



BERKELEY CITY COUNCILMEMBER  
**TERRY TAPLÍN**  
DISTRICT 2

## **SUPPLEMENTAL AGENDA MATERIAL**

### **For Land Use and Economic Development Committee**

**Meeting Date:** March 18, 2021

**Item Number:** 4

**Item Description:** Affordable Housing Overlay

**Submitted by:** Councilmember Taplin

Amendment would make the following additions to the referral:

- Clarifying applicability of state density bonus law with respect to local overlay
- Specifying labor standards required for ministerial approval to be consistent with state law
- Clarifying scope and applicability of density bonus in commercial zones
- Clarifying process to increase permitted dwelling units per acre
- Correcting local bonus in R1, R1A, R2, and R2A
- Prescribing VMT reduction as positive goal of TDM policies
- Non-substantive additions to background information



ACTION CALENDAR  
DATE: March 9, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Terry Taplin, Councilmember Bartlett, Councilmember Robinson (co-sponsors)

Subject: Affordable Housing Overlay

RECOMMENDATION

Refer to the City Manager and Planning Commission revisions to the zoning code and General Plan, permitting increased height and density for 100% affordable housing developments, including but not limited to:

1. Exceeding standards set forth in California Government Code Section 65915 with additional local height and density incentives, including waivers and modifications similar to those vested in state density bonus law, with ministerial approval contingent on objective zoning and design criteria, and skilled and trained workforce standards as defined by state law, for qualifying 100% affordable projects deed-restricted for Low, Very Low, Extremely Low, and Moderate Income households (exclusive of manager's unit), with moderate-income units not to exceed rents capped for 100% of Area Median Income, specifying:  
~~Exceeding standards set forth in California Government Code Section 65915 with additional height and density incentives for qualifying 100% affordable projects deed-restricted for low- and moderate-income households, including:~~
  - a. ~~In R3, R4, and all C-prefixed zoning districts, an additional 33' local density bonus in addition to, and duplicative of, the state density bonus under Government Code Section 65915 for qualifying projects; for~~  
~~qualifying projects with low- and moderate-income units deed-restricted for households earning up to 100% of Area Median Income, aiming to maximize total unit count restricted for Very Low and Extremely Low Income households;~~
    - i. ~~In R4, commence a General Plan amendment to increase permitted density up to 150 dwelling units per acre for qualifying 100% affordable projects;~~
    - ii. ~~In R3, commence a General Plan amendment to increase permitted density up to 125 dwelling units per acre for qualifying 100% affordable projects;~~
  - b. ~~In R-1, R-1A, R-2, and R-2A zones, a local 12' height bonus for qualifying projects, waiving density limits and permitting up to 80% lot coverage;~~

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- i. ~~In R-1, R-1A, R-2, and R-2A zones, commence General Plan amendment to increase permitted density up to 165 dwelling units per acre for qualifying 100% affordable projects;~~
  - c. ~~Ensure consistent applicability in all C-prefixed zoning districts for the residential portion of qualifying mixed-use projects with ground-floor commercial and/or live-work space;~~
  - d. ~~In all qualifying transit-adjacent areas, inclusive of all parcels within one-half mile of a commuter rail station, or within 1/4 mile of an AC Transit bus route with 7-day service in Fiscal Year 2019, waiving density limits, including units per acre, floor area ratio, and up to 80% lot coverage;~~
- ~~Increased density for projects outside of transit proximity threshold specified in 1(d) above contingent upon additional Transportation Demand Management (TDM) policies aiming to reduce Vehicle Miles Traveled (VMT) per capita, including bike parking, paratransit and shared micro-mobility systems;~~
- e.
    - a. ~~Expanding waiver of density limits, including units per acre and floor area ratio, for transit adjacent projects to include all parcels within one-half mile of a commuter rail station, and within 1/4 mile of an AC Transit bus route with 7-day service in Fiscal Year 2019;~~
    - b. ~~Reduced density limits for projects outside of transit proximity threshold with additional Transportation Demand Management (TDM) policies, including bike parking, paratransit and shared micro-mobility systems;~~
    - c. ~~Ministerial approval of all qualifying projects meeting objective design criteria and union labor requirements;~~
    - d. ~~Exempting parcels with Designated Historic Landmarks and maintaining demolition restrictions consistent with state law.~~
      - 2. ~~Exempting parcels with Designated Historic Landmarks and maintaining demolition restrictions consistent with state law; Ministerial approval for a baseline of 76' for 100% affordable residential dwelling units in all commercial zones, and provisions for ground-floor retail and/or live-work space;~~
      - 2. ~~In R-1, R-1A and R-2 zones, provide ministerial approval for a 10' local density bonus for 100% affordable housing, with waived density requirements for dwelling units per acre and lot coverage.~~
  - 3. ~~On parcels within high-risk wildfire zones as determined by the California Department of Forestry and Fire Protection (CalFire), ministerial approval for 100% affordable qualifying projects should be contingent on fire-blocking design and defensible space standards certified by the Planning Department.~~

Council directs the Planning Commission and staff to codify an Affordable Housing Overlay for 100% affordable housing as specified above in 2021-2022 work plans in anticipation of 2023-2031 RHNA targets. Staff and the commission should build upon the framework established in Government Code Section 65915 as well as municipal implementations of Affordable Housing Overlays in other states, such as Cambridge and Somerville, MA.

**BACKGROUND**

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Berkeley has made insufficient progress on meeting its state-mandated Regional Housing Need Allocation (RHNA) goals for low- and moderate-income housing in the 2014-2022 RHNA cycle. As recently as the city's 2020<sup>1</sup> Housing Pipeline Report, the city had only fulfilled 23% of its moderate-income RHNA goals, 21% of its RHNA goals for Very-Low Income households, and a mere 4% for Low-Income households. Berkeley's next RHNA cycle is estimated to mandate roughly 3 times as many units<sup>2</sup> as the previous cycle's total of 2,959 units across all income tiers. SB-330 by Sen. Nancy Skinner (D-Berkeley), passed in 2019, requires municipal general plans to zone adequately to meet residential capacity mandated by RHNA goals and state-certified Housing Elements.

Affordable housing will continue to be a high priority, but nonprofit affordable housing developers may face stiff competition for scarce land with market-rate developers, particularly during an anticipated period of economic recovery. In 2019, Governor Newsom signed AB-1763 by Assembly member David Chiu (D-SF), amending California Government Code 65915 to confer greater fiscal advantages for 100% affordable housing developments through state density bonus law. The bill prohibits minimum parking requirements (which Berkeley has recently removed) and grants an ~~3-story~~ increase of up to 33' in allowable heights in permitted height, with a waiver on density restrictions for projects located within a half-mile of major transit stops.

When the 42-unit affordable housing project at Harpers Crossing opened in Berkeley, at a total project cost of \$18 million, over 700 seniors applied. Without substantial funding and square footage for affordable housing, the City of Berkeley will be increasingly challenged to create enough subsidized housing to meet increasing demand. Increased allowable density and streamlined approvals for affordable housing will also be key to meeting Berkeley's RHNA goals for low- and moderate-income housing.

#### RATIONALE FOR RECOMMENDATION

There is precedent in the state of California for meeting low-income RHNA goals with an Affordable Housing Overlay. In eastern Contra Costa County, the newly-incorporated city of Oakley established an Affordable Housing Overlay in 2005, which has yielded 7 affordable housing developments totaling 509 housing units combined as of 2019.<sup>3</sup> Despite local opposition to low-income housing, the AHO enabled the city to obtain state certification for its first 2001-2007 Housing Element, procure funding from the county, and meet its low-income RHNA goals by rezoning 16.3 acres for multifamily housing.

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<sup>1</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/07\\_Jul/Documents/2020-07-28\\_Item\\_45\\_Annual\\_Housing\\_Pipeline\\_Report.aspx&sa=U&ved=2ahUKEwjc3tDIntHuAhXWu54KHdyGAtAQFjABegQICRAC&usg=AOvVaw0eXQ4oP5AAL14h0lphPdr](https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-28_Item_45_Annual_Housing_Pipeline_Report.aspx&sa=U&ved=2ahUKEwjc3tDIntHuAhXWu54KHdyGAtAQFjABegQICRAC&usg=AOvVaw0eXQ4oP5AAL14h0lphPdr)

<sup>2</sup> [https://abag.ca.gov/sites/default/files/draft\\_rhna\\_allocation\\_presentation\\_to\\_exec\\_bd\\_jan\\_21.pdf](https://abag.ca.gov/sites/default/files/draft_rhna_allocation_presentation_to_exec_bd_jan_21.pdf)

<sup>3</sup> UC Berkeley Turner Center for Housing Innovation. (2019). Affordable Housing Overlays: Oakley. Retrieved from [https://turnercenter.berkeley.edu/wp-content/uploads/2020/10/Affordable\\_Housing\\_Overlay\\_Zones\\_Oakley.pdf](https://turnercenter.berkeley.edu/wp-content/uploads/2020/10/Affordable_Housing_Overlay_Zones_Oakley.pdf)

According to the Association of Bay Area Governments (ABAG), 28 jurisdictions in the 9-county Bay Area have some form of Housing Overlay Zone policy.<sup>4</sup>

According to a 2010 fact sheet by Public Advocates and East Bay Housing Organizations (EBHO), “the more valuable the developer incentives included in a Housing Overlay Zone, the more effective the HOZ will be in encouraging production of homes that people can afford. Desirable incentives both motivate developers to take advantage of the HOZ, and reduce development costs to allow construction of more affordable homes.”<sup>5</sup>

The City Council of Cambridge, Massachusetts passed an Affordable Housing Overlay amendment to its zoning code in October of 2020.<sup>6</sup> The City Council of Somerville, MA passed a similar zoning ordinance in December of 2020. These zoning overlays permit greater height and density for ministerial approval 100% Below Market-Rate housing developments, following objective design criteria. The intent of these ordinances is to increase the availability of infill sites with an advantage for affordable housing development where nonprofit and public entities may otherwise be unable to compete win the private market, as well as promoting a more equitable distribution of affordable housing in cities where class and racial segregation still mirrors the historical legacy of redlining and Jim Crow-era racial covenants.

These ordinances preserve open space requirements and comport with restrictions on historic districts. The Somerville<sup>7</sup> and Cambridge<sup>8</sup> Overlays were overwhelmingly supported by nonprofit affordable housing developers and activists. The city of Boston is now exploring similar policy initiatives.<sup>9</sup>

Prior to introduction of the city’s Affordable Housing Overlay policy, Somerville City Councilor Ben Ewen-Campen, chair of the council’s Land Use Committee, directed city

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<sup>4</sup> <http://housing.abag.ca.gov/policysearch>

<sup>5</sup> [http://www.friendsofrpe.org/files/HOZ\\_Fact\\_Sheet\\_FINAL\\_7-27-10%282%29.pdf](http://www.friendsofrpe.org/files/HOZ_Fact_Sheet_FINAL_7-27-10%282%29.pdf)

<sup>6</sup> Sennott, A. (2020). Mayor: ‘An important social justice moment.’ Councilors pass Affordable Housing Overlay after more than 20 community meetings. *WickedLocal.com*. Retrieved from <https://www.wickedlocal.com/story/cambridge-chronicle-tab/2020/10/06/an-important-social-justice-moment-cambridge-councilors-pass-affordable-housing-overlay/114657068/>

<sup>7</sup> Taliesin, J. (2020). Somerville moves to facilitate local affordable housing development. *WickedLocal.com*. Retrieved from <https://www.wickedlocal.com/story/somerville-journal/2020/11/23/residents-support-citys-move-ease-affordable-housing-development/6328944002/>

<sup>8</sup> Eisner, D. (2020). The Historic Affordable Housing Overlay Is about to Pass. How Did It Overcome so Many Obstacles? *A Better Cambridge*. Retrieved from [https://www.abettercambridge.org/the\\_historic\\_affordable\\_housing\\_overlay\\_is\\_about\\_to\\_pass\\_how\\_did\\_it\\_overcome\\_so\\_many\\_obstacles](https://www.abettercambridge.org/the_historic_affordable_housing_overlay_is_about_to_pass_how_did_it_overcome_so_many_obstacles)

<sup>9</sup> Logan, T. (2020). Boston to consider looser zoning for affordable housing. *The Boston Herald*. Retrieved from <https://www.bostonglobe.com/2020/08/24/business/boston-mull-looser-zoning-affordable-housing/>

staff to survey the region's affordable housing. "Overwhelmingly, we heard about two obstacles," Ewen-Campen wrote.<sup>10</sup>

*First, and most obviously, is the cost of land. Today, it is nearly impossible for any non-profit housing developer to purchase property in Somerville. This is no surprise: they are competing against "market rate" developers and investors who can afford to pay far more because they'll soon be making windfall profits in our red-hot real estate market. Second, the funding agencies that support affordable housing are looking for predictability and certainty in the projects they support. This means that the uncertainty, delays, and discretionary nature of the permitting process in Somerville can be a major issue when attempting to secure funding. Together, these two obstacles mean that new affordable units in Somerville are almost always created by market rate developers through Somerville's "20% inclusionary zoning" policy, which is absolutely necessary but nowhere near sufficient to meet Somerville's goals for affordability.*

Affordable housing nonprofits face similar fiscal and regulatory barriers to developing much-needed low- and moderate-income housing. [Increased density and streamlined, predictable permitting processes through ministerial review can increase the amount of affordable housing that limited public subsidies are able to provide. In San Francisco, a new affordable housing project at 833 Bryant St qualified for ministerial review under state law and "is on pace to build homes, conservatively, about 30 percent faster and at 25 percent less cost per unit than the similar project."](#)<sup>11</sup>

While Berkeley does not have an abundance of vacant and/or publicly-owned land close to transit to help meet these goals, an Affordable Housing Overlay permitting residential uses on commercial corridors for 100% affordable housing can tap into an abundant subset of commercial parcels with residential potential in the city. According to a study by the UC Berkeley Turner Center for Housing Innovation, mid-sized cities in the San Francisco Bay Area have an average of 32.4% of land zoned for commercial uses, and this land tends to be evenly distributed between high- and low-opportunity neighborhoods as defined by the state's Tax Credit Allocation Committee.<sup>12</sup>

As the Home for All SMC Housing Overlay Zone fact sheet explains: "In locations where the zoning doesn't allow residential development, HOZs can enable housing construction while avoiding the lengthy process of amending a general plan."<sup>13</sup>

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<sup>10</sup> Ewen-Campen, B. (2020). We need a city-wide 'Affordable Housing Overlay District' in Somerville. *The Somerville Times*. Retrieved from <https://www.thesomervilletimes.com/archives/103539>

<sup>11</sup> Decker, N. (2021). Strategies to Lower Cost and Speed Housing Production: A Case Study of San Francisco's 833 Bryant Street Project. *UC Berkeley Turner Center for Housing Innovation*. Retrieved from <https://turnercenter.berkeley.edu/wp-content/uploads/2021/02/833-Bryant-February-2021.pdf>

<sup>12</sup> Romem, I. & Garcia, D. (2020). Residential Redevelopment of Commercially Zoned Land in California. *UC Berkeley Turner Center for Housing Innovation*. Retrieved from <https://turnercenter.berkeley.edu/wp-content/uploads/2020/12/Residential-Redevelopment-of-Commercially-Zoned-Land-in-California-December-2020.pdf>

<sup>13</sup> <https://homeforallsmc.org/toolkits/housing-overlay-zones/>

## ALTERNATIVES CONSIDERED

Due to aforementioned state laws, there is no alternative in which the City of Berkeley does not rezone certain areas to meet its upcoming RHNA goals and have a certified Housing Element. While the city could simply abide by the standards set forth in AB-1763 with no additional incentives or streamlining for 100% affordable housing, this would risk insufficiently prioritizing low- and moderate-income housing, and is inconsistent with goals already identified by the City Manager's office to reduce homelessness and housing insecurity.

The City Manager's 1000 Person Plan to End Homelessness<sup>14</sup> includes among its strategic recommendations:

*"Continue implementing changes to Berkeley's Land Use, Zoning, and Development Review Requirements for new housing with an eye towards alleviating homelessness. If present economic trends continue, the pace with which new housing is currently being built in Berkeley will likely not allow for a declining annual homeless population. Berkeley should continue to streamline development approval processes and reform local policies to help increase the overall supply of housing available."*

Maintaining current allowable densities would also maintain higher per-unit costs for affordable housing and limit Berkeley's capacity to meet its RHNA goals for low- and moderate-income housing. According to an October 2014 report on affordable housing development by several state housing agencies, "for each 10 percent increase in the number of units, the cost per unit declines by 1.7 percent."<sup>15</sup>

## ENVIRONMENTAL IMPACTS

A 2019 study of displacement and gentrification in Seattle<sup>16</sup> found qualitative evidence that the displacement of low-income households from central urban neighborhoods could increase emissions from the area with the influx of higher-income households with more carbon-intensive consumption, while those displaced may be more likely to move to where they contribute higher Vehicle Miles Traveled (VMT) in suburban communities. At the same time, research from UC Berkeley<sup>17</sup> confirms that high-income households

<sup>14</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2019/02\\_Feb/Documents/2019-02-26\\_Item\\_20\\_Referral\\_Response\\_1000\\_Person\\_Plan.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/02_Feb/Documents/2019-02-26_Item_20_Referral_Response_1000_Person_Plan.aspx)

<sup>15</sup> California Department of Housing and Community Development, et al. (2014). *Affordable Housing Cost Study: Analysis of the Factors that Influence the Cost of Building Multi-Family Affordable Housing in California*. Retrieved from [https://www.treasurer.ca.gov/ctcac/affordable\\_housing.pdf](https://www.treasurer.ca.gov/ctcac/affordable_housing.pdf)

<sup>16</sup> Rice, J. L., Cohen, D. A., Long, J., & Jurjevich, J. R. (2019). Contradictions of the Climate-Friendly City: New Perspectives on Eco-Gentrification and Housing Justice. *International Journal of Urban and Regional Research*. doi:10.1111/1468-2427.12740

<sup>17</sup> Jones, C. et al. (2017). Carbon Footprint Planning: Quantifying Local and State Mitigation Opportunities for 700 California Cities. *Urban Planning*, 3(2). doi:10.17645/up.v3i2.1218.

moving to low-VMT urban neighborhoods enables major reductions in per-capita emissions. An Affordable Housing Overlay coupled with the city's Local Preference policy could promote environmental justice and reduce per-capita VMT pursuant to goals established in the city's Climate Action Plan.

#### FISCAL IMPACTS

TBD.

The City Manager's 1000 Person Plan to End Homelessness notes that the fiscal impact of land use reform "could not be quantified" at the time the report was issued.

#### CONTACT

Councilmember Terry Taplin (District 2), 510-983-7120, [ttaplin@cityofberkeley.info](mailto:ttaplin@cityofberkeley.info)

#### ATTACHMENTS/SUPPORTING MATERIALS

1. Resolution
2. Cambridge, MA: Ordinance No. 2020-8
3. Assembly Bill 1763 (2019)



RESOLUTION NO. ##,###-N.S.

WHEREAS the San Francisco Bay Area is in the midst of a crisis-level housing shortage disproportionately affecting low- and moderate-income households; and,

WHEREAS the City of Berkeley has failed to meet its Regional Housing Needs Allocation production goals for low- and moderate-income households in the 2014-2022 RHNA cycle; and,

WHEREAS the 2022-2031 RHNA cycle will likely allocate over 9,000 housing units to the City of Berkeley, while the previous cycle's housing needs for low- and moderate-income households remain unmet; and,

WHEREAS Assembly Bill 1763, passed in 2019, enables greater density and height allowances for 100% affordable housing, with low- and moderate-income households defined by Section 50053 of the Health and Safety Code; and,

WHEREAS state law will mandate sufficient residential capacity in the City's general plan to align its zoning with its housing element and RHNA goals;

WHEREAS the City of Oakley authorized an Affordable Housing Overlay in 2005 to meet its low-income RHNA goals; and,

WHEREAS several cities in the State of Massachusetts have implemented Affordable Housing Overlay policies to increase density in high-opportunity neighborhoods near transit to reverse patterns of historic segregation, produce more affordable housing, and give affordable housing profits an advantage in parcel acquisition;

THEREFORE, BE IT RESOLVED that the City Council of the City of Berkeley refers to the City Manager and Planning Commission revisions to the zoning code and General Plan, permitting increased height and density for 100% affordable housing developments, including but not limited to:

Refer to the City Manager and Planning Commission revisions to the zoning code and General Plan, permitting increased height and density for 100% affordable housing developments, including but not limited to:

1. Exceeding standards set forth in California Government Code Section 65915 with additional local height and density incentives, including waivers and modifications similar to those vested in state density bonus law, with ministerial approval contingent on objective zoning and design criteria, and skilled and trained workforce standards as defined by state law, for qualifying 100% affordable projects deed-restricted for Low, Very Low, Extremely Low, and Moderate Income households (exclusive of manager's unit), with moderate-income units not to exceed rents capped for 100% of Area Median Income, specifying:

- a. In R3, R4, and all C-prefixed zoning districts, a local density bonus in addition to, and duplicative of, the state density bonus under Government Code Section 65915 for qualifying projects:
    - i. – In R4, commence a General Plan amendment to increase permitted density up to 150 dwelling units per acre for qualifying 100% affordable projects;
    - ii. – In R3, commence a General Plan amendment to increase permitted density up to 125 dwelling units per acre for qualifying 100% affordable projects;
  - b. In R-1, R-1A, R-2, and R-2A zones, a local 12' height bonus for qualifying projects, waiving density limits and permitting up to 80% lot coverage;
    - i. – In R-1, R-1A, R-2, and R-2A zones, commence General Plan amendment to increase permitted density up to 165 dwelling units per acre for qualifying 100% affordable projects;
  - c. Ensure consistent applicability in all C-prefixed zoning districts for the residential portion of qualifying mixed-use projects with ground-floor commercial and/or live-work space;
  - d. In all qualifying transit-adjacent areas, inclusive of all parcels within one-half mile of a commuter rail station, or within 1/4 mile of an AC Transit bus route with 7-day service in Fiscal Year 2019, waiving density limits, including units per acre, floor area ratio, and up to 80% lot coverage;
  - e. Increased density for projects outside of transit proximity threshold specified in 1(d) above contingent upon additional Transportation Demand Management (TDM) policies aiming to reduce Vehicle Miles Traveled (VMT) per capita, including bike parking, paratransit and shared micro-mobility systems;
2. Exempting parcels with Designated Historic Landmarks and maintaining demolition restrictions consistent with state law;
  3. On parcels within high-risk wildfire zones as determined by the California Department of Forestry and Fire Protection (CalFire), ministerial approval for qualifying projects should be contingent on fire-blocking design and defensible space standards certified by the Planning Department.
  1. ~~Exceeding standards set forth in California Government Code Section 65915 with additional local height and density incentives, including waivers and modifications similar to those vested in state density bonus law, with ministerial approval contingent on objective zoning and design criteria, and labor standards as required by Senate Bill 35, for qualifying 100% affordable projects deed-restricted for Low, Very Low, Extremely Low, and Moderate Income households (exclusive of manager's unit), with moderate-income units not to exceed rents capped for 100% of Area Median Income, specifying:~~
    - a. ~~In R3, R4, and C-prefixed zones, an additional 33' local density bonus height in addition to the state density bonus under Government Code Section 65915 for qualifying projects;~~
    - b. ~~In R-1, R-1A, R-2, and R-2A zones, a 12' height bonus for qualifying projects, waiving limits on density and lot coverage;~~

- ~~c. In all C-prefixed zoning districts, a baseline of 76' for the residential portion of mixed-use projects that incorporate ground-floor commercial and/or live-work space;~~
- ~~d. In all transit-adjacent areas, inclusive of all parcels within one-half mile of a commuter rail station, or within 1/4 mile of an AC Transit bus route with 7-day service in Fiscal Year 2019, eliminating density limits, including units per acre, lot coverage and floor area ratio;~~
- ~~e. Increased density for projects outside of transit proximity threshold with additional Transportation Demand Management (TDM) policies aiming to reduce Vehicle Miles Traveled (VMT) per capita, including bike parking, paratransit and shared micro-mobility systems;~~
- ~~2. Exempting parcels with Designated Historic Landmarks and maintaining demolition restrictions consistent with state law;~~
- ~~3. On parcels within high-risk wildfire zones as determined by the California Department of Forestry and Fire Protection (CalFire), ministerial approval for qualifying projects should be contingent on fire-blocking design and defensible space standards certified by the Planning Department;~~

BE IT FURTHER RESOLVED, that the City Council of the City of Berkeley directs the Planning Commission and staff to codify an Affordable Housing Overlay for 100% affordable housing as specified above in 2021-2022 work plans in anticipation of 2023-2031 RHNA targets.

**ORDINANCE NO. 2020-8 – First Publication**

CITY OF CAMBRIDGE

In the Year Two Thousand and Twenty

AN ORDINANCE

ORDERED: That the attached proposed zoning ordinance establishing an Affordable Housing Overlay be submitted by the City Council, and that it be referred to the Committee on Ordinances and the Planning Board for public hearings, as provided in Chapter 40A, Section 5 of the Massachusetts General Laws, to wit:

ORDERED: That the Cambridge City Council amend Section 2.000, DEFINITIONS, of the Zoning Ordinance of the City of Cambridge amended to insert the following definitions alphabetically:

**Affordable Housing Overlay (AHO).** A set of modified development standards set forth in Section 11.207.3 of this Zoning Ordinance intended to allow incremental increases in density, limited increases in height, and relaxation of certain other zoning limitations for residential developments in which all units are made permanently affordable to households earning up to 100% of area median income.

**Affordable Housing Overlay (AHO) Dwelling Unit.** A dwelling unit within an AHO Project for which occupancy is restricted to an AHO Eligible Household and whose rent or initial sale price is established by the provisions of Section 11.207.3 of this Zoning Ordinance.

**Affordable Housing Overlay (AHO) Eligible Household.** A household whose gross household income does not exceed the amounts set forth in Section 11.207.3 of this Zoning Ordinance.

**Affordable Housing Overlay (AHO) Project.** The construction of a new building or buildings and/or the modification of an existing building or buildings resulting in single-family, two-family, townhouse, or multifamily dwellings within which each dwelling unit is an AHO Dwelling Unit subject to the standards and restrictions set forth in Section 11.207 of this Zoning Ordinance.

**Grade.** The mean finished ground elevation of a lot measured either around the entire perimeter of the building or along any existing wall facing a public street, which ground elevation is maintained naturally without any structural support.

**Ground Story or Ground Floor.** The lowest Story Above Grade within a building. Story. That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above.

**Story Above Grade.** A Story whose highest point is more than 4 feet above the Grade.

**Story Below Grade.** Any Story that is lower than the Ground Story of a building.

ORDERED: That the Cambridge City Council amend of the Zoning Ordinance of the City of Cambridge, by inserting a new section 11.207, **AFFORDABLE HOUSING OVERLAY**, to read as follows:

#### 11.207.1 Purpose and Intent

The purpose of this Section is to promote the public good by supporting the development of housing that is affordable to households earning up to 100% of area median income. The intent of this Section is to allow incremental increases in density, limited increases in height, and relaxation of certain other zoning limitations for residential developments in which all units are made permanently affordable to households earning up to 100% of area median income (referred to as “AHO Projects,” as defined in Article 2.000 of this Zoning Ordinance); to incentivize the reuse of existing buildings in order to create AHO Projects that are more compatible with established neighborhood character; to promote the city’s urban design objectives in Section 19.30 of this Zoning Ordinance while enabling AHO Projects to be permitted as-of-right, subject to non-binding advisory design consultation procedures that follow all design objectives set forth within this Zoning Ordinance and the results of the design review process shall be provided to the Cambridge Affordable Housing Trust; and to apply such standards throughout the City, to promote city planning goals of achieving greater socioeconomic diversity and a more equitable distribution of affordable housing citywide.

#### 11.207.2 Applicability

- (a) The provisions set forth in this Section shall apply to AHO Projects, as defined in Article 2.000 of this Zoning Ordinance, in all zoning districts except Open Space Districts.
- (b) An AHO Project shall be permitted as-of-right if it meets all of the standards set forth in this Affordable Housing Overlay in place of the requirements otherwise applicable in the zoning district. Any development not meeting all of

the standards set forth in this Affordable Housing Overlay shall be subject to the requirements otherwise applicable in the zoning district, including any requirements for special permits.

11.207.3 Standards for Eligibility, Rent, and Initial Sale Price for AHO Dwelling Units

- (a) All dwelling units in an AHO Project shall comply with the standards for AHO Dwelling Units as set forth in this Section.
- (b) For all AHO Dwelling Units:
  - (i) AHO Dwelling Units shall be rented or sold only to AHO Eligible Households, with preference given to Cambridge residents, and former Cambridge residents who experienced a no-fault eviction in Cambridge in the last twelve (12) months, in accordance with standards and procedures related to selection, asset limits, and marketing established by the Community Development Department (CDD) and applicable state funding requirements.
  - (ii) AHO Dwelling Units shall be created and conveyed subject to recorded covenants approved by CDD guaranteeing the permanent availability of the AHO Dwelling Units for AHO Eligible Households.
- (c) For rental AHO Dwelling Units:
  - (i) The gross household income of an AHO Eligible Household upon initial occupancy shall be no more than one-hundred percent (100%) of AMI.
  - (ii) At least eighty percent (80%) of AHO Dwelling Units within the project shall be occupied by AHO Eligible Households whose gross household income upon initial occupancy is no more than eighty percent (80%) of AMI.
  - (iii) Rent, including utilities and any other fees routinely charged to tenants and approved by CDD, shall not exceed thirty percent (30%) of the gross household income of the AHO Eligible Household occupying the AHO Dwelling Unit or other similar standard pursuant to an applicable housing subsidy program which has been approved by CDD.

- (iv) After initial occupancy, the gross household income of an AHO Eligible Household shall be verified annually, or on such other basis required by an applicable housing subsidy program which has been approved by CDD, to determine continued eligibility and rent, in accordance with policies, standards, and procedures established by CDD.
  - (v) An AHO Eligible Household may continue to rent an AHO Dwelling Unit after initial occupancy even if the AHO Eligible Household's gross household income exceeds the eligibility limits set forth above, but may not exceed one hundred twenty percent (120%) of AMI for more than one year after that Eligible Household's gross household income has been verified to exceed such percentage, unless otherwise restricted pursuant to an applicable housing subsidy program which has been approved by CDD.
  - (vi) Notwithstanding the requirements set forth in (i) through (v) above, an owner may voluntarily choose to charge a lower rent than as provided herein for AHO Dwelling Units.
- (d) For owner-occupied AHO Dwelling Units:
- (i) The gross household income of an AHO Eligible Household upon initial occupancy shall be no more than one-hundred percent (100%) of AMI.
  - (ii) At least fifty percent (50%) of AHO Dwelling Units shall be sold to AHO Eligible Households whose gross household income upon initial occupancy is no more than eighty percent (80%) of AMI.
  - (iii) The initial sale price of an AHO Dwelling Unit shall be approved by CDD and shall be determined to ensure that the monthly housing payment (which shall include debt service at prevailing mortgage loan interest rates, utilities, condominium or related fees, insurance, real estate taxes, and parking fees, if any) shall not exceed thirty percent (30%) of the monthly income of:
    - 1) A household earning ninety percent (90%) of AMI, in the case of an AHO Dwelling Unit to be sold to an AHO Eligible Household whose income upon initial

occupancy is no more than one-hundred percent (100%) of AMI; or

- 2) A household earning seventy percent (70%) of AMI, in the case of an AHO Dwelling Unit to be sold to an AHO Eligible Household whose income upon initial occupancy is no more than eighty percent (80%) of AMI
- (e) An AHO Project meeting the standards set forth herein as approved by CDD shall not be required to comply with the Inclusionary Housing Requirements set forth in 11.203 of this Zoning Ordinance.

#### 11.207.4 Use

- (a) In all zoning districts, an AHO Project may contain single-family, two-family, townhouse, or multifamily dwellings as-of-right. Townhouse and Multifamily Special Permit procedures shall not apply.
- (b) An AHO Project may contain active non-residential uses on the ground floor as they may be permitted as-of-right in the base zoning district or the overlay district(s) that are applicable to a lot, which for the purpose of this Section shall be limited to Institutional Uses listed in Section 4.33, Office Uses listed in Section 4.34 Paragraphs a. through e., and Retail and Consumer Service uses listed in Section 4.35 that provide services to the general public.

#### 11.207.5 Development Standards

##### 11.207.5.1 General Provisions

- (a) For the purposes of this Section, the phrase “District Development Standards” shall refer to the development standards of the base zoning district as they may be modified by the development standards of all overlay districts (with the exception of this Affordable Housing Overlay) that are applicable to a lot.
- (b) District Dimensional Standards shall include the most permissive standards allowable on a lot, whether such standards are permitted as-of-right or allowable by special permit. A District Dimensional Standard that is allowable by special permit shall include any nondiscretionary requirements or limitations that would otherwise apply.



- (c) An AHO Project that conforms to the following development standards shall not be subject to other limitations that may be set forth in Article 5.000 or other Sections of this Zoning Ordinance, except as otherwise stated in this Section.

11.207.5.2 Dimensional Standards for AHO Projects

11.207.5.2.1 Building Height and Stories Above Grade. For an AHO Project, the standards set forth below shall apply in place of any building height limitations set forth in the District Development Standards.

- (a) Where the District Dimensional Standards set forth a maximum residential building height of forty (40) feet or less, an AHO Project shall contain no more than four (4) Stories Above Grade and shall have a maximum height of forty-five (45) feet, as measured from existing Grade. For AHO Projects containing active non-residential uses on the ground floor, the maximum height may be increased to fifty (50) feet but the number of Stories Above Grade shall not exceed four (4) stories.
- (b) Where the District Dimensional Standards set forth a maximum residential building height of more than forty (40) feet but not more than fifty (50) feet, an AHO Project shall contain no more than six (6) Stories Above Grade and shall have a maximum height of sixty-five (65) feet, as measured from existing Grade, except as further limited below. For AHO Projects containing active non-residential uses on the ground floor, the maximum height may be increased to seventy (70) feet but the number of Stories Above Grade shall not exceed six (6) stories.
  - (i) Except where the AHO Project abuts a non-residential use, portions of an AHO Project that are within thirty-five (35) feet of a district whose District Dimensional Standards allow a maximum residential building height of forty (40) feet or less shall be limited by the provisions of Paragraph (a) above, except that if the AHO project parcel extends into that District, then the height limitation shall only extend thirty five (35) feet from the property line.
- (c) Where the District Dimensional Standards set forth a maximum residential building height of more than fifty (50) feet, an AHO Project shall contain no more than seven (7) Stories Above Grade and shall have a maximum height

of eighty (80) feet, as measured from existing Grade, except as further limited below.

- (i) Except where the AHO Project abuts a non-residential use, portions of an AHO Project that are within thirty-five (35) feet of a district whose District Dimensional Standards allow a maximum residential building height of forty (40) feet or less shall be reduced to a minimum of five (5) Stories Above Grade or a maximum height of sixty (60) feet, as measured from existing Grade, except that if the AHO project parcel extends into that District, then the height limitation shall only extend thirty five (35) feet from the property line.
- (d) The Height Exceptions set forth in Section 5.23 of this Zoning Ordinance shall apply when determining the building height of an AHO Project.

#### 11.207.5.2.2 Residential Density

- (a) Where the District Dimensional Standards establish a maximum floor area ratio (FAR) of less than 1.00, an AHO Project shall not exceed an FAR of 2.00. Otherwise, there shall be no maximum FAR for an AHO Project.
- (b) There shall be no minimum lot area per dwelling unit for an AHO Project.

#### 11.207.5.2.3 Yard Setbacks

- (a) For the purpose of this Section, the applicable District Dimensional Standards shall not include yard setback requirements based on a formula calculation as provided in Section 5.24.4 of the Zoning Ordinance, but shall include non-derived minimum yard setback requirements set forth in Article 5.000 or other Sections of this Zoning Ordinance.
- (b) Front Yards. An AHO Project shall have a minimum front yard setback of 15 feet, except where the District Dimensional Standards establish a less restrictive requirement, or may be reduced to the average of the front yard setbacks of the four (4) nearest pre-existing principal buildings that contain at least two Stories Above Grade and directly front the same side of the street as the AHO Project, or may be reduced to a minimum of ten (10) feet in the case of an AHO Project on a corner lot. Where the District Dimensional Standards set forth different requirements for residential and non-residential uses, the

non-residential front yard setback requirement shall apply to the entire AHO Project if the Ground Story contains a non-residential use as set forth in Section 11.207.4 Paragraph (b) above; otherwise, the residential front yard setback shall apply.

- (c) Side Yards. An AHO Project shall have a minimum side yard setback of seven and one-half (7.5) feet, or may be reduced to the minimum side yard setback set forth in the District Dimensional Standards for residential uses that is not derived by formula if it is less restrictive.
- (d) Rear Yards. An AHO Project shall have a minimum rear yard setback of twenty (20) feet, or may be reduced to the minimum rear yard setback set forth in the District Dimensional Standards for residential uses that is not derived by formula if it is less restrictive.
- (e) Projecting eaves, chimneys, bay windows, balconies, open fire escapes and like projections which do not project more than three and one-half (3.5) feet from the principal exterior wall plane, and unenclosed steps, unroofed porches and the like which do not project more than ten (10) feet beyond the line of the foundation wall and which are not over four (4) feet above Grade, may extend beyond the minimum yard setback.
- (f) Bicycle parking spaces, whether short-term or long-term, and appurtenant structures such as coverings, sheds, or storage lockers may be located within a required yard setback but no closer than seven and one-half (7.5) feet to an existing principal residential structure on an abutting lot.

#### 11.207.5.2.4 Open Space

- (a) Except where the District Dimensional Standards establish a less restrictive requirement or as otherwise provided below, the minimum percentage of open space to lot area for an AHO Project shall be thirty percent (30%). However, the minimum percentage of open space to lot area may be reduced to no less than fifteen percent (15%) if the AHO Project includes the preservation and protection of an existing building included on the State Register of Historic Places.
- (b) The required open space shall be considered Private Open Space but shall be subject to the limitations set forth below and shall not be subject to the dimensional and other limitations set forth in Section 5.22 of this Zoning

Ordinance. Private Open Space shall exclude parking and driveways for automobiles.

- (c) All of the required open space that is located at grade shall meet the definition of Permeable Open Space as set forth in this Zoning Ordinance.
- (d) The required open space shall be located at Grade or on porches and decks that are no higher than the floor elevation of the lowest Story Above Grade, except that up to twenty five percent (25%) of the required open space may be located at higher levels, such as balconies and decks, only if it is accessible to all occupants of the building.
- (e) For the purpose of this Affordable Housing Overlay, area used for covered or uncovered bicycle parking spaces that are not contained within a building shall be considered Private Open Space.

#### 11.207.5.3 Standards for Existing Buildings

A building that is in existence as of the effective date of this Ordinance and does not conform to the standards set forth in Section 11.207.5.2 above may be altered, reconstructed, extended, relocated, and/or enlarged for use as an AHO Project as-of-right in accordance with the standards set forth below. Except as otherwise stated, the required dimensional characteristics of the building and site shall be those existing at the time of the conversion to an AHO Project if they do not conform to the standards of Section 11.207.5.2. The following modifications shall be permitted as-of-right, notwithstanding the limitations set forth in Article 8.000 of this Zoning Ordinance:

- (a) Construction occurring entirely within an existing structure, including the addition of Gross Floor Area within the interior of the existing building envelope that may violate or further violate FAR limitations set forth in Section 11.207.5.2, and including any increase to the number of dwelling units within the existing building, provided that the resulting number of Stories Above Grade is not more than the greater of the existing number of Stories Above Grade or the existing height of the building divided by 10 feet.
- (b) The relocation, enlargement, or addition of windows, doors, skylights, or similar openings to the exterior of a building.

- (c) The addition of insulation to the exterior of an existing exterior wall to improve energy efficiency, provided that the resulting exterior plane of the wall shall either conform to the yard setback standards set forth in Section 11.207.5.2 above or shall not intrude more than eight (8) inches further into the existing yard setback and provided that the lot shall either conform to the open space standards set forth in Section 11.207.5.2 or shall not decrease the existing open space by more than 5% or 100 square feet, whichever is greater.
- (d) The installation of exterior features necessary for the existing structure to be adapted to meet accessibility standards for persons with disabilities, including but not limited to walkways, ramps, lifts, or elevators, which may violate or further violate of the dimensional requirements set forth in Section 11.207.5.2.
- (e) The repair, reconstruction, or replacement of any preexisting nonconforming portions of a building including but not limited to porches, decks, balconies, bay windows and building additions, provided that the repair, reconstruction or replacement does not exceed the original in footprint, volume, or area.
- (f) Any other alterations, additions, extensions, or enlargements to the existing building that are not further in violation of the dimensional requirements set forth in Section 11.207.5.2 above.

#### 11.207.6 Parking and Bicycle Parking

The limitations set forth in Article 6.000 of this Zoning Ordinance shall be modified as set forth below for an AHO Project.

##### 11.207.6.1 Required Off-Street Accessory Parking

- (a) There shall be no required minimum number of off-street parking spaces for an AHO Project except to the extent necessary to conform to other applicable laws, codes, or regulations.
- (b) An AHO Project of greater than 20 units, for which no off-street parking is provided shall provide or have access to either on-street or off-street facilities that can accommodate passenger pick-up and drop-off by motor vehicles and short-term loading by moving vans or small delivery trucks. The Cambridge Traffic, Parking, and Transportation Department shall certify to the Superintendent of Buildings

that the AHO Project is designed to reasonably accommodate such activity without causing significant hazard or congestion. The Cambridge Director of Traffic, Parking, and Transportation shall have the authority to promulgate regulations for the implementation of the provisions of this Paragraph.

#### 11.207.6.2 Accessory Parking Provided Off-Site

- (a) Off-street parking facilities may be shared by multiple AHO Projects, provided that the requirements of this Section are met by all AHO Dwelling Units served by the facility and the facility is within 1,000 feet of all AHO Projects that it serves.
- (b) Off-street parking facilities for an AHO Project may be located within existing parking facilities located within 1,000 feet of the AHO Project and in a district where parking is permitted as a principal use or where the facility is a pre-existing nonconforming principal use parking facility, provided that the owner of the AHO Project shall provide evidence of fee ownership, a long-term lease agreement or renewable short-term lease agreement, recorded covenant, or comparable legal instrument to guarantee, to the reasonable satisfaction of the Superintendent of Buildings, that such facilities will be available to residents of the AHO Project.

#### 11.207.6.3 Modifications to Design and Layout Standards for Off-Street Parking

- (a) Notwithstanding Section 6.43.2, parking spaces may be arranged in tandem without requiring a special permit, provided that no more than two cars may be parked within any tandem parking space.
- (b) Notwithstanding Section 6.43.6, owners of adjacent properties may establish common driveways under mutual easements without requiring a special permit.
- (c) Notwithstanding Paragraph 6.44.1(a), on-grade open parking spaces may be located within ten (10) feet but not less than five (5) feet from the Ground Story of a building on the same lot or seven and one-half (7.5) feet from the Ground Story of a building on an adjacent lot without requiring a special permit, provided that such parking spaces are screened from buildings on abutting lots by a fence or other dense year-round visual screen.

- (d) Notwithstanding Paragraph 6.44.1(b), on-grade open parking spaces and driveways may be located within five (5) feet of a side or rear property line without requiring a special permit, provided that screening is provided in the form of a fence or other dense year-round visual screen at the property line, unless such screening is waived by mutual written agreement of the owner of the lot and the owner of the abutting lot.

#### 11.207.6.4 Modifications to Bicycle Parking Standards

- (a) Notwithstanding Section 6.104, long-term or short-term bicycle parking spaces may be located anywhere on the lot for an AHO Project or on an adjacent lot in common ownership or under common control.
- (b) Notwithstanding Section 6.107.5, up to 20 long-term bicycle parking spaces may be designed to meet the requirements for Short-Term Bicycle Parking Spaces, so long as they are covered from above to be protected from precipitation.
- (c) The requirement for short-term bicycle parking shall be waived where only four or fewer short-term bicycle parking spaces would otherwise be required.
- (d) The number of required bicycle parking spaces shall be reduced by half, up to a maximum reduction of 28 spaces, where a standard-size (19-dock) Public Bicycle Sharing Station is provided on the lot or by the developer of the AHO Project on a site within 500 feet of the lot, with the written approval of the City if located on a public street or other City property, or otherwise by legally enforceable mutual agreement with the owner of the land on which the station is located as approved by the Community Development Department. If additional Public Bicycle Sharing Station docks are provided, the number of required bicycle parking spaces may be further reduced at a rate of 0.5 bicycle parking space per additional Public Bicycle Sharing Station dock, up to a maximum reduction of half of the required number of spaces.
- (e) For AHO Dwelling Units created within an existing building, bicycle parking spaces meeting the standards of this Zoning Ordinance shall not be required but are encouraged to be provided to the extent practical given the limitations of the existing structure. Bicycle parking spaces shall be provided, as required by this Zoning Ordinance, for

dwelling units in an AHO Project that are constructed fully outside the envelope of the existing structure.

#### 11.207.6.5 Transportation Demand Management

An AHO Project not providing off-street parking at a ratio of 0.4 space per dwelling unit or more shall provide, in writing, to the Community Development Department a Transportation Demand Management program containing the following measures, at a minimum:

- (a) Offering either a free annual membership in a Public Bicycle Sharing Service, at the highest available tier where applicable, or a 50% discounted MBTA combined subway and bus pass for six months or pass of equivalent value, to up to two individuals in each household upon initial occupancy of a unit.
- (b) Providing transit information in the form of transit maps and schedules to each household upon initial occupancy of a unit, or providing information and a real-time transit service screen in a convenient common area of the building such as an entryway or lobby.

#### 11.207.7 Building and Site Design Standards for New Development

##### 11.207.7.1 General Provisions

- (a) Except where otherwise stated, the Project Review requirements set forth in Article 19.000 of this Zoning Ordinance and any design standards set forth in Section 19.50 or elsewhere in the Zoning Ordinance shall be superseded by the following standards for an AHO Project.
- (b) The following design standards shall apply to new construction and to additions to existing structures. Except as otherwise provided, an existing building that is altered or moved to accommodate an AHO Project shall not be subject to the following standards, provided that such alterations do not create a condition that is in greater nonconformance with such standards than the existing condition.

##### 11.207.7.2 Site Design and Arrangement

- (a) The area directly between the front lot line and the principal wall plane of the building nearest to the front lot line shall consist of any combination of landscaped area, hardscaped area accessible to pedestrians and bicyclists,



and usable spaces such as uncovered porches, patios, or balconies. Parking shall not be located within such area, except for driveway access which shall be limited to a total of thirty (30) feet of width for any individual driveway for each one hundred (100) feet of lot frontage.

- (b) Pedestrian entrances to buildings shall be visible from the street, except where the building itself is not visible from the street due to its location. All pedestrian entrances shall be accessible by way of access routes that are separated from motor vehicle access drives.
- (c) A building footprint exceeding two hundred and fifty (250) feet in length, measured parallel to the street, shall contain a massing recess extending back at least fifteen (15) feet in depth measured from and perpendicular to the front lot line and at least fifteen (15) feet in width measured parallel to the front lot line so that the maximum length of unbroken façade is one hundred fifty (150) feet.

#### 11.207.7.3 Building Façades

- (a) At least twenty percent (20%) of the area of building façades facing a public street or public open space shall consist of clear glass windows. For buildings located in a Business A (BA), Business A-2 (BA-2), Business B (BB) or Business C (BC) zoning district, this figure shall be increased to thirty percent (30%) for non-residential portions of the building, if any.
- (b) Building façades shall incorporate architectural elements that project or recess by at least two feet from the adjacent section of the façade. Such projecting or recessed elements shall occur on an average interval of 40 linear horizontal feet or less for portions of the façade directly facing a public street, and on an average interval of 80 linear horizontal feet or less for other portions of the façade. Such projecting or recessed elements shall not be required on the lowest Story Above Grade or on the highest Story Above Grade, and shall not be required on the highest two Stories Above Grade of a building containing at least six Stories Above Grade. The intent is to incorporate elements such as bays, balconies, cornices, shading devices, or similar architectural elements that promote visual interest and residential character, and to allow variation at the ground floor and on upper floors where a different architectural treatment may be preferable.

#### 11.207.7.4 Ground Stories and Stories Below Grade

- (a) The elevation at floor level of the Ground Story shall be at the mean Grade of the abutting public sidewalk, or above such mean Grade by not more than four feet. Active non-residential uses at the Ground Story shall be accessible directly from the sidewalk without requiring use of stairs or a lift. The requirements of this paragraph shall not apply if it is determined by the City Engineer that a higher Ground Story elevation is necessary for the purpose of flood protection.
- (b) Where structured parking is provided within the Ground Story of a building, the portion of the building immediately behind the front wall plane shall consist of residential units, common areas, or other populated portions of the building in order to screen the provided parking over at least seventy-five percent (75%) of the length of the façade measured parallel to the street and excluding portions of the façade used for driveway access. On a corner lot, the requirements of this Paragraph shall only apply along one street.
- (c) The façade of a Ground Story facing a public street shall consist of expanses no longer than twenty-five (25) feet in length, measured parallel to the street, which contain no transparent windows or pedestrian entryways.
- (d) If the Ground Story is designed to accommodate active non-residential uses, the following additional standards shall apply:
  - (i) the height of the Ground Story for that portion of the building containing active non-residential uses shall be at least fifteen (15) feet;
  - (ii) the depth of the space designed for active non-residential uses shall be at least thirty-five (35) feet on average measured from the portion of the façade that is nearest to the front lot line in a direction perpendicular to the street, and measured to at least one street in instances where the space abuts two or more streets; and
  - (iii) that portion of the Ground Story façade containing active non-residential uses shall consist of at least thirty percent (30%) transparent glass windows or, if the use is a retail or consumer service establishment, at least thirty percent (30%) transparent glass windows, across the combined façade on both streets in the case of a corner lot.

- (e) Ground Stories shall be designed to accommodate at least one space, with a total frontage equaling at least fifty percent (50%) of the existing retail frontage, for an active non-residential use, which may include retail or consumer establishments as well as social service facilities supporting the mission of the owner of the AHO Project, on sites that are located in a Business base zoning district, and where the project site contains or has contained a retail and or consumer service use at any point within the past two years prior to application for a building permit for an AHO Project.
- (f) Private living spaces within dwelling units, including bedrooms, kitchens, and bathrooms, may only be contained within Stories Above Grade. Stories Below Grade may only contain portions of dwelling units providing entries, exits, or mechanical equipment, or common facilities for residents of the building, such as lobbies, recreation rooms, laundry, storage, parking, bicycle parking, or mechanical equipment

#### 11.207.7.5 Mechanical Equipment, Refuse Storage, and Loading Areas

- (a) All mechanical equipment, refuse storage, or loading areas serving the building or its occupants that are (1) carried above the roof, (2) located at the exterior building wall or (3) located outside the building, shall meet the requirements listed below. Mechanical equipment includes, but is not limited to, ventilation equipment including exhaust fans and ducts, air conditioning equipment, elevator bulkheads, heat exchangers, transformers and any other equipment that, when in operation, potentially creates a noise detectable off the lot. The equipment and other facilities: (a) Shall not be located within any required setback. This Paragraph (a) shall not apply to electrical equipment whose location is mandated by a recognized public utility, provided that project plans submitted for review by the City identify a preferred location for such equipment.
- (b) When on the ground, shall be permanently screened from view from adjacent public streets that are within 100 feet of the building, or from the view from abutting property in separate ownership at the property line. The screening shall consist of a dense year-round screen equal or greater in height at the time of installation than the equipment or facilities to be screened, or a fence of equal or greater

height that is comparable in quality to the materials used on the principal facades of the building, with no more than twenty-five (25) percent of the face of the fence open with adjacent planting.

- (c) When carried above the roof, shall be set back from the principal wall plane by a dimension equal to at least the height of the equipment and permanently screened from view, from the ground, from adjacent public streets and any abutting residentially used lot or lots in a residential zoning district. The screening shall be at least seventy-five percent (75%) opaque and uniformly distributed across the screening surface, or opaque to the maximum extent permissible if other applicable laws, codes, or regulations mandate greater openness.
- (d) Shall meet all city, state and federal noise regulations, as applicable, as certified by a professional acoustical engineer if the Department of Inspectional Services deems such certification necessary.
- (e) That handle trash and other waste, shall be contained within the building or screened as required in this Section until properly disposed of.

#### 11.207.7.6 Environmental Design Standards

- (a) This Section shall not waive the Green Building Requirements set forth in Section 22.20 of this Zoning Ordinance that may otherwise apply to an AHO Project.
- (b) Where the provisions of the Flood Plain Overlay District apply to an AHO Project, the performance standards set forth in Section 20.70 of this Zoning Ordinance shall apply; however, a special permit shall not be required.
- (c) An AHO Project shall be subject to other applicable laws, regulations, codes, and ordinances pertaining to environmental standards.
- (d) New outdoor light fixtures installed in an AHO Project shall be fully shielded and directed to prevent light trespass onto adjacent residential lots.

#### 11.207.8 Advisory Design Consultation Procedure

Prior to application for a building permit, the developer of an AHO Project shall comply with the following procedure, which is intended to provide an opportunity for non-binding community and staff input into the design of the project.

- (a) The intent of this non-binding review process is to advance the City's desired outcomes for the form and character of AHO Projects. To promote the City's goal of creating more affordable housing units, AHO Projects are permitted to have a greater height, scale, and density than other developments permitted by the zoning for a given district. This procedure is intended to promote design outcomes that are compatible with the existing neighborhood context or with the City's future planning objectives for the area.
- (b) The City's "Design Guidelines for Affordable Housing Overlay," along with other design objectives and guidelines established for the part of the city in which the AHO Project is located, are intended to inform the design of AHO Projects and to guide the Planning Board's consultation and report as set forth below. It is intended that designers of AHO Projects, City staff, the Planning Board, and the general public will be open to creative variations from any detailed provisions set forth in such objectives and guidelines as long as the core values expressed are being served.
- (c) At least two community meetings shall be scheduled at a time and location that is convenient to residents in proximity to the project site. The Community Development Department (CDD) shall be notified of the time and location of such meetings, and shall give notification to abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the lot on which the AHO Project is proposed and to any individual or organization who each year files with CDD a written request for such notification, or to any other individual or organization CDD may wish to notify.
  - (i) The purpose of the first community meeting shall be for the developer to share the site and street context analysis with neighborhood residents and other interested parties prior to building design, and receive feedback from community members.
  - (ii) The purpose of the subsequent community meeting(s) shall be to present preliminary project designs, answer questions from neighboring residents and other interested members of the public, and receive feedback on the design. The date(s), time(s), location(s), attendance, materials presented, and comments received at such

meeting(s) shall be documented and provided to CDD.

- (d) Following one or more such community meeting(s), the developer shall prepare the following materials for review by the Planning Board. CDD shall review to certify that the submitted written and graphic materials provide the required information in sufficient detail. All drawings shall be drawn to scale, shall include a graphic scale and north arrow for orientation, and shall provide labeled distances and dimensions for significant building and site features.
  - (i) A context map indicating the location of the project and surrounding land uses, including transportation facilities.
  - (ii) A context analysis, discussed with CDD staff, including existing front yard setbacks, architectural character, and unique features that inform and influence the design of the AHO Project.
  - (iii) An existing conditions site plan depicting the boundaries of the lot, the locations of buildings, open space features, parking areas, trees, and other major site features on the lot and abutting lots, and the conditions of abutting streets.
  - (iv) A proposed conditions site plan depicting the same information above as modified to depict the proposed conditions, including new buildings (identifying building entrances and uses on the ground floor and possible building roof deck) and major anticipated changes in site features.
  - (v) A design statement on how the proposed project attempts to reinforce existing street/context qualities and mitigates the planned project's greater massing, height, density, &c.
  - (vi) Floor plans of all proposed new buildings and existing buildings to remain on the lot.
  - (vii) Elevations and cross-section drawings of all proposed new buildings and existing buildings to remain on the lot, depicting the distances to lot lines and the heights of surrounding buildings, and labeling the proposed materials on each façade elevation.

- (viii) A landscape plan depicting and labeling all hardscape, permeable, and vegetated areas proposed for the site along with other structures or appurtenances on the site.
  - (ix) Plans of parking and bicycle parking facilities, as required by Section 6.50 of this Zoning Ordinance.
  - (x) Materials palettes cataloguing and depicting with photographs the proposed façade and landscape materials.
  - (xi) Existing conditions photographs from various vantage points on the public sidewalk, including photos of the site and of the surrounding urban context.
  - (xii) Proposed conditions perspective renderings from a variety of vantage points on the public sidewalk, including locations adjacent to the site as well as longer views if proposed buildings will be visible from a distance.
  - (xiii) A dimensional form, in a format provided by CDD, along with any supplemental materials, summarizing the general characteristics of the project and demonstrating compliance with applicable zoning requirements.
  - (xiv) A brief project narrative describing the project and the design approach, and indicating how the project has been designed in relation to the citywide urban design objectives set forth in Section 19.30 of the Zoning Ordinance, any design guidelines that have been established for the area, and the “Design Guidelines for Affordable Housing Overlay.”
  - (xv) Viewshed analysis and shadow studies that show the impact on neighboring properties with existing Solar Energy Systems.
  - (xvi) An initial development budget that shows anticipated funding sources and uses including developer fee and overhead.
- (e) Within 65 days of receipt of a complete set of materials by CDD, the Planning Board shall schedule a design consultation as a general business matter at a public meeting and shall give notification to abutters, owners of land directly opposite on any public or private street or

way, and abutters to the abutters within three hundred feet of the property line of the lot on which the AHO Project is proposed and to any individual or organization who each year files with CDD a written request for such notification, or to any other individual or organization CDD may wish to notify. The materials shall be made available to the public in advance, and the Planning Board may receive written comments prior to the meeting from City staff, abutters, and members of the public.

- (f) At the scheduled design consultation, the Planning Board shall hear a presentation of the proposal from the developer and oral comments from the public. The Board may ask questions or seek additional information from the developer or from City staff.
- (g) The Planning Board shall evaluate the proposal for general compliance with the requirements of this Section, for consistency with City development guidelines prepared for the proposal area and the “Design Guidelines for Affordable Housing Overlay,” for appropriateness in terms of other planned or programmed public or private development activities in the vicinity, and for consistency with the Citywide Urban Design Objectives set forth in Section 19.30. The Board may also suggest specific project adjustments and alterations to further the purposes of this Ordinance. The Board shall communicate its findings in a written report provided to the developer and to CDD within 20 days of the design consultation.
- (h) The developer may then make revisions to the design, in consultation with CDD staff, and shall submit a revised set of documents along with a narrative summary of the Planning Board’s comments and changes made in response to those comments.
- (i) The Planning Board shall review and discuss the revised documents at a second design consultation meeting, which shall proceed in accordance with Paragraphs (c) and (d) above. Following the second design consultation, the Planning Board may submit a revised report and either the revised report or if there are no revisions the initial report shall become the final report (the “Final Report”). Any additional design consultations to review further revisions may occur only at the discretion and on the request of the developer or the Cambridge Affordable Housing Trust.



- (j) The Final Report from the Planning Board shall be provided to the Superintendent of Buildings to certify compliance with the procedures set forth herein.

#### 11.207.9 Implementation of Affordable Housing Overlay

- (a) The City Manager shall have the authority to promulgate regulations for the implementation of the provisions of this Section 11.207. There shall be a sixty-day review period, including a public meeting, to receive public comments on draft regulations before final promulgation.
- (b) The Community Development Department may develop standards, design guidelines, and procedures appropriate to and consistent with the provisions of this Sections 11.207 and the above regulations.

#### 11.207.10 Enforcement of Affordable Housing Overlay

The Community Development Department shall certify in writing to the Superintendent of Buildings that all applicable provisions of this Section have been met before issuance of any building permit for any AHO Project, and shall further certify in writing to the Superintendent of Buildings that all documents have been filed and all actions taken necessary to fulfill the requirements of this Section before the issuance of any certificate of occupancy for any such project.

#### 11.207.11 Review of Affordable Housing Overlay

- (a) Annual Report. CDD shall provide an annual status report to the City Council, beginning eighteen (18) months after ordination and continuing every year thereafter. The report shall contain the following information:
  - (i) List of sites considered for affordable housing development under the Affordable Housing Overlay, to the extent known by CDD, including site location, actions taken to initiate an AHO Project, and site status;
  - (ii) Description of each AHO Project underway or completed, including site location, number of units, unit types (number of bedrooms), tenure, and project status; and
  - (iii) Number of residents served by AHO Projects.
- (b) Five-Year Progress Review. Five (5) years after ordination, CDD shall provide to the City Council, Planning Board and

the Affordable Housing Trust, for its review, a report that assesses the effectiveness of the Affordable Housing Overlay in increasing the number of affordable housing units in the city, distributing affordable housing across City neighborhoods, and serving the housing needs of residents. The report shall also assess the effectiveness of the Advisory Design Consultation Procedure in gathering meaningful input from community members and the Planning Board and shaping AHO Projects to be consistent with the stated Design Objectives. The report shall evaluate the success of the Affordable Housing Overlay in balancing the goal of increasing affordable housing with other City planning considerations such as urban form, neighborhood character, environment, and mobility. The report shall discuss citywide outcomes as well as site-specific outcomes.

Passed to a second reading as amended at the City Council meeting held on September 14, 2020 and on or after October 5, 2020 the question comes on passage to be ordained.

Attest:- Anthony I. Wilson  
City Clerk

## Assembly Bill No. 1763

### CHAPTER 666

An act to amend Section 65915 of the Government Code, relating to housing.

[Approved by Governor October 9, 2019. Filed with Secretary of State October 9, 2019.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1763, Chiu. Planning and zoning: density bonuses: affordable housing.

Existing law, known as the Density Bonus Law, requires a city or county to provide a developer that proposes a housing development within the jurisdictional boundaries of that city or county with a density bonus and other incentives or concessions for the production of lower income housing units, or for the donation of land within the development, if the developer agrees to construct a specified percentage of units for very low income, low-income, or moderate-income households or qualifying residents and meets other requirements. Existing law provides for the calculation of the amount of density bonus for each type of housing development that qualifies under these provisions.

This bill would additionally require a density bonus to be provided to a developer who agrees to construct a housing development in which 100% of the total units, exclusive of managers' units, are for lower income households, as defined. However, the bill would provide that a housing development that qualifies for a density bonus under its provisions may include up to 20% of the total units for moderate-income households, as defined. The bill would also require that a housing development that meets these criteria receive 4 incentives or concessions under the Density Bonus Law and, if the development is located within ½ of a major transit stop, a height increase of up to 3 additional stories or 33 feet. The bill would generally require that the housing development receive a density bonus of 80%, but would exempt the housing development from any maximum controls on density if it is located within ½ mile of a major transit stop. The bill would prohibit a housing development that receives a waiver from any maximum controls on density under these provisions from receiving a waiver or reduction of development standards pursuant to existing law, other than as expressly provided in the bill. The bill would also make various nonsubstantive changes to the Density Bonus Law.

Existing law requires that an applicant for a density bonus agree to, and that the city and county ensure, the continued affordability of all very low and low-income rental units that qualified the applicant for a density bonus for at least 55 years, as provided. Existing law requires that the rent for

lower income density bonus units be set at an affordable rent, as defined in specified law.

This bill, for units, including both base density and density bonus units, in a housing development that qualifies for a density bonus under its provisions as described above, would instead require that the rent for at least 20% of the units in that development be set at an affordable rent, defined as described above, and that the rent for the remaining units be set at an amount consistent with the maximum rent levels for a housing development that receives an allocation of state or federal low-income housing tax credits from the California Tax Credit Allocation Committee.

Existing law, upon the request of the developer, prohibits a city, county, or city and county from requiring a vehicular parking ratio for a development meeting the eligibility requirements under the Density Bonus Law that exceeds specified ratios. For a development that consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families, as provided in specified law, and that is a special needs housing development, as defined, existing law limits that vehicular parking ratio to 0.3 spaces per unit.

This bill would instead, upon the request of the developer, prohibit a city, county, or city and county from imposing any minimum vehicular parking requirement for a development that consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families and is either a special needs housing development or a supportive housing development, as those terms are defined.

By adding to the duties of local planning officials with respect to the award of density bonuses, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Section 65915 of the Government Code, as amended by Chapter 937 of the Statutes of 2018, is amended to read:

65915. (a) (1) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall comply with this section. A city, county, or city and county shall adopt an ordinance that specifies how compliance with this section will be implemented. Failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.

(2) A local government shall not condition the submission, review, or approval of an application pursuant to this chapter on the preparation of an

additional report or study that is not otherwise required by state law, including this section. This subdivision does not prohibit a local government from requiring an applicant to provide reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p).

(3) In order to provide for the expeditious processing of a density bonus application, the local government shall do all of the following:

(A) Adopt procedures and timelines for processing a density bonus application.

(B) Provide a list of all documents and information required to be submitted with the density bonus application in order for the density bonus application to be deemed complete. This list shall be consistent with this chapter.

(C) Notify the applicant for a density bonus whether the application is complete in a manner consistent with the timelines specified in Section 65943.

(D) (i) If the local government notifies the applicant that the application is deemed complete pursuant to subparagraph (C), provide the applicant with a determination as to the following matters:

(I) The amount of density bonus, calculated pursuant to subdivision (f), for which the applicant is eligible.

(II) If the applicant requests a parking ratio pursuant to subdivision (p), the parking ratio for which the applicant is eligible.

(III) If the applicant requests incentives or concessions pursuant to subdivision (d) or waivers or reductions of development standards pursuant to subdivision (e), whether the applicant has provided adequate information for the local government to make a determination as to those incentives, concessions, or waivers or reductions of development standards.

(ii) Any determination required by this subparagraph shall be based on the development project at the time the application is deemed complete. The local government shall adjust the amount of density bonus and parking ratios awarded pursuant to this section based on any changes to the project during the course of development.

(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f), and, if requested by the applicant and consistent with the applicable requirements of this section, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

(D) Ten percent of the total dwelling units in a common interest development, as defined in Section 4100 of the Civil Code, for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(E) Ten percent of the total units of a housing development for transitional foster youth, as defined in Section 66025.9 of the Education Code, disabled veterans, as defined in Section 18541, or homeless persons, as defined in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.). The units described in this subparagraph shall be subject to a recorded affordability restriction of 55 years and shall be provided at the same affordability level as very low income units.

(F) (i) Twenty percent of the total units for lower income students in a student housing development that meets the following requirements:

(I) All units in the student housing development will be used exclusively for undergraduate, graduate, or professional students enrolled full time at an institution of higher education accredited by the Western Association of Schools and Colleges or the Accrediting Commission for Community and Junior Colleges. In order to be eligible under this subclause, the developer shall, as a condition of receiving a certificate of occupancy, provide evidence to the city, county, or city and county that the developer has entered into an operating agreement or master lease with one or more institutions of higher education for the institution or institutions to occupy all units of the student housing development with students from that institution or institutions. An operating agreement or master lease entered into pursuant to this subclause is not violated or breached if, in any subsequent year, there are not sufficient students enrolled in an institution of higher education to fill all units in the student housing development.

(II) The applicable 20-percent units will be used for lower income students. For purposes of this clause, “lower income students” means students who have a household income and asset level that does not exceed the level for Cal Grant A or Cal Grant B award recipients as set forth in paragraph (1) of subdivision (k) of Section 69432.7 of the Education Code. The eligibility of a student under this clause shall be verified by an affidavit, award letter, or letter of eligibility provided by the institution of higher education that the student is enrolled in, as described in subclause (I), or by the California Student Aid Commission that the student receives or is eligible for financial aid, including an institutional grant or fee waiver, from the college or university, the California Student Aid Commission, or the federal government shall be sufficient to satisfy this subclause.

(III) The rent provided in the applicable units of the development for lower income students shall be calculated at 30 percent of 65 percent of the area median income for a single-room occupancy unit type.

(IV) The development will provide priority for the applicable affordable units for lower income students experiencing homelessness. A homeless service provider, as defined in paragraph (3) of subdivision (d) of Section 103577 of the Health and Safety Code, or institution of higher education that has knowledge of a person's homeless status may verify a person's status as homeless for purposes of this subclause.

(ii) For purposes of calculating a density bonus granted pursuant to this subparagraph, the term "unit" as used in this section means one rental bed and its pro rata share of associated common area facilities. The units described in this subparagraph shall be subject to a recorded affordability restriction of 55 years.

(G) One hundred percent of the total units, exclusive of a manager's unit or units, are for lower income households, as defined by Section 50079.5 of the Health and Safety Code, except that up to 20 percent of the total units in the development may be for moderate-income households, as defined in Section 50053 of the Health and Safety Code.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), an applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), (D), (E), (F), or (G) of paragraph (1).

(3) For the purposes of this section, "total units," "total dwelling units," or "total rental beds" does not include units added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

(c) (1) (A) An applicant shall agree to, and the city, county, or city and county shall ensure, the continued affordability of all very low and low-income rental units that qualified the applicant for the award of the density bonus for 55 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

(B) (i) Except as otherwise provided in clause (ii), rents for the lower income density bonus units shall be set at an affordable rent, as defined in Section 50053 of the Health and Safety Code.

(ii) For housing developments meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b), rents for all units in the development, including both base density and density bonus units, shall be as follows:

(I) The rent for at least 20 percent of the units in the development shall be set at an affordable rent, as defined in Section 50053 of the Health and Safety Code.

(II) The rent for the remaining units in the development shall be set at an amount consistent with the maximum rent levels for a housing development that receives an allocation of state or federal low-income housing tax credits from the California Tax Credit Allocation Committee.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of all for-sale units that qualified the applicant for the award of the density bonus are persons and families of very low, low, or moderate income, as required, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code. The local government shall enforce an equity sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following apply to the equity sharing agreement:

(A) Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The local government shall recapture any initial subsidy, as defined in subparagraph (B), and its proportionate share of appreciation, as defined in subparagraph (C), which amount shall be used within five years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote home ownership.

(B) For purposes of this subdivision, the local government's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

(C) For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the ratio of the local government's initial subsidy to the fair market value of the home at the time of initial sale.

(3) (A) An applicant shall be ineligible for a density bonus or any other incentives or concessions under this section if the housing development is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low income households, unless the proposed housing development replaces those units, and either of the following applies:

(i) The proposed housing development, inclusive of the units replaced pursuant to this paragraph, contains affordable units at the percentages set forth in subdivision (b).

(ii) Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.

(B) For the purposes of this paragraph, "replace" shall mean either of the following:

(i) If any dwelling units described in subparagraph (A) are occupied on the date of application, the proposed housing development shall provide at least the same number of units of equivalent size to be made available at



affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy. If the income category of the household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. For unoccupied dwelling units described in subparagraph (A) in a development with occupied units, the proposed housing development shall provide units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as the last household in occupancy. If the income category of the last household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) If all dwelling units described in subparagraph (A) have been vacated or demolished within the five-year period preceding the application, the proposed housing development shall provide at least the same number of units of equivalent size as existed at the highpoint of those units in the five-year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known. If the incomes of the persons and families in occupancy at the highpoint is not known, it shall be rebuttably presumed that low-income and very low income renter households occupied these units in the same proportion of low-income and very low income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(C) Notwithstanding subparagraph (B), for any dwelling unit described in subparagraph (A) that is or was, within the five-year period preceding the application, subject to a form of rent or price control through a local government's valid exercise of its police power and that is or was occupied

by persons or families above lower income, the city, county, or city and county may do either of the following:

(i) Require that the replacement units be made available at affordable rent or affordable housing cost to, and occupied by, low-income persons or families. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) Require that the units be replaced in compliance with the jurisdiction's rent or price control ordinance, provided that each unit described in subparagraph (A) is replaced. Unless otherwise required by the jurisdiction's rent or price control ordinance, these units shall not be subject to a recorded affordability restriction.

(D) For purposes of this paragraph, "equivalent size" means that the replacement units contain at least the same total number of bedrooms as the units being replaced.

(E) Subparagraph (A) does not apply to an applicant seeking a density bonus for a proposed housing development if the applicant's application was submitted to, or processed by, a city, county, or city and county before January 1, 2015.

(d) (1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:

(A) The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

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

(C) The concession or incentive would be contrary to state or federal law.

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.

(B) Two incentives or concessions for projects that include at least 20 percent of the total 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 common interest development.

(C) Three incentives or concessions for projects that include at least 30 percent of the total 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 common interest development.

(D) Four incentives or concessions for projects meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b). If the project is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, the applicant shall also receive a height increase of up to three additional stories, or 33 feet.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section that shall include legislative body approval of the means of compliance with this section.

(4) The city, county, or city and county shall bear the burden of proof for the denial of a requested concession or incentive.

(e) (1) In no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. Subject to paragraph (3), an applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical

environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

(2) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(3) A housing development that receives a waiver from any maximum controls on density pursuant to clause (ii) of subparagraph (D) of paragraph (3) of subdivision (f) shall not be eligible for, and shall not receive, a waiver or reduction of development standards pursuant to this subdivision, other than as expressly provided in subparagraph (D) of paragraph (2) of subdivision (d) and clause (ii) of subparagraph (D) of paragraph (3) of subdivision (f).

(f) For the purposes of this chapter, “density bonus” means a density increase over the otherwise maximum allowable gross residential density as of the date of application by the applicant to the city, county, or city and county, or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density. The amount of density increase to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
17	30.5
18	32
19	33.5
20	35

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Very Low Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(3) (A) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of senior housing units.

(B) For housing developments meeting the criteria of subparagraph (E) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of the type of units giving rise to a density bonus under that subparagraph.

(C) For housing developments meeting the criteria of subparagraph (F) of paragraph (1) of subdivision (b), the density bonus shall be 35 percent of the student housing units.

(D) For housing developments meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b), the following shall apply:

(i) Except as otherwise provided in clause (ii), the density bonus shall be 80 percent of the number of units for lower income households.

(ii) If the housing development is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, the city, county, or city and county shall not impose any maximum controls on density.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Moderate-Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19

25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not require, or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

(g) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county in accordance with this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density for the entire development, as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32

28	33
29	34
30	35

(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks an increase pursuant to both this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

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

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned with appropriate development standards for development at the density described in paragraph (3) of subdivision (c) of Section 65583.2, and is or will be served by adequate public facilities and infrastructure.

(D) 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, not later than the date of approval of the final subdivision map, parcel map, or residential development application, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government before the time of transfer.

(E) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of the transfer.

(F) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(G) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(H) A proposed source of funding for the very low income units shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.

(h) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a childcare facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) 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 in the childcare facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the childcare facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The childcare 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 subdivision (c).

(B) Of the children who attend the childcare facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or city and county shall not be required to provide a density bonus or concession for a childcare facility if it finds, based upon substantial evidence, that the community has adequate childcare facilities.

(4) “Childcare facility,” as used in this section, means a child daycare facility other than a family daycare home, including, but not limited to, infant centers, preschools, extended daycare facilities, and schoolage childcare centers.

(i) “Housing development,” as used in this section, means a development project for five or more residential units, including mixed-use developments. For the purposes of this section, “housing development” also includes a subdivision or common interest development, as defined in Section 4100 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.



(j) (1) The granting of a concession or incentive shall not require or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, study, or other discretionary approval. For purposes of this subdivision, “study” does not include reasonable documentation to establish eligibility for the concession or incentive or to demonstrate that the incentive or concession meets the definition set forth in subdivision (k). This provision is declaratory of existing law.

(2) Except as provided in subdivisions (d) and (e), the granting of a density bonus shall not require or be interpreted to require the waiver of a local ordinance or provisions of a local ordinance unrelated to development standards.

(k) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable and actual cost reductions, to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(2) 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 project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable and actual cost reductions to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(l) Subdivision (k) does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) This section does not supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which the applicant is entitled under this section shall be permitted in a manner that is consistent with this section and Division 20 (commencing with Section 30000) of the Public Resources Code.

(n) If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) “Development standard” includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.

(2) “Maximum allowable residential density” means the density allowed under the zoning ordinance and land use element of the general plan, or, if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. If the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

(p) (1) Except as provided in paragraphs (2), (3), and (4), upon the request of the developer, a city, county, or city and county shall not require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivisions (b) and (c), that exceeds the following ratios:

(A) Zero to one bedroom: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) Notwithstanding paragraph (1), if a development includes the maximum percentage of low-income or very low income units provided for in paragraphs (1) and (2) of subdivision (f) and is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and there is unobstructed access to the major transit stop from the development, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds 0.5 spaces per bedroom. For purposes of this subdivision, a development shall have unobstructed access to a major transit stop if a resident is able to access the major transit stop without encountering natural or constructed impediments.

(3) Notwithstanding paragraph (1), if a development consists solely of rental units, exclusive of a manager’s unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health and Safety Code, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds the following ratios:

(A) If the development is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and there is unobstructed access to the major transit stop from the development, the ratio shall not exceed 0.5 spaces per unit.

(B) If the development is a for-rent housing development for individuals who are 62 years of age or older that complies with Sections 51.2 and 51.3 of the Civil Code, the ratio shall not exceed 0.5 spaces per unit. The development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(4) Notwithstanding paragraphs (1) and (8), if a development consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health and Safety Code, and the development is either a special needs housing development, as defined in Section 51312 of the Health and Safety Code, or a supportive housing development, as defined in Section 50675.14 of the Health and Safety Code, then, upon the request of the developer, a city, county, or city and county shall not impose any minimum vehicular parking requirement. A development that is a special needs housing development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(5) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide onsite parking through tandem parking or uncovered parking, but not through onstreet parking.

(6) This subdivision shall apply to a development that meets the requirements of subdivisions (b) and (c), but only at the request of the applicant. An applicant may request parking incentives or concessions beyond those provided in this subdivision pursuant to subdivision (d).

(7) This subdivision does not preclude a city, county, or city and county from reducing or eliminating a parking requirement for development projects of any type in any location.

(8) Notwithstanding paragraphs (2) and (3), if a city, county, city and county, or an independent consultant has conducted an areawide or jurisdictionwide parking study in the last seven years, then the city, county, or city and county may impose a higher vehicular parking ratio not to exceed the ratio described in paragraph (1), based upon substantial evidence found in the parking study, that includes, but is not limited to, an analysis of parking availability, differing levels of transit access, walkability access to transit services, the potential for shared parking, the effect of parking requirements on the cost of market-rate and subsidized developments, and the lower rates of car ownership for low-income and very low income individuals, including seniors and special needs individuals. The city, county, or city and county shall pay the costs of any new study. The city, county, or city and county

shall make findings, based on a parking study completed in conformity with this paragraph, supporting the need for the higher parking ratio.

(9) A request pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(q) Each component of any density calculation, including base density and bonus density, resulting in fractional units shall be separately rounded up to the next whole number. The Legislature finds and declares that this provision is declaratory of existing law.

(r) This chapter shall be interpreted liberally in favor of producing the maximum number of total housing units.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.