



THE CITY OF SAN DIEGO

## Report to the Planning Commission

DATE ISSUED: November 24, 2017

REPORT NO. PC-17-084

HEARING DATE: November 30, 2017

SUBJECT: **HousingSD:** Amendments to the City's Affordable Housing Density Bonus Regulations

### **SUMMARY**

**Issue:** Should the Planning Commission recommend to the City Council approval of the Planning Department's proposed changes to the City's Affordable Housing Density Bonus Regulations?

**Staff Recommendation:** Recommend approval of the proposed Land Development Code amendments to the City Council for the reasons specified in this staff report.

### **Environmental Review:**

The proposed Affordable Housing Regulation amendments were reviewed for consistency in accordance with Public Resources Code Section 21166 with the previously certified LDC EIR No. 96-0333/SCH No. 96081056 and associated environmental determinations; the General Plan PEIR No. 104495/SCH No. 2006091032 and associated Addendums; and the Climate Action Plan PEIR No. 416603/SCH No. 2015021053 and associated Addendum. Based on this evaluation, it was determined that the amendments would not result in new impacts or changed circumstances that would require a new environmental document and that the previous environmental documents adequately cover the modifications to the LDC. Therefore, the amendments are consistent with the certified Land Development Code PEIR, General Plan PEIR, and the Climate Action Plan PEIR. The CEQA findings are in Attachment 1.

### **Housing Impact Statement:**

The intent of the proposed modifications is to increase subsidized as well as market-rate housing unit production, citywide. Both the state law changes and staff recommendations remove processing barriers, improve the program in order to achieve maximum allowable density authorized under state and local law and clarify vague code language. The proposed changes also encourage the development of more micro units; an affordable market-rate housing unit product type.

## **BACKGROUND**

### **A. The Mayor's Housing Initiative:**

Over the past decade, new housing development has not kept pace with job or population growth, resulting in housing costs that have increased at a much faster rate than income levels. With a growing population and a county median home purchase price exceeding \$500,000 and an average home rental price exceeding \$1,800 per month, more and more families are finding it increasingly difficult to find an affordable place to live in San Diego.

In response, the Mayor has developed a series of strategies and initiatives that will help increase housing production in the City. The plan is called **Housing-SD** and includes multiple regulatory reforms that are intended to improve housing affordability, improve review processes, facilitate more affordable housing and support the Climate Action Plan.

The proposed amendments to the City's Affordable Housing Density Bonus Regulations is the third Housing-SD initiative plan being considered by the Planning Commission.

### **B. Density Bonus Law**

Affordable housing density bonus is a California state law (Government Code section 65915) that allows a developer to increase density above the maximum set under a city's local land use plan (General Plan/Community Plan) when a certain percentage of the new homes are reserved for very low, low or moderate income households or for seniors.

In addition, developers of qualifying residential projects are entitled to receive certain benefits, including reduced parking standards, "incentives or concessions," and waivers of certain development standards when said standards prevent the applicant from achieving the density authorized under the state law. The state law requires that each jurisdiction adopt an ordinance specifying how compliance with the State law will be implemented. The City's Density Bonus Regulations were last updated in July 2016.

In January 2017, four Assembly Bills (AB 2501, AB 2556, AB 2442 & AB 2501) went into effect that amended the State's mandatory density program, which requires that the City update its current regulations. In addition, staff is proposing additional modifications in an effort to further incentivize the use of this program to increase the production of more affordable units.

## **DISCUSSION**

Below is a summary of the proposed code amendments resulting from the four state bills, along with additional regulatory improvements proposed by staff. The draft strikeout/underline amendments to the Affordable Housing Density Bonus Regulations are found in Attachment 2.

### **A. AB 2501 (Bloom Bill)**

- Developers are eligible for an incentive even if they do not request a density bonus.
- Parking reductions provided for in state law do not count towards an incentive or concession.

- Cities must adopt procedures and timelines for processing a density bonus application.
- Clarification of the definition of incentives and concessions and grounds for denial.
- Reasonable documentation can be required by a city to establish an applicant's eligibility for incentives, waivers and reduced parking.

**B. AB 2442 (Holden Bill)**

- Projects reserving 10% of the total dwelling units for very-low income transition-age foster youth, disabled veterans, or persons experiencing homelessness are eligible for a 20% density bonus. However, the bonus calculation is applied to the number of dwelling units *reserved*, not the base density. This amendment, as drafted in state law, is not expected to have much practical effect since the same project, if processed as a straight forward very low income housing project, would be eligible for a higher density bonus.

**C. AB 2556 (Nazarian Bill)**

- A cleanup bill to Assembly Member Mazarin's AB 222, which went into effect January 2015. AB 222 required that density bonus projects replace each rental unit that was occupied in the past five years by households of low or very low income. However, obtaining the income of current/past tenants is often challenging.
- AB 2556 clarified that when former tenant income is not known, required percentage affordability is determined by HUD Comprehensive Housing Affordability Strategy database. Additionally, replacement units must be of equivalent size (bedroom count).

**D. AB 1934 (Santiago Bill)**

- A commercial developer may be granted a development bonus consistent with State law if the developer partners with an affordable housing developer to construct a mixed-used project with the housing located in the commercial development or within a one-mile radius of the commercial development.

**E. Additional Regulatory Incentives**

In addition to the mandatory changes above, the City is proposing the following additional incentives to help promote and encourage the use of this regulatory tool.

- Applicants not requesting a waiver/incentive to enlarge the building envelope are entitled to an additional 10% density bonus above maximum, provided the added density does not cause a need for a waiver or an incentive to enlarge the building envelope.
- Applicants proposing a project entirely comprised of micro-units ( $\leq 600$  square foot overall average unit size;  $< 800$  square foot maximum unit size) and located within a

Transit Priority Area are entitled to a 100% density bonus, provided the additional density does not cause a need for a waiver or an incentive to enlarge the building envelope.

- Expand AB 2442 (housing for very-low income transition-age foster youth, disabled veterans, or persons experiencing homelessness) allowance so that projects reserving 10% of the total units receive a density bonus pursuant to the more generous calculation/sliding scale available to other very-low income affordable housing projects under the City's Ordinance (not limited to a 20% density bonus).
- Currently, projects reserving 10% of the total units for senior housing (age restricted) receive a 20% density bonus. Clarify that senior housing that is reserved for very-low, low or moderate incomes receive a density bonus pursuant to the calculation/sliding scale available under the City's Ordinance.
- Clarify what qualifies as a 'waiver' and 'incentive' and standardized reporting requirements.
- Staff recommends the regulations be renamed the "Affordable Housing Regulations" instead of "Affordable Housing Density Bonus Regulations" since developers are no longer required to request a density bonus (AB 2501) or achieve the maximum base zone density in order to request incentives, waivers or allowances provided in the regulations.

**Code Monitoring Team (CMT) Recommendation:** On September 13, 2017, the CMT unanimously voted (11-0-0) to recommend to TAC approval of staff's proposed code changes with the following additions: Include definitions/examples of waivers, incentives and deviations and encourage ongoing training/education programs for industry and staff. An information bulletin is being created and will reflect CMT's recommendations. Staff intends to perform regular staff trainings and public outreach to ensure consistent understanding and implementation of the new code.

**Technical Advisory Committee (TAC) Recommendation:** On September 13, 2017, the TAC considered CMT's recommendations and after deliberations unanimously voted (11-0-0) to recommend that City Council approve staff's proposed changes.

**Community Planning Committee (CPC) Recommendation:** On September 26, 2017, the Community Planners Committee voted 14-7-2 to recommended approval of the Affordable Housing Regulations with the recommendation that projects reserve 25% of the total units pursuant to the sliding scale, not the proposed 10%. However, staff recommends that the requirement remain at 10% to be consistent with state density bonus law and the City's current regulations.

## **CONCLUSION**

The proposed amendments are intended to increase production of subsidized, as well as market-rate housing, citywide. As previously stated, San Diego County's median home sales price exceeds \$500,000 and the average home rental price exceeds \$1,800 per month making it increasingly difficult for families and individuals to find an affordable place to live. Amending the Affordable Housing Density Bonus Regulations to further entice developers to include lower cost housing is part of the



the Mayor's HousingSD Initiative, which outlines a series of policies and programs aimed at providing new tools for developing additional housing at all levels of income.

Both the state law changes and staff recommendations remove processing barriers and expand the regulations in order to achieve maximum allowable density authorized under state and local law. The proposed changes also encourage the development of more micro units; an affordable market-rate housing unit product type.

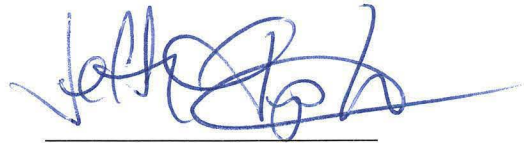
This is only one of several initiatives that address housing affordability that will be brought forward for consideration throughout the next year.

Respectfully submitted,



**DAN NORMANDIN**

Development Project Manager III  
Planning Department



**JEFF MURPHY**

Director  
Planning Department

JKM/lg

Attachments:

1. CEQA Findings
2. Proposed Amendments to the City's Affordable Housing Density Bonus Ordinance (Strikeout/Underline)



THE CITY OF SAN DIEGO

## MEMORANDUM

DATE: November 14, 2017

TO: Dan Normandin, Project Manager, Planning Department

FROM: Sara Osborn, Senior Planner, Planning Department

SUBJECT: Amendments to Land Development Code Chapter 12, Article 6, Division 5, Sections 2 and 5; Chapter 13, Article 1, Division 4, Section 6; and Chapter 14, Article 3, Division 7, Affordable Housing Regulations – Section Environmental Evaluation.

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The Planning Department (Planning) has completed a California Environmental Quality Act (CEQA) Section 15162 – Subsequent EIRs and Negative Declaration consistency evaluation in compliance with Public Resources Code 21166 for the proposed amendments to Land Development Code (LDC) Chapter 12, Article 6, Division 5; Chapter 13, Article 1, Division 4; and Chapter 14, Article 3, Division 7, Affordable Housing Regulations (or Affordable Housing Density Bonus Regulations).

This evaluation was performed to determine if conditions specified in CEQA Guidelines Sections 15162 would require preparation of additional CEQA review for the proposed LDC amendments. As outlined in this evaluation memo, Planning has determined that the proposed LDC amendments are consistent with the original LDC Environmental Impact Report (EIR) No. 96-0333/SCH No. 96081056, certified by City Council on November 18, 1997, Resolution No. 98-288; the City of San Diego General Plan Program EIR No. 104495/SCH No. 20006091032, certified by City Council on March 10, 2008, Resolution No. 2008-685; the Climate Action Plan Environmental Impact Report (EIR) No. 416603/SCH No. 2015021053, certified by City Council on December 7, 2015, Resolution No. 310176, and would not result in new impacts.

### PROJECT SCOPE AND DESCRIPTION

Density bonus is a California state law (Government Code section 65915) that allows a developer to increase density above the maximum set under a city's local land use plan (Community Plan) when a certain percentage of the new homes are reserved for very low, low, or moderate income households, or for seniors and other identified at risk populations. In accordance with California Government Code Section 65915, a city or county shall adopt an ordinance that specifies compliance with the implementation of the State's Density Bonus Law which grants a density bonus, concessions and incentives, prescribes parking requirements, as well as waivers of development standards when the development includes a certain percentage of affordable housing.

In January 2017, four Assembly Bills (AB) (AB2501, AB2556, AB2442, & AB1934) went into effect, amending the State's mandatory density program, and requiring the City to update its current Affordable Housing Density Bonus Regulations (Chapter 14, Article 3, Division 7). Furthermore, additional modifications are proposed in an effort to further incentivize the use of this program to increase the production of more affordable units.

In summary, the major provisions from the new state laws have been incorporated into the City's Affordable Housing Regulations as follows:

- All density calculations (base & density bonus) must be rounded up to next whole number.
- Developers are eligible for an incentive even if they do not request a density bonus.
- Parking reductions do not count towards an incentive or concession.
- Cities must adopt procedures and timelines for processing a density bonus application.
- Clarification of the definition of incentives and concessions and grounds for denial.
- Reasonable documentation can be required by a city to establish an applicant's eligibility for incentives, waivers and reduced parking.
- Projects reserving 10% of the total units for very-low income transition-age foster youth, disabled veterans, or persons experiencing homelessness are eligible for a 20% density bonus. The bonus calculation is applied to the number of units reserved, not the base density.
- This bill provides clarifications for implementing adopted legislation. This bill clarifies when former tenant income is not known, a required affordability proportion is determined by reliance on HUD's Comprehensive Housing Affordability Strategy database. Additionally, replacement units must be of equivalent size (bedroom count).
- Commercial developer may be granted a development bonus per Government Code Section 65915.7(b) if the developer partners with an affordable housing developer to construct a mixed-used project with the housing located in the commercial development or within a one-mile radius of the commercial development. The partner agreement shall be approved by the City.

In addition to the state mandatory changes above, the City is proposing the following additional incentives to help promote and encourage the use of the Affordable Housing regulatory tool. These include:

- An additional 10% density bonus above maximum, as long as the added density does not cause a need for a waiver/incentive to enlarge the building height and setbacks beyond that allowed by the base zone.
- A 100% density bonus is available to development where the average unit size is 600 sf average and all units in the development are 800 sf or smaller, the development is at least partially in a Transit Priority Area, and the additional density does not cause a need for a waiver/incentive to enlarge the building heights or setbacks beyond that allowed by the base zone.
- Affordable developments may request an incentive or waiver even if they do not request a density bonus.
- Senior housing that is reserved for very-low, low or moderate income receive a density bonus pursuant to the calculation/sliding scale available under the City's Ordinance
- Clarify what qualifies as a 'waiver' and 'incentive' and standardized reporting requirements

## **BACKGROUND - PLANNING AND ENVIRONMENTAL FRAMEWORK**

**California Housing Element Law**

California Housing Element law, Government Code Section 65580, mandates that local governments outline the housing needs of their community, the barriers or constraints to providing that housing, and actions proposed to address these concerns over an eight-year period. Housing Element law requires local governments to adequately plan to meet their existing and projected housing needs, including their share of the regional housing need, and establish the policy and regulatory framework that provides opportunities for housing development.

In accordance with California Senate Bill 375 (SB 375), which seeks to reduce greenhouse gas (GHG) emissions, the Housing Element is a key part of an integrated transportation and housing planning process coordinated through a Sustainable Communities Strategy (SCS) and Regional Transportation Plan (RTP).

**California State Density Bonus Law**

Under State Density Bonus Law (Government Code Section 65915 et seq.), jurisdictions are required to grant density bonuses, waivers from development standards, and incentives when a developer of a housing project of five or more units reserves at least 5% of those units for affordable to moderate, low or very low income households (between 50% and 120% of area median income and for transition-age foster youth, disabled veterans, or persons experiencing homelessness). The increased development potential allowed under this law is intended to provide additional affordable units. The amount of the density bonus, and the number of concessions and incentives varies depending on the percentage of affordable units proposed and the level of affordability. Project applicants are able to request waivers from development standards if the development standards physically preclude the project with the additional density or with the concessions and incentives. State Law further requires that rental units be affordable for a term of no less than 55 years, and that ownership units be affordable to at least the first buyer. Additionally, the State Density Bonus mandate supersedes local land use requirements to encourage the development of affordable housing and allows a jurisdiction to grant a density bonus greater than identified in state law to incentivize the use of this program to increase the production of more affordable units.

**Regional Plan**

San Diego Association of Governments (SANDAG) adopted the 2015 Regional Plan, which integrates both the 2004 Regional Comprehensive Plan and the 2050 Regional Transportation Plan, as well as the Sustainable Communities Strategy (SCS), into one unified plan. By incorporating the SCS, the Regional Plan is in compliance with Senate Bill 375 and focuses on land use planning and transportation issues in an attempt to develop sustainable growth patterns on a regional level. The Regional Plan serves as a unifying document for a number of other regional initiatives covering topics such as housing, economic prosperity, habitat preservation, and environmental resource protection.



### **Land Development Code**

The LDC was created to consolidate development regulations into a sequence of chapters of the Municipal Code (Chapters 11-15) to simplify the City's land development regulations; make the land development regulations more objective; make the code more adaptable; eliminate redundancies and contradictions; standardize the code framework; and increase predictability in the application of land development regulations. Currently, the City's LDC Affordable Housing Density Bonus Regulations included in the LDC under section Chapter 14, Article 3, Division 7, allow a maximum density bonus of up to 50% for very low, low, and moderate income dwelling units based on the percentage of affordable housing provided, and include separate parking regulations based on the affordability of units.

The certified LDC Program Environmental Impact Report (PEIR) analyzed the environmental effects associated with adoption and implementation of the proposed LDC, related regulations, amendments, and appeals. The LDC EIR identified significant unmitigated impacts in the following issue areas: Land Use, Biological Resources, Landform Alteration, Historical Resources, Paleontological Resources, and Human Health and Public Safety. Cumulative impacts were also identified to Soils/Erosion Hazard, Air Quality, Hydrology/Water Quality, Biological Resources, Land Use, Transportation/Circulation, Landform Alteration, Historical Resources, and Paleontological Resources. A Mitigation Monitoring and Reporting Program was adopted with LDC PEIR to reduce potentially significant impacts to Land Use, Biological Resources, Historical Resources, Landform Alteration/Neighborhood Character, Paleontological Resources, Natural Resources, and Human Health and Safety.

### **City of San Diego General Plan**

The General Plan was designed to complement and support regional planning efforts and includes 10 elements that are intended to provide general guidance for future development. This comprehensive policy-level document anticipates future actions, including community plan updates, land development code amendments, and applicable ordinances required to provide for effective implementation. Under the City of Villages Strategy, the General Plan aims to direct new development projects away from natural undeveloped lands into already urbanized areas and/or areas where conditions allow the integration of housing, employment, civic, and transit uses. It is a development strategy that mirrors regional planning and smart growth principles intended to preserve remaining open space and natural habitat, and focus development and density near transit and services. The General Plan's City of Villages strategy implements policies that encourage mixed-use developments that are pedestrian-friendly, centers of community, and linked to regional transit system.

The General Plan PEIR analysis includes SANDAG's projections that from 2004 to 2030, the City's population will increase by over 360,000 people and add almost 120,000 residential units, an increase of approximately 24 percent. Multiple family units comprise the majority of housing unit growth accounting for 102,582 of the 119,783 projected housing units. It is also anticipated that future growth will most likely occur in existing urban areas in accordance with the General Plan, since less than four percent of the City's land consists of vacant land.

The General Plan PEIR analyzed the environmental effects associated with its adoption and implementation of the maximum buildout of 120,000 residential units. It took into account the previously adopted Density Bonus Regulations in its project description and environmental analysis, which largely direct growth and affordable housing to already developed areas of the City through infill and redevelopment in support of the City of Villages concept. The General Plan PEIR identified

significant unmitigated impacts in the following issue areas: Air Quality, Biological Resources, Geologic Conditions, Health and Safety, Historical Resources, Hydrology, Land Use, Mineral Resources, Noise, Paleontological Resources, Population and Housing, Public Facilities, Public Utilities, Transportation/Traffic/Circulation/Parking, Visual Effects and Neighborhood Character, and Water Quality. The General Plan PEIR included a Mitigation Framework to identify means by which potentially significant impacts could be reduced or avoided in cases where the PEIR analysis determined such impacts to be potentially significant. Standard existing regulations, programs and procedures that are applied to all similar projects were taken into account in identifying additional project specific mitigation that may be needed to reduce identified significant impacts.

### **General Plan Action Plan**

Adopted in 2009, the General Plan Action Plan is the comprehensive implementation program for the 2008 General Plan. The Action Plan contains broad implementation measures drawing from General Plan policies and implementing plans and programs. The Action Plan goes beyond the typical implementation tools of zoning, subdivisions, and capital improvements to address implementation comprehensively. It identifies Land Development Code amendments as a key component of General Plan implementation.

### **General Plan Housing Element 2013-2020**

The Housing Element serves as a policy guide to address the comprehensive housing needs of the City of San Diego. The Housing Element is one of the 10 elements of the City of San Diego's General Plan and is mandated by the State. The intent of the Housing Element is to assist with the provision of adequate housing to serve San Diegans of every economic level and demographic group and includes reliance and analysis of the use of density bonus to achieve projected residential housing needs.

Specific to affordable housing, Goal 4 of the Housing Element is to "provide affordable housing opportunities consistent with a land use pattern which promotes infill development and socioeconomic equity; and facilitate compliance with all applicable federal, state, and local laws and regulations". Policy direction specific to density bonus is to:

- Encourage and promote the use of available Housing Density Bonus Programs. Future consideration should be given to further expanding density bonus incentives and provisions.
- Enforce all federal, state, and local ordinances or regulations pertaining to land use incentives which promote affordable housing opportunities for low- and moderate-income homebuyers, such as inclusionary housing and density bonus.

The Housing Element also includes the City of San Diego's regional share goal for the 11-year period, January 1, 2010 – December 31, 2020, which was determined by SANDAG to be approximately 87,000 new housing units.

<b>City of San Diego's Regional Housing Needs Allocation (2010-2020)</b>	
<b>Income Group</b>	<b>Regional Share</b>
Extremely Low-income (0-30% AMI)	10,988
Very Low-income (31-50% AMI)	10,989
Low-income (51-80% AMI)	16,703
Moderate-income (81-120% AMI)	14,462
Above Moderate-income (120% + AMI)	33,954
<b>Total Sum of Regional Housing Needs</b>	<b>87,096</b>

The Regional Housing Needs Allocation (RHNA) goal does not require affordable housing units in each income category be provided, but does require that San Diego have sufficient vacant and potentially redevelopable land zoned for residential use in various density categories to potentially meet the housing goals for each income group. The Housing Element identified an inventory of approximately 126,000 additional units designated and zoned for residential. It was further anticipated that the use of density bonus could achieve additional units beyond those zoned.

An Addendum to the City's General Plan PEIR was prepared and certified for the General Plan Housing Element Update (2013-2020) on March 4, 2013. State requirements for the Housing Elements are more specific than for other General Plan elements and require that quantifiable goals be established and specific programs be identified to meet these goals. The Housing Element contains objectives, policies, and programs that address regional housing needs for all income groups and supports incentive programs such as inclusionary housing and density bonus for low to moderate income households. The Housing Element Addendum project description restates the RHNA goal, which is included in the Housing Element, and states "the City of San Diego encourages the production of new housing units that offer a diversity of housing types to ensure that an adequate supply is available to meet the existing and future needs of all groups. The City is to continue to maintain an inventory of both vacant and redevelopable land which is distributed throughout the City in such a way that the City can achieve its 11 year regional share goal of 87,096 units, as allocated by SANDAG in the Regional Housing Needs". While CEQA Guidelines Section 15283 states that CEQA does not apply to regional housing needs determinations made by the Department of Housing and Community Development, a council of governments, or a city or county pursuant to Government Code, the Addendum to the General Plan PEIR was prepared to address the potential impacts associated with the development of the maximum buildout of the Housing Element.

### **Housing Element Annual Report**

State law requires an annual report summarizing yearly progress made toward achieving Housing Element goals. As of March 2017, the City is at the midpoint of its eight-year Housing Element Cycle and housing production is less than halfway toward the goal to develop 45,100 new units (44 percent), all of which was analyzed within the previous PEIR and associated Addendum. The following table provides a comparison of the Housing Production Goals with current Production (2016), and the remaining production needed to meet the Housing Element 2020 goals:

<b>Housing Production for New Construction 2013-2016</b>				
<b>Income Group</b>	<b>Housing Production Goals 2013-2020</b>	<b>Production 2013-2020</b>	<b>Percent of Production Target Achieved</b>	<b>Units Needed to Meet Production Goals by Dec 2020</b>
Extremely Low / Very Low	6,000	1,009	17%	4,991
Low	3,600	1,511	42%	2,089
Moderate / Above Moderate	35,500	17,513	49%	17,987
<b>Total</b>	<b>45,100</b>	<b>20,033</b>	<b>44%</b>	<b>25,067</b>

As of 2016, since 2013, approximately 20,000 units, with 17 percent of the extremely low- and very low-income units built, 42 percent of low-income units constructed, and 49 percent of moderate- and above moderate-income units, were constructed. The City has made progress in new housing construction, however, the residential unit count in new extremely low- and very low-income housing has been well below the residential units programmed in the General Plan and Housing Element, and similarly analyzed in prior environmental documentation.

### **Climate Action Plan**

The 2015 Climate Action Plan identifies measures to meet GHG reduction targets for 2020 and 2035 while accounting for future population and economic growth. The City identifies GHG reduction strategies focusing on energy and water-efficient buildings; clean and renewable energy; bicycling, walking, transit, and land use; zero waste; and climate resiliency.

CAP Action 3.1 Implement General Plan Mobility Element and City of Villages Strategy in Transit Priority Areas (TPAs), and Action 3.6 Implement Transit-Oriented Development within Transit Priority Areas would result in the development of more dense, built-up, and transit- and alternative transportation-oriented development, particularly within the TPAs. Since there is little remaining vacant land in the City available for development, implementation of the City of Villages strategy would largely occur through infill and redevelopment occurring in selected built areas.

The CAP PEIR incorporates by reference the General Plan PEIR and the land use assumptions contained within the Plan. CAP Actions 3.1 and 3.6, which call for implementation of the General Plan Mobility Element and City of Villages strategy in Transit Priority Areas, as well as implementation of Transit-Oriented Development within Transit Priority Areas, were addressed in the previous environmental review contained in the City of San Diego General Plan Program EIR.

The CAP PEIR analysis includes ensuring that growth assumptions used in the CAP to forecast future emissions are not exceeded. The CAP PEIR analysis includes SANDAG's growth projections from 2010 to 2035, where citywide population is projected to increase by almost 400,000 people and add 138,056 housing units by 2035 with multi-family units comprising the majority of housing unit growth in 2035. The CAP PEIR analyzed the environmental effects associated with the population and maximum residential units as would be implemented with the adoption of the CAP. The PEIR analysis concluded that the CAP would have a significant environmental effect in the following areas(s): Land Use, Visual Effects and Neighborhood Character, Air Quality, Greenhouse Gases, Historical Resources, Transportation and Circulation, Utilities, and Water Supply. For impacts related to Visual Effects and Neighborhood Character, Air Quality, Historical Resources, and Transportation and Circulation, mitigation measures would not reduce program-level impacts to below a level of significance.

### **Climate Action Plan Consistency Checklist**

Subsequent to the adoption of the CAP, the City adopted a CAP Consistency Checklist (Checklist). The purpose of the Checklist is to, in conjunction with the CAP, provide a streamlined review process for proposed new development projects that are subject to discretionary review. The Checklist confirms land use consistency and evaluates a project's consistency with the applicable strategies and actions of the CAP including, energy, water, sustainable features, multi-modal access and active transportation features, and whether a project implements the General Plan's City of Villages strategy in an identified Transit Priority Area (TPA) that will result in an increase in the capacity for transit-supportive residential and/or employment densities.



## ANALYSIS OF LDC AMENDMENTS

The LDC amendments to the Affordable Housing Regulations are in response to new State law and the growing housing crisis in San Diego. Generally, these amendments clarify existing state law regulations and how incentives and waivers are administered; provide a better tracking and monitoring mechanism for tenants in rental units displaced by new units; create a density bonus for projects aimed at housing transition-age foster youth, disabled veterans, or homeless; and encourage affordable housing and commercial developers to partner to stimulate more mixed use development. Additionally, the City is proposing additional density bonus measures to further stimulate affordable housing development. One amendment would offer an additional 10% density bonus for affordable housing projects which maintain the base zone's established structural height and setback requirements. A 100% density bonus is proposed to incentivize developments within Transit Priority Areas that provide small unit sizes of under 800 sf with an overall average unit size of 600 sf. The intent of the LDC amendments are consistent with the City's policy framework and analysis contained within those associated environmental documents summarized above.

### **Housing Growth, Capacity & Production**

Housing availability and affordability, and population increase are factors which influenced the General Plan and Housing Element updates. The General Plan and associated General Plan PEIR acknowledge that:

- State law mandates that General Plan and community plan amendments are not to be required for projects utilizing state mandated housing density bonuses;
- As projects and future implementation actions are reviewed, individual actions are to be deemed consistent with the General Plan if, considering all its aspects, it will further the goals and policies of the plan and not obstruct their attainment;
- Specific legislative, regulatory, administrative, and collaborative implementation actions will be needed to implement the General Plan;
- The RHNA allocation designates the City's housing need into four income brackets: very low, low, moderate, and above moderate and the state requires that each jurisdiction identify enough multifamily zoned land or take other actions to accommodate their share of lower-income housing; and
- The above activities are monitored to measure effectiveness in achieving plan goals.

The policies of the General Plan are developed and analyzed within the context of state requirements, regional plans and population forecasts, and the issues and needs unique to the City of San Diego. The General Plan policies support, and the General Plan PEIR analyzes, SANDAG's projections that the City's population will increase by over 360,000 people and add almost 120,000 housing units by 2030. It is anticipated that future growth will most likely occur in existing urban areas in accordance with the General Plan through implementation of the City of Villages growth strategy.

The Housing Element further identifies "potential future infill housing opportunity sites" throughout the City. In addition to providing an Adequate Sites Inventory which identifies the capacity for 126,259 additional housing units, and a production goal of 45,000 units, the adopted Housing Element identifies additional goals, policies and programs to increase the supply and distribution of affordable housing, redevelopment, infill, and new growth, including through the use of density bonus, to be targeted into compact and mixed-use villages. This infill strategy strives to increase housing supply and is a key component of the City's housing strategy.

As part of the monitoring program of the General Plan and Housing Element, the City summarizes the yearly progress made toward achieving Housing Element goals in the Housing Element Annual Report. As noted above as of 2016, since 2013, housing production is less than halfway toward the goal to develop 45,100 new units by 2020. It is reported that there have been approximately 20,000 units constructed. The growth assumptions contained and analyzed within the General Plan PEIR anticipated 119,783 new residential units by 2030; and the CAP EIR further anticipated and analyzed 138,056 new residential units by 2035.

As summarized above, the Annual Housing Report demonstrates that production of affordable housing in the City has been limited, and well under the projected and analyzed number of residential units anticipated within both the General Plan and Housing Element Update. Regular updates of the LDC were anticipated to occur to not only maintain the code consistent with the goals described above, but also to provide for additional programs and policies to implement the General Plan and Housing Element.

The Affordable Housing Regulations amendment would provide additional measures, policy and programs to further incentivize development and stimulate more affordable housing production to reduce the gap in the City's RNHA and realize more of the anticipated housing growth previously identified and analyzed within the General Plan PEIR and CAP PEIR. The proposed LDC amendments are consistent with the General Plan EIR and the Housing Element Addendum to the City's General Plan PEIR, which anticipate future growth and the need to update regulations and programs to achieve this growth. The proposed LDC amendments would not result in new significant environmental effects or substantially increase the severity of previously identified significant effects in any of these issue areas or mitigation requirements for any of the referenced environmental documents that previously analyzed a maximum citywide residential buildout of up to 138,056 housing units by 2035. Therefore, no further documentation is required for the proposed project.

### **Permitting**

On a project-level basis, the proposed ordinance amendment would require requested waivers to be analyzed in compliance with CEQA to ensure compliance with State or federal law, including the California Coastal Act and the City's Environmentally Sensitive Lands regulations, similar to incentives. An incentive is a modification of a development standard which has been determined to be economically infeasible in order to achieve the authorized density. Incentives are evaluated by staff and may be granted unless findings of denial are made. Similarly, waivers, can be requested to reduce or waive development standards that would make a project physically infeasible at the density allowed. Waivers are also evaluated by staff and may be granted unless findings of denial are made. Additionally, an Affordable Housing Incentive and Waiver Report is required for all projects requesting incentives and waivers, the Report summarizes all incentives and waivers and provides a comparison with the zoning requirements and unit sizes of proposed project and adjacent development.

An analysis of an incentive or waiver, in and of itself, would not determine the permit process. If a project would have been discretionary without the requested density bonus or incentive(s) it would continue to be discretionary and would be subject to CEQA. If a project would have been ministerial without the requested density bonus or incentive(s)/waiver(s) it would continue to be ministerial and would not be subject to CEQA review. Discretionary projects are subject to CEQA while ministerial projects are statutorily exempt. However, projects requesting an incentive or waiver that otherwise would require discretionary review (without a density bonus) now may become ministerial using the

density bonus regulations. Incentives requested of a development are reviewed by the City and can be denied based on specific findings.

Similar to incentives, a waiver, in and of itself, would not determine the permit process for a development project. Waivers contain similar concessions to incentives and are intended to reduce a development standard that physically precludes construction of affordable units. Also similar to incentives, waivers are reviewed by the City and can be denied. Waivers have been included as part of Density Bonus state law since 2006 and with this action will be codified within the LDC similar to incentives. Waivers will be processed similar to incentives and include similar findings of denial. By approving the amendments to the LDC, the City Council would be codifying how projects proposing to use the density bonus regulations, including waivers, would be processed.

Although waivers are requested to reduce development standards, they “shall not require a General Plan amendment, zoning change, development permit, or other discretionary approval” and waivers can be denied by staff or decision makers. The findings of denial serve to analyze issue areas that could have a significant effect on health, safety and the environment. Waivers can be denied if there is substantial evidence, of any of the following:

- (1) The waiver would have a significant, quantifiable, direct, and unavoidable impact upon health, safety, or the physical environment for which there is no feasible method to mitigate or avoid the impact;
- (2) The waiver would have an adverse impact on any real property that is listed in the California Register of Historical Resources; or
- (3) The waiver would be contrary to state or federal law. Requested waiver(s) shall be analyzed in compliance with the California Environmental Quality Act as set forth in Chapter 12, Article 8, and no waiver shall be granted without such compliance.
- (4) Within the Coastal Overlay Zone the waiver would be inconsistent with the resource protection standards of the City's Local Coastal Program or the environmentally sensitive lands regulations, with the exception of density.

Therefore, on a project-level basis, the proposed ordinance would require requested waivers to be analyzed in compliance with CEQA to ensure compliance with state and federal law, including, but not limited to, the City's Coastal Overlay Zone and Environmentally Sensitive Lands regulations.

#### **Environmental Determination**

The LDC amendments were reviewed for environmental consistency with the LDC PEIR, the General Plan PEIR and Housing Element Addendum, and the CAP PEIR. As previously analyzed in the LDC EIR, the LDC includes regulations that address a variety of treatments, options, exceptions, and bonuses for development projects. Consistent with this analysis, the Density Bonus Regulations under Chapter 14, Article 3, Division 7, and the proposed LDC amendments would comply with the provisions already afforded under State law.

The LDC amendments as proposed would not conflict with any applicable plan, policy or regulation adopted and the amendments would apply to established urban areas with services and facilities available. The LDC amendments apply to areas that are designated for residential and commercial/residential mixed use development and it is further assumed that most growth within the City will occur as infill development, within Transit Priority Areas, where the site can be service by all required utilities.

The CAP includes strategies and actions to address transportation, building energy, and water use. The goals of Strategy 1, Energy and Water Efficient Buildings, are to reduce energy consumption in residential building and municipal facilities, and to reduce per capita water use. Projects implemented per the LDC Amendments would be required to comply with the updated California Green Building Standards Code (Title 24, Part 11 of CCR) (CalGreen Code), which provides for greater efficiency in energy and water use than existing structures.

For the purpose of reducing greenhouse gas emissions, the LDC amendments are consistent with the policy goals of the CAP and the CAP PEIR. The new growth is anticipated to be within infill areas and the new regulation to provide smaller units with a 100% density bonus must be located in Transit Priority Areas. Both the General Plan and CAP anticipate future growth in urban areas and the CAP included a Monitoring and Reporting Program, and should the City be falling short in achieving the goals set out in the CAP, future development may be required to provide analysis and possible mitigation.

The additional density bonus measures being considering beyond the state law mandate would require the development to maintain base zone structural height and setbacks. Best management practices would continue to be used to eliminate any waste discharge and assure compliance with water quality standards. Conformance with State and City stormwater water standards would preclude downstream impacts and the project would not preclude any regulations currently in place. Additionally, since the building envelope is maintained, landscaped areas are anticipated to be similar to developments within the same zone that do not utilize the new Affordable Housing Regulations and therefore landscape water use would not increase with the use of the density bonus.

Future development would continue to comply with the requirements of the Municipal Code regarding onsite and offsite drainage and would be required to be consistent with the City of San Diego's Significance Thresholds for noise regulations and noise levels for each area of development. Also, future development would be required to be consistent with the City of San Diego's policies for utilities and service systems, and other regulatory requirements, and would not have a cumulatively considerable effect on air quality, water quality, traffic, or any other environmental issue areas.

The LDC EIR addressed growth-inducing impacts when a project, such as the proposed regulations, would directly or indirectly foster economic growth, population growth, or additional housing; when it removes obstacles to growth; when it overburdens public facilities and services; or when it encourages or facilitates other activities that could significantly affect the environment. As such, some of the changes that would likely induce growth could include: 1) the change in applicability of the regulations and 2) the reduction in level of decision making process for many types of development. Since the intent of the Density Bonus Regulations would allow incentives, bonuses and exceptions from the development standards to encourage affordable dwelling units for very low, low, and moderate income households, the project would be consistent with the LDC EIR conclusions.

The LDC amendments could result in new construction and other physical changes that could result in new or modifications to the existing infrastructure systems to support a more concentrated urban landscape, however, this was anticipated in the General Plan and the Climate Action Plan, and the PEIRs for both analyzed these potential impacts.

Thus, the proposed Affordable Housing Regulations amendments are consistent and covered by the City's LDC, General Plan and Housing Element, and CAP goals, policies and objectives. The LDC



amendments, themselves, would not result in new impacts or changed circumstances that would require a new environmental document. However, on a project-level basis, when waivers are requested, compliance with CEQA and associated City regulations would be required to ensure there would not be a significant, quantifiable, direct, and unavoidable impact upon health, safety, or the physical environment.

## CONCLUSION

The Planning Department reviewed the proposed LDC amendments and conducted an 15162 consistency evaluation in compliance with Public Resources Code Section 21166 with the previously certified LDC EIR No. 96-0333/SCH No. 96081056 and associated environmental determinations; the General Plan PEIR No. 104495/SCH No. 2006091032 and associated Addendums; and the Climate Action Plan PEIR No. 416603/SCH No. 2015021053 and associated Addendum. The project would not result in new impacts or changed circumstances that would require a new environmental document.

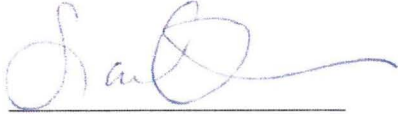
Section 15162 of the CEQA Guidelines states:

When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
  - (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
  - (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
  - (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
  - (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

The Planning Department finds that none of the three criteria listed above has occurred. In addition, this evaluation supports the use of the LDC EIR, the 2008 General Plan PEIR, the Climate Action Plan PEIR, and all associated documentation, for the proposed amendments pursuant to Public Resources Code 21166 and CEQA Guidelines Section 15162.

Therefore, the certified Land Development Code PEIR, General Plan PEIR, and the Climate Action Plan PEIR adequately covers the modifications to Amendments to Land Development Code Chapter 12, Article 6, Division 5; Chapter 13, Article 1, Division 4; and Chapter 14, Article 3, Division 7, Affordable Housing Regulations – Section Environmental Evaluation being proposed.



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**§126.0502 When a Site Development Permit is Required**

(a) through (c) [No change in text.]

(d) A Site Development Permit decided in accordance with Process Four is required for the following types of *development*.

(1) through (4) [No change in text.]

~~(5) — Development for which the applicant, using the Affordable Housing Density Bonus Regulations, seeks a deviation from the applicable development regulations that exceeds the allowable incentives provided for in Section 143.0740.~~

(6) *Development* for which the *applicant* seeks a deviation from the development regulations in Section 144.0507 for *condominium conversions*.

(7) Any *encroachment* or object which is erected, placed, constructed, established or maintained in the *public right-of-way* when the *applicant* is not the *record owner* of the property on which the proposed *encroachment* will be located in accordance with Section 129.0710(b).

(8) *Development* of a *large retail establishment* of 100,000 or more square feet *gross floor area* in all commercial and industrial zones, and in all planned districts.

(9) A request for a deviation from the applicable development regulations for affordable/in-fill housing and sustainable building projects in accordance with Section 143.0920.

(e) through (g) [No change in text.]

**§126.0505 Findings for Site Development Permit Approval**

A Site Development Permit may be approved or conditionally approved only if the decision maker makes all of the findings in Section 126.0505(a) and the supplemental findings in Section 126.0505(b) through (n) that are applicable to the proposed development as specified in this section.

(a) through (k) [No change in text.]

~~(l) — Supplemental Findings — Deviation for Affordable Housing~~

A development that requires a Site Development Permit in accordance with Section 143.0750 because the applicant has requested a deviation from the applicable development regulations as an additional incentive to a density bonus for providing affordable housing may be approved or conditionally approved only if the decision maker makes the following supplemental findings in addition to the findings in Section 126.0505(a):

- (1) ~~The proposed development will materially assist in accomplishing the goal of providing affordable housing opportunities in economically balanced communities throughout the City;~~
- (2) ~~The development will not be inconsistent with the purpose of the underlying zone.~~
- (3) ~~The deviation is necessary to make it economically feasible for the applicant to utilize a density bonus authorized for the development pursuant to Section 143.0725.~~

(m) Supplemental Findings - *Condominium Conversions*

A Site Development Permit required in accordance with Section 144.0509, because of potential impacts to the surrounding neighborhood, may be approved or conditionally approved only if the decision maker makes either of the following supplemental findings in addition to the findings in Section 126.0404 (a):

- (1) and (2) [No change in text.]

(n) Supplemental Findings-*Public Right-of-Way Encroachments*. A Site

Development Permit in accordance with Section 126.0502(d)(7) for any *encroachment* or object which is erected, placed, constructed, established or maintained in the *public right-of-way* when the *applicant* is not the *record owner* of the property on which the proposed *encroachment* will be located may be approved or conditionally approved only if the decision maker makes the following supplemental findings in addition to the findings in Section 126.0504(a):

- (1) through (5) [No change in text.]

**§129.0710 How to Apply for a Public Right-of-Way Permit**

An application for a Public Right-of-Way Permit shall be submitted in accordance with Sections 112.0102 and 129.0105. The submittal requirements for Public Right-of-Way Permits are listed in the Land Development Manual.



A *development permit* is required prior to issuance of a Public Right-of-Way Permit for the following:

- (a) [No change in text.]
- (b) If the proposed *encroachment* is erected, placed, constructed, established or maintained in the *public right-of-way* when the *applicant* is not the *record owner* of the property on which the *encroachment* will be located, a Site Development Permit is required in accordance with section 126.0502(d)(76), except for the following:
- (c) and (d) [No change in text.]

**§131.0446 Maximum Floor Area Ratio in Residential Zones**

- (a) through (e) [No change in text.]
- (f) In the RM-3-7, RM-3-8, RM-3-9, RM-4-10, RM-4-11, and RM-5-12 zones, excluding *development* using the Affordable Housing Regulations in Chapter 14, Article 3, Division 7, a minimum of one-third of the permitted *floor area ratio* shall be reserved for required parking. The maximum *floor area ratio* for all *structures* on the *premises*, excluding underground parking *structures*, shall not exceed the maximum permitted *floor area ratio* for the zone as identified in Table 131- 04G, except that a *floor area ratio* bonus shall be provided equal to the *gross floor area* of the underground parking *structure*.
- (g) [No change in text.]

**Article 3: Supplemental Development Regulations**  
**Division 7: Affordable Housing ~~Density Bonus~~ Regulations**

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

The purpose of these regulations is to provide incentives for *development* that provides housing for *very low income*, *low income*, and *moderate income* households; senior households; or transitional foster youth, disabled veterans, or homeless persons. Additionally, the purpose is to specify how compliance with California Government Code Section 65915 (“State Density Bonus Law”) will be implemented, as required by California Government Code Section 65915(a)(1). These regulations are intended to materially assist in providing adequate and affordable housing for all economic segments of the community and to provide a balance of housing opportunities throughout the City.

~~The purpose of these regulations is to provide increased residential density to developers who guarantee that a portion of their residential *development* will be~~

available to *moderate income, low income, very low income*, or senior households. The regulations are intended to materially assist the housing industry in providing adequate and affordable housing for all economic segments of the community and to provide a balance of housing opportunities for *moderate income, low income, very low income*, and senior households throughout the City. It is intended that the affordable housing *density* bonus and any additional *development* incentive be available for use in all residential *development* of five or more units, using criteria and standards provided in the General Plan, and that requests be processed by the City of San Diego and be implemented by the President and Chief Executive Officer of the San Diego Housing Commission. It is also intended that these regulations implement the provisions of California Government Code Sections 65915 through 65918.

**§143.0715 When Affordable Housing Density Bonus Regulations Apply**

This Division applies to any *residential development* where current zoning allows for five or more *dwelling units*, not including *density* bonus units, ~~where an applicant proposes *density* beyond that permitted by the base zone and *land use plan* at the time the application is *deemed complete*~~, in exchange for either of the following:

- (a) A portion of the total *dwelling units* in the *development* being reserved for *moderate, low, or very low, low, or moderate income* households; ~~or~~ for senior citizens; transitional foster youth, disabled veterans, or homeless persons; or child care in accordance with Section 143.0741 through a written agreement with the San Diego Housing Commission; or
- (b) The donation of land, pursuant to the State Density Bonus Law.

**§143.0717 Required Replacement of Affordable Units**

- (a) An *applicant* is ineligible for a *density* bonus or any incentive under this Division if the property on which the *development* is proposed contains, or during the five years preceding the application, contained, rental *dwelling units* that have had the rent restricted by law or covenant to persons and families of *low income* or *very low income*, or have been occupied by persons and families of *low income* or *very low income*, unless the proposed *development* replaces the affordable *dwelling units*, and either:
  - (1) Provides affordable *dwelling units* at the percentages set forth in Section ~~143.0725~~ 143.0720(i) (inclusive of the replacement *dwelling units*), or
  - (2) Provides all of the *dwelling units* as affordable to *low income* or *very low income* households, excluding any manager's unit(s).

- (b) The number and type of required replacement *dwelling units* shall be determined as follows:
- (1) For a *development* containing any occupied *dwelling units*, the *development* must contain at least the same number of replacement *dwelling units*, of equivalent size and bedroom type, or both, and must be made affordable to and occupied by persons and families in the same or a lower income category as the occupied *dwelling units*. If ~~some of the~~ For unoccupied *dwelling units* in the *development* are unoccupied, the replacement *dwelling units* shall be of the same proportion of affordability as those *dwelling units* that are occupied the same or lower income category as the last household in occupancy. If the income category of the last household is unknown, it is rebuttably presumed that the units were occupied by *low income* renter households in the same proportion as all renter housing within within the the City of an Diego, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database.
  - (2) If all the *dwelling units* are vacant or have been demolished within the five years preceding the application, the *development* must contain at least the same number of replacement *dwelling units*, of equivalent size or type, or both, as existed at the time of the greatest number of occupied affordable *dwelling units* in that *development* highpoint of those units in the five year period preceding the application, and must be made affordable to and occupied by persons and families in the same or a lower income category as those in occupancy at that same time. If the income categories are unknown for the highpoint prior five year period, then one-half of the replacement *dwelling units* shall be made available for rent to or purchase by and occupied by persons and families in the very low income category, and one-half of the replacement *dwelling units* shall be made available for rent to and occupied by persons and families in the low income category it is rebuttably presumed that units were occupied by very low income and low income renter households in the same proportion as all renter housing within the City of San Diego, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database, and replacement *dwelling units* shall be provided in that same percentage.
  - (3) All replacement *dwelling unit* calculations resulting in fractional units shall be rounded up to the next whole number.

- (4) All rental replacement *dwelling units* shall be affordable for at least 55 years.
- (5) All for-sale replacement *dwelling units* shall be subject to an equity sharing agreement to the satisfaction of the San Diego Housing Commission.

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

- (a) A *development* shall be entitled to a *density* bonus as described in this ~~Division~~, for any residential *development* for which a written agreement, and a deed of trust securing the agreement, is entered into by the *applicant* and the President and Chief Executive Officer of the San Diego Housing Commission. ~~The agreement and deed of trust in favor of the San Diego Housing Commission are to be recorded in the Office of the Recorder of the County of San Diego as an encumbrance against the *development*.~~
- (b) The *density* bonus *dwelling units* ~~units~~ authorized by this Division shall be exempt from the Inclusionary Housing Regulations set forth in Chapter 14, Article 2, Division 13, ~~provided that the affordability restrictions, term of affordability, occupancy, and rents charged under the *density* bonus regulations provide greater affordability than those within the Inclusionary Housing Regulations.~~ *Development* providing at least 10 percent of the total pre-density bonus *dwelling units* as affordable to rental households at or below 65% area median income for a period of not less than 55 years is exempt from the payment of inclusionary affordable housing fees. Notwithstanding Section 142.1303(f) *development* providing less than 10 percent of the pre-density bonus *dwelling units* at or below 65% area median income, as rental units, for at least 55 years shall pay pro-rated inclusionary affordable housing fees as determined by the Housing Commission, so that the inclusionary requirement may be satisfied by a combination of providing affordable rental units and paying a prorated Affordable Housing Fee to satisfy the requirement.
- (c) A rental affordable housing *density* bonus agreement shall utilize the following qualifying criteria ~~consistent with the procedures established by the San Diego Housing Commission:~~
  - (1) *Very low income* - At least 5 percent of the pre-density bonus *dwelling units* ~~units~~ in the *development* shall be affordable, including an allowance for utilities, to *very low income* households at a rent that does not exceed 30 percent of 50 percent of the area median income, as adjusted for household size; or
  - (2) *Low income* - At least 10 percent of the pre-density bonus *dwelling units* ~~units~~ in the *development* shall be affordable, including an

allowance for utilities, to *low income* households at a rent that does not exceed 30 percent of 60 percent of the area median income, as adjusted for household size.

- (3) The *very low and low income dwelling units* ~~affordable units~~ shall be designated units, be comparable in bedroom mix and amenities to the market-rate ~~units~~ *dwelling units* in the *development*, and be dispersed throughout the *development*.
  - (4) The *very low and low income rental dwelling units* ~~dwelling units~~ shall remain available and affordable for a period of at least 55 years or longer, as may be required by other laws or covenants.
- (d) A for-sale affordable housing *density* bonus agreement shall utilize the following qualifying criteria ~~consistent with the procedures established by the San Diego Housing Commission~~:
- (1) *Very low income* - At least 5 percent of the pre-*density* bonus *dwelling units* ~~units~~ in the *development* shall be affordable, including an allowance for utilities, to *very low income* households at a rent that does not exceed 30 percent of 50 percent of the area median income, as adjusted for household size.
  - (2) *Low income* - At least 10 percent of the pre-*density* bonus *dwelling units* ~~units~~ in the *development* shall be affordable, including an allowance for utilities, to *low income* households at a rent that does not exceed 30 percent of 60 percent of the area median income, as adjusted for household size.
  - (3) *Moderate income* - At least 10 percent of the total *dwelling units* in a common interest development, as defined in California Civil Code Section 4100, shall be affordable, provided that all *dwelling units* in the *development* are offered to the public for purchase.
  - (4) The initial occupant of all for-sale affordable *dwelling units* shall be a *very low income*, *low income*, or *moderate income* household.
  - (5) Prior to, or concurrent with, the sale of each *density* bonus affordable *dwelling unit* ~~unit~~, the *applicant* shall require the buyer to execute and deliver a promissory note in favor of the San Diego Housing Commission so that the repayment of any initial subsidy is ensured.
  - (6) Each for-sale *dwelling unit* ~~unit~~ shall be occupied by the initial owner at all times until the resale of the *dwelling unit* ~~unit~~.

- (7) Upon the first resale of a dwelling unit~~unit~~, the seller shall comply with all conditions regarding the sale of a dwelling unit~~unit~~, as applied by the San Diego Housing Commission, and as set forth in California Government Code Section 65915(c)(2).
- (8) The affordable dwelling units~~units~~ shall be designated ~~units~~, be comparable in bedroom mix and amenities to the market-rate dwelling units~~units~~ in the *development*, and be dispersed throughout the *development*.
- (e) A *density* bonus agreement for housing for senior citizens shall utilize the following qualifying criteria ~~consistent with the procedures established by the San Diego Housing Commission~~:
  - (1) The *development* consists of housing for senior citizens or qualifying residents as defined under California Civil Code Section 51.3 and 51.12, where at least 35 dwelling units are provided; or a *mobilehome* park that limits residency based on age requirements for housing for older persons pursuant to California Civil Code Section 798.76 or 799.5.
  - (2) Rental dwelling units shall remain available for a period of at least 55 years or longer as may be required by other laws or covenants.
- (f) A *density* bonus agreement for transitional foster youth, as defined in Section 66025 of the Education Code, disabled veterans as defined in Section 18541 of the Government Code, or homeless persons as defined in the McKinley-Vento Homeless Assistance shall utilize the following qualifying criteria:
  - (1) At least 10 percent of the *pre-density* bonus dwelling units in the *development* shall be affordable, including an allowance for utilities, to transitional foster youth, disabled veterans, or homeless persons at a rent that does not exceed 30 percent of 50 percent of the area median income, as adjusted for household size.
  - (2) Rental dwelling units shall remain available for a period of at least 55 years or longer as may be required by other laws or covenants.
- (fg) The *density* bonus units shall have recorded against them a Declaration of Covenants, Conditions and Restrictions in favor of the San Diego Housing Commission that shall enjoy first lien position and shall be secured by a deed of trust that may be recorded against the project or unit, as applicable, prior to construction or permanent financing.
- (g) Provision shall be made by the San Diego Housing Commission for certification of eligible tenants and purchasers, annual certification of property



owner compliance, payment of a monitoring fee to the San Diego Housing Commission, as adjusted from time to time, for monitoring of affordable unit requirements, and any other terms that the San Diego Housing Commission determines are needed to implement the provisions and intent of this division and State law.

- (h) A *condominium conversion* that provides at least 33 percent of the total *dwelling units* to *low income* and *moderate income* households, or 15 percent of the total *dwelling units* to *low income* households, shall be entitled to a *density* bonus of 25 percent or other incentives of equivalent financial value in accordance with State Density Bonus Law and this Division, unless the *development* previously received a *density* bonus or other incentives.

**§143.0725 — Density Bonus Provisions**

- (i) A *development* proposal requesting an affordable housing *density* bonus is subject to the following:

- (a1) For *development* ~~senior citizen housing~~ meeting the criteria ~~of~~ for senior citizen housing in Section 143.0720(e), the *density* bonus shall be 20 percent. For a senior citizen housing development that includes senior citizen housing for very low income and low income households a density bonus shall be calculated as set forth in Tables 143-07A and 143-07B respectively.
- (b2) For *development* meeting the criteria for *very low income* in Section 143.0720(c)(1), the *density* bonus shall be calculated as set forth in Table 143-07A. The increased *density* shall be in addition to any other increase in *density* allowed in this Division, up to a maximum combined *density* increase of 50 percent. For *development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable *floor area ratio* applicable to the *development* consistent with Section 156.0309(e).
- (e3) For *development* meeting the criteria for *low income* in Section 143.0720(c)(2), the *density* bonus shall be calculated as set forth in Table 143-07B. The increased *density* shall be in addition to any other increase in *density* allowed in this Division, up to a maximum combined *density* increase of 50 percent. For *development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable *floor area ratio* applicable to the *development* consistent with Section 156.0309(e).
- (d4) For *development* meeting the criteria for *moderate income* in Section 143.0720(d), the *density* bonus shall be calculated as set forth in Table 143-07C. The increased *density* shall be in addition to any other increase in *density* allowed in this Division, up to a maximum

combined *density* increase of 50 percent. For *development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable *floor area ratio* applicable to the *development* consistent with Section 156.0309(e).

- (5) For *development* meeting the criteria for transitional foster youth, disabled veterans, or homeless persons in Section 143.0720(f) the *density* bonus shall be 20 percent of the total pre-*density* bonus *dwelling units*. A *density* bonus for transitional foster youth, disabled veterans, or homeless persons for *very low income* shall be calculated as set forth in Table 143-07A. For *development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable *floor area ratio* applicable to the *development* consistent with Section 156.0309(e).
- (6) For *development* meeting the criteria Section 143.0720(c)(1), 143.0720(c)(2), 143.0720(d)(2), or 143.0720(f), where an *applicant* is not requesting an incentive or waiver to exceed the maximum *structure height* or *setbacks* of the base zone, an additional *density* bonus of 10 percent of the pre-*density* bonus *dwelling units* shall be granted provided that *development* of the additional *density* does not cause the need for an incentive, waiver, or deviation to exceed the maximum *structure height* or *setbacks* of the base zone.
- (7) For *development* that provides five or more *dwelling units*; meets the criteria in Section 143.0720(c)(1), 143.0720(c)(2), 143.0720(d)(2), or 143.0720(f); provides an average of no more than 600 square feet per *dwelling unit* with no *dwelling unit* exceeding 800 square feet; with a portion of the *lot* located within a *Transit Priority Area*; where an *applicant* is not requesting an incentive or waiver to exceed the maximum *structure height* or *setbacks* of the base zone, and where the *premises* can be serviced by all required utilities, a *density* bonus of up to 100 percent of the pre-*density* bonus *dwelling units* shall be granted provided that *development* of the additional *density* does not cause the need for an incentive, waiver, or deviation to exceed the maximum *structure height* or *setbacks* of the base zone.
- (e8) If the *premises* is located in two or more zones, the number of *dwelling units* permitted in the *development* is the sum of the *dwelling units* permitted in each of the zones. Within the *development*, the permitted number of *dwelling units* may be distributed without regard to the zone boundaries.
- (f9) Where the *development* consists of two or more specifically identified parcels, whether contiguous or noncontiguous, the maximum number



of *dwelling units* permitted on each parcel is calculated based on the area of that parcel.

- (g10) Where the *development* consists of two or more noncontiguous parcels lying within two or more community planning areas, the *dwelling units* reserved at levels affordable by ~~*moderate income, low income or very low, low, or moderate income*~~ households shall be distributed among community planning areas in the same proportion as the total number of *dwelling units* constructed within the *development*.

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

An *applicant* for a *tentative map, parcel map*, or residential *development* permit, may donate and transfer land to the City for *development* with affordable *dwelling units*, in exchange for a *density* bonus, in accordance with this Division and pursuant to State Density Bonus Law.

**§143.0740 Development Incentives for Affordable Housing Density Bonus Projects in Exchange for Affordable Housing Dwelling Units**

An *applicant* proposing *density* bonus shall be entitled to incentives as described in this Division, for any *development* for which a written agreement, and a deed of trust securing the agreement, is entered into by the *applicant* and the President and Chief Executive Officer of the San Diego Housing Commission. The City shall process an incentive requested by an *applicant*, consistent with State Density Bonus Law and as set forth in this Section.

- (a) An incentive means any of the following:
- (1) A deviation to a *development* regulation;
  - (2) Approval of mixed use zoning in conjunction with a residential *development* provided that the commercial, office, or industrial uses:
    - (A) Reduce the cost of the residential *development*; and
    - (B) Are compatible with the proposed residential *development*; and
    - (C) Are compatible with existing or planned *development* in the area where the proposed residential *development* will be located.
  - (3) Any other incentive proposed by the *applicant*, other than those identified in Section 143.0740(eb), that results in identifiable, ~~financially sufficient~~, actual cost reductions.

- (b) Items not considered incentives by the City of San Diego include, but are not limited to the following:
  - (1) A waiver of a required permit;
  - ~~(2) A deviation from the requirements of the Coastal Height Limit Overlay Zone (Chapter 13, Article 2, Division 5);~~
  - ~~(3) A waiver of fees or dedication requirements;~~
  - ~~(4) A direct financial incentive;~~
  - ~~(5) A deviation from the requirements of the City of San Diego Building Regulations;~~
  - ~~(6) For projects required to notice the Federal Aviation Administration, an increase in height that has not received a determination of No Hazard to Air Navigation.~~
- (c) An incentive requested as part of a *development* meeting the requirements of Section 143.0720 shall be processed according to the following:
  - (1) Upon an *applicant's* request, *development* that meets the applicable requirements of Sections 143.0720 and 143.0725 shall be entitled to incentives pursuant to Section 143.0740 unless the City makes a written *finding* of denial based upon substantial evidence, of any of the following:
    - (A) The incentive is not required in order to provide for affordable housing costs, as defined in California Health and Safety Code Sections 50052.5 and 50053;
    - (B) The incentive would have a specific adverse impact upon public health and safety as defined in Government Code section 65589.5, the physical environment, including *environmentally sensitive lands*, 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 incentive would be contrary to state or federal law. Requested incentives shall be analyzed in compliance with the California Environmental Quality Act as set forth in Chapter

12, Article 8, and no incentive shall be granted without such compliance; or

- (D) Within the Coastal Overlay Zone, the incentive would be inconsistent with the resource protection standards of the City's Local Coastal Program or the *environmentally sensitive lands* regulations, with the exception of *density*.
- (2) ~~The granting of~~ an incentive shall not require a General Plan amendment, zoning change, a development permit, or other discretionary approval.
- ~~(3) The decision process for a development requesting an incentive shall be the same decision process that would be required if the incentive were not a part of the development proposal.~~
- ~~(4) The development permit requirement for a development requesting an incentive shall be the same development permit that would be required if the incentive were not a part of the development proposal.~~
- ~~(5) Notwithstanding Sections 143.0740(e)(3) and (4), when a development permit is otherwise required, the decision to deny a requested incentive shall be made by the decision maker for the development permit.~~
- (d) The number of incentives available are identified in Table 143-07A for *very low income* households, Table 143-07B for *low income* households, and Table 143-07C for *moderate income* households consistent with the percentage of pre-density bonus units identified in the first column of each table.

**Table 143-07A**  
**Very Low Income Density Bonus**  
**Households**

Percent <i>Very Low Income</i> Units	Percent <i>Density Bonus</i>	Number of Incentives
5	20	1
6	22.5	1
7	25	1
8	27.5	1
9	30	1
10	32.5	2
11	35	2
12	38.75	3
13	42.5	4

**Table 143-07A**  
**Very Low Income Density Bonus**  
**Households**

Percent <i>Very Low Income</i> Units	Percent <i>Density</i> Bonus	Number of Incentives
14	46.25	4
≥ 15	50	5

**Table 143-07B**  
**Low Income Density Bonus**  
**Households**

Percent <i>Low Income</i> Units	Percent <i>Density</i> Bonus	Number of Incentives
10	20	1
11	21.5	1
12	23	1
13	24.5	1
14	26	1
15	27.5	1
16	29	1
17	30.5	1
18	32	1
19	33.5	1
20	35	2
21	38.75	2
22	42.5	2
23	46.25	2
≥ 24 – 29	50	2
≥ 30	50	3
31 – 32	50	4
≥ 33	50	5

**Table 143-07C**  
**Moderate Income Density Bonus**  
**Households**

Percent <i>Moderate Income</i> Units	Percent <i>Density</i> Bonus	Number of Incentives
10	5	1
11	6	1
12	7	1

**Table 143-07C**  
**Moderate Income Density Bonus**  
**Households**

Percent <i>Moderate</i> <i>Income</i> Units	Percent <i>Density</i> Bonus	Number of Incentives
13	8	1
14	9	1
15	10	1
16	11	1
17	12	1
18	13	1
19	14	1
20	15	2
21	16	2
22	17	2
23	18	2
24	19	2
25	20	2
26	21	2
27	22	2
28	23	2
29	24	2
30	25	3
31	26	4
32	27	4
33	28	5
34	29	5
35	30	5
36	31	5
37	32	5
38	33	5
39	34	5
40	35	5
41	38.75	5
42	42.5	5
43	46.25	5
≥ 44	50	5

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

- (1) — The child care center remains in operation for the greater of 30 years, or the period of time established by Section 143.0720(c)(4);
- (2) — The percentage of children from *low, very low, or moderate income* households attending the child care center is equal to or greater than the percentage of those same households required in the residential *development*;
- (3) — The additional *density* bonus or incentive requested is either:
  - (A) — An additional *density* bonus in an amount equal to the amount of square feet in the child care center up to a maximum combined *density* increase of 35 percent; or
  - (B) — An additional incentive that contributes significantly to the economic feasibility of the construction of the child care center; and
- (4) — The City finds, based upon substantial evidence, that the community is inadequately served by child care centers.

**§143.0741 Density Bonus and Incentives in Exchange for Child Care**

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

- (a) The child care center remains in operation for the greater of 30 years, or the period of time established by Section 143.0720(c)(4);
- (b) The percentage of children from *low, very low, or moderate income* households attending the child care center is equal to or greater than the percentage of those same households required in the residential *development*;
- (c) The additional *density* bonus or incentive requested is either:
  - (1) An additional *density* bonus in an amount equal to the amount of square feet in the child care center up to a maximum combined *density* increase of 35 percent; or
  - (2) An additional incentive that contributes significantly to the economic feasibility of the construction of the child care center; and

- (d) The City finds, based upon substantial evidence that the community is inadequately served by child care centers.

**§143.0742 Incentives for Commercial Development**

An applicant for a commercial development that has entered into an agreement with an applicant for a residential development which includes at least 15 percent of the dwelling units affordable to very low income households or at least 30 percent of the dwelling units affordable to low income households in accordance with 143.0720, shall be entitled a development bonus in accordance with Government Code Section 65915.7(b) and the following.

- (a) The agreement shall be approved by the City Manager and identify how the applicant for the commercial development will contribute to affordable housing as follows:
- (1) Directly construct the affordable dwelling units; or
  - (2) Donate a portion of the commercial site or other site that meets the criteria in Section 143.0742(b) for development of the affordable dwelling units; or
  - (3) Financially contribute to the development of the affordable dwelling units.
- (b) The residential development shall be located within the City of San Diego, in close proximity to public amenities, and within the Transit Priority Area.

**§143.0743 Waivers in Exchange for Affordable Housing Units**

An applicant proposing density bonus shall be entitled to a waiver as described in this Division, for any residential development for which a written agreement, and a deed of trust securing the agreement, is entered into by the applicant and the President and Chief Executive Officer of the San Diego Housing Commission.

- (a) A waiver means a request by an applicant to waive or reduce a development standard that physically precludes construction of development meeting the criteria of Section 143.720(c), (d), (e), (f), or (h).
- (b) Upon an applicant's request, development that meets the applicable requirements of Section 143.0720 shall be entitled to waivers unless the City makes a written finding of denial based upon substantial evidence, of any of the following:
- (1) The waiver would have a significant, quantifiable, direct, and unavoidable impact upon health, safety, or the the physical



environment for which there is no feasible method to mitigate or avoid the impact;

- (2) The waiver would have an adverse impact on any real property that is listed in the California Register of Historical Resources; or
- (3) The waiver would be contrary to state or federal law. Requested waiver(s) shall be analyzed in compliance with the California environmental Quality Act as set forth in Chapter 12, Article 8, and no waiver shall be granted without such compliance.
- (4) Within the Coastal Overlay Zone the waiver would be inconsistent with the resource protection standards of the City's Local Coastal Program or the *environmentally sensitive lands* regulations, with the exception of *density*.
- (c) The granting of a waiver shall not require a General Plan amendment, zoning change, *development permit*, or other discretionary approval.
- (d) When a *development permit* is otherwise required, the decision to deny a requested waiver shall be made by the decision maker for the *development permit*.
- (e) There is no limit on the number of waivers an applicant may request.

**§143.0744 Parking Ratios for Affordable Housing**

- ~~(f) — Parking. In addition to any other incentive, and upon the request of an applicant, the City shall apply the following regulations:~~

Upon the request of an applicant for a development meeting the criteria in Section 143.0720(c), (d), (e), (f), or (h) the City shall apply the following regulations.

- (1a) For a development that meets the criteria for *moderate income households* in Section 143.0720(d)(3), the vehicular parking ratios in ~~Table 143-07D~~ or those set forth below, inclusive of disabled and guest parking, whichever is lower, shall apply:
  - (A1) Zero to one bedroom: one onsite parking space.
  - (B2) Two to three bedrooms: two onsite parking spaces.
  - (C3) Four and more bedrooms: two and one-half parking spaces.



- (D4) Additional reductions of 0.25 spaces per *dwelling unit* shall be granted for *development* that is at least partially within a *transit area* as described in Chapter 13, Article 2, Division 10 (Transit Area Overlay Zone), or that is subject to Chapter 13, Article 2, Division 11 (Urban Village Overlay Zone).
- (2b) For a *development* that meets the criteria for *very low and low income rental dwelling units* ~~of~~ in Sections 143.0720(c) or *senior housing in Section 143.0720(e)*, the vehicular parking ratios in Table 143-07D, as may be applicable, or those set forth in Section 142.0527(a)(3), inclusive of disabled and guest parking, whichever is lower, shall apply.
- (3c) For purposes of this Division, a *development* may provide onsite parking through tandem parking or uncovered parking, but not through on-street parking or parking within a required front *yard* setback.
- (4d) Parking reductions for a *development* providing rental and for-sale affordable housing for *very low income* and *low income* households in accordance with Sections 142.0720(c) and 142.0720(d); or rental housing for senior citizens in accordance with Section 142.0720(e); or housing for transitional foster youth, disabled veterans, or homeless persons in accordance with Section 143.0720(f) that meet transit proximity requirements are set forth in Table 143-07D.

**Table 143-07D**  
**Parking Reduction for Proximity to Transit**

Type of <i>Development</i>	Percent Affordable	Transit Requirement	Parking Ratio for <i>Development</i> <sup>1</sup>
Rental or for-sale <i>development</i> containing market rate and <i>low income</i> and/or <i>very low income dwelling units</i> <ul style="list-style-type: none"> <li>• <i>Very low income</i></li> <li>• <i>Low income</i></li> </ul>	11% 20%	The <i>development is located within a Transit Priority Area</i> shall be located within ½ mile of unobstructed access to a rail station, a ferry terminal served by bus or rail service, or the intersection of two or more bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods, or a major transit stop included in the applicable regional transportation plan.	0.5 spaces per <i>bedroom</i>
Rental housing <ul style="list-style-type: none"> <li>• <i>Low &amp; very low income</i></li> </ul>	100% <sup>2</sup>		0.5 spaces per <i>dwelling unit</i>

Type of <i>Development</i>	Percent Affordable	Transit Requirement	Parking Ratio for <i>Development</i> <sup>1</sup>
Rental housing with an affordable housing cost to lower income senior citizens in accordance with California Civil Code Sections 51.3 and 51.12	100% <sup>2</sup>	The <i>development</i> shall have either paratransit service, or be located within ½ mile of unobstructed access to a fixed bus route service that operates at least eight times per day.	0.5 spaces per <i>dwelling unit</i>

**Footnotes for Table 143-07D**

<sup>1</sup> Parking reductions shall not be subject to the parking regulations of the Transit Overlay Zone and shall not be entitled to parking reductions provided in Section 142.0550 (Parking Assessment District Calculation Exception).

<sup>2</sup> Exclusive of manager's unit.

**§143.0745 Locating Required Affordable Dwelling Units Off-site**

A *development* that complies with the Affordable Housing ~~Density Bonus~~ Regulations may provide all or a portion of the required affordable *dwelling units* off-site in accordance with the following:

- (a) Off-site affordable *dwelling units* shall be located in the same community planning area and City Council District, or within one mile of the *premises* of the *development*. The distance shall be measured in a straight line from the *property lines* of the proposed housing *developments*.
- (b) Off-site affordable *dwelling units* that do not meet the locational criteria in Section 143.0745(a) may be approved with a Process Four Planned Development Permit in accordance with Section 126.0604.
- (c) At a minimum, the same number of affordable *dwelling units* required of the *development* must be provided, at the same affordability levels and the same total ~~bedroom~~ bedroom count mix as the *development*. The applicant may provide different bedroom mixes to meet the total *dwelling unit* and *bedroom* count minimums.
- (d) The *applicant*, prior to the issuance of a *construction permit* or a *development permit* for the *development*, shall secure the required number of off-site affordable *dwelling units* and enter into an agreement(s) with the President and Chief Executive Officer of the San Diego Housing Commission establishing the same terms and conditions set forth in Section 143.0720 for similar affordable *density bonus dwelling units*.
- (e) Off-site affordable *dwelling units* may be located in an existing *structure(s)* provided the *applicant* provides evidence that the existing *structure* has a remaining useful life of at least 55 years and complies with current building code standards, to the satisfaction of the City Manager. Off-site affordable

dwelling units that are occupied at the time the application is *deemed complete* shall comply with the State Relocation Act pursuant to Government Code Section 7260.

- (ef) The *applicant*, prior to the issuance of the first building permit, shall record a deed restriction against the off-site development that:
- (1) Documents the required number of affordable *dwelling units* to be provided; and
  - (2) Assigns foreclosure rights of the *development premises* to the San Diego Housing Commission as follows:
    - (A) For new *development*, if the affordable *dwelling unit(s)* has not received a certificate of occupancy within 54 months of the issuance of the first building permit.
    - (B) For ~~redevelopment~~ of an existing *structure(s)*, if the affordable *dwelling unit(s)* has not received a certificate of occupancy within 36 months of the issuance of the first building permit.

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

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

**§143.0750 Affordable Housing Incentives and Waivers Report**

An applicant requesting a density bonus, incentive(s), waiver(s), or parking reductions provided under this Division shall submit, at the time of application, an Affordable Housing Incentives and Waivers Report to the satisfaction of the City Manager. The report shall document the basis for the requested incentive(s), waiver(s), or parking reductions.

**§143.0920 Affordable Housing, In-Fill Projects, and Sustainable Buildings Deviations**

*Development* identified in Section 143.0915 may be permitted with a Neighborhood Development Permit decided in accordance with Process Two, except as provided in Section 143.0920(d), for the following:

- (a) *Development* that proposes deviations from applicable Land Development Code regulations provided that the *findings* in Section 126.0505(a) and the supplemental *findings* in Section 126.0505(b) through (m) are made.

(b) [No change in\_text.]