

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 14, ARTICLE 3, DIVISION 7, SECTIONS 143.0710, 143.0715, 143.0720, 143.0725, 143.0730, 143.0740, AND 143.0750, AND DELETING SECTION 143.0760; BY AMENDING CHAPTER 12, ARTICLE 6, DIVISION 7, SECTION 126.0708, AND AMENDING CHAPTER 14, ARTICLE 1, DIVISION 3, BY AMENDING SECTION 141.0310(b), ALL RELATING TO THE AFFORDABLE HOUSING DENSITY BONUS REGULATIONS.

WHEREAS, the City of San Diego [City] is required by Section 65915 of the California Government Code [State Density Bonus Law] to provide a developer with a density bonus and other incentives for the production of affordable and senior housing units or the donation of land within a proposed development if the developer meets certain requirements [Density Bonus Regulations]; and

WHEREAS, the City desires to provide incentives to provide Inclusionary Housing on-site; and

WHEREAS, the City Council adopted Density Bonus Regulations Citywide on December 9, 1997, by O-18451; and

WHEREAS, the City Council proposed amendments to its Density Bonus Regulations on June 21, 1999, by O-18654, subject to the approval of the California Coastal Commission for the areas of the City within the Coastal Overlay Zone; and

WHEREAS, on November 13, 2000, the California Coastal Commission failed to approve the June 21, 1999, amendments for the areas of the City within the Coastal Overlay Zone, resulting in two different sets of Density Bonus Regulations, one effective outside of the

Coastal Overlay Zone (O-18654) and one effective inside the Coastal Overlay Zone (O-18451);  
and

WHEREAS, the City's Density Bonus Regulations are inconsistent with recent amendments to the State Density Bonus Law; and

WHEREAS, the City desires to update its Density Bonus Regulations to ensure conformance with the State Density Bonus Law both inside and outside of the Coastal Overlay Zone; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

**Section 1.** That Chapter 14, Article 3, Division 7, is amended by amending Sections 143.0710, 143.0715, 143.0720, 143.0725, 143.0730, 143.0740, and 143.0750, and deleting

Section 143.0760, to read as follows:

"deleting section   
142.0760" removes the   
requirement for a Site   
Development Permit.

### **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 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 shelter 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 Progress Guide and General Plan, as defined by the San Diego Housing Commission; that requests be processed by the City of San Diego, and that they 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* of five or more pre-*density* bonus *dwelling units* where an *applicant* proposes *density* beyond that permitted by the applicable zone in exchange for either of the following as set forth in this division:

- (a) A portion of the total *dwelling units* in the *development* being reserved for *moderate, low, or very low income* households or for senior citizens through a written agreement with the San Diego Housing Commission; or
- (b) The donation of land.

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

- (a) A *development* shall be entitled to a *density* bonus and incentives as described in this division, for any residential *development* for which an 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 units authorized by this division shall be exempt from the Inclusionary Housing Regulations set forth in Chapter 14, Article 2, Division 13.
- (c) A rental *density* bonus agreement shall utilize the following qualifying criteria consistent with the procedures established by the San Diego Housing Commission:
  - (1) Housing for senior citizens - 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) Affordable housing units-
    - (A) *Low income* - At least 10 percent of the pre-*density* bonus 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 area median income, as adjusted for assumed household size; or
    - (B) *Very low income* - At least 5 percent of the pre-*density* bonus 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 assumed household size.

(C) The affordable units shall be designated units, be comparable in bedroom mix and amenities to the market-rate units in the *development*, and be dispersed throughout the *development*.

(3) The *dwelling units* shall remain available and affordable for a period of at least 30 years or longer as may be required by other laws.

(d) A for-sale *density* bonus agreement shall utilize the following qualifying criteria consistent with the procedures established by the San Diego Housing Commission:

(1) For-sale *density* bonus shall only be available to common interest *development*, as defined by California Civil Code Section 1351, where at least 10 percent of the pre-*density* bonus units in the *development* shall be initially sold and affordable to *moderate income* households at a price that is affordable to families earning 110 percent of the area median income as adjusted or assumed household size, as determined by the San Diego Housing Commission, and where all of the *dwelling units* are offered to the public for purchase.

- (2) Prior to, or concurrent with, the sale of each *density* bonus affordable 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 may be ensured.
- (3) Each for-sale unit shall be occupied by the initial owner at all times until the resale of the unit.
- (4) Upon the first resale of a unit the seller shall comply with all conditions regarding the sale of a unit, as applied by the San Diego Housing Commission, and as set forth in California Government Code Section 65915(c)(2).
- (5) The affordable units shall be designated units, be comparable in bedroom mix and amenities to the market-rate units in the *development*, and be dispersed throughout the *development*.
- (e) 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.
- (f) 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.

**§143.0725 Density Bonus Provisions**

A *development* proposal to utilize *density* bonus, in and of itself, shall be processed in accordance with Process One. A *development* requesting a *density* bonus is subject to the following:

- (a) For senior citizen housing meeting the criteria of Section 143.0720(c)(1), the *density* bonus shall be 20 percent.
- (b) For *development* that includes affordable housing, pursuant to the Inclusionary Housing Regulations in Chapter 14, Article 2, Division 13, and that affordable housing is located onsite, that *development* shall be entitled to a *density* bonus, equal to the number of affordable units provided onsite, up to a maximum of 10 percent of the pre-*density* bonus units. 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 35 percent.
- (c) For *development* meeting the criteria for *low income* in Section 143.0720(c)(2)(A), 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 35 percent. For *development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the

"Shall be processed in accordance with Process One" deprives the public of any input. There is no appeal to either the Planning Commission or the City Council

maximum allowable *floor area ratio* applicable to the *development* consistent with Section 151.0310(e).

- (d) For *development* meeting the criteria for *very low income* in Section 143.0720(c)(2)(B), 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 35 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 151.0309(e).
- (e) 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 35 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 151.0309(e).
- (f) Where the zone requires that each *lot* be occupied by no more than one *dwelling unit*, the *development* requires a Planned Development Permit.
- (g) 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.

- (h) 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.
- (i) 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 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 land to the City for *development* with affordable housing units, in exchange for a *density* bonus, in accordance with California Government Code Section 65915, provided the land to be transferred meets the following criteria:

- (a) The site is at least 1 acre or of sufficient size to permit *development* of at least 40 affordable *dwelling units*;
- (b) The General Plan designation is appropriate for residential *development*;
- (c) The site is zoned to allow for the appropriate residential *development*;
- (d) The site is or will be served by public facilities and infrastructure adequate to serve the *dwelling units*; and

- (e) The land to be transferred is within the boundary of the proposed *development* or, if the City agrees, within one-quarter mile of the boundary of the proposed *development*.

**§143.0740 Development Incentives for Affordable Housing Density Bonus Projects**

- (a) The City shall grant an incentive requested by an *applicant*, to the extent allowed by State law and as set forth in this Section.
  - (1) An incentive means any of the following:
    - (A) A deviation to a *development* regulation;
    - (B) Approval of a mixed use *development* in conjunction with the residential *development* if the commercial, office, or industrial uses will reduce the cost of the residential *development*; and if the mixed use *development* is compatible with the residential *development*; and if the mixed use *development* is compatible with the applicable land use plan;
    - (C) Any other regulatory deviation proposed by the *applicant*, other than a waiver from a required permit, which results in identifiable, financially sufficient, and actual cost reductions.
  - (2) The granting of an incentive shall not be interpreted, in and of itself, to require a General Plan amendment, zoning change or other discretionary approval, notwithstanding Planned

Development Permit Procedures (Chapter 12, Article 6, Division 6).

- (3) Nothing in this division shall be construed to require the City or any of its related legal entities, including the San Diego Housing Commission, to provide a direct financial incentive, including the provision of land, or the waiver of fees or dedication requirements.
- (4) Upon an *applicant's* request, *development* meeting the requirements of Sections 143.0720(c) or (d) shall be entitled to incentives pursuant to Section 143.0740(b) unless the City makes a written finding based upon substantial evidence, of either 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 health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the *development* unaffordable to *low* and *moderate income* households.
- (5) Any *development* requesting an incentive within the Coastal Overlay Zone shall be required to make the findings in Section

126.0708 and any *development* within the area identified on Map C-380 shall be subject to the regulations of Chapter 13, Article 2, Division 5, in accordance with the certified *Local Coastal Program*.

"Shall be provided   
through Process one" is   
not in Option 2

(b) The following incentives shall be provided through Process One consistent with Tables 143-07A, 143-07B, and 143-07C:

- (1) One incentive for *development* that includes any of the following:
  - (A) At least 10 percent of the total units for *low income* households;
  - (B) At least 5 percent of the total units for *very low income* households; or
  - (C) At least 10 percent of the total units for *moderate income* households in a common interest development.
- (2) Two incentives for *development* that includes any of the following:
  - (A) At least 20 percent of the total units for *low income* households;
  - (B) At least 10 percent of the total units for *very low income* households; or
  - (C) At least 20 percent of the total units for *moderate income* households in a common interest *development*.
- (3) Three incentives for *development* that includes any of the following:

- (A) At least 30 percent of the total units for *low income* households;
- (B) At least 15 percent of the total units for *very low income* households; or
- (C) At least 30 percent of the total units for *moderate income* households in a common interest *development*.

Low Income Density Bonus  
Table 143-07A

Percent <i>Low Income</i> units	Percent <i>Density Bonus</i>	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 – 29	35	2
≥ 30	35	3

Very Low Income Density Bonus  
Table 143-07B

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 – 14	35	2
≥ 15	35	3

Moderate Income Density Bonus  
Table 143-07C

Percent <i>Moderate Income</i> Units	Percent <i>Density Bonus</i>	Number of Incentives
10	20	1
11	21	1
12	22	1
13	23	1
14	24	1
15	25	1
16	26	1
17	27	1
18	28	1
19	29	1
20	30	2
21	31	2
22	32	2
23	33	2
24	34	2
25-29	35	2
≥ 30	35	3

(c) Child Care Center: *Development* that meets the criteria in 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)(3);
- (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.
- (d) Parking: In addition to any other incentive, and upon the request of an *applicant* that proposes a *development* meeting the criteria of Section 143.0720(c) or (d) the City shall apply the following vehicular parking ratio, inclusive of handicapped and guest parking:
- (1) Zero to one bedroom: one onsite parking space.
  - (2) Two to three bedrooms: two onsite parking spaces.
  - (3) Four and more bedrooms: two and one-quarter parking spaces.
  - (4) Reductions to the parking ratios shall be granted as follows:
    - (i) *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), shall receive a 0.25 space per *dwelling unit* reduction in the parking ratio for the entire *development*.

- (ii) *Development* that includes *dwelling units* limited to occupancy by *very low income* households shall receive a 0.25 space reduction in the parking ratio for each *dwelling unit* that is limited to occupancy by a *very low income* household.
  - (iii) *Development* that includes *dwelling units* limited to occupancy by *very low income* households, and is at least partially within a transit area, shall receive a 0.50 space reduction in the parking ratio for each *dwelling unit* that is limited to occupancy by a *very low income* household.
- (5) 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.

**§143.0750 Development in the Coastal Overlay Zone**

- (a) *Development* within the Coastal Overlay Zone that proposes to use the regulations of this division shall be subject to the applicable certified land use plan and implementing ordinances, including a Coastal Development Permit (Chapter 12, Article 6, Division 7), as described in Chapter 13, Article 2, Division 4.
- (b) The City may consider deviations from the Environmentally Sensitive Lands Regulations in Chapter 14, Article 3, Division 1 when requested by an *applicant* as an incentive for providing affordable housing consistent

with this division, provided that the *findings* in Section 126.0708(b)(2) can be made.

**Section 2.** That Chapter 12, Article 6, Division 7, is amended by amending Section 126.0708, to read as follows:

**§126.0708 Findings for Coastal Development Permit Approval**

An application for a Coastal Development Permit may be approved or conditionally approved only if the decision maker makes all of the *findings* in Section 126.0708(a) and the supplemental *findings* in Section 126.0708(b) that are applicable to the proposed *development*.

(a) [No change]

(b) Supplemental Findings - Environmentally Sensitive Lands Within the Coastal Overlay Zone

Waring wants to here insert   
into the Municipal Code the   
power to grant exemptions   
from the regulations governing   
Environmentally Sensitive   
Lands based upon a finding of   
"interference with the   
applicant's   
reasonable investment-backed   
expectations".

(1) When a deviation is requested from the Environmentally Sensitive Lands Regulations because the *applicant* contends that application of the regulations would result in denial of all economically viable use, the following shall apply:

(A) Any *development permit* in the Coastal Overlay Zone, required in accordance with Section 143.0110 because of potential impacts to *environmentally sensitive lands* where a deviation is requested in accordance with Section 143.0150 may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* and the supplemental *findings* for deviations from

the Environmentally Sensitive Lands Regulations in addition to the *findings* for the applicable *development permit(s)*:

- (i) Based on the economic information provided by the *applicant*, as well as any other relevant evidence, each use provided for in the Environmentally Sensitive Lands Regulations would not provide any economically viable use of the *applicant's* property;
  - (ii) Application of the Environmentally Sensitive Lands Regulations would interfere with the *applicant's* reasonable investment-backed expectations;
  - (iii) The use proposed by the *applicant* is consistent with the applicable zoning;
  - (iv) The use and project design, siting, and size are the minimum necessary to provide the *applicant* with an economically viable use of the *premises*; and
  - (v) The project is the least environmentally damaging alternative and is consistent with all provisions of the certified *Local Coastal Program* with the exception of the provision for which the deviation is requested.
- (B) The Coastal Development Permit shall include a determination of economically viable use.

- (C) The public hearing on the Coastal Development Permit shall address the economically viable use determination.
  - (D) The *findings* adopted by the decision making authority shall identify the evidence supporting the *findings*.
- (2) A deviation from the Environmentally Sensitive Lands Regulations when requested as an incentive for providing affordable housing pursuant to the Affordable Housing Density Bonus Regulations in Chapter 14, Article 3, Division 7, may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* in Section 126.0708(a)(1) through (4):
- (A) Feasible alternatives to the requested incentive and the effect of such alternatives on coastal resources have been considered;
  - (B) Granting the incentive or alternative will not adversely affect coastal resources.

**Section 3.** That Chapter 14, Article 1, Division 3, is amended by amending Section 141.0310, to read as follows:

**§141.0310 Housing for Senior Citizens**

Housing for senior citizens may be permitted with a Conditional Use Permit decided in accordance with Process Three in the zones indicated with a “C” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

- (a) [No change]
- (b) Housing for senior citizens may be permitted a *density* bonus as provided in Chapter 14, Article 3, Division 7 (Affordable Housing *Density* Bonus Regulations).
- (c) through (e) [no change]

**Section 4.** That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

**Section 5.** That this ordinance shall take effect and be in force on the thirtieth day from and after its passage, except that the provisions of this ordinance applicable inside the Coastal Overlay Zone, which are subject to California Coastal Commission jurisdiction as a City of San Diego Local Coastal Program amendment, shall not take effect until the date the California Coastal Commission unconditionally certifies those provisions as a local coastal program amendment.

**Section 6.** City departments may not issue permits outside the Coastal Overlay Zone for development that is inconsistent with this ordinance unless complete applications for the permits were submitted to the City prior to the date of adoption of this ordinance.

City departments may not issue permits inside the Coastal Overlay Zone for development that is inconsistent with this ordinance unless complete applications for the permits were submitted to the City prior to the date the California Coastal Commission unconditionally certifies this ordinance as a local coastal program amendment.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By \_\_\_\_\_  
Shannon M. Thomas  
Deputy City Attorney

SMT:als  
01/08/07  
01/22/07 COR.COPY  
01/30/07 COR.COPY.1  
Or.Dept:DSD  
O-2007-40  
MMS#3273

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at its meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor