



## **PUBLIC NOTICE**

TO INTERESTED PARTIES:

Please be advised that the City of Carlsbad is considering text amendments to its Local Coastal Program (LCP) as summarized below. This LCP amendment is being proposed by the City of Carlsbad and is currently under review. This notice hereby opens a six-week review period after which the Planning Commission and City Council will consider all comments and act on the proposed LCP amendment. The Planning Commission hearing is expected to take place in fall 2019 and will be duly noticed. The City Council hearing is expected to take place in fall 2019 and will be duly noticed.

Copies of the LCP amendment are available for review at the following locations: (1) Carlsbad Planning Division, 1635 Faraday Avenue; (2) City Clerk's Office, 1200 Carlsbad Village Drive; (3) Carlsbad Main Library, 1775 Dove Lane; (4) Georgina Cole Library, 1250 Carlsbad Village Drive; and (5) the California Coastal Commission, 7575 Metropolitan Drive, Suite 103, San Diego, CA 92108-4402. The LCP Amendment is also posted on the city's website at <http://www.carlsbadca.gov/services/depts/planning/agendas.asp>.

### **PROPOSED LCP AMENDMENT SUMMARY**

#### **LCPA 2017-0001 (PUB17Y-0004) – INCLUSIONARY HOUSING AND DENSITY BONUS AMENDMENTS**

The City's Zoning Ordinance is the implementing ordinance for the City's LCP. Accordingly, the LCP amendment is necessary to ensure consistency between the City's proposed amended Zoning Ordinance and its Local Coastal Program. This specific Zoning Code Amendment is as follows:

This project is a city-initiated amendment to the text of the inclusionary housing zoning ordinance (Carlsbad Municipal Code Chapter 21.85) and the density bonus zoning ordinance (Carlsbad Municipal Code Chapter 21.86). The purpose of the proposed amendments is to ensure the city's inclusionary housing regulations are applied equally to rentals and ownership projects and density bonus regulations are consistent with changes to state law. With regard to the LCP, no portion of the LCP land use plan document is proposed to be amended.

If you have any questions, please contact Melanie Saucier, in the Planning Division at (760) 602-4605 or [melanie.saucier@carlsbadca.gov](mailto:melanie.saucier@carlsbadca.gov). Written comments should be sent to the Planning Division at 1635 Faraday Avenue, Carlsbad, California 92008.

PUBLISH DATE: June 7, 2019

PUBLISH DATE FOR U-T SAN DIEGO: June 7, 2019

PUBLISH DATE FOR COAST NEWS: June 7, 2019

**Community & Economic Development**  
**Planning Division**

1635 Faraday Avenue | Carlsbad, CA 92008 | 760-602-4600 | 760-602-8560 fax

**INCLUSIONARY HOUSING AND DENSITY BONUS AMENDMENTS  
ZCA 2017-0001/LCPA 2017-0001 (PUB17Y-0004)**

**PROPOSED TEXT CHANGES TO THE ZONING ORDINANCE (TITLE 21)  
SHOWN IN STRIKETHROUGH/UNDERLINE FORMAT**

---

**AMENDMENTS TO CHAPTER 21.85 INCLUSIONARY HOUSING**

---

**21.85.010 Purpose and intent.**

The purpose and intent of this chapter is as follows:

A. It is an objective of the city, as established by the housing element of the city's general plan, to ensure that all residential development, including all master planned and specific planned communities and all residential subdivisions provide a range of housing opportunities for all identifiable economic segments of the population, including households of lower and moderate income. It is also the policy of the city to:

1. Require that a minimum of fifteen percent of all approved ~~ownership and qualifying rental units~~residential development as set forth in Section 21.85.030(A) be restricted to and affordable to lower-income households; subject to adjustment based on the granting of an inclusionary credit;
2. Require that for those developments which provide ten or more units affordable to lower-income households, at least ten percent of the lower-income units shall have three or more bedrooms;
3. Under certain conditions, allow alternatives to on-site construction as a means of providing affordable units; and
4. In specific cases, allow inclusionary requirements to be satisfied through the payment of an in-lieu fee as an alternative to requiring inclusionary units to be constructed.

B. It is the purpose of this chapter to ensure the implementation of the city objective and policy stated in subsection A.

C. Nothing in this chapter is intended to create a mandatory duty on the part of the city or its employees under the Government Tort Claims Act and no cause of action against the city or its employees is created by this chapter that would not arise independently of the provisions of this chapter. (Ord. CS-109 § II, 2010; Ord. NS-794 § 2, 2006; Ord. NS-535 § 1, 2000)

**21.85.030 Inclusionary housing requirement.**

The inclusionary housing requirements of this chapter shall apply as follows:

A. This chapter shall apply to all housing development projects that result in the construction of new residential units, including mixed use projects that include residential units and residential market-rate dwelling units resulting from new construction of ownership units, including the conversion of apartments to condominiums, ~~and to new construction of rental units where the developer receives direct financial assistance, offsets, or any incentive of the type specified in density bonus law pursuant to the provisions of Chapter 21.86 of this code, and the developer agrees by contract to~~

~~limit rents for below market rate rental units. Any developer not receiving direct financial assistance, offsets, or other incentives may voluntarily agree to provide inclusionary rental units.~~

B. For any residential development or development revision of seven or more units as set forth in subsection A, not less than fifteen percent of the total units approved shall be constructed and restricted both as to occupancy and affordability to lower-income households.

C. For those developments which are required to provide ten or more units affordable to lower-income households, at least ten percent of the lower-income units shall have three or more bedrooms.

D. This chapter shall not apply to the following:

1. Existing residences which are altered, improved, restored, repaired, expanded or extended, provided that the number of units is not increased, except that this chapter shall pertain to the subdivision of land for the conversion of apartments to condominiums;
2. Conversion of a mobile home park pursuant to Section 21.37.120 of the code;
3. The construction of a new residential structure which replaces a residential structure that was destroyed or demolished within two years prior to the application for a building permit for the new residential structure, provided that the number of residential units is not increased from the number of residential units of the previously destroyed or demolished residential structure;
4. Any residential unit which is accessory as defined in Section 21.04.020 of this code;
5. Accessory dwelling units not constructed to fulfill inclusionary housing requirements and developed in accordance with Section 21.10.030 of this code;
6. Any project or portion of a project which is a commercial living unit as defined in Section 21.04.093 of this code;
- ~~7. Any rental unit where the developer does not obtain direct financial assistance, offset, or any other incentive or concession of the type specified in density bonus law, although a mandatory density bonus may have been applied pursuant to the provisions of Chapter 21.86 of this code; and~~
8. Those residential units which have obtained affordable housing approvals prior to the effective date of the ordinance codified in this chapter, as set forth in Section 21.85.160 of this chapter. (Ord. CS-109 §§ IV—VI, 2010; Ord. NS-535 § 1, 2000)

### **21.85.040 Affordable housing standards.**

The affordable housing standards are as follows:

A. All qualifying residential developments pursuant to Section 21.85.030(A) are subject to and must satisfy the inclusionary housing requirements of this chapter, notwithstanding a developer's request to process a residential development under other program requirements, laws or regulations, including but not limited to Chapter 21.86 (Residential Density Bonus) of this code. If an applicant seeks to construct affordable housing to qualify for a density bonus in accordance with the provisions of Chapter 21.86 (Residential Density Bonus), those affordable dwelling units that qualify a residential development for a density bonus ~~shall also be counted toward satisfying~~ ~~are in~~

~~addition to, and do not count toward satisfying,~~ the inclusionary housing requirements of this chapter.

B. Whenever reasonably possible, inclusionary units should be built on the residential development project site.

C. The required inclusionary units shall be constructed concurrently with market-rate units unless both the final decision-making authority of the city and developer agree within the affordable housing agreement to an alternative schedule for development.

D. Inclusionary rental units shall remain restricted and affordable to the designated income group for fifty-five years. In addition to the income of a targeted group, limitations on assets may also be used as a factor in determining eligibility for rental or ownership units. Notwithstanding anything to the contrary in this chapter, no inclusionary unit shall be rented for an amount which exceeds ninety percent of the actual rent charged for a comparable market unit in the same development, if any.

E. After the initial sale of the inclusionary ownership units at a price affordable to the target income level group, inclusionary ownership units shall remain affordable to subsequent income eligible buyers pursuant to a resale restriction with a term of thirty years or ownership units may be sold at a market price to other than targeted households provided that the sale shall result in the recapture by the city or its designee of a financial interest in the units equal to the amount of subsidy necessary to make the unit affordable to the designated income group and a proportionate share of any appreciation. Funds recaptured by the city shall be used in assisting other eligible households with home purchases at affordable prices. To the extent possible, projects using ownership units to satisfy inclusionary requirements shall be designed to be compatible with conventional mortgage financing programs including secondary market requirements.

F. Inclusionary units should be located on sites that are in proximity to or will provide access to employment opportunities, urban services, or major roads or other transportation and commuter rail facilities and that are compatible with adjacent land uses.

G. The design of the inclusionary units shall be reasonably consistent or compatible with the design of the total project development in terms of appearance, materials and finished quality.

H. Inclusionary projects shall provide a mix of number of bedrooms in the affordable dwelling units in response to affordable housing demand priorities of the city.

I. No building permit shall be issued, nor any development approval granted for a development which does not meet the requirements of this chapter. No inclusionary unit shall be rented or sold except in accordance with this chapter. (Ord. CS-109 §§ VII—IX, 2010; Ord. NS-794 § 4, 2006; Ord. NS-535 § 1, 2000)

### **21.85.050 Calculating the required number of inclusionary units.**

Subject to adjustments for an inclusionary credit, the required number of lower-income inclusionary units shall be fifteen percent of the total residential units approved by the final decision-making authority, including density bonus units. If the inclusionary units are to be provided within an off-site combined or other project, the required number of lower-income inclusionary units shall be fifteen percent of the total residential units to be provided both on-site and/or off-site. Subject to the maximum density allowed per the growth management control point or per specific authorization granted by the planning commission or city council, fractional units for both market rate and inclusionary units of 0.5 will be rounded up to a

whole unit. If the rounding calculation results in a total residential unit count which exceeds the maximum allowed, neither the market rate nor the inclusionary unit count will be increased to the next whole number.

Example 1: Total residential units = fifteen percent inclusionary units plus eighty-five percent market-rate units. If the final decision-making authority approves one hundred total residential units, then the inclusionary requirement equals fifteen percent of the “total” or fifteen units ( $100 \times .15 = 15$ ). The allowable market-rate units would be eighty-five percent of the “total” or eighty-five units.

Example 2: If the inclusionary units are to be provided off-site, the total number of inclusionary units shall be calculated according to the total number of market-rate units approved by the final decision-making authority. If one hundred market-rate units are approved, then this total is divided by .85 which provides a total residential unit count ( $100 \div .85 = 117$ ). The fifteen percent requirement is applied to this “total” (one hundred seventeen units) which equals the inclusionary unit requirement ( $117 \times .15 = 17.6$  units).

<b>AMENDMENTS TO CHAPTER 21.86 RESIDENTIAL DENSITY BONUS AND INCENTIVES OR CONCESSIONS</b>
------------------------------------------------------------------------------------------------

**Sections:**

- 21.86.010 Purpose and intent.**
- 21.86.020 Definitions.**
- 21.86.030 Inclusionary housing.**
- 21.86.040 Density bonus for housing developments.**
- 21.86.050 Incentives and concessions for housing developments.**
- 21.86.060 Waiver or reduction of development standards.**
- 21.86.070 Density bonus and incentives for condominium conversions.**
- 21.86.075 Development bonus with commercial development and partnered housing.**
- 21.86.080 Housing developments with child day care centers.**
- 21.86.090 Density bonus housing standards.**
- 21.86.100 Affordability tenure.**
- 21.86.110 Application process.**
- 21.86.120 Findings for approval.**
- 21.86.130 Density bonus housing agreement.**
- 21.86.140 Agreement processing fee.**
- 21.86.150 Severability.**

**21.86.010 Purpose and intent.**

A. The public good is served when there exists in a city, housing which is appropriate for the needs of and affordable to all members of the public who reside within that city. Among other needs, there is in Carlsbad a need for housing affordable to lower-income households, and special needs groups, including homeless persons, foster youth, disabled veterans, lower income students and senior citizens. Therefore, it is in the public interest for the city to promote the construction of such additional housing through the exercise of its powers and the utilization of its resources.

B. It is the purpose of this chapter to provide a means for granting density bonuses and incentives or concessions to developers for the production of housing affordable to lower- and moderate-income

households, [homeless persons, foster youth, disabled veterans, lower income students](#) and senior citizens.

C. It is the purpose of this chapter to implement the goals, objectives, ~~and~~ policies [and programs](#) of the housing element of the city's general plan.

D. It is the purpose of this chapter to implement Sections 65915 through 65918 of the California [Government Code](#).

E. ~~Nothing in~~ this chapter is [not](#) intended to create a mandatory duty on behalf of the city or its employees under the Government Tort Claims Act and no cause of action against the city or its employees is created by this chapter that would not arise independently of the provisions of this chapter.

F. ~~Nothing in~~ this chapter [does not shall be construed to](#) supersede or in any way alter or lessen the effect or application of the California Coastal Act [of 1976. 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 chapter and Division 20 \(commencing with Section 30000\) of the Public Resources Code.](#) (Ord. CS-242 § 3, 2014; Ord. NS-794 § 11, 2006)

#### **21.86.020 Definitions.**

A. Whenever the following terms are used in this chapter, they shall have the meaning established by this section:

1. "Affordable housing" means housing for which the allowable housing expenses paid by a qualifying household shall not exceed a specified fraction of the county median income, adjusted for household size, as follows:
  - a. Extremely low-income, rental and for-sale units: the product of thirty percent times thirty percent of the county median income, adjusted for household size.
  - b. Very low-income, rental and for-sale units: the product of thirty percent times fifty percent of the county median income, adjusted for household size.
  - c. Low-income, rental units: the product of thirty percent times sixty percent of the county median income, adjusted for household size.
  - d. Low-income, for-sale units: the product of thirty percent times seventy percent of the county median income, adjusted for household size.
  - e. Moderate-income, for-sale units: allowable housing expenses shall not be less than twenty-eight percent of the gross income of the household, nor exceed the product of thirty-five percent times one hundred ten percent of the county median income, adjusted for household size.
2. "Allowable housing expense" means the total monthly or annual recurring expenses required of a household to obtain shelter. For a for-sale unit, allowable housing expenses include loan principal and interest at the time of initial purchase by the homebuyer, allowances for property and mortgage insurance, property taxes, homeowners' association dues and a reasonable allowance for utilities as defined by the Code of Federal Regulations (24CFR982). For a rental unit, allowable housing expenses include rent and a utility allowance as established and adopted by the City of Carlsbad housing authority, as well as all monthly

payments made by the tenant to the lessor in connection with use and occupancy of a housing unit and land and facilities associated therewith, including any separately charged fees, utility charges, or service charges assessed by the lessor and payable by the tenant.

3. “Child day care center” shall have the same meaning as defined in Section 21.83.020(D) of this title.

4. “Common interest development” means any of the following (as defined in Section 4100 of the California [Civil Code](#)):

- a. A community apartment project;
- b. A condominium project;
- c. A planned development;
- d. A stock cooperative.

5. “Conversion” means the change of occupancy of a dwelling unit from owner-occupied to rental or vice versa.

6. “Density bonus” means an increase over the maximum allowable [gross](#) residential density as specified by the land use element of the general plan in effect at the time of application submittal [or if elected by the applicant, a lesser percentage of density increase, including but not limited to, no increase in density.](#)

7. “Density bonus dwelling units” means those residential units granted pursuant to the provisions of this chapter, which are above the maximum allowable residential density of the project site.

8. “Density bonus housing agreement” means a legally binding agreement between a developer and the city to ensure that the density bonus requirements of this chapter are satisfied. The agreement establishes, among other things, the number of target dwelling units and density bonus dwelling units, the unit sizes, location, affordability tenure, terms and conditions of affordability and unit production schedule.

9. “Development standard” means a site or construction condition/requirement that applies to a housing development pursuant to any ordinance, general plan element, master or specific plan, or other city [condition](#), requirement, law, policy, resolution or regulation. A “development standard” may include, but is not limited to a height limitation, a setback requirement, a floor area ratio, an onsite open space requirement or a parking ratio.

[10. “Equivalent size” means that replacement units contain at least the same total number of bedrooms as the units being replaced.](#)

[11. “Extremely low-income household” means those households whose gross income is equal to or less than thirty percent of the median income for San Diego County as determined annually by the U.S. Department of Housing and Urban Development.](#)

[12. “Floor area ratio” means the ratio of gross building area of the eligible housing development, excluding structured parking areas, proposed for the project divided by the net lot area. For purposes of this paragraph, “gross building area” means the sum of all finished areas of all floors of a building included within the outside faces of its exterior walls.](#)

13. “Housing development” means a development project for five or more residential units, [including mixed-use developments, and may also include](#) the following:

- a. A subdivision or common interest development consisting of residential units or unimproved lots; or
- b. A project to either substantially rehabilitate and convert an existing commercial building to residential use; or
- c. A project to substantially rehabilitate an existing two-family or multiple-family dwelling structure(s), where the rehabilitation results in a net increase to five or more available residential units.

14. “Incentives or concessions” means such regulatory incentives or concessions as stipulated in California [Government Code](#) Section 65915(k), to include, but not be limited to, the reduction of site development standards or zone code requirements [or architectural design requirements](#), 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](#), or any other regulatory incentive [or concession](#) which would result in identifiable ~~-, financially sufficient,~~ and actual cost reductions to [provide for affordable housing costs or rents for the targeted units. enable the provision of housing affordable to the designated income group or qualified \(senior\) resident.](#)

15. “Income” means any monetary benefits that qualify as income in accordance with the criteria and procedures used by the City of Carlsbad housing and neighborhood services department for the acceptance of applications and recertifications for the tenant based rental assistance program, or its successor.

16. “Low-income household” means those households whose gross income is more than fifty percent but does not exceed eighty percent of the median income for San Diego County as determined annually by the U.S. Department of Housing and Urban Development.

17. “Lower-income household” means low-income, very low-income and extremely low-income households, whose gross income does not exceed eighty percent of the median income for San Diego County as determined annually by the U.S. Department of Housing and Urban Development.

18. [“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.](#)

19. “Market-rate unit” means a dwelling unit where the rental rate or sales price is not restricted either by this chapter or by requirements imposed through other local, state or federal affordable housing programs.

20. “Maximum allowable residential density” means the maximum density of the density range allowed by the ~~residential~~ general plan land use designation(s) applicable to a project site. All environmentally constrained lands identified as undevelopable in the general plan, local coastal program, and zoning ordinance shall be excluded from the total area of the project site when calculating maximum density.

21. “Moderate-income household” means those households whose gross income is more than eighty percent but does not exceed one hundred twenty percent of the median income for San

Diego County as determined annually by the U.S. Department of Housing and Urban Development.

22. ~~“Qualifying resident” means a resident as defined in Chapter 21.84 of this title and Section 51.2 of the California Civil Code.~~

23. “Target dwelling unit” means a dwelling unit that will be offered for rent or sale exclusively to and which shall be affordable to the designated income group or qualified (senior) resident, as required by this chapter.

24. “Total units” means the number of dwelling units in a housing development, excluding the density bonus dwelling units awarded pursuant to this chapter or any other local ordinance granting a greater density bonus.

25. “Very low-income household” means a household earning a gross income equal to fifty percent or less of the median income for San Diego County as determined annually by the U.S. Department of Housing and Urban Development. (Ord. CS-242 § 4, 2014; Ord. CS 164 § 12, 2011; Ord. NS-889 § 2, 2008; Ord. NS-794 § 11, 2006)

### **21.86.030 Inclusionary housing.**

All housing development projects are subject to Chapter 21.85 – Inclusionary Housing, including projects that also qualify for a density bonus under this chapter, required to provide affordable housing units in accordance with Chapter 21.85 (Inclusionary Housing) of this title. The affordable housing requirements of the two chapters are not cumulative. If an applicant seeks to construct affordable housing to qualify for a density bonus in accordance with the provisions of this chapter, those affordable dwelling units provided to meet the inclusionary requirement established pursuant to Chapter 21.85 of this title shall also be counted toward satisfying the density bonus requirements of this chapter. For projects that qualify for a density bonus, the inclusionary housing requirement shall be based on the total residential units approved for the project, including any density bonus dwelling units awarded pursuant to this chapter. (Ord. CS-242 § 5, 2014; Ord. NS-794 § 11, 2006)

### **21.86.040 Density bonus for housing developments.**

\_\_\_\_\_ A. The decision-making body shall grant one density bonus, as specified in subsection B of this section, and incentives or concessions, as set forth in Section 21.86.050 of this chapter, when an applicant seeks and agrees to construct ~~of~~ a housing development of at least five units, excluding any units permitted by the density bonus awarded pursuant to this chapter, that will contain ~~seeks and agrees to construct~~ at least any one of the following:

1. A minimum of ten percent of the total units of the housing development as restricted and affordable to lower-income households;
2. A minimum of five percent of the total units of the housing development as restricted and affordable to very low-income households;
3. A senior citizen housing development as defined in Section 21.84.030(A)(7) of this title and Section 51.3 and 51.12 of the California Civil Code, or mobile home park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the California Civil Code; ~~or~~

4. A minimum of ten percent of the total units in a common interest development restricted and affordable to moderate-income households, provided that all units in the development are offered to the public for purchase;

5. A minimum of ten percent of the total units of a housing development for transitional foster youth, as defined in Section 66025.9 of the California 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 paragraph 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; or

6. 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 subparagraph, the developer shall, as a condition of receiving a certificate of occupancy, provide evidence to the city 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 subparagraph 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 twenty percent units will be used for lower income students. For purposes of this paragraph, "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 paragraph 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 subparagraph (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 subparagraph.

(iii) The rent provided in the applicable units of the development for lower income students shall be calculated at thirty percent of sixty-five 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 subparagraph.

(v) For purposes of calculating a density bonus granted pursuant to this paragraph, 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 paragraph shall be subject to a recorded affordability restriction of 55 years.

B. When an applicant seeks and agrees to construct a housing development meeting the criteria specified in subsection A of this section, the decision-making body shall grant a density bonus subject to the following:

1. The amount of density bonus to which a housing development is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentages established in subsection A of this section, as follows:

a. For housing developments meeting the criteria of subsection (A)(1) of this section, the density bonus shall be calculated as follows:

**Table A**

**Density Bonus for Housing Developments with Units Affordable to Low-Income Households**

<b>Percentage of Low-Income Units (Minimum 10% required)</b>	<b>Percentage of Density Bonus to be Granted (Additional 1.5% density bonus for each 1% increase above the 10% minimum)</b>
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
16	29
17	30.5
18	32
19	33.5
20	35

b. For housing developments meeting the criteria of subsection (A)(2) of this section, the density bonus shall be calculated as follows:

**Table B**

**Density Bonus for Housing Developments with Units Affordable to Very Low-Income Households**

<b>Percentage of Very Low-Income Units</b>	<b>Percentage of Density Bonus to be Granted</b>
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

c. For housing developments meeting the criteria of subsection (A)(3) of this section, the density bonus shall be twenty percent of the number of senior housing units.

d. For housing developments meeting the criteria of subsection (A)(4) of this section, the density bonus shall be calculated as follows:

**Table C**  
**Density Bonus for Common Interest Developments with Units**  
**Affordable to Moderate-Income Households**

Percentage of Moderate-Income Units	Percentage of Density Bonus to be Granted
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

e. For housing developments meeting the criteria of subsection (A)(5) of this section, the density bonus shall be twenty percent of the number of the type of units giving rise to a density bonus under that subsection.

f. For housing developments meeting the criteria of subsection (A)(6) of this section, the density bonus shall be thirty-five percent of the student housing units.

2. The amount of density bonus to which a housing development is entitled shall not exceed thirty-five percent.

3. The applicant may elect to accept a lesser percentage of density bonus than specified in [this subsection B of this section](#).

4. If a housing development includes a combination of target dwelling unit types that meet two or more of the criteria specified in subsection A of this section, the applicant shall elect one applicable density bonus.

C. When an applicant for a tentative subdivision map, parcel map, or other housing development approval donates land to the city, in accordance with this subsection, the applicant shall be entitled to a density bonus for the entire development, as follows:

**Table D**

**Density Bonus for Land Donation**

<b>Percentage of Very Low-Income Units</b>	<b>Percentage of Density Bonus to be Granted</b>
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

1. A density bonus granted pursuant to this subsection shall not exceed thirty-five percent.

2. If an applicant seeks both the density bonus pursuant to this subsection and subsection A of this section, both density bonuses shall be granted up to a maximum combined density bonus of thirty-five percent.

3. An applicant shall be eligible for the density bonus described in this subsection only if all of the following conditions are met:

a. The land is donated and transferred to the city no later than the date of approval of the final subdivision map, parcel map or housing development application.

b. The developable acreage, zoning classification and general plan land use designation of the land being donated are sufficient to permit construction of the units affordable to very low-income households in an amount not less than ten 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 forty units, and has the appropriate: 1) general plan land use designation; 2) zoning classification with appropriate development standards for development at the density described in paragraph (3) of subdivision (c) of Section 65583.2 of the California [Government Code](#), and 3) 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 housing development, except that the city may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 of the California [Government Code](#) if the design is not reviewed by the city prior to 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 Section [21.86.100](#) of this chapter, which shall be recorded on the property at the time of the transfer.

f. The land is transferred to the city or to a housing developer approved by the city. The city 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 city agrees, within one-quarter mile of the boundary of the proposed development.

h. Prior to the approval of the final subdivision map, parcel map or housing development application, the developer shall identify a proposed source of funding for the very low income units.

D. In cases where an applicant requests a density bonus of more than what is specified in this section, the city council may grant the requested additional density bonus, subject to the following:

1. The project meets the requirements of this chapter.
2. The additional density bonus shall be considered an incentive, in accordance with Section [21.86.050](#) of this chapter.
3. The city council may require some portion of the additional density bonus units to be designated as target dwelling units.

E. The city council may grant a proportionately lower density bonus than what is specified by this section for developments that do not meet the requirements of this chapter.

F. The density bonus dwelling units granted pursuant to this chapter shall not be included when determining the number of housing units required by this chapter to be reserved for income-restricted households.

G. When calculating [any density, including the base density](#), the density bonus, or the required number of target dwelling units, any calculations resulting in fractional units shall be [separately rounded up to the next whole number](#).

H. For the purposes of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application in a housing development, but do not have to be based upon individual subdivision maps or parcels.

I. The density bonus units shall be permitted in geographic areas of the housing development other than the areas where the units for lower-income households are located.

J. A density bonus housing agreement shall be made a condition of the discretionary permits (i.e., tentative maps, parcel maps, planned unit developments, condominium permits, site development plans and redevelopment permits) for all housing developments that request a density bonus and incentives or concessions. The relevant terms and conditions of the density bonus housing agreement shall be filed and recorded as a deed restriction on those individual lots or units of a project development which are designated for the location of target dwelling units. The density bonus housing agreement shall be consistent with Section 21.86.130 of this chapter.

K. An applicant shall be ineligible for a density bonus or any other incentives or concessions under this chapter if the housing development is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if rental 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 the city'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:

1. The proposed housing development, inclusive of the units replaced pursuant to this subsection, contains affordable units at the percentages set forth in this section.
2. 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.
3. For the purposes of this subsection, "replaces" shall mean either of the following:
  - a. If any rental dwelling unit(s) is occupied on the date of application, the proposed housing development shall provide at least the same number of units of equivalent size ~~or type, or both,~~ 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 Carlsbad, 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 this subsection 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 Carlsbad, 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. For unoccupied dwelling units in a development with occupied units, the proposed housing development shall provide units of equivalent size or type, or both, 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 in the same proportion of affordability as the occupied units.~~ The replacement units shall be subject to the affordability tenure requirements specified in Section 21.86.100.

b. If all rental dwelling units 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 ~~or type, or both,~~ as existed at the highpoint of those units ~~(in the five-year period preceding the application).~~ The replacement units shall be provided at an 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 the highpoint, 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 Carlsbad, 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 incomes of the persons and families in occupancy at the highpoint is not known, then one half of the required units shall be made available at affordable rent or affordable housing cost to, and occupied by, very low income persons and families and one half of the required units shall be made available for rent at affordable housing costs to, and occupied by, low income persons and families. The replacement units shall be subject to the affordability tenure requirements specified in Section 21.86.100. (Ord. CS-280 § 1, 2015; Ord. CS-242 §§ 6—8, 2014; Ord. NS-794 § 11, 2006)

### **21.86.050 Incentives and concessions for housing developments.**

A. When an applicant requests a density bonus pursuant to Section 21.86.040(A) of this chapter, the decision-making body shall grant incentives or concessions, subject to the following:

1. An applicant shall submit a proposal for any specific incentives or concessions requested pursuant to this section.
2. The decision-making body shall grant the incentive(s) or concession(s) requested by the applicant unless, based upon substantial evidence, any of the following findings are made in writing:
  - a. The incentive or concession ~~is not required in order~~does not result in identifiable and actual cost reductions, consistent with Section 21.86.020(A)(14) to provide for affordable housing costs as defined in Section 21.86.020(A)(1) of this chapter.
  - b. The incentive or concession would have a specific adverse impact 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- and moderate-income households. As used in this paragraph, and as defined in paragraph (2) of subdivision (d) of Section 65589.5 of the California Government Code, a “specific, adverse impact” means a significant,

quantifiable, direct and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

- c. The incentive or concession would be contrary to state or federal law.
3. The applicant shall receive the following number of incentives or concessions:
  - a. One incentive or concession for projects that include at least ~~ten percent~~<sup>40%</sup> of the total units for lower-income households, at least five percent for very low-income households, or at least ~~ten percent~~<sup>40%</sup> for persons and families of moderate income in a common interest development.
  - b. Two incentives or concessions for projects that include at least ~~twenty percent~~<sup>20%</sup> of the total units for lower-income households, at least ~~ten percent~~<sup>40%</sup> for very low-income households, or at least ~~twenty percent~~<sup>20%</sup> for persons and families of moderate income in a common interest development.
  - c. Three incentives or concessions for projects that include at least ~~thirty percent~~<sup>30%</sup> of the total units for lower-income households, at least ~~fifteen percent~~<sup>15%</sup> for very low-income households, or at least ~~thirty percent~~<sup>30%</sup> for persons and families of moderate income in a common interest development.
4. An incentive or concession may include any of the following:
  - a. A reduction in site development standards or a modification of zoning code or architectural design requirements (excluding State Building Standards), that results in identifiable, ~~financially sufficient~~ and actual cost reductions. A reduction/modification to standards or requirements may include, but is not limited to, a reduction in minimum lot size, setback requirements, and/or in the ratio of vehicular parking spaces that would otherwise be required.
  - b. Approval of mixed use zoning in conjunction with the housing development if: (i) commercial, office, industrial or other land uses will reduce the cost of the housing development; and (ii) the commercial, office, industrial, or other land uses are compatible with the housing development and the existing or planned future development in the area where the proposed project will be located.
  - c. Other regulatory incentives or concessions that result in identifiable, ~~financially sufficient~~ and actual cost reductions.
  - d. The city council may, but is not required to, provide direct financial incentives, including the provision of publicly owned land, or the waiver of fees or dedication requirements.
5. The applicant shall show that the requested incentive(s) or concession(s) will result in identifiable, ~~financially sufficient~~, and actual cost reductions. (Ord. CS-280 § 2, 2015; Ord. CS-242 § 9, 2014; Ord. NS-794 § 11, 2006)

#### **21.86.060 Waiver or reduction of development standards.**

A. In addition to the incentives or concessions permitted by Section 21.86.050 of this chapter, an applicant may seek a waiver or reduction of development standards that will have the effect of physically precluding the construction of a housing development meeting the criteria of Section

21.86.040(A) of this chapter at the densities or with the incentives or concessions permitted by this chapter.

1. The applicant shall provide evidence that the development standard(s) requested to be waived or reduced will have the effect of physically precluding the construction of a housing development at the densities or with the incentives or concessions permitted by this chapter.
2. A proposal for the waiver or reduction of development standards pursuant to this section shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to Section 21.86.050 of this chapter.

B. The decision-making body shall grant the requested waiver or reduction of development standards, unless, based upon substantial evidence, any of the following findings are made in writing:

1. The development standard(s) requested to be waived or reduced will not have the effect of physically precluding the construction of a housing development at the densities or with the incentives or concessions permitted by this chapter.
2. The requested waiver or reduction of development standards would have a specific adverse impact 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. As used in this subsection, and as defined in paragraph (2) of subdivision (d) of Section 65589.5 of the California [Government Code](#), a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.
3. The waiver or reduction of development standards would be contrary to state or federal law. (Ord. CS-242 § 10, 2014; Ord. NS-794 § 11, 2006)

#### **21.86.070 Density bonus and incentives for condominium conversions.**

A. When an applicant proposes to convert apartments to condominiums, the decision-making body shall grant either a density bonus or other incentives of equivalent financial value, as set forth in Section 21.86.050(A) of this chapter, if the applicant agrees to provide the following:

1. A minimum of thirty-three percent of the total units of the proposed condominium conversion project as restricted and affordable to low-income or moderate-income households;  
or
2. A minimum of fifteen percent of the total units of the proposed condominium conversion project as restricted and affordable to lower-income households.

B. For purposes of this section “density bonus” means an increase in units of twenty-five percent over the number of apartments, to be provided within the existing structure or structures proposed for conversion.

C. For purposes of this section, “other incentives of equivalent financial value” shall not be construed to require the city to provide monetary compensation, but may include the waiver or reduction of requirements that might otherwise apply to the proposed condominium conversion project.

D. The density bonus dwelling units shall not be included when determining the number of housing units required to be reserved for income-restricted households.

E. When calculating the density bonus, or the required number of target dwelling units, any calculations resulting in fractional units shall be separately rounded up to the next whole ~~number~~.

F. Nothing in this section shall be construed to require that the city approve a proposal to convert apartments to condominiums.

G. An applicant/developer proposing to convert apartments to condominiums shall be ineligible for a density bonus or other incentives under this section if the apartments proposed for conversion constitute a housing development for which a density bonus or other incentives were provided under Sections [21.86.040](#) and [21.86.050](#) of this chapter.

H. A density bonus housing agreement shall be made a condition of the discretionary permits (tentative maps, parcel maps, planned unit developments and condominium permits) for all condominium conversion proposals that request a density bonus or other incentives. The relevant terms and conditions of the density bonus housing agreement shall be filed and recorded as a deed restriction on those individual lots or units of a project development which are designated for the location of target dwelling units. The density bonus housing agreement shall be consistent with Section [21.86.130](#) of this chapter.

I. An applicant shall be ineligible for a density bonus, or any other incentives or concessions under this chapter if the condominium project is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if rental 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 the city's valid exercise of its police power; or occupied by lower- or very low-income households, unless the proposed condominium project replaces those units, as defined in Section [21.86.040\(K\)\(3\)](#) of this chapter, and either of the following applies:

1. The proposed condominium project, inclusive of the units replaced pursuant to Section [21.86.040\(K\)\(3\)](#) of this chapter, contains affordable units at the percentages set forth in subsection A.
2. 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. (Ord. CS-280 § 3, 2015; Ord. NS-794 § 11, 2006)

#### **[21.86.075](#)    **Development bonus with commercial development and partnered housing.****

[A.](#) When an applicant for approval of a commercial development has entered into an agreement for partnered housing described in subsection C. to contribute affordable housing through a joint project or two separate projects encompassing affordable housing, the city shall grant to the commercial developer a development bonus as prescribed in subsection B. The housing shall be constructed on the site of the commercial development or on a site that includes all of the following:

- [1.](#) Within the city;
- [2.](#) In close proximity to public amenities including schools and employment centers; and

3. Located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the California Public Resources Code.
- B. The development bonus granted to the commercial developer shall mean incentives, mutually agreed upon by the developer and the city, that may include, but are not limited to, any of the following:
    1. Up to a twenty percent increase in maximum allowable intensity in the General Plan;
    2. Up to a twenty percent increase in maximum allowable floor area ratio;
    3. Up to a twenty percent increase in maximum height requirements;
    4. Up to a twenty percent reduction in minimum parking requirements;
    5. Use of a limited-use/limited-application elevator for upper floor accessibility; or
    6. An exception to the zoning ordinance or other land use regulation.
  - C. For the purposes of this section, the agreement for partnered housing shall be between the commercial developer and the housing developer, shall identify how the commercial developer will contribute affordable housing, and shall be approved by the decision-making body.
  - D. For the purposes of this section, affordable housing may be contributed by the commercial developer in one of the following manners:
    1. The commercial developer may directly build the units;
    2. The commercial developer may donate a portion of the site or property elsewhere to the affordable housing developer for use as a site for affordable housing; or
    3. The commercial developer may make a cash payment to the affordable housing developer that shall be used towards the costs of constructing the affordable housing project.
  - E. For the purposes of this section, subsection 21.86.040(K) shall apply.
  - F. Nothing in this section shall preclude any additional allowances or incentives offered to developers by the city pursuant to law or regulation.
  - G. If the developer of the affordable units does not commence with construction of those units in accordance with timelines ascribed by the agreement described in subsection C, the city may withhold certificates of occupancy for the commercial development under construction until the developer has completed construction of the affordable units.
  - H. In order to qualify for a development bonus under this section, a commercial developer shall partner with a housing developer that provides at least thirty percent of the total units for low-income households or at least fifteen percent of the total units for very low-income households.
  - I. Nothing in this section shall preclude an affordable housing developer from seeking a density bonus, concessions or incentives, waivers or reductions of development standards, or parking ratios under this chapter.

- J. A development bonus pursuant to this section shall not include a reduction or waiver of the requirements within an ordinance that requires the payment of a fee by a commercial developer for the promotion or provision of affordable housing.
- K. The city shall submit to the Department of Housing and Community Development, as part of the annual report required by California Government Code Section 65400 (Housing Report), information describing a commercial development bonus approved pursuant to this section, including the terms of the agreements between the commercial developer and the affordable housing developer, and the developers and the city, and the number of affordable units constructed as part of the agreements.
- L. For purposes of this section, “partner” shall mean formation of a partnership, limited liability company, corporation, or other entity recognized by the state in which the commercial development applicant and the affordable housing developer are each partners, members, shareholders or other participants, or a contract or agreement between a commercial development applicant and affordable housing developer for the development of both the commercial and the affordable housing properties.
- M. This section shall remain in effect only until January 1, 2022, and as of that date is repealed.

#### **21.86.080 Housing developments with child day care centers.**

A. When an applicant proposes to construct a housing development that conforms to the requirements of Section 21.86.040(A) of this chapter, and includes a child day care center that will be located on the premises of, as part of, or adjacent to, the project, the following provisions shall apply:

1. The decision-making body 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 child day care center; or
  - b. An additional incentive or concession that contributes significantly to the economic feasibility of the construction of the child day care center.
2. The decision-making body shall require, as a condition of approval of the housing development, that the following occur:
  - a. The child day care center shall remain in operation for a period of time that is as long as or longer than the period of time during which the target dwelling units are required to remain affordable, pursuant to Section 21.86.100 of this chapter; and
  - b. Of the children who attend the child day care center, the children of very low-, lower-, or moderate-income households shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low-, lower-, or moderate-income households pursuant to Section 21.86.040(A) of this chapter.
3. Notwithstanding any requirement of this section, the decision-making body shall not be required to provide an additional density bonus, incentive or concession for a child day care center if it finds, based on substantial evidence, that the community has an adequate number of child day care centers. (Ord. NS-794 § 11, 2006)

#### **21.86.090 Density bonus housing standards.**

A. Required target dwelling units shall be constructed concurrent with market-rate dwelling units unless both the final decision-making authority of the city and the developer/applicant agree within the density bonus housing agreement to an alternative schedule for development.

B. Whenever feasible, target dwelling units and density bonus dwelling units should be built on-site (within the boundary of the proposed development) and, whenever reasonably possible, be distributed throughout the project site.

C. Whenever feasible, target dwelling units should be located on sites that are in proximity to, or will provide access to, employment opportunities, urban services, or major roads or other transportation and commuter rail facilities (i.e., freeways, bus lines) and that are compatible with adjacent land uses.

D. Whenever feasible, target dwelling units should vary in size and number of bedrooms, in response to affordable housing demand priorities of the city.

E. Density bonus projects shall comply with all applicable development standards, except those which may be modified as an incentive or concession, or as otherwise provided for in this chapter. In addition, all units must conform to the requirements of the applicable building and housing codes. The design of the target dwelling units shall be reasonably consistent or compatible with the design of the total project development in terms of appearance, materials and finished quality.

F. No building permit shall be issued, nor any development approval granted, for a development which does not meet the requirements of this chapter. No target dwelling unit shall be rented or sold except in accordance with this chapter.

G. Upon the request of the applicant, the parking ratio (inclusive of handicap and guest parking) for a housing development that conforms to the requirements of Section 21.86.040(A) of this chapter shall not exceed the ratios specified in Table E or as noted, below. If the applicant does not request the parking ratios specified in this section or the project does not conform to the requirements of Section 21.86.040(A) of this chapter, the parking standards specified in Chapter 21.44 of this code shall apply.

1. If a development includes the maximum percentage of low- or very low-income units provided for in Section 21.86.040(A) and is located within one-half mile of a major transit stop, as defined in the State [Public Resources Code](#) (subdivision (b) of Section 21155), and there is unobstructed access to the major transit stop from the development, then, upon the request of the developer, the city shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds 0.5 spaces per bedroom. For purposes of this subsection, 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.

2. 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 State [Health and Safety Code](#) Section 50052.5, then, upon the request of the developer, the city 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 State [Public Resources Code](#) (subdivision (b) of Section 21155), 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 State [Civil Code](#) (Sections 51.2 and 51.3), 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.
- c. If the development is a special needs housing development, as defined in State [Health and Safety Code](#) (section 51312), the ratio shall not exceed 0.3 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.
3. If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded down to the next whole number.
4. For purposes of this section, a housing development may provide “on-site” parking through tandem parking or uncovered parking, but not through on-street parking.
5. The applicant may request parking incentives or concessions beyond those provided in this section, subject to the findings specified in Section [21.86.050\(A\)\(2\)](#) of this chapter.
6. Notwithstanding subsections (G)(1) and (G)(2) of this section, if the city or an independent consultant has conducted an area-wide or ~~jurisdiction-city~~wide parking study in the last seven years, then the city may impose a higher vehicular parking ratio not to exceed the ratio described in Table E, 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- and very low-income individuals, including seniors and special needs individuals. The city shall pay the costs of any new study. The city shall make findings, based on a parking study completed in conformity with this paragraph, supporting the need for the higher parking ratio.

**Table E**

**Parking Ratio for Housing Developments**

<b>Dwelling Unit Size</b>	<b>On-Site Parking Ratio</b>
0-1 bedrooms	1 space per unit
2-3 bedrooms	2 spaces per unit
4 or more bedrooms	2.5 spaces per unit

(Ord. CS-311 § 1, 2017; Ord. CS-242 § 11, 2014; Ord. NS-794 § 11, 2006)

**21.86.100 Affordability tenure.**

A. All low- and very low-income rental dwelling units that qualified the housing project for a density bonus shall remain restricted and affordable to the designated group for a period of at least 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. Rents for the target dwelling unit(s) shall be set at an affordable rent as defined in Section 50053 of the [Health and Safety Code](#).

B. All very low-, low- and moderate-income for-sale dwelling units that qualified the housing project for a density bonus shall be subject to the following:

1. The initial occupant(s) of the target dwelling unit(s) shall be persons and families of very low, low or moderate income, as required, and the units shall be offered at an affordable housing cost as defined in Section 50052.5 of the [Health and Safety Code](#).
2. Unless in conflict with the requirements of another public funding source or law, the target dwelling unit(s) shall be subject to an equity sharing agreement that specifies:
  - a. Upon resale, the seller of the unit shall retain the value of any improvements, the down payment, and the seller's proportionate share of appreciation.
  - b. Upon resale, the city shall recapture any initial subsidy and its proportionate share of appreciation, which shall then 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 homeownership.
    - i. For the purposes of this subsection, the city'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 down payment 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.
    - ii. For the purposes of this subsection, the city's proportionate share of appreciation shall be equal to the ratio of the city's initial subsidy to the fair market value of the home at the time of initial sale.
3. If the city provides a direct financial contribution to the housing development through participation in cost of infrastructure, write-down of land costs, or subsidizing the cost of construction, the target dwelling unit(s) shall remain affordable to the designated income group for at least 30 years.

C. For rental projects, the city or its designee shall have a one-time first right of refusal to purchase any project containing affordable units offered for sale at the end of the minimum tenure of affordability. The first right of refusal to purchase the rental project shall be submitted in writing to the housing and neighborhood services director. Within 90 days of its receipt, the city shall indicate its intent to exercise the first right of refusal for the purpose of providing affordable housing. (Ord. CS-280 § 4, 2015; Ord. CS-242 § 12, 2014; Ord. CS-164 § 12, 2011; Ord. NS-794 § 11, 2006)

#### **21.86.110 Application process.**

- A. The granting of a density bonus, incentive or concession, pursuant to this chapter, shall not be interpreted, in and of itself, to require a general plan amendment, zone code amendment, local coastal plan amendment, zone change, other discretionary approval, or the waiver of a city ordinance or provisions of a city ordinance unrelated to development standards.
- B. Preliminary Application. A preliminary application may be submitted prior to the submittal of any formal development application for a housing project that includes a request for a density bonus, incentive(s) or concession(s). The preliminary application should include the following information:

1. A brief description of the proposal including the number of target dwelling units and density bonus units proposed;
2. The zoning, general plan designations and assessors parcel number(s) of the project site;
3. A site plan, drawn to scale, which includes: building footprints, driveway and parking layout, existing contours and proposed grading;
4. A letter identifying what specific density bonus, incentives or concessions (e.g., standards modifications, additional density bonus, or fee waiver, etc.) are being requested of the city; and
5. The planning division shall provide to an applicant/developer, a letter that identifies project issues of concern and the procedures for compliance with this chapter.

C. Formal Application. A request for a density bonus, incentive(s) or concession(s), pursuant to this chapter, does not require a discretionary approval. The request shall be processed as part of the development applications for a housing development, as otherwise required in other sections of this code (e.g., site development plan, tentative map, parcel map, planned unit development, conditional use permit, redevelopment permit, etc.).

1. If the project involves a request for direct financial incentives from the city, then any action by the planning commission on the application shall be advisory only, and the city council shall have the authority to make the final decision on any discretionary permits related to the project.
2. The following information shall be included with the development application(s) required for the project:
  - a. A legal description of the total site proposed for development of the target dwelling units including a statement of present ownership and present and proposed zoning;
  - b. A letter signed by the present owner stating what specific density bonus, incentives, or concessions, ~~waivers or modifications in development standards (e.g., standards modifications, additional density bonus, or fee waiver, etc.)~~ are being requested from the city;
  - c. A detailed vicinity map showing the project location and such details as the location of the nearest commercial retail, transit stop, potential employment locations, park or recreation facilities or other social or community service facilities;
  - d. Site plans, designating the total number of units proposed on the site, including the number and location of target dwelling units and density bonus dwelling units, and supporting plans per the application submittal requirements;
  - e. In the case of a request for any incentive(s) or concession(s), ~~a pro forma for the proposed project to justify evidence that~~ the request ~~will result in identifiable and actual cost reductions;~~ in accordance with the provisions of Section 21.86.050 of this chapter;
  - f. In the case of a request for a waiver or reduction of development standards, pursuant to Section 21.86.060 of this chapter, evidence that the development standard being waived or reduced will have the effect of physically precluding the construction of the development at the densities or with the concessions or incentives permitted by this chapter;

g. In the case of a condominium conversion request, a report with sufficient evidence to determine whether replacement dwelling units are required pursuant to Section 21.86.040(K); documenting the following information for each unit proposed to be converted:

i. The monthly income of tenants of each unit throughout the prior year;

ii. The monthly rent for each unit throughout the prior year; and

iii. Vacancy information for each unit throughout the prior year.

h. In the case of a request for a density bonus on property that contains or did contain rental dwelling units, a report with sufficient evidence to determine whether replacement dwelling units are required pursuant to Section 21.86.040(K); and

i. The number of parking spaces proposed and whether applicant is requesting a parking ratio pursuant to Section 21.86.090(G).

3. Upon submittal, the planning division will review the application for completeness within the timelines specified in Government Code Section 65943. If the application is determined to be complete, the planning division shall so notify the applicant in writing, along with a determination as to the following:

a. The amount of density bonus, calculated pursuant to Section 21.86.040(B), for which the applicant is eligible;

b. If the applicant requests a parking ratio pursuant to Section 21.86.090(G)(6), the parking ratio for which the applicant is eligible; and

c. If the applicant requests incentives or concessions pursuant to Section 21.86.050, or waivers or reductions of development standards pursuant to Section 21.86.060, whether the information provided in the application is adequate for the city to make a determination as to those incentives, concessions, or waivers or reductions of development standards.

4. Any determination required by paragraph 3 above 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.

5. The city planner is authorized to modify all administrative procedures, forms, checklists, and templates as necessary to ensure expeditious processing of a density bonus application consistent with this chapter.

-(Ord. CS-280 § 5, 2015; Ord. CS-242 § 13, 2014; Ord. CS-164 § 11, 2011; Ord. NS-794 § 11, 2006)

### **21.86.120 Findings for approval.**

A. When a project involves a request for a density bonus, incentive(s) or concession(s), the following findings shall be made as part of the approval of the development application(s) required for the project:

1. The project is consistent with the provisions of this chapter.

2. The requested incentive(s) or concession(s) will result in identifiable, ~~financially sufficient~~, and actual cost reductions.
3. In cases where an applicant requests a waiver or reduction of development standards, pursuant to Section 21.86.060, the requested waiver or reduction of development standard(s) is necessary to avoid physically precluding the construction of a housing development at the densities or with the incentives or concessions permitted by this chapter.
4. The requested incentive(s) or concession(s), and/or waiver(s) or reduction(s) of development standards, if any, will not result in an adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5 of the California [Government Code](#), to the public health and safety, the environment, or on any real property that is listed in the California Register of Historical Resources; or, if the request will result in an adverse impact, then the request may be approved if [the following finding is made](#):
  - a. ~~There~~ is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.
5. In cases where an applicant requests to convert apartment units to condominiums, the condominium conversion project shall not result in a reduction in the affordable housing stock for lower-income groups, as of most recent inventory.
6. For development located in the coastal zone, the requested density bonus, and any requested incentive(s), concession(s), and/or waiver(s) or reduction(s) of development standards, are consistent with [this chapter and Division 20 \(commencing with Section 30000\) of the Public Resources Code](#) ~~all applicable requirements of the certified Carlsbad Local Coastal Program Land Use Plan(s), with the exception of density~~.
7. The requested incentive(s) or concession(s), and/or waiver(s) or reduction(s) of development standards would be contrary to state or federal law. (Ord. CS-242 §§ 14, 15, 2014; Ord. NS-889 § 3, 2008; Ord. NS-794 § 11, 2006)

#### **21.86.130 Density bonus housing agreement.**

- A. Applicants/developers, requesting a density bonus, incentives or concessions pursuant to this chapter, shall demonstrate compliance with this chapter by executing a density bonus housing agreement prepared by the city housing and neighborhood services director and submitted to the developer for signature.
- B. Density bonus housing agreements for projects involving a request for direct financial incentives from the city shall be subject to city council approval; otherwise, the agreement shall be subject to the approval of the community and economic development director.
- C. Following the approval and the signing by all parties, the completed density bonus housing agreement, with approved site development plan, shall be recorded against the entire development, including market-rate lots/units; and the relevant terms and conditions therefrom filed and recorded as a deed restriction or regulatory agreement on those individual lots or units of a property which are designated for the location of target dwelling units.
- D. The approval and signing by all parties of the density bonus housing agreement shall take place prior to final map approval, and the agreement shall be recorded concurrent with the final map

recording or, where a map is not being processed, prior to issuance of building permits for such lots or units.

E. The density bonus housing agreement shall be binding to all future owners and successors in interest.

F. A density bonus housing agreement for a housing development or condominium conversion project processed pursuant to this chapter shall include, but not be limited to, the following:

1. The number of density bonus dwelling units granted;
2. The number and type (e.g., restricted to lower- or moderate-income households) of target dwelling units proposed;
3. The unit size(s) (square footage) of target dwelling units and the number of bedrooms per target dwelling unit;
4. The proposed location of the target dwelling units;
5. Schedule for production of target dwelling units;
6. Incentives or concessions provided by the city;
7. Where applicable, tenure and conditions governing the initial sale of for-sale target units;
8. Where applicable, tenure and conditions establishing rules and procedures for qualifying tenants, setting rental rates, filling vacancies, and operating and maintaining units for rental target dwelling units; and
9. Where applicable, requirements for other documents to be approved by the city, such as marketing, leasing and management plans; financial assistance/loan documents; resale agreements; and monitoring and compliance plans. (Ord. CS-164 §§ 12, 14, 2011; Ord. NS-794 § 11, 2006)

#### **21.86.140 Agreement processing fee.**

The city council may establish by resolution, fees to be paid by the applicant to defray the city's cost of preparing and/or reviewing all density bonus housing agreements. (Ord. NS-794 § 11, 2006)

#### **21.86.150 Severability.**

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the remainder of the chapter and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby. (Ord. CS-102 § CXVI, 2010; Ord. NS-794 § 11, 2006)