

**ANNOTATED AGENDA
BERKELEY CITY COUNCIL MEETING
Tuesday, March 26, 2019
6:00 PM**

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – CHERYL DAVILA
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – RIGEL ROBINSON
DISTRICT 8 – LORI DROSTE

Preliminary Matters

Roll Call: 6:00 p.m.

Present: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, Arreguin

Absent: None

Ceremonial Matters:

1. Recognition of Susan Muscarella, Local Musician
2. Recognition of the Suitcase Clinic
3. Recognition of March for Meals Month
4. Adjourned in memory of Rob Browning
5. Adjourned in memory of Victims of the Christchurch Mosque Shootings
6. Adjourned in memory of the recent Suicides of Mass Shooting Survivors and their Family Members
7. Adjourned in memory of Palestinians killed in the ongoing Friday marches

City Manager Comments: None

City Auditor Comments: None

Public Comment on Non-Agenda Matters: 10 speakers.

Consent Calendar

Public Comment on Consent Calendar and Information Items Only: 4

Consent Calendar

Action: M/S/C (Davila/Harrison) to adopt the Consent Calendar in one motion except as indicated.

Vote: All Ayes.

Action: M/S/C (Arreguin/Hahn) to take up items on Action in the following order: 5, 10, 21, 19, 20, 22.

Vote: Ayes – Kesarwani, Harrison, Hahn, Wengraf, Droste, Arreguin; Noes – Davila, Bartlett, Robinson.

Recess 6:49 p.m. – 6:55 p.m.

- 1. Density Bonus Ordinance Revisions - Repeal Existing Section 23C.12.050 (State of California Density Bonus Requirements) and Adopt New Chapter 23C.14 (Density Bonus)**
From: City Manager
Recommendation: Adopt the second reading of Ordinance No. 7,644-N.S., the Zoning Ordinance amendments that repeal obsolete Density Bonus regulations (Section 23C.12.050: State of California Density Bonus Requirements) and adopt a new, standalone Density Bonus chapter (Chapter 23C.14) that complies with California State Government Code 65915–65918: Density Bonuses and Other Incentives.
First Reading Vote: All Ayes
Financial Implications: None
Contact: Timothy Burroughs, Planning and Development, 981-7400
Action: Adopted second reading of Ordinance No. 7,644-N.S.
- 2. Minutes for Approval**
From: City Manager
Recommendation: Approve the minutes for the Council meetings of February 5, 2019 (special), February 19, 2019 (regular), February 26, 2019 (regular), and February 28, 2019 (special).
Financial Implications: None
Contact: Mark Numainville, City Clerk, 981-6900
Action: Approved minutes as submitted.
- 3. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on March 26, 2019**
From: City Manager
Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.
Financial Implications: \$325,000
Contact: Henry Oyekanmi, Finance, 981-7300
Action: Approved recommendation.

ORDINANCE NO. 7,644-N.S.

RESCINDING SECTION 23C.12.050 OF THE BERKELEY MUNICIPAL CODE AND
ADDING CHAPTER 23C.14 TO THE BERKELEY MUNICIPAL CODE; DENSITY BONUS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Section 23C.12.050 is hereby rescinded.

Section 2. That Chapter 23C.14 is hereby added to read as follows:

Chapter 23C.14 Density Bonus

23C.14.010	Purpose
23C.14.020	Definitions
23C.14.030	Application Requirements
23C.14.040	Density Bonus Calculations and Procedures
23C.14.050	Incentives and Concessions
23C.14.060	Waivers and Reductions
23C.14.070	Qualifying Units
23C.14.080	Special Provisions
23C.14.090	Regulatory Agreements

23C.14.010 Purpose

The purpose of this Chapter is to establish procedures and local standards for the implementation of California Government Code Sections 65915 - 65918 consistent with local zoning regulations and development standards, and to provide special provisions consistent with the intent of State and local law. Unless otherwise noted, all section references in this Chapter are to the California Government Code.

23C.14.020 Definitions

Whenever the following terms are used in this Chapter, they have the meaning established by this Section. Other capitalized terms have the meaning set forth in Berkeley Municipal Code Chapter 23A.08 and/or Chapter 23F.04, or in California Government Code Sections 65915 - 65918, as applicable.

- A. "Administrative Regulations" means guidelines and procedures promulgated by the Planning Director that may be modified from time to time to effectively implement this ordinance.
- B. "Base Project" means the maximum allowable residential density on a housing development site pursuant to the applicable zoning district or, where no density

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standard is provided, as set forth in the Administrative Regulations before applying the density bonus.

- C. "Density Bonus" means those residential units, floor area, rental beds or bedrooms added to the Base Project pursuant to the provisions of Section 65915 and this Chapter.
- D. "Eligible Housing Development" has the meaning set forth in Section 65917.2.
- E. "Housing Development" has the meaning set forth in Section 65915(i).
- F. "Incentive and Concession" means an incentive or a concession as the terms are used in Section 65915 and in particular as defined in Section 65915(k) thereof. The City may request reasonable documentation from the applicant to support the request.
- G. "Qualifying Unit" means a unit that is provided at a below market-rate rent or sales price as set forth in Section 65915 in order to receive a Density Bonus and/or Waivers and Reductions and/or Incentives and Concessions.
- H. "Waiver and Reduction" means a waiver or a reduction as the terms are used in Section 65915 and in particular in Section 65915(e) thereof, and means any and all changes to or exemptions from physical lot development standards that are required to avoid precluding the construction of a Housing Development with Density Bonus Units, as set forth in Section 65915(e). The City may request reasonable documentation from the applicant to support the request.

23C.14.030 Application Requirements

In addition to any other information required by this Title, an application for a Density Bonus must include the following information:

- A. How the proposed project will satisfy the eligibility requirements of Section 65915 or 65917.2.
- B. For those districts without density standards, a density bonus schematic as set forth in the Administrative Regulations;
- C. The requested Density Bonus pursuant to Berkeley Municipal Code Section 23C.14.040.
- D. Any Waivers and Reductions that are sought under Section 65915(e) that would be required to accommodate the Housing Development including the Density Bonus Units. The City may request reasonable documentation from the applicant to support the request.

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- E. Any Incentives and Concessions that are sought under Section 65915(d) accompanied by documentation of resulting cost reductions to provide for affordable housing costs. The City may request reasonable documentation from the applicant to support the request.
- F. Any requested additional bonus units under Section 65915(n).
- G. Any requested parking reductions under Section 65915(p). The City may request reasonable documentation from the applicant to support the request.
- H. Whether the applicant elects to receive a Density Bonus that is less than that mandated by Section 65915, including a Density Bonus of 0 (zero). In such cases, the applicant retains their entitlement to Incentives and Concessions.
- I. Documentation of how project complies with regulations regarding replacement units as described in Section 65915(c)(3).

23C.14.040 Density Bonus Calculations and Procedures

- A. Density Bonuses must be calculated as set forth in Section 65915, 65917.2, and pursuant to the Administrative Regulations.
- B. Density Bonus requests must accompany Housing Development permit applications and will be decided upon concurrent with the underlying Permit for the project.

23C.14.050 Incentives and Concessions

- A. For purposes of this Chapter, the number of Incentives and Concessions are counted as follows:
 - 1. Any Incentive and Concession that would otherwise require discretionary approval by the Zoning Officer, Zoning Adjustments Board or City Council of any single dimensional lot development standard, such as height or setbacks, or any single quantitative lot development standard, such as parking or open space, counts as one.
 - 2. A proposed Incentive and Concession that would involve exceedance of a single physical lot development standard counts as one even if that exceedance would otherwise require more than one Permit (e.g., extra height may require Permits for height, Floor Area Ratio, and/or number of stories but would count as one Incentive and Concession for height).
 - 3. Where it is ambiguous as to whether a proposed Incentive and Concession involves one or more dimensional or quantitative lot development standards, the stricter interpretation shall apply, as determined by the Zoning Officer, Zoning Adjustments Board or City Council, as the case may be.

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- B. The City shall grant Incentives and Concession unless findings are made as set forth in Section 65915(d)(1).
- C. The City is not required to deny a proposed Incentive and Concession solely because it is able to make a finding under Section 65915(d)(1). The City bears the burden of proof for the denial of a requested Incentive and Concession.
- D. Unless denied under Section 65915, Incentives and Concessions will be exempt from discretionary review or Permits under this Title, other than Design Review, and by law do not modify the CEQA review status of a project.

23C.14.060 Waivers and Reductions

- A. An applicant may submit to the City a proposal for Waivers and Reductions of development standards that physically preclude construction of a Housing Development and Density Bonus Units meeting the criteria of Section 65915(b).
- B. The City may negotiate changes to the requested Waivers and Reductions as part of the Use Permit and Design Review process, in coordination with the applicant, in order to address aspects of the project that may be of concern in the community or inconsistent with overarching principles of the General Plan, Zoning Ordinance and Design Guidelines.
- C. The City may deny Waivers and Reductions for the reasons set forth in Section 65915(e)(1).

23C.14.070 Qualifying Units

Qualifying Units must meet the standards set forth in subdivisions B, C, and D of Section 23C.12.040.

23C.14.080 Special Provisions

In addition to requirements set forth in Sections 65915 - 65918 and this Chapter, the following Special Provisions apply to Density Bonuses in the City of Berkeley.

- A. [RESERVED]

23C.14.090 Regulatory Agreements

Prior to issuance of a Certificate of Occupancy for a Housing Development that has received a Density Bonus, the applicant must enter into a regulatory agreement in a form provided by the City that implements Sections 65915 – 65918 and this Chapter.

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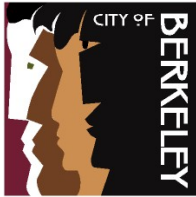
Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on March 12, 2019, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf,
and Arreguin.

Noes: None.

Absent: None.



Office of the City Manager

REVISED AGENDA MATERIAL

Meeting Date: February 19, 2019

Item Number: 14

Item Description: Density Bonus Ordinance Revisions - Repeal Existing Section 23C.12.050 (State of California Density Bonus Requirements) and Adopt New Chapter 23C.14 (Density Bonus)

Supplemental/Revision Submitted By: Timothy Burroughs, Director, Planning and Development Department

The attached version of the proposed Ordinance has been revised to fully comply with State mandates, to better articulate definitions of terms for consistency, and to reflect additional input received since the item was continued from Council's Jan. 29 meeting.

DENSITY BONUS ORDINANCE - SUPPLEMENTAL

ORDINANCE NO. -N.S.

RESCINDING SUB-SECTION 23C.12.050 OF THE BERKELEY MUNICIPAL CODE
AND ADDING CHAPTER 23C.14 TO THE BERKELEY MUNICIPAL CODE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Sub-Section 23C.12.050 is hereby rescinded.

Section 2. That Chapter 23C.14 is hereby added to read as follows:

Chapter 23C.14 Density Bonus

23C.14.010	Purpose
23C.14.020	Definitions
23C.14.030	Application Requirements
23C.14.040	Density Bonus Calculations and Procedures
23C.14.050	Incentives and Concessions
23C.14.060	Waivers and Reductions
23C.14.070	Qualifying Units
23C.14.080	Special Provisions
23C.14.090	Regulatory Agreements

23C.14.010 Purpose

The purpose of this Chapter is to establish procedures and local standards for the implementation of California Government Code Section 65915, [65916](#), and [65917](#) consistent with local zoning regulations and development standards, and to provide special provisions consistent with the intent of State and local law.

23C.14.020 Definitions

Whenever the following terms are used in this Chapter, they have the meaning established by this Section. Other capitalized terms have the meaning set forth in Berkeley Municipal Code Chapter 23A.08 and/or Chapter 23F.04, or in California Government Code Section 65915, [65916](#), and [65917](#), as applicable.

- A. "Administrative Regulations" means guidelines and procedures promulgated by the Planning Director that may be modified from time to time to effectively implement this ordinance.
- B. "Base Project" means the maximum allowable residential density ([lots](#), number and [type-size](#) of [residential](#) units, [floor area ratio](#), or [number of beds or bedrooms](#), [as determined by City or State law or regulation](#)) on a housing development site

DENSITY BONUS ORDINANCE - SUPPLEMENTAL

1 pursuant to the applicable zoning district or, where no density standard is provided,
2 as set forth in the Administrative Regulations before applying the density bonus.
3

4 C. "Density Bonus ~~Units~~" means those lots, residential units, floor area, rental beds or
5 bedrooms added to the Base Project pursuant to the provisions of Section 65915
6 and this Chapter.
7

8 D. "Eligible Housing Development" has the meaning set forth in Section 65917.2.
9

10 E. "Floor Area Ratio" has the meaning set forth in Section 65917.2.
11

12 ~~D.F.~~ "Housing Development" has the meaning set forth in Section 65915(i).
13

14 ~~E.G.~~ "Incentive and Concession" means an incentive or a concession as the terms are
15 used in Section 65915 and in particular as defined in Section 65915(k) thereof.
16

17 ~~F.H.~~ "Qualifying Unit" means a unit that is provided at a below market-rate rent or
18 sales price as set forth in Section 65915 in order to receive a Density Bonus and/or
19 Waivers and Reductions and/or Incentives and Concessions.
20

21 ~~G. "Section 65915" means California Government Code Section 65915, as it may be~~
22 ~~amended from time to time.~~
23

24 ~~H.I.~~ "Waiver and Reduction" means a waiver or a reduction as the terms are used in
25 Section 65915 and in particular in Section 65915(e) thereof, and means any and all
26 changes to or exemptions from physical lot development standards that are required
27 to avoid precluding the construction of a Housing Development with Density Bonus
28 Units, as set forth in Section 65915(e).
29

30 **23C.14.030 Application Requirements**
31

32 In addition to any other information required by this Title, an application for a Density
33 Bonus must include the following information:
34

35 A. How the proposed project will satisfy the eligibility requirements of Section 65915 or
36 65917.2.
37

38 B. For those districts without density standards, a density bonus schematic as set forth
39 in the ~~administrative~~ Administrative regulations ~~Regulations~~;
40

41 C. The ~~proposed size of the requested~~ Density Bonus pursuant to Section 23C.14.040.
42

43 D. Any Waivers and Reductions that are sought under Section 65915(e) that would be
44 required to accommodate the Housing Development including the Density Bonus
45 Units.
46

DENSITY BONUS ORDINANCE - SUPPLEMENTAL

- 1 E. Any Incentives and Concessions that are sought under Section 65915(d)
2 accompanied by documentation of resulting cost reductions to provide for affordable
3 housing costs.
- 4
- 5 F. Any requested additional bonus units under Section 65915(n).
- 6
- 7 G. Any requested parking reductions under Section 65915(p).
- 8
- 9 H. ~~An~~ Whether the applicant ~~may~~ elects in writing to receive a Density Bonus
10 that is less than that mandated by Section 65915, including a Density
11 Bonus of 0 (zero). In such cases, the applicant ~~will~~ retains their entitlement
12 to Incentives and Concessions.
- 13
- 14 I. Documentation of how project complies with regulations regarding
15 replacement units as described in Section 65915(c)(3).
- 16

17 **23C.14.040 Density Bonus Calculations and Procedures**

- 18
- 19 A. Density Bonuses must be calculated as set forth in Section 65915,
20 65917.2, -and pursuant to the Administrative Regulations.
- 21
- 22 B. Density Bonus requests must accompany Housing Development permit
23 applications and will be decided upon by the highest governing body
24 concurrent with the underlying Permit for the project.
- 25

26 **23C.14.050 Incentives and Concessions**

- 27
- 28 A. For purposes of this Chapter, the number of Incentives and Concessions are
29 counted as follows:
30
 - 31 1. Any Incentive and Concession that would otherwise require discretionary
32 approval by the Zoning Officer or Zoning Adjustments Board of any single
33 dimensional lot development standard, such as height or setbacks, or any single
34 quantitative lot development standard, such as parking or open space, counts as
35 one.
 - 36
 - 37 2. A proposed Incentive and Concession that would involve exceedance of a single
38 physical lot development standard counts as one even if that exceedance would
39 otherwise require more than one Permit (e.g., extra height may require Permits
40 for height, FAR floor area ratio, and/or number of stories but would count as one
41 Incentive and Concession for height).
 - 42
 - 43 3. Where it is ambiguous as to whether a proposed Incentive and Concession
44 involves one or more dimensional or quantitative lot development standards, the
45 stricter interpretation shall apply, as determined by the Zoning Officer, and
46 Zoning Adjustments Board, or the City Council, as the case may be.

DENSITY BONUS ORDINANCE - SUPPLEMENTAL

- 1
2 B. In determining whether it can make the finding set forth in Section 65915(d)(1)
3 related to the necessity for, efficacy of, and adverse effects of a requested Incentive
4 and Concession, the City will base its determination and any finding on a
5 comparison of the project including the Density Bonus and requested Incentives and
6 Concessions to the Base Project.
7
8 C. The City is not required to deny a proposed Incentive and Concession solely
9 because it is able to make a finding under Section 65915(d)(1). The City bears the
10 burden of proof for the denial of a requested Incentive and Concession, and may not
11 require the applicant to prepare a pro forma.
12
13 D. Unless denied under Section 65915, Incentives and Concessions will be exempt
14 from discretionary review or Permits under this Title, other than design review, and
15 do not modify the CEQA review status of a project.
16
17 ~~E. Incentives and Concessions must be justified based on the financial needs of the~~
18 ~~project, including reduced costs and increased revenue, to provide for the affordable~~
19 ~~housing costs of the qualifying units and for the project overall.~~
20

21 **23C.14.060 Waivers and Reductions**
22

- 23 A. An applicant may submit to the City a proposal for Waivers and Reductions of
24 development standards that physically preclude construction of a development
25 Housing Development project and Density Bonus Units meeting the criteria of
26 Section 65915(b).
27
28 ~~B. The applicant may request, and the City shall hold, a meeting to discuss Waivers~~
29 ~~and Reductions.~~
30
31 B. The City may negotiate changes to the requested Waivers and Reductions as part of
32 the Use Permit and Design Review process, in coordination with the applicant, in
33 order to address aspects of the project that may be of concern in the community or
34 inconsistent with overarching principles of the General Plan, Zoning Ordinance and
35 Design Guidelines.
36
37 C. The City may deny Waivers and Reductions if a Waiver or Reduction would have
38 adverse impacts and/or there is no mitigation for such impacts, as described in
39 Section 65915(e)(1).
40

41 **23C.14.070 Qualifying Units**
42

43 Upon completion of project construction, Qualifying Units must be ~~reasonably dispersed~~
44 ~~throughout the Housing Development,~~ be of the same size and contain, on average, the
45 same number of bedrooms as the non-Qualifying Units in the project, and must be
46 comparable to the non-Qualifying Units in terms of design, use, appearance, materials

DENSITY BONUS ORDINANCE - SUPPLEMENTAL

1 and finish quality. ~~In determining whether dispersal of Qualifying Units is reasonable,~~
2 ~~the decision-making body may consider special benefits provided by, as well as special~~
3 ~~constraints on, the project.~~

4
5 **23C.14.080 Special Provisions**

6
7 In addition to requirements set forth in Section 65915 and this Chapter, the following
8 Special Provisions apply to Density Bonuses in the City of Berkeley.

9
10 A. [RESERVED]

11
12 ~~B. In addition to other required findings, Special Provisions may be awarded only when~~
13 ~~the City finds that the Density Bonus project complies with the purposes of the~~
14 ~~district in which the project is located.~~

15
16 **23C.14.090 Regulatory Agreements**

17
18 Prior to issuance of a Certificate of Occupancy for a Housing Development that has
19 received a Density Bonus, the applicant must enter into a regulatory agreement in a
20 form provided by the City that implements Section 65915 and this Chapter.

21
22
23
24
25 Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the
26 display case located near the walkway in front of Council Chambers, 2134 Martin Luther
27 King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each
28 branch of the Berkeley Public Library and the title shall be published in a newspaper of
29 general circulation.

30
31
32



Office of the City Manager

PUBLIC HEARING

March 12, 2019

(Continued from February 19, 2019)

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Timothy Burroughs, Director, Planning and Development Department
Subject: Density Bonus Ordinance Revisions - Repeal Existing Section 23C.12.050 (State of California Density Bonus Requirements) and Adopt New Chapter 23C.14 (Density Bonus)

RECOMMENDATION

Conduct a public hearing, and upon conclusion, adopt the first reading of Zoning Ordinance amendments that repeal obsolete Density Bonus regulations (Section 23C.12.050: State of California Density Bonus Requirements) and adopt a new, standalone Density Bonus chapter (Chapter 23C.14) that complies with California State Government Code 65915–65918: Density Bonuses and Other Incentives.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley's Density Bonus ordinance is currently embedded in the Inclusionary Housing Requirements chapter of the Zoning Ordinance (Chapter 23C.12). That ordinance (Section 23C.12.050: State of California Density Bonus Requirements) was most recently amended in 2005 and needs updating because it references obsolete State regulations and includes requirements that are no longer in effect. The proposed amendments (see *Attachment 1*) create a stand-alone Density Bonus chapter in the Zoning Ordinance that accurately reflects and complies with State law.¹

The proposed amendments comprise the first part of Planning Commission's response to six Density Bonus-related City Council referrals. Some of these referrals specifically mention modifications to Density Bonus, whereas others suggest modifying Berkeley's development standards. The common thread that ties the referrals together is clarity around density standards or increased residential densities in return for community benefits most often valued as affordable housing (see *Attachment 2*). The Planning Commission and its Subcommittee on Affordable Housing reviewed the six referrals and

¹ http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65915&lawCode=GOV

developed a multi-phase approach to address referrals through an updated Density Bonus ordinance:

- 1) Bring the Zoning Ordinance into compliance with State Density Bonus requirements and document existing practices;
- 2) Develop a local density incentive program that would result in affordable housing production in excess of what is provided by State Density Bonus; and
- 3) Analyze and recommend modifications to Berkeley’s density standards.

The proposed Zoning Ordinance amendment included with this report, if adopted, will complete Phase 1. This step is necessary to set a new framework within which Phase 2 and Phase 3 policies can be implemented.

BACKGROUND

State Density Bonus provides incentives for developers to include affordable housing units within market-rate projects by granting increased density, and relief through concessions related to financial feasibility of the proposed project and waivers to development standards.

Density bonuses of up to 35% of the base project are mandated by the State and are based on the percentage of affordable units provided at various income levels². See below for a summary of the relationship between income levels for the inclusionary units, the percentage of affordable units provided, and the density bonus awarded.

Summary of Density Bonus Awards		
Household Income Level	Percentage of Affordable Units in Base Project (range)	Density Bonus (market rate units)
Very Low Income	5%	20%
Very Low Income	11%	35%
Low Income	10%	20%
Low Income	20%	35%
Moderate Income	10%	5%
Moderate Income	40%	35%

To illustrate how this works, a 100-unit base project with 11 very low income units would receive a 35-percent density bonus, resulting in 135 units (11 affordable and 124 market rate). If that same 100-unit base project included 10 moderate income units, it would only receive a 5-percent density bonus, resulting in 105 units (10 affordable and 95 market rate). This structure balances the public and private outcomes based on the

² Very Low Income is defined as 30-50% of Area Median Income, Low Income is defined as 50-80% Area Median Income, and Moderate Income is defined as 80-120% Area Median Income.

assumed value and cost of the affordable units, targeted income levels, and remaining market rate units.

All cities and counties are required to adopt an ordinance specifying how they will comply with State Density Bonus regulations.

On December 6, 2017, and February 7, 2018, the Planning Commission's Subcommittee on Affordable Housing (the Subcommittee) reviewed the City's Density Bonus zoning language and related referrals. Due to the complexity of State Density Bonus regulations and the scope of the six referrals, the Subcommittee suggested a three-phased approach to accomplish this work. This multi-stage approach is currently underway. Below is a summary of the work that has been accomplished to date and on-going research that will inform next steps:

- Phase 1: Develop Zoning Ordinance Amendments and Administrative Regulations
Staff prepared Zoning Ordinance language to support Phase 1 for Planning Commission consideration on February 21, 2018. Planning Commission discussed these changes, then conducted a Public Hearing on March 21, 2018 on Zoning Ordinance amendments related to Phase 1 of Density Bonus. Along with Zoning Ordinance amendments, staff revised Administrative Regulations (see *Attachment 3*) to document the process by which the Planning Department evaluates density bonus projects. Administrative Regulations are intentionally written in simple terms and provide a step-by-step procedure for staff to follow, maintaining consistency between projects and amongst staff. Administrative Regulations also allow the Planning Department to remain nimble in its workflow as State Density Bonus law continues to change.
- Phases 2 & 3: Conduct Research to Guide Local Enhancements to Density Bonus
In April 2018, the Joint Subcommittee for the Implementation of State Housing Law (JSISHL) inherited the work of the Planning Commission's Subcommittee on Affordable Housing. JSISHL considered modifications to Berkeley's Density Bonus program at its May and July meetings. During the July meeting, a number of questions were posed that either related to on-going projects or prompted new research. These efforts are described below. As information is collected and analyzed, staff will share results with JSISHL and Planning Commission. Phases 2 and 3 are expected to be completed in 2019.

Analysis of State Laws

In October 2017, the California legislature passed and the Governor signed a package of 15 housing bills, all of which went into effect on or before January 1, 2018. These laws addressed a variety of issues related to California's housing crisis, such as the timing of land use approvals, limits on local discretionary authority over housing projects, requirements and reporting deadlines for Regional Housing Needs Allocation (RHNA) and housing element reports, and new funding measures. Staff

presented an analysis of these laws to JSISHL on May 17, 2018 (see *Attachment 4*). This analysis included a discussion of Density Bonus.

One year later, the Governor signed into law 16 new housing laws that went into effect on January 1, 2019. Four of these bills amend State Density Bonus law (e.g. allow use of floor area ratio (FAR) and student housing projects in Density Bonus) and relate directly to Berkeley's Density Bonus efforts. This package of housing legislation is intended to further the effectiveness of the bills introduced in 2017 and increase affordable housing production in the state. The Planning Department has developed a matrix of 2017 and 2018 State housing legislation (see *Attachment 5*) to track newly adopted regulations and determine steps necessary to comply with changing State law.

Separately, in an effort to understand the challenges of administering State Density Bonus in the context of Berkeley's zoning regulations, the Planning Department has been analyzing proposed, entitled and completed Density Bonus projects applications. This effort includes review of best practices from neighboring and similar cities, and conversation with staff and developers to better understand how Density Bonus is being administered and its outcome in Berkeley.

Analysis of Development Standards

Parallel to the work mentioned above, the Planning Department is analyzing existing development standards in order to address the referrals presented in *Attachment 2*. Described below are four separate yet related projects that aim to better understand existing conditions and inform development of Density Bonus policies in Phase 2 and Phase 3.

Student Housing in the Southside – Staff is researching a number of questions in order to respond to ideas presented in the *More Student Housing Now Resolution* (see *Attachment 6*) and in Southside-focused referrals. The overarching theme of this work focuses on mechanisms that allow for increased density to accommodate new and affordable student housing. Research ranges from a capacity analysis to better understand built conditions in the Southside to interviews with property-owners to gauge interest in development incentives that could be implemented in Phase 2.

Density Standards in Commercial Corridors – The City of Berkeley has not established parcel-based density standards for higher density residential districts (R-3 and above) or for commercial/mixed-use zoning districts. Density Bonus projects rely on zoning development standards and basic Building Code considerations to define a "base project" from which bonus calculations are derived. The Planning Department is currently working with a consultant to assess Density Bonus project outcomes along Berkeley's commercial corridors, where most high-density residential projects are locating. These results will be compared to best practices from other cities and will guide development of potential new density standards in Phase 3.

GIS Analysis of Development Standards – In order to evaluate referrals that request additional density and/or modifications to development standards, the Planning Department is collaborating with Berkeley’s Information Technology Department to use available technology and data to visualize existing development conditions. This same methodology will be used to evaluate future scenarios that reflect findings from concurrent research projects mentioned in this report. This effort will inform Phases 2 and 3.

Adeline Corridor Plan – During the Adeline Corridor planning process the community has voiced their desire for community benefits, including affordable housing for displaced residents and communities of color, in return for development in the Adeline Corridor. Although not directly related to the referrals presented in *Attachment 2*, the work informing the community benefit structure and/or zoning regulations can be used to guide city-wide proposals related to Phases 2 and 3.

Analysis of Development Fees

In order to understand the City’s ability to incentivize affordable housing development, the Planning Department has hired a consultant to analyze fees imposed on Berkeley development projects and assess development feasibility under a variety of fee scenarios. The results of this study will be used in Phase 2 to help develop policies that encourage construction of affordable housing above and beyond the parameters of State Density Bonus.

ENVIRONMENTAL SUSTAINABILITY

Density Bonus is a State mandated planning and permitting tool that brings flexibility into the zoning process by providing developer incentives in exchange for affordable housing. Development projects that include affordable units encourage social interactions of diverse residents thereby building a connected, resilient community. Density Bonus projects also address Berkeley’s Climate Action Plan goal to increase compact development patterns throughout the City.

RATIONALE FOR RECOMMENDATION

Zoning Ordinance amendments in this report codify existing practice, respond to changes in State law, and provide a framework for future local programs and policies.

ALTERNATIVE ACTIONS CONSIDERED

None.

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Density Bonus Ordinance Revisions

PUBLIC HEARING
March 12, 2019

Attachments:

- 1: Ordinance
- 2: Council Referrals
- 3: Administrative Regulations
- 4: May 17, 2018 JSISHL Staff Report on 2017 Housing Package
- 5: Matrix of 2018 & 2019 Housing Regulations
- 6: *More Student Housing Now* City Council Resolution
- 7: Public Hearing Notice