal Zone pursuant to Ordinance No. O-18451, which was not shown in the codified version of the Municipal Code.)

- (a) ~~The affordable housing *density* bonus shall be extended to all development for which an agreement has been entered into by the applicant and the Executive Director of the San Diego Housing Commission.~~
- (b) The affordable housing *density* bonus agreement shall include the following provisions:
- (1) ~~At least 20 percent of the total units in the *development* will be affordable by persons and *families of low income or moderate incomes*;~~
 - (2) ~~The affordable units will remain available to and affordable by persons and *families of low income or moderate income* for a period of at least 20 years; and~~
 - (3) ~~The units affordable by persons and *families of low income or moderate income* shall be identified and described.~~

- (1) An applicant shall be entitled to a density bonus for any residential development for which an agreement is entered into by the applicant and the San Diego Housing Commission as provided in Section 143.0720(b)(2).
- (2) The density bonus agreement shall include the following provisions:
- (A) Number of affordable units provided and Level of Affordability:
- (i) 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
- (ii) At least 5 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
- (iii) A senior citizen housing development as defined in Civil Code sections 51.3 and 51.12; or
- (iv) At least 10 percent of the pre-bonus units in a condominium project will be available for sale to moderate income households, or

(B) In lieu of complying with Section 143.0720(b)(1) and (2), an applicant for a tentative map, parcel map, or development permit may donate land to the San Diego Housing Commission in accordance with the following requirements:

(i) The applicant donates and transfers the land no later than the date of approval of the final map, parcel map, or residential development permit application.

(ii) 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.

(iii) The transferred land is at least 1 acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned for development as affordable housing, and is or will be served by adequate public facilities and infrastructure. The land shall have appropriate zoning and development standards to make the development of the affordable units feasible. No later than the date of approval of the final map, parcel map, or of the residential development permit, the transferred land shall have all of the permits and approvals, other than

building permits, necessary for the *development* of the very low income housing units on the transferred land, except that the City of San Diego may subject the proposed *development* to subsequent design review to the extent authorized by California Government Code section 65583.2(i) if the design is not reviewed by the City of San Diego prior to the time of transfer.

(iv) The transferred land and the affordable units shall be subject to a deed restriction, approved by the San Diego Housing Commission ensuring continued affordability of the units in accordance with Sections 143.0720(b)(2)(D) or 143.0720(b)(2)(E) and shall be recorded on the property at the time of dedication.

(v) The land is transferred to the San Diego Housing Commission or to a housing developer approved by the San Diego Housing Commission. The San Diego Housing Commission may require the applicant to identify and transfer the land to the developer.

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

(C) With respect to “for sale” housing:

- (i) Affordability for the moderate income condominium or planned development units shall be comprised of both initial occupancy restrictions on the purchasers as well as initial restricted sales prices. Initial moderate income density bonus units shall be initially sold to and occupied by persons and families of moderate income. The initial moderate income restricted sales price shall be established at a maximum sales prices that does not exceed a price that generates a monthly housing cost as defined in Section 50052.5 of the Health and Safety Code, for moderate income purchasers, assuming a down payment of 5 percent of the restricted sales price and utilizing standard underwriting criteria at the date of initial sale and assuming prevailing interest rates for the moderate income restricted density bonus units.
- (ii) Density bonus units shall be owner occupied by the initial purchaser of the units at all times until the resale of the density bonus unit(s) by the initial moderate income purchaser.
- (iii) Upon the resale of the moderate income restricted density bonus unit by the initial moderate income purchaser, the San Diego Housing Commission shall be entitled to its share of appreciation and payoff of its note. Resale for

the purposes of Section 143.0720 shall mean the sale, transfer, conveyance, hypothecation, pledging, refinancing with cash out (refinancing without cash out to reduce interest rates shall not be deemed a resale), further encumbrance, leasing of the property, failure to occupy the property as a primary place of residence, or other similar action or disposition of the moderate income restricted density bonus unit, or any portion thereof, without the express, advance written consent of the San Diego Housing Commission. Fair market values and restricted market values, if and when required to calculate and determine shares of appreciation, shall be determined by state certified real estate appraisals selected by the San Diego Housing Commission, in their sole discretion.

(D) The density bonus units affordable to low income, very low income residents, or senior citizens shall remain available and affordable as provided in Section 143.0720(b)(2)(A)(i) – (iii) for a period of thirty years, or longer if required by a construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy programs.

(E) The density bonus units affordable to moderate income condominium or planned development owners shall be sold initially to and occupied by a person or families meeting the

income requirements of subsection 143.0720(b)(2)(C)(i). Upon the resale of the *density* bonus units affordable to moderate income condominium or planned development unit owners, as resale is defined in Section 143.0720(b)(2)(C)(iii), the initial seller shall retain the value of any down payments, any San Diego Housing Commission approved improvements to the property, and the initial seller's proportionate share of the appreciation. The San Diego Housing Commission shall recapture its proportionate share of appreciation, which shall be used by the San Diego Housing Commission within three (3) years of the resale for any of the purposes described within Health and Safety Code section 33334.2(e) that promote homeownership.

- (i) For purposes of Section 143.0720(b)(2)(E), the City of San Diego's proportionate share of appreciation shall be equal to the percentage by which the initial sale price to the moderate-income household was less than the fair market value of the unit at the time of initial sale.
- (ii) For purposes of Section 143.0720(b)(2)(E), appreciation shall mean the amount of increase, if any, in the fair market unrestricted value of the *density* bonus unit on the date of the resale of the *density* bonus unit less the initial fair market unrestricted value of the *density* bonus unit at

the time of the initial sale, less the value of any San Diego Housing Commission approved permanent improvements in the *density* bonus unit. In addition to the share in the appreciation to be received by the San Diego Housing Commission, the San Diego Housing Commission shall be entitled to retain the sum of money which is equal to the difference in the initial *moderate income* restricted sales price and the initial fair market sales price at the time of the initial sale, which difference shall be evidence by a note, secured by a deed of trust, in favor of the San Diego Housing Commission at the time of the initial sale.

- (iii) For purposes of Section 143.0720(b)(2)(E), value shall mean the actual written documented cost of such permanent improvements, but only when the owner of the *density* bonus unit has given advance written notice of the improvements to the San Diego Housing Commission of said owner's intention of making a permanent improvement in the *density* bonus unit and, provided, further, that such permanent improvement(s) have been approved by the San Diego Housing Commission in advance of such improvement.

- (F) The affordable *density* bonus units shall be designated units which are comparable in size, bedroom mix and amenities, location, and other similar characteristics, to the market-rate units in the *development*.
- (G) Provision shall be made for certification of eligible tenants and purchasers, annual certification of property owner compliance by the San Diego Housing Commission, and payment of a monitoring fee, as adjusted from time to time, for monitoring of affordable unit requirements by the San Diego Housing Commission.
- (H) Where the *applicant* seeks a *density* bonus as provided in Section 143.0750:
- (i) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the *density* bonus units are required to remain affordable pursuant to this Division; and
 - (ii) Of the children who attend the child care facility, the children of *very low income* households, *low income* households, or *families of moderate income* shall equal a percentage that is equal to or greater than the percentage that is equal to or greater than the percentage of *dwelling units* that are required for *very low income* households, *low income* households, or *families of moderate income*.

(I) Any other term necessary to implement the provisions and intent of this Division and State law.

(3) The applicant shall submit a pro forma analysis to the San Diego Housing Commission that documents project feasibility on a form acceptable to the San Diego Housing Commission, which shall be approved in the reasonable discretion of the San Diego Housing Commission. The analysis also shall include information explaining why the concession or incentive is necessary to meet recognized affordability standards.

§143.0730 Density Bonus Provisions

(a) Outside the Coastal Overlay Zone, A a residential development proposal requesting an affordable housing density bonus in accordance with Section 143.0715 is subject to the following:

~~(a)(1)~~ Except as described herein, The development shall be permitted a density bonus of equal to the amount number of units requested by the applicant, up to a total project dwelling unit count of 125120 percent of the units permitted by the density regulations of the applicable base zone; on the date the development application is deemed complete, for those projects subject to Section 143.0720(a)(2)(A)(i) - (iii). For each 1 percent increase above 10 percent in the percentage of units affordable to lower income households, the density bonus shall be increased by 1.5 percent up to a maximum of 35 percent. For each 1 percent increase above 5 percent in the percentage of units affordable to very low income

households, the *density* bonus shall be increased by 2.5 percent up to a maximum of 35 percent. This increase shall be in addition to any increase in *density* mandated or allowed under this Division, up to a maximum combined *density* increase of 35 percent.

(2) 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 120 percent of the units permitted by the *density* regulations of the applicable base zone, for those projects subject to Section 143.0720(a)(2)(A(iv)). For each 1 percent increase above the minimum 10 percent land donation described in Section 143.0720(a)(2)(B), the *density* bonus shall be increased by 1 percent, up to a maximum of 35 percent. This increase shall be in addition to any increase in *density* mandated or allowed under this Division, up to a maximum combined *density* increase of 35 percent.

(3) 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 115 percent of the units permitted by the *density* regulations of the applicable base zone, for those projects subject to Section 143.0720(a)(2)(B). For each 1 percent increase above the minimum 10 percent land donation described in Section 143.0720(a)(2)(B), the *density* bonus shall be increased by 1 percent, up to a maximum of 35 percent. This increase shall be in addition to any increase in *density*

mandated or allowed under this Division, up to a maximum combined density increase of 35 percent.

- ~~(b)~~(4) 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.
- ~~(e)~~(5) If the ~~*premises*~~*development* is located in two or more zones, the number of *dwelling units* permitted in the *development* is the sum of the *dwelling units* permitted in each of the zones. Within the *development*, the permitted number of *dwelling units* may be distributed without regard to the zone boundaries.
- ~~(d)~~(6) Where the *development* consists of two or more specifically identified parcels, whether contiguous or noncontiguous, the maximum number of *dwelling units* permitted on each parcel ~~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~~ parcel.
- ~~(e)~~(7) Where the *development* consists of two or more noncontiguous parcels lying within two or more community planning areas, the *dwelling units* reserved at levels affordable by *low-income households*, ~~or~~, *very low-income households*, or moderate income condominium owners shall be distributed among community planning areas in the same proportion as the total number of *dwelling units* constructed within the *development*.

(8) All density calculations resulting in fractional units shall be rounded up to the next number.

(9) All density calculations shall be based on the pre-bonus number of units

(b) Inside Coastal Overlay Zone, A a residential *development* proposal requesting an affordable housing density bonus in accordance with Section 143.0715 shall be is-subject to the following:

(a)(1) Except as described herein, The the affordable housing density bonus development shall permit a total project dwelling be permitted a density bonus equal to the number of units requested by the applicant, up to a total project dwelling unit count of up to 125 120 percent of the units permitted by the density regulations of the applicable base zone, on the date the development application is deemed complete, for those projects subject to Section 143.0720(b)(2)(A)(i) – (iii). For each 1 percent increase above 10 percent in the percentage of units affordable to lower income households, the density bonus shall be increased by 1.5 percent up to a maximum of 35 percent. For each 1 percent increase above 5 percent in the percentage of units affordable to very low income households, the density bonus shall be increased by 2.5 percent up to a maximum of 35 percent. This increase shall be in addition to any increase in density mandated or allowed under this Division, up to a maximum combined density increase of 35 percent.

(2) 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 120 percent of the units permitted by the *density* regulations of the applicable base zone, for those projects subject to Section 143.0720(b)(2)(A)(iv). For each 1 percent increase above the minimum 10 percent land donation described in Section 143.0720(b)(2)(B), the *density* bonus shall be increased by 1 percent, up to a maximum of 35 percent. This increase shall be in addition to any increase in *density* mandated or allowed under this Division, up to a maximum combined *density* increase of 35 percent.

(3) 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 115 percent of the units permitted by the *density* regulations of the applicable base zone, for those projects subject to Section 143.0720(b)(2)(B). For each 1 percent increase above the minimum 10 percent land donation described in Section 143.0720(b)(2)(B), the *density* bonus shall be increased by 1 percent, up to a maximum of 35 percent. This increase shall be in addition to any increase in *density* mandated or allowed under this Division, up to a maximum combined *density* increase of 35 percent.

~~(b)~~(4) 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.

- ~~(e)~~(5) If the *premises development* is located in two or more zones, the number of *dwelling units* permitted in the *development* is the sum of the *dwelling units* permitted in each of the zones. Within the *development*, the permitted number of *dwelling units* may be distributed without regard to the zone boundaries.
- ~~(d)~~(6) Where the *development* consists of two or more specifically identified parcels, whether contiguous or noncontiguous, the maximum number of *dwelling units* permitted on each parcel ~~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 parcel.~~
- (7) Where the *development* consists of two or more noncontiguous parcels lying within two or more community planning areas, the *dwelling units* reserved at levels affordable by *low-income* households, *very low-income* households, or *moderate income condominium* owners shall be distributed among community planning areas in the same proportion as the total number of *dwelling units* constructed within the *development*.
- (8) All *density* calculations resulting in fractional units shall be rounded up to the next number.
- (9) All *density* calculations shall be based on the pre-bonus number of units.

§143.0735 On-Site Building Bonus Provisions

(a) Outside the Costal Overlay Zone, A-a residential development proposal requesting an increase in residential units in accordance with Section 143.0718(a) is subject to the following:

(1) The development shall be permitted an on-site building bonus of the amount of units requested by the applicant, up to a total project dwelling unit count of 110 percent of the units permitted by the density regulations of the applicable base.

(2) The residential development shall contain affordable units on the same site as the market rate units, in accordance with Section 142.1306(b)(1).

(b) Inside the Costal Overlay Zone, A-a residential development proposal requesting an increase in residential units in accordance with Section 143.0718(b) is subject to the following:

(1) The development shall be permitted an on-site building bonus of the amount of units requested by the applicant, up to a total project dwelling unit count of 110 percent of the units permitted by the density regulations of the applicable base zone.

(2) The residential development shall contain affordable units on the same site as the market rate units, in accordance with Section 142.1306(b)(1).

§ 143.0740 ~~Additional~~ Development Incentive or Concessions for Affordable Housing

(a) Outside the Costal Overlay Zone the following regulations apply:

~~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)(1) A *density* bonus of more than 25 percent; In addition to the *density* bonus provisions contained in Sections 143.0730(a)(1) and (2), the *applicant* shall be entitled to, upon request, one of the following *development* incentives or concessions when providing residential units in accordance with Section 143.0720(a)(2)(A)(i), (ii), or (iv):~~

~~(b) A financial incentive consisting of:~~

~~(1) Fee reductions or deferrals as authorized for affordable housing in the Municipal Code; or~~

~~(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~~

~~(e) (A) A deviation from applicable *development* regulations of the underlying zone pursuant to Section 143.0750, such as setback, parking, lot size, height, or FAR to the limited extent the deviation results in identifiable, financially sufficient, and actual cost reductions, pursuant to Section 143.0760; or~~

~~(B) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing *development* and if the commercial, office, industrial, or other land uses are compatible~~

with the housing *development* and the existing or planned *development* in the area where the proposed housing *development* will be located; or

(C) Other regulatory incentives or concessions proposed by the *applicant* or the City of San Diego that result in identifiable, financially sufficient, and actual cost reductions.

(2) In addition to the *density* bonus provisions contained in Section 143.0730(a)(1) and (2), the *applicant* shall be entitled to, upon request, two of the *development* incentives or concessions described in Section 143.0740(a)(A) – (C) when providing residential units that included at least 20 percent of the total pre-bonus units for *lower income* households, at least 10 percent for *very low income* households, or at least 20 percent for persons and families of *moderate income* in a *condominium* or planned *development*.

(3) In addition to the *density* bonus provisions contained in Section 143.0730(a)(1) and (2), the *applicant* shall be entitled to, upon request, three of the *development* incentives or concessions described in Section 143.0740(a)(1)(A) – (C) when providing residential units that included at least 30 percent of the total pre-bonus units for *lower income* households, at least 15 percent for *very low income* households, or at least 30 percent for persons and families of *moderate income* in a *condominium* or planned *development*.

(NOTE TO THE CLERK: The strikeout portion of this section was applicable Inside the Coastal Zone pursuant to Ordinance No. _____, which was not shown in the codified version of the Municipal Code.)

§ 143.0740 Affordable Housing Provisions

(b) Inside the Coastal Overlay Zone the following regulations apply:

(a) The number of dwelling units reserved for purchase or rent at prices affordable by persons and *families of low income or moderate income* shall equal or exceed the number of bonus units constructed within the *development*.

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

(1) In addition to the *density* bonus provisions contained in Sections 143.0730(b)(1) and (2), the *applicant* shall be entitled to, upon request, one of the following *development* incentives or concessions when providing residential units in accordance with Section 143.0720(b)(2)(A)(i),(ii) or (iv):

(A) A deviation from applicable *development* regulations of the underlying zone, such as setback, parking, lot size, height, or FAR to the limited extent the duration results in identifiable,

financially sufficient, and actual cost reductions, pursuant to Section 143.0760; or

- (B) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing *development* and if the commercial, office, industrial, or other land uses are compatible with the housing *development* and the existing or planned *development* in the area where the proposed housing *development* will be located; or
- (C) Other regulatory incentives or concessions proposed by the applicant or the City of San Diego that result in identifiable, financially sufficient, and actual cost reductions.

(2) In addition to the *density* bonus provisions contained in Section 143.0730(b)(1) and (2), the *applicant* shall be entitled to, upon request, two of the *development* incentives or concessions described in Section 143.0740(b)(A) – (C) when providing residential units that included at least 20 percent of the total pre-bonus units for *lower income* households, at least 10 percent for *very low income* households, or at least 20 percent for persons and *families of moderate income* in a *condominium* or *planned development*.

(3) In addition to the *density* bonus provisions contained in Section 143.0730(b)(1) and (2), the *applicant* shall be entitled to, upon request, three of the *development* incentives or concessions described in Section

143.0740(b)(A) – (C) when providing residential units that included at least 30 percent of the total pre-bonus units for *lower income* households, at least 15 percent for *very low income* households, or at least 30 percent for persons and *families of moderate income* in a *condominium* or *planned development*.

~~§143.0750 — Deviation to Allow for Additional Development Incentive~~

~~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.~~

(NOTE TO THE CLERK: The *strikeout* portion of this section was applicable Inside the Coastal Zone pursuant to Ordinance No. O-18451, which was not shown in the codified version of the Municipal Code.)

~~§ 143.0750 Transfer of Bonus Density Units~~

- ~~(a) Within any *development* involving an affordable housing *density* bonus where the transfer of *density* rights between either contiguous or noncontiguous parcels in proposed, a Site Development Permit is required.~~
- ~~(b) When a transfer of *density* rights would result in a *development* on any parcel exceeding 125 percent of the units permitted by the *density* regulations of the applicable zone, the approval of a Site Development Permit shall require that the *findings* in Section 126.0504(1) be made.~~
- ~~(c) If a hearing results in denial of transfer of *density* to a particular parcel and a *construction permit* has already been issued on its companion parcel, the *density*~~

~~of which is being reduced, the *applicant* shall, for a period of 12 months from the date of the denial, be entitled to submit one or more substitute parcels to the hearing process to complete the *development* for purposes of *density* bonus transfer to the substitute parcel.~~

§ 143.0750 Development Incentive or Concessions for Affordable Housing with Child Care Facility

- (a) Outside the Coastal Overlay Zone, where the *applicant* proposes to construct a residential *development* that conforms to the requirements of this Division and includes a child care facility that will be located on the *premises*, as a part of, or adjacent to the residential *development*, the *applicant* is entitled to:
- (1) an additional *density* bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet of the child care facility; or
 - (2) an additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.
- (b) Inside the Coastal Overlay Zone, where the *applicant* proposes to construct a residential *development* that conforms to the requirements of this Division and includes a child care facility that will be located on the *premises*, as a part of, or adjacent to the residential *development*, the *applicant* is entitled to:
- (1) an additional *density* bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet of the child care facility; or

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

§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*~~

§ 143.0760 **Rules for Granting Development Incentives or Concessions**

- (a) Outside the Coastal Overlay Zone, an application for the incentive or concession pursuant to Section 143.0740 or Section 143.0750 shall be decided in accordance with Process 4.
 - (1) The City of San Diego shall grant the additional concession or incentive pursuant to Section 143.0740 unless the decision-maker makes one of the following *findings*, in writing:
 - (A) the incentive or concession is not required in order to provide for affordable housing costs as defined in Health and Safety Code section 50052.5, as amended from time to time, or for rents for the targeted units to be set in accordance with Section 143.0720(a)(2)(A)(i) or (ii); or
 - (B) granting the incentive would have a specific _____ adverse impact, as defined in Government Code _____ section 65589.5(d)(2), as amended from time to time, upon public health and safety or upon the physical environment or on any real property that is listed in the California Register of Historical

Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the *development* unaffordable to *low-income* and *moderate income* households.

(2) The City of San Diego shall grant the additional concession or incentive pursuant to Section 143.0750 unless the decision-maker makes one of the following *findings*, in writing:

(A) The additional *density* bonus is not an amount of square feet of _____ residential space equal to or greater than the amount of square feet of the child care facility; or

(B) The additional concession or incentive does not contribute significantly to the economic feasibility of the construction of the child care facility.

(b) Inside the Coastal Overlay Zone, an application for the incentive or concession pursuant to Section 143.0740 or Section 143.0750 shall be decided in accordance with Process 4.

(1) The City of San Diego shall grant the additional concession or incentive pursuant to Section 143.0740 unless the decision-maker makes one of the following *findings*, in writing:

(A) the incentive or concession is not required in order to provide for affordable housing costs as defined in Health and Safety Code section 50052.5, as amended from time to time, or for rents for

the targeted units to be set in accordance with Section 143.0720(b)(1)(A) or (B); or

(B) granting the incentive would have a specific adverse impact, as defined in Government Code section 65589.5(d)(2), as amended from time to time, upon public health and safety or upon the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the *development* unaffordable to *low-income* and *moderate income* households.

(2) The City of San Diego shall grant the additional concession or incentive pursuant to Section 143.0750 unless the decision-maker makes one of the following *findings*, in writing:

(A) The additional *density* bonus is not an amount of square feet of _____ residential space equal to or greater than the amount of square feet of the child care facility; or

(B) The additional concession or incentive does not contribute significantly to the economic feasibility of the construction of the child care facility.

§ 143.0770 Waiver or Reduction of Development Standards for Affordable Housing Density Bonus Developments

(a) Outside the Coastal Overlay Zone, an *applicant* may request a _____ waiver or reduction of any *development* standard that will have the _____ effect of precluding

the construction of *development* under Section 143.0720(a)(2)(A)(i) – (iv) with receiving the concessions or incentives allowed under Section 143.0740. The request shall show that the waiver or modification is necessary to make the housing units economically feasible.

- (b) Inside the Coastal Overlay Zone, an *applicant* may request a waiver or reduction of any *development* standard that will have the effect of precluding the construction of *development* under Section 143.0720(b)(2)(A)(i) – (iv) or with receiving the concessions or incentives allowed under Section 143.0740. The request shall show that the waiver or modification is necessary to make the housing units economically feasible.

§ 143.0780 Rules for Granting a Waiver or Reduction of Development Standards for Affordable Housing Density Bonus Developments

- (a) Outside the Coastal Overlay Zone, an *applicant* requesting a waiver or reduction of *development* standards pursuant to Section 143.0770 shall be decided in accordance with Process 4.

- (1) The City of San Diego shall grant the reduction or waiver of *development* standards, whichever is minimally required to allow for construction of the *development* under Section 143.0720(a)(2)(A)(i) – (iv) or with receiving the concessions or incentives allowed under Section 143.0740, unless the decision-maker makes one of the following *findings*, in writing:

- (A) granting the reduction or waiver of *development* standards is not necessary to make the housing units economically feasible; or

(B) granting the reduction or waiver of *development* standards would have a specific adverse impact, as defined in Government Code section 65589.5(d)(2), as amended from time to time, upon public health and safety, or upon the physical environment for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact; or

(C) granting the reduction or waiver of *development* standards would have an adverse impact on real property that is listed in the California Register of Historical Resources.

(b) Inside the Coastal Overlay Zone, an *applicant* requesting a waiver or reduction of *development* standards pursuant to Section 143.0770 shall be decided in accordance with Process 4.

(1) The City of San Diego shall grant the reduction or waiver of *development* standards, whichever is minimally required _____ to allow for construction of the *development* under _____ Section 143.0720(b)(2)(A)(i) – (iv) or with receiving the concessions or incentives allowed under Section 143.0740, unless the decision-maker makes one of the following *findings*, in writing:

(A) granting the reduction or waiver of *development* standards is not necessary to make the housing units economically feasible; or

(B) granting the reduction or waiver of *development* standards would have a specific adverse impact, as defined in Government Code section 65589.5(d)(2), as amended from time to time, upon

public health and safety, or upon the physical environment for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact; or

(C) granting the reduction or waiver of *development* standards would have an adverse impact on real property that is listed in the California Register of Historical Resources.

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