

DENSITY BONUS ORDINANCE

30-17 DENSITY BONUS ORDINANCE

30-17.1 Purpose:

The purpose of this Density Bonus Ordinance is to create incentives for the provision of affordable housing in Alameda. The California Legislature requires each local government to adopt an ordinance that specifies how the jurisdiction will comply with Section 65915 et seq. of the California Government Code. This ordinance is intended to satisfy the requirements of that code.

30-17.2 Findings.

Rising land prices have been a key factor in preventing development of new affordable housing. New housing construction that does not include affordable units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land. This reduces the supply of land for affordable housing and increases the price of remaining residential land.

30-17.3 Definitions

Unless the context plainly requires otherwise, the following words and phrases shall have the following meanings as used in this section 30-17. Terms used in this section 30-17 shall have the meanings attributed to them in Government Code section 65915 as it now exists or may hereafter be amended.

a. *Affordable Housing* or *Affordable Housing Dwelling Unit* shall mean a dwelling unit required to be offered at Affordable Rent or available at Affordable Housing Cost to *Very Low, Lower* or *Moderate Income* Households pursuant to this section 30-17.

b. *Affordable Housing Agreement* means a written agreement between an applicant for a development and the City of Alameda ensuring the continuing affordability of housing pursuant to this section 30-17.

c. *Applicant* is defined as any person who seeks residential property development permits or approvals from the City of Alameda.

d. *Child Care Facility* is defined as a child day facility other than a family day care home, including but not limited to infant centers, preschools, extended day care facilities and school-age child care centers, installed, operated and maintained for the nonresidential care of children.

e. *Development* means all development pursuant to a proposal to construct or place one or more dwelling units on a lot or contiguous lots including, without limitation, a planned unit development, site plan, subdivision, or conversion of a non-residential building to dwelling units.

f. *Marketing Plan* means a plan that describes how the applicant will inform the public, and those within the appropriate income groups, of the availability of Affordable Housing Units.

g. *Maximum Allowable Residential Density* means the density allowed under the Zoning Ordinance.

h. *Mixed-Use Development Project* means a Development that includes residential as well as commercial, office, or industrial uses.

i. *Presumed Occupancy Levels* are defined as: One person for a studio unit; two people for a one-bedroom unit; three people for a two-bedroom unit; and one additional person for each additional bedroom thereafter.

j. *Senior Citizen Household* means a household headed by a person 55 years of age or older.

30-17.4 Application

The provisions of this Article apply to:

a. New residential development projects of 5 or more dwelling units, regardless of the type of dwelling units proposed;

b. New mixed-use developments which include at least 5 dwelling units

c. Renovation of one or more multiple-family residential structures containing at least 5 units so to increase the number of residential units.

d. New or renovated Mixed-Use Development Project in the Park Street and Webster Street Business Districts, as depicted in Exhibits A-1 and A-2.

e. Development that will change the use of an existing building from nonresidential to residential and that will provide at least 5 residential units.

f. Development that includes the conversion of at least 5 residential rental units to ownership housing.

Developments subject to this paragraph include projects undertaken in phases, stages, or otherwise developed in distinct sections.

If the site of a development proposal 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. The permitted number of dwelling units may be distributed within the development without regard to the zone boundaries.

For projects subject to section 30-16 of this code, “Inclusionary Housing Requirements for Residential Projects,” the inclusionary units required by that section may be counted toward the affordable unit requirements of this section 30-17. To the extent that the provisions of this section and section 30-16 conflict, the more demanding provisions in terms of affordable housing production of section 30-16 shall prevail, it being the intent of this ordinance to comply with the state density bonus law without reducing the requirements of the City’s inclusionary housing ordinance.

30-17.5 Specified Housing Units

The City shall grant a Density Bonus, and incentives or concessions described in section 30-17.10 when an Applicant for a Development seeks and agrees to construct at least any of the following:

- a. 10 percent of the total dwelling units of a Development or Mixed Use Development for *Lower Income* Households; or
- b. 5 percent of the total dwelling units of a Development or Mixed Use Development for *Very Low Income* Households; or
- c. A Senior Citizen Housing Development or a Mobilehome Park; or
- d. 10 percent of the total dwelling units in a common interest development as defined in Section 1351 of the Civil Code (typically a condominium or small-lot single-family development) for persons and families of *Moderate Income*, provided that all units in the development are offered to the public for purchase.

The applicant shall elect whether the Density Bonus shall be awarded on the basis of paragraph a., b., c., or d. of section 30-17.5. The granting of a Density Bonus shall not be interpreted, in and of itself, to require a General Plan amendment, zoning change, or other discretionary approval. All density calculations resulting in fractional units shall be rounded up to the next whole number.

For Residential Developments that include 10 percent of the total dwelling units for *Low Income* Households, the Density Bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
16	29

17	30.5
18	32
19	33.5
20	35

For Residential Developments that include 5 percent of the total dwelling units of a Residential Development for *Very Low-Income* Households, the Density Bonus shall be calculated as follows:

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

For a Senior Citizen Housing Development or Mobilehome Park, the Density Bonus shall be 20 percent.

For Residential Developments that include 10 percent of the total dwelling units in a common interest development for persons and families of *Moderate Income*, the Density Bonus shall be calculated as follows:

Percentage Moderate Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24

30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

Developments incorporating a Density Bonus require review and approval by the Planning Board; provided, however, that if a Development involves another permit or entitlement requiring City Council approval, then the Planning Board may deny the project or recommend its approval to the City Council. Decisions of the Planning Board may be appealed to or reviewed by the City Council as provided in section 30-25 of this code, *Appeals or Calls for Review*.

30-17.6 Land Donation

When an Applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to the City, the Applicant shall be entitled to a 15 percent increase above the otherwise maximum allowable residential density for the entire Development as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32
28	33

The Density Bonus for land dedication shall be in addition to any Density Bonus allowed by section 30-17.5, up to a maximum combined increase of 35 percent if the Applicant seeks an increase under this section and the increase under section 30-17.5.

An applicant shall be eligible for the increased Density Bonus described in this section if all of the following conditions are met:

a. The Applicant donates and transfers the land to the City no later than the date of approval by the City of the final subdivision map, parcel map, or residential development application of the Development seeking the Density Bonus.

b. The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to *Very Low Income* households in an amount not less than 10 percent of the number of residential units of the proposed Development seeking the Density Bonus.

c. The transferred land:

- (i) is at least one acre in size or of sufficient size to permit development of at least 40 units; and
- (ii) has the appropriate General Plan designation and is appropriately zoned for development of very-low-income housing; and
- (iii) is or will be served by adequate public facilities and infrastructures for the development of very-low-income housing; and
- (iv) has appropriate zoning and development standards to make the development of the Affordable Housing Units feasible; and
- (v) No later than the date of approval of the final subdivision map, parcel map, or of the Development application seeking the Density Bonus, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the *Very Low Income* housing units on the transferred land, except that the City may subject the proposed Development to subsequent design review, if the design is not reviewed by the City prior to the transfer.

d. The transferred land and the Affordable Housing Units shall be subject to a deed restriction, which shall be recorded on the property upon dedication, ensuring continued affordability of the units for at least 30 years.

e. The land is transferred to the City or to another housing developer approved by the City.

f. The transferred land is within the proposed Development or, if the City agrees, within one-quarter mile of the boundary of the proposed Development.

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

30-17.7 Child Care Facilities

When an Applicant proposes to construct a Development that conforms to the requirements of section 30-17.5 and includes a Child Care Facility located on the premises or, as part of, or adjacent to, the Development, the City shall grant either of the following:

- a. An additional Density Bonus of 5 percent provided that the total density bonus for the project does not exceed 35 percent. The Density Bonus is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the Child Care Facility and shall not exceed a maximum of 5 square feet of floor area of new structures for each 1 square foot of floor area contained in the Child Care Facility; or
- b. An additional concession or incentive designated by the City that contributes significantly to the economic feasibility of the construction of the Child Care Facility.

In order to qualify for a Density Bonus as provided in this subsection 30-17.7, the Applicant shall submit for review and approval by the Planning and Building Director a financial report (*pro forma*) for the proposed Child Care Facility that includes sources of operating revenue to ensure that the center remains open and provides the promised services for the life of the project.

The City shall require, as a condition of approving the Development that:

- a. The Child Care Facility shall remain in operation as long as or longer than time during which the Affordable Housing Units are required to remain affordable pursuant to this section 30-17; and
- b. Of the children who attend the Child Care Facility, the children of *Very Low-Income* Households, *Lower-Income* Households, *Moderate-Income* Households shall equal a percentage that is equal to or greater than the percentage of Dwelling Units that are made affordable to *Very Low-Income* Households, *Lower-Income* Households, or *Moderate-Income* Households.

Notwithstanding any requirement of this subsection 30-17.7, the City need not provide a Density Bonus or concession for a Child Care Facility if it finds, based upon substantial evidence, that Alameda has adequate child care facilities.

30-17.8 Condominium Conversions

When a Development is the conversion of an existing apartment complex to a condominium complex and the Applicant agrees to make at least 33 percent of the total units of the Development affordable to *Moderate Income* households for 30 years, or 15

percent of the total units of the proposed Development affordable to *Lower-Income* households for 30 years, and agrees to pay for the administrative costs incurred by the City to process the application and to monitor the continued affordability and habitability of the Affordable Housing Units, the City shall either

- a. Grant a Density Bonus of 25 percent or
- b. Provide other incentives of equivalent financial value to the determined by the City.

An Applicant shall be ineligible for a Density Bonus or other incentives under this subsection 30-17.8 if the apartments proposed for conversion is a Development for which a Density Bonus or other incentives were previously provided under this section 30-17 or section 30-16 of this code.

30-17.9 Design, Distribution and Timing of Development of Affordable Housing Units

Affordable Housing Units must be constructed concurrently with market-rate units. Affordable Housing Units shall be integrated into the Development and be comparable in infrastructure (including sewer, water and other utilities), construction quality and exterior design to the market-rate units. The Affordable Housing Units must also comply with the following criteria:

- a. **Rental Developments:** Rental units shall be integrated within and reasonably dispersed throughout the project. All Affordable Housing Units shall reflect the range and numbers of bedrooms provided in the project as a whole, and shall not be distinguished by design, construction or materials.

- b. **Owner-occupied Developments:** Owner-occupied units shall be integrated within the project. Affordable Housing Units may be smaller in size and have different interior finishes and features than market-rate units so long as the interior features are durable, of good quality and consistent with contemporary standards for new housing as determined by the Planning and Building Director. All Affordable Housing Units shall reflect the range and numbers of bedrooms provided in the project as a whole, except that Affordable Housing Units need not provide more than four bedrooms.

No building permits will be issued for market-rate units until permits for all Affordable Housing Units have been obtained, unless Affordable Housing Units are to be constructed in phases pursuant to a plan approved by the City.

Market-rate units will not be inspected for occupancy until all Affordable Housing Units have been constructed, unless Affordable Housing Units are to be constructed in phases pursuant to a plan approved by the City.

30-17.10 Requests for Incentives or Concessions:

When an Applicant seeks a density bonus or seeks to donate land for housing, the City shall provide the Applicant with incentives or concessions for the production of housing units and child care facilities. The Applicant must submit a Density Bonus Application, as described in subsection 30-17.11 below, identifying the specific incentives or concessions that the Applicant requests. The City shall grant the concession or incentive requested by the Applicant unless the City makes any of the following written findings, based upon substantial evidence:

- a. The concession or incentive is not required to provide for Affordable Housing Costs as defined in Section 50052.5 of the Health and Safety Code or for rents for the targeted units;
- b. The concession or incentive would have a specific adverse impact upon public health and safety or the physical environment or on any real property that is listed in the Federal Register of Historic Resources, the California Register of Historical Resources or the City's List of Officially Designated Architecturally and Historically Significant Buildings and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to *Lower-* and *Moderate-Income* households;
- c. Is a request to modify the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code.
- d. Is a request for direct financial incentives for the development, including the provision of publicly owned land or the waiver of fees or dedication requirements.
- e. The concession or incentive would be contrary to State or federal law.

30-17.11 Granting of Incentives or Concessions

If the conditions of Section 30-17.5 are met, the following incentives or concessions shall be granted:

- a. One incentive or concession for a Development that makes: at least 10 percent of the total units affordable to *Lower-Income* Households; or at least 5 percent of the total units affordable to *Very Low-Income* Households; or at least 10 percent of the total units affordable to persons and families of *Moderate-Income* in a common interest development.
- b. Two incentives or concessions for a Residential Development that makes: at least 20 percent of the total units affordable to *Lower-Income* Households; or at least 10 percent of the total units affordable to *Very Low-Income* Households; or at least 20 percent of the total units affordable to persons and families of *Moderate-Income* in a common interest development.

c. Three incentives or concessions for a Residential Development that makes: at least 30 percent of the total units for *Lower-Income Households*; at least 15 percent for *Very Low-Income* Households, or at least 30 percent for persons and families of *Moderate-Income* in a common interest development.

30-17.12 Types of Incentives or Concessions

For the purposes of this Section, concession or incentive may mean:

a. As enumerated below, a reduction in site Development Standards or a modification of zoning code or architectural design requirements resulting in identifiable, financially sufficient, and actual cost reductions. “Concession or incentive” means any of the following:

- (i) Reduced minimum lot sizes and/or dimensions
- (ii) Reduced minimum setbacks
- (iii) Increased height limitations
- (iv) Reduced onsite open-space requirements
- (v) Increased maximum lot coverage
- (vi) Increased floor area ratio
- (vii) Reduced parking requirements,
- (viii) Allowance for live-work units within multi-family residential zone districts, and
- (ix) In lieu of reduced setbacks, allowance for attached dwelling units, considered a waiver of a provision of Measure A, if shown to be necessary to make the project feasible.

b. Approval of mixed use development in conjunction with the Development if non-residential uses will reduce the development cost of the residential portion of the Development and if the non-residential uses are compatible with Development and with existing or planned development in the area.

Nothing in this section shall be construed to require the provision of direct financial incentives for a Development, including the provision of publicly owned land by the City or other waiver of fees or dedication requirements. Moreover, concessions or incentives shall not include any exceptions, waivers or departures from health and safety standards of building and fire codes or from solid waste and recycling standards established by the State of California and the City of Alameda.

In no case shall any development standard be applied that will physically preclude construction of a development meeting the criteria of subsection 30-17.5.

30-17.13 Compliance

The provisions of this Article shall apply to all agents, successors and assignees of an Applicant proposing a Development governed by this section 30-17. No tentative map, use permit, special development permit or occupancy permit shall be issued for any Development that has been granted a density bonus under this section unless that map or permit is exempt from or in compliance with the terms of this section 30-17.

The City may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including but not limited to actions to revoke, deny or suspend any permit or development approval.

30-17.14 Density Bonus Application

In order to receive the concessions and/or incentives, an Applicant must submit to the City a Density Bonus Application which will be treated as part of the development application. At any time during the review process, the Planning and Building Director may require from the Applicant additional information reasonably necessary to clarify and supplement the application or to determine the Development's consistency with the requirements of this Article.

The Density Bonus Application shall include the following:

- a. A description of the Development, including the total number of proposed Affordable Housing Units, Senior Housing Units or Mobilehome Park Units;
- b. The zoning and General Plan designations and assessor's parcel number(s) of the project site;
- c. A vicinity map and preliminary site plan, drawn to scale, including building footprints, driveways and parking layout.
- d. A description of the concessions or incentives requested.
- e. If an additional incentive(s) is requested, the application shall describe why the additional incentive(s) is necessary to provide the Affordable Housing Units.
- f. The Affordable Housing Unit Plan described in subsection 10-27.16 below.
- g. Any other information reasonably requested by the Planning and Building Director to aid in the implementation of this section 30-17.

30-17.15 Affordable Housing Unit Plan

An Applicant shall submit an Affordable Housing Unit Plan as part of the development application.

The Affordable Housing Unit Plan shall include the following:

- a. The location, structure (attached, semi-attached, or detached), proposed tenure (sale or rental), and size of proposed market-rate, and Affordable Housing Units and the proposed tenure and size of non-residential uses included in the Development;
- b. A floor or site plan depicting the location of the Affordable Housing Units and a floor plan describing the size of the Affordable Housing Units in square feet;
- c. The income level to which each Affordable Housing Unit will be made affordable;
- d. Drafts of the documents to be used to assure that the units remain affordable for the desired term, such as resale and rental restrictions, deed of trust, and rights of first refusal and other documents;
- e. For phased Developments, a phasing plan that provides for the timely development of Affordable Housing Units in proportion to other housing units in each proposed phase of development as required by this article;
- f. A marketing plan that described how the Applicant will inform the public, and those within the appropriate income groups, of the availability of Affordable Housing Units;
- g. A financial report (pro forma) to evaluate: i) whether the concessions or incentives sought would result in identifiable, financially sufficient, and actual cost reductions and ii) whether the concessions or incentives sought would reduce the cost of the housing project; and
- h. Any other information reasonably requested by the Planning and Building Director to assist with evaluation of the Affordable Housing Unit Plan.

30-17.16 Affordable Housing Unit Agreement

The Affordable Housing Unit Agreement will vary depending on how a Development satisfies the provisions of this section 30-17. The Affordable Housing Unit Agreement shall be recorded as a restriction on the parcel or parcels on which the Affordable Housing units will be constructed. The Affordable Housing Unit Agreement shall be approved and recorded before final map approval, or, where a map is not requested, prior to issuance of building permits for such parcels or units. The Affordable Housing Unit Agreement shall be binding on all future owners and successors in interest. An Affordable Housing Unit Agreement must include the following:

- a. A description of the Development, including the total number of units, and the number and tenure of Affordable Housing Units.

- b. The size, in square feet and location of Affordable Housing Units;
- c. A description of the income group to be accommodated by the Affordable Housing Units, and the formula for determining the affordable rent or affordable sales price and housing cost for each Affordable Housing Unit;
- d. The term of affordability for the Affordable Housing Units;
- e. A schedule for completion and occupancy of the Affordable Housing Units;
- f. Provisions and/or documents for resale restrictions, deeds of trust, rights of first refusal or rental restrictions;
- g. The Marketing Plan approved by the City for sale or rental of the Affordable Housing Units, which shall use an equitable selection method;
- h. Provisions for subletting units consistently with affordability restrictions;
- i. Procedures for qualifying tenants and prospective purchasers of Affordable Housing Units.
- j. Provisions for monitoring the ongoing affordability and habitability of Affordable Housing Units, and the process for qualifying prospective resident households for income eligibility; and
- k. A description of the concession(s) or incentive(s) provided by the City.

30-17.17 Affordable Housing Unit Agreements for Ownership Units

In addition to the requirements of subsection 10-17.17, an Affordable Housing Unit Agreement for an ownership Development must provide the following conditions governing the sale and use of Affordable Housing Units during the use restriction period:

a. Affordable Housing Units shall be sold to *Very Low Income* households, *Lower Income* households or *Moderate Income* households in a common interest development, at an affordable sales price and housing cost as defined by this section 30-17 and Government Code section 65915 as it exists when the application for the Development is submitted to the City.

b. The Affordable Housing Units shall be owner-occupied by *Very Low or Lower Income* households or by *Moderate Income* households within common interest developments.

c. With the exception of *Moderate Income* housing units, the resale price of any affordable unit shall not exceed the purchase price paid by the owner of that unit with the following exceptions:

- (i) Customary closing costs and costs of sale,

(ii) Cost of real estate commissions paid by the seller if a licensed real estate salesperson is employed, and

(iii) Consideration for permanent capital improvements installed by the seller.

d. Upon resale of *Moderate Income* housing units, the seller of the unit shall retain the value of any improvements installed by the seller, his or her down payment, and the seller's proportionate share of appreciation. The City shall recapture any initial subsidy and its proportionate share of appreciation, which shall then be used within five years for the purposes of increasing, improving, and preserving the City's supply of *Lower* and *Moderate Income* housing available at affordable housing cost. The City's proportionate share of appreciation is equal to the ratio of the City's initial subsidy to the fair market value of the home at the time of initial sale. The City's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, including any down payment assistance or mortgage assistance. If upon resale, the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value thereafter.

e. The purchaser of each Affordable Housing Unit shall execute an instrument or agreement approved by the City restricting the sale of the Affordable Housing Unit in accordance with this section 30-17 during the use restriction period. Such instrument or agreement shall be recorded against the parcel containing the Affordable Housing Unit and shall contain such provisions as the City may require ensuring continued compliance with this section 3-17 and with Government Code section 65915. With respect to Moderate-Income Affordable Housing Units, the instrument or agreement shall provide for equity-sharing as set forth in Government Code Section 65915.

f. Any additional obligations relevant to the compliance with this section 30-17.

30-17.18 Affordable Housing Unit Agreements for Rental Units.

In addition to the requirements of subsection 10-17.17, an Affordable Housing Unit Agreement for a rental Development must provide the following conditions governing the use of Affordable Housing Units during the use restriction period:

- a. Specific property management procedures for qualifying and documenting tenant income eligibility, establishing affordable rent and maintaining Affordable Housing Units for qualified tenants;
- b. Provisions requiring property owners to verify household incomes and maintain books and records to demonstrate compliance with this section 30-17.
- c. Provisions requiring the Property Owner to submit an annual report to the City which includes the name(s), address, and income of each household occupying target units, and which identifies the bedroom size and monthly rent or cost of each Affordable Housing Unit. The information included in

this report shall be maintained in confidence by the City and used only to enforce the requirements of this section 30-17.

- d. Provision describing the amount and time for payment of Administrative Fees to be paid to the City for the on-going compliance monitoring of the provisions of this section 30-17 as provided in subsection 30-17.20 below.
- e. Any additional obligations relevant to the compliance with this section 30-17.

30-17.19 Administrative Fee

The City shall charge an Administrative Fee to Applicants to cover the City's cost to review all materials submitted in accordance with this section 30-17 and for on-going enforcement of this section. The amount of the Administrative Fee shall be established from time to time by City Council resolution. Fees will be charged for, inter alia, staff time and materials associated with: review and approval of applications for the Development; project marketing and lease-up; long-term compliance of the Applicant, and successors-in-interest to the Applicant, with respect to the Affordable Housing Units.

30-17.20 Violation of Affordable Housing Cost

If the Planning and Building Director determines that rents in excess of those allowed by this section 30-17 have been charged to a tenant residing in a rental Affordable Housing Unit, the City may take the appropriate legal action to recover, and the rental unit owner shall be obligated to pay to the tenant (or to the City in the event the tenant cannot be located), any excess rent paid.

If the Planning and Building Director determines that a sales price in excess of that allowed by this section 30-17 has been charged for an ownership Affordable Residential Unit, the City may take the appropriate legal action to recover, and the Affordable Residential Unit seller shall be obligated to pay to the purchaser (or to the City in the event the purchaser cannot be located), any excess sales costs.