

ORDINANCE 2209

ORDINANCE OF THE TOWN OF LOS GATOS ADDING A NEW DIVISION 8 TO CHAPTER 29, ARTICLE I OF THE LOS GATOS TOWN CODE ENTITLED "DENSITY BONUS (STATE MANDATED)"

WHEREAS, pursuant to California Government Code Section 65915, the Town is required to adopt a density bonus ordinance that applies to housing developments that provide a specified percentage of housing dedicated to and affordable to very low income, low income, senior housing, and moderate income housing; and

WHEREAS, the Density Bonus Program provides incentives and concessions for affordable housing projects to meet State mandated housing goals; and

WHEREAS, the Town of Los Gatos Density Bonus Ordinance will meet the requirements under State law.

THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES ORDAIN AS FOLLOWS:

SECTION I

Chapter 29, Article I, Division 8, entitled "Density Bonus (State Mandated)" is hereby added to the Los Gatos Town Code, and shall read as follows:

CHAPTER 29

ARTICLE I. In General

Division 8. State Mandated Density Bonus

29.10.405 Intent and Authority.

The density bonus ordinance in this chapter is intended to comply with the State Density Bonus Law codified in California Government Code Section 65915 et seq., which provides that a local government shall grant a density bonus and an additional concession, or financially equivalent incentive(s), to a qualified housing development agreeing to construct a specific percentage of housing for lower income households, very low income households, or senior housing as defined by state law.

Exhibit 18

29.10.410 Applicability of Regulations.

- (a) In addition to providing a density bonus and additional concession or equivalent incentives to a qualified housing development for lower income and very low income households or senior housing, it is the intent to apply the state law density bonus to qualified physically handicapped persons. The term “physically handicapped” shall be defined pursuant to California Health and Safety Code Section 50070 and the Density Bonus Program Guidelines initially adopted by Town Council in 2012 and amended from time to time thereafter.
- (b) Applicant who elects to proceed with a housing development using the state law density bonus shall not be eligible for any density increases under the Town’s General Plan Density Bonus Policy or the General Plan Below Market Price (BMP) Program as set forth in the Town’s Housing Element portion of the General Plan.

29.10.415 General Requirements.

Applicants who voluntarily agree to develop a housing development project that complies with the affordability requirements referenced in Government Code 65915 et seq. shall conform to the Density Bonus Program Guidelines adopted by Town Council (initial adopted in 2012) and as may be amended from time to time.

29.10.420 Grounds for Denial of a Project.

- (a) Nothing in Division 8 of this Chapter 29 limits the Town’s right to deny an affordable housing project electing to proceed under the state law density bonus provisions, if the Council makes written findings, based on substantial evidence, any of the following:
 1. The Town has adopted a Housing Element as part of the General Plan, and the Town has met or exceeded its share of the regional housing needs for the income category proposed for the development project;
 2. The project as proposed would have a specific, adverse impact upon the public health or safety which cannot be satisfactorily mitigated without rendering it unaffordable to lower-income households;
 3. The denial of the project or imposition of conditions is required in order to comply with State or Federal law and there is no feasible method to comply without rendering the development unaffordable to lower-income households;

4. The development project is proposed on land zoned for agriculture or resource preservation which is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, and which does not have adequate water or wastewater facilities to serve the project.

5. The development project is inconsistent with the Town's General Plan land use designation as it existed on the date the application was deemed complete, and the Town has adopted a housing element pursuant to state law.

(b) Nothing in this chapter limits the Town's right to deny a senior housing project if the Town finds, based on substantial evidence, that the project would have a specific, adverse impact upon the public health or safety; and there is no feasible method to satisfactorily mitigate or avoid the adverse impact identified.

29.10.425 Housing Agreement

Applicant requesting a state law density bonus on any rental or for sale project shall agree to enter into a density bonus housing agreement with the Town as required under the Density Bonus Program Guidelines. This housing agreement shall be made a condition of the planning permits for all residential developments pursuant to this Division and shall be recorded as a restriction on any parcels on which the density bonus units will be constructed.

29.10.430 Requirements to Maintain the Affordable Units.

- (a) All affordable units shall be occupied by the household type specified in the written housing agreement required under this Division. The applicant's obligation to maintain these units as affordable housing shall be evidenced by the housing agreement which shall be recorded as a deed restriction running with the land.
- (b) The Town may establish fees associated with the setting up and monitoring of affordable units.
- (c) The owner shall submit an annual report to the Town, on a form provided by the Town. The report shall include for each affordable unit the rent, income, and family size of the household occupying the unit.
- (d) The owner shall provide to the Town any additional information required by the Town to insure the long-term affordability of the affordable units by eligible households.

29.10.435 Administrative Fee.

An administrative fee shall be charged to the applicant for the review of all materials submitted in accordance with this Division and for future monitoring of the affordability of the project. The fee amount shall be established and will be included in the Town's Master Fee Schedule. Fees will be charged for staff and consultant time associated with the development review process, project marketing and leasing, and compliance with the affordability requirements of the project.

29.10.440 Appeals.

Any person aggrieved by the denial, conditioning, suspension, or revocation of a density bonus housing development in compliance with the provisions of this Division may appeal such action or determination to the Council in compliance with Chapter 29, Article II (Administration and Enforcement) of the Town Code.

SECTION II

In the event that any part of this ordinance is held to be invalid, the invalid part or parts shall be severed from the remaining portions which shall remain in full force and effect.

SECTION III

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on June 4, 2012, and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on June 18, 2012. This ordinance takes effect 30 days after it is adopted.

COUNCIL MEMBERS:

AYES: Steven Leonardis, Diane McNutt, Joe Pirzynski, Barbara Spector, and Mayor Steve Rice

NAYS:

ABSENT:

ABSTAIN:

SIGNED:


MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:



CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

Exhibit A
TOWN OF LOS GATOS
DENSITY BONUS PROGRAM GUIDELINES

I. PURPOSE, AUTHORITY, AND DEFINITION

- A. **Purpose:** The density bonus regulations in these Guidelines are intended to comply with the State Density Bonus Law codified in California Government Code Section 65915 et seq., which provides that a local government shall grant a density bonus and an additional concession, or financially equivalent incentive(s), to a qualified housing development agreeing to construct a specific percentage of affordable housing and senior housing as defined by state law. In enacting these guidelines, it is the intent of the Town of Los Gatos to implement the goals, objectives, and policies of Town of Los Gatos 2020 General Plan and further to implement and be subject to California Government Code Section 65915. In the event that any provision in these Guidelines conflicts with State law, State law shall control.
- B. **Enabling Legislation:** The Density Bonus Program is governed by Chapter 29, Article I, Division 8 (Section 29.10.400 et seq.) of the Town Code. The Density Bonus Program is administered under these Program Guidelines.
- C.
 - 1. **General Plan Density Bonus Policy Action HOU-1.3:** Applicant who elects to proceed with a housing development using the state law density bonus shall not be eligible for any density increases under the Town's General Plan Density Bonus Policy Action HOU-1.3.
 - 2. **General Plan Below Market Price (BMP) Program Policy Action HOU- 1.1:** Applicant who elects to proceed with a housing development using the state law density bonus shall not be eligible for any density increases under the Town's General Plan Below Market Price (BMP) Program Policy Action HOU-1.1.
- D. **Definitions:** The following terms used in these Guidelines shall be defined as follows:
 - 1. **Affordable Housing/Affordable Housing Unit.** A housing unit which is available for sale to moderate income households or for rent to low and/or very low income households, as those terms are defined in this Section.
 - 2. **Affordable Rent.** Monthly rent charged to low and very low income households for housing units as calculated in accordance with Section 50053 of the Health and Safety Code.
 - 3. **Child Care Facility.** A child day care 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 as defined in California Government Code Section 65915(h)(4).

4. **Density Bonus.** A density increase for residential units over the otherwise allowed residential density under the applicable zoning and land use designation on the date an application is deemed complete.
5. **Density Bonus Housing Agreement.** A legally binding agreement between a developer and the Town that ensures the continued affordability of the affordable housing units required by these Guidelines and to ensure the units are maintained in accordance with these Guidelines.
6. **Density Bonus Units.** Those additional residential units granted pursuant to the provisions of these Guidelines.
7. **Housing Development.** A development project for five or more residential units. Within these Guidelines, it shall also include a subdivision or common interest development, a project which substantially rehabilitates and converts a commercial building to a residential use and a condominium conversion of an existing apartment building as more fully defined in California Government Code Section 65915(i).
8. **Incentives or Concessions.** Regulatory concessions which include, but are not limited to, the reduction of site development standards or zoning code requirements, approval of mixed-use zoning in conjunction with the housing development, or any other regulatory incentive which would result in identifiable, financially sufficient, and actual cost reductions that are offered in addition to a density bonus.
9. **Initial Subsidy.** The fair market value of the home at the time of initial sale minus the initial sale price to the moderate income household, plus the amount of any down payment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value. (e.g., X (fair market value of the home to be purchased) - Y (the price the moderate income family paid for the home) + Z (amount of any down payment assistance) = Initial Subsidy).
10. **Low Income Household.** A household whose income does not exceed 80 percent of the area median income for Santa Clara County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Section 50079.5 of the California Health and Safety Code.
11. **Moderate Income Household.** A household whose gross income does not exceed 120 percent of the area median income for Santa Clara County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Sections 50079.5 and 50052.5 of the California Health and Safety Code.
12. **Physically Handicapped Housing.** A residential development developed, substantially rehabilitated or renovated, and having at least 35 dwelling units designed specifically for a family in which the head of the household suffers from an orthopedic disability impairing personal mobility or has a physical disability that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such an impairment or a single person with such a disability, where the family or person requires special care or facilities in the home
13. **Proportionate Share of Appreciation.** The ratio of the local government's initial subsidy as defined above to the fair market value of the home at the time of initial

sale. (e.g., X (initial subsidy) /Y (fair market value) = Proportionate Share of Appreciation).

14. **Senior Citizen Housing Development.** A residential development developed, substantially rehabilitated or renovated, and having at least 35 dwelling units for senior citizens in compliance with the requirements of Section 51.3 and 51.12 of the California Civil Code, or a mobile home park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.
15. **Very Low Income Household.** A household whose income does not exceed 50 percent of the area median income for Santa Clara County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Section 50105 of the California Health and Safety Code.

II. DENSITY BONUS HOUSING REQUIREMENTS

- A. Eligibility Criteria for Density Bonus: The Town of Los Gatos shall consider a density bonus and incentives or concessions as described in these Guidelines when a developer of a housing development seeks and agrees to construct a housing development that will contain at least one of the following:
 1. Five percent of the total units of a housing development strictly for very low income households as defined herein;
 2. Ten percent of the total units of a housing development strictly for low income households as defined herein;
 3. A senior citizen housing development, as defined herein;
 4. Physically handicap housing development, as defined herein; or
 5. Ten percent of the total dwelling units in a condominium or planned unit development for persons and families of moderate income households as defined herein, provided that all units in the development are offered to the public for purchase.

III. IMPLEMENTATION

- A. Project Specific Density Bonus: The Town of Los Gatos will allow a housing development a density bonus and concessions or incentives meeting all the applicable eligibility requirements of these Guidelines according to the following density bonus options. In the event that the minimum requirements for granting density bonus units or number of applicable concessions or incentives as set forth in California Government Code Section 65915 is amended or modified after the adoption of these Guidelines by the Town, then the lowest minimum requirements shall apply.

All density bonus calculations resulting in fractional units shall be rounded up to the next whole number. 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.

1. Density bonus for very low income households. If a housing developer elects to construct units for very low income households, the development shall be entitled to the following density bonus calculations:

Table A - Provision of Very Low Income Units

Percentage of Very Low Income Units Affordable	Density Bonus Available	Number of Incentives or Concessions
5%	20%	1
6%	22.5%	1
7%	25%	1
8%	27.5%	1
9%	30%	1
10%	32.5%	2
11%	35%	2
15%	35%	3

2. Density bonus for low income households. If a housing developer elects to construct units for low income households, the housing development shall be entitled to the following density bonus calculation:

Table B - Provision of Low Income Units

Percentage of Low Income Units Affordable	Density Bonus Available	Number of Incentives or Concessions
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
30%	35%	3

3. Senior Citizen Housing Development. If a housing developer elects to construct a senior citizen housing development, the density bonus shall be 20 percent of the total number of allowed housing units without the density bonus.
4. Physically Handicap Housing Development. If a housing developer elects to construct a housing development design for and restricted to physically handicap citizens, the density bonus shall be 20 percent of the total number of allowed housing units without the density bonus.
5. Moderate income units in condominiums and planned developments. If a housing developer elects to construct units for sale to moderate income households, the development shall be entitled to the following density bonus calculation:

Table C - Provision of Moderate Income Units

Percentage of Moderate Income Units Affordable	Density Bonus Available	Number of Incentives or Concessions
10%	5%	1
11%	6%	1
12%	7%	1
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%	3
32%	27%	3
33%	28%	3
34%	29%	3
35%	30%	3
36%	31%	3
37%	32%	3
38%	33%	3
39%	34%	3
40%	35%	3

6. Density bonus for land donation. When an applicant for a tentative map, parcel map, or other residential development approval donates at least one acre of land or enough land to develop 40 units, then the applicant shall be entitled to a 15 percent increase above the otherwise maximum allowable residential density for the entire housing development as follows:

Table D - Land Donation	
Percentage of Very Low Income Units	Percentage Density Bonus
10%	15%
11%	16%
12%	17%
13%	18%
14%	19%
15%	20%
16%	21%
17%	22%
18%	23%
19%	24%
20%	25%
21%	26%
22%	27%
23%	28%
24%	29%
25%	30%
26%	31%
27%	32%
28%	33%
29%	34%
30%	35%

- a) Nothing in this subsection shall be construed to enlarge or diminish the authority of the Town to require a developer to donate land as a condition of development.
- b) The density bonus for land dedication shall be in addition to any density bonus earned pursuant to these Guidelines and up to a maximum combined increase of 35 percent if an applicant seeks an increase pursuant to both this section and Section III.A1.

c) An applicant with a land donation shall be eligible for the increased density bonus if all of the following conditions are met:

- (i). The applicant donates and transfers the land to the Town no later than the date of approval of the Town of the final subdivision map, parcel map, or housing development application, whichever occurs first, for the proposed housing development seeking the density bonus.
- (ii) 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 housing development seeking the density bonus.
- (iii). The land proposed to be donated to the Town meets the following:
 - 1. The transferred land is at least 1 acre in size or of sufficient size to permit development of at least 40 units, has the appropriate General Plan designation and is appropriately zoned for development at the density described in paragraph (3) of subsection (c) of Section 65583.2; and
 - 2. Is or will be served by adequate public facilities and infrastructures; and
 - 3. Is donated no later than the date of approval of the final subdivision map, parcel map or housing development application, seeking a density bonus and has 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; and
 - 4. Is transferred to the Town or a housing developer approved by the Town by the date established in Section III.A.6 (c)(i); and
 - 5. Shall be within the Town and within the boundary of the proposed development or within one-quarter mile of the boundary of the proposed development; and
 - 6. Must have a proposed source of funding for the very low income units not later than the approval of the final subdivision map, parcel map or housing development application seeking the density bonus.

- d) The transferred land and the affordable housing units shall be subject to a deed restriction, which shall be recorded on the property at the time of the transfer, ensuring continued affordability of units for at least 30 years or longer term under another regulatory agreement from the date of initial occupancy. A longer period of time may be specified if required by any construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program applicable to the housing development.

7. Condominium conversions. When an Applicant's residential development project is the conversion of an existing apartment complex to a condominium complex and the Applicant agrees to make at least thirty-three percent (33%) of the total units of the proposed condominium residential development project affordable to Low or Moderate Income households for thirty years (30), or fifteen percent (15%) of the total units of the proposed condominium residential development project to Lower Income households for thirty years (30), and agrees to pay for the administrative costs incurred by the Town related to process the application and monitor the future status of the Affordable Housing Units, the Town shall either (i) grant a condominium conversion Density Bonus or (ii) provide other incentives of equivalent financial value to be determined by the Town.

B. Density Bonus for Development of Child Care Facility: A housing development meeting the requirements of Section II.A. and including a child care facility that will be located on the premises of, as part of, or adjacent to, such a housing development shall receive either of the following:

- 1. An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.
- 2. An additional incentive or concession that contributes significantly to the economic feasibility of the construction of the child care facility.

When a housing development is providing a child care facility consistent with the Guidelines, then the conditions of approval shall require that:

- 1. The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the affordable units are required to remain affordable; and
- 2. Of the children who attend the child care facility, the children of very low income households, lower income households, or persons or families of moderate income shall equal a percentage that is equal to or greater than the percentage of affordable units that are required pursuant to Section II.A.

The Town shall not be required to provide a density bonus or incentive or concession for a child care facility if it makes a written finding, based upon substantial evidence, that the Town has adequate child care facilities.

C. Nothing in these Guidelines limits the Town's right to deny an affordable, senior or physically handicap housing project electing to proceed under the state law density bonus provisions, if the Council finds, based on substantial evidence, any of the following:

1. The Town has adopted a housing element, and the Town has met or exceeded its share of the regional housing needs for the income category proposed for the development project;
2. The project as proposed would have a specific, adverse impact upon the public health or safety which cannot be satisfactorily mitigated without rendering it unaffordable to lower-income households;
3. The denial of the project or imposition of conditions is required in order to comply with State or Federal law and there is no feasible method to comply without rendering the development unaffordable to lower-income households;
4. The development project is proposed on land zoned for agriculture or resource preservation which is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, and which does not have adequate water or wastewater facilities to serve the project.
5. The development project is inconsistent with the Town's General Plan land use designation as it existed on the date the application was deemed complete, and the Town has adopted a housing element pursuant to state law.

D. Incentives or Concessions: Applicants who request a density bonus and voluntarily agree to develop a housing development project that complies with the affordability requirements referenced in Government Code 65915 may submit to the Town a proposal for the specific incentive(s) or concession(s) provided by applicable state law. A proposal shall be submitted concurrently with the application for the development and a density bonus. In accordance with Government Code Section 65915(d)(2), the applicant shall receive the number of incentives or concessions that correspond to the percentage of density bonus as outlined in Section III (A) Tables A through C. The Town shall award the incentive(s) or concession(s) requested by the applicant in compliance with state law requirements unless the Town Council adopts a written finding that the incentive or concession is not required to make the units affordable.

The deciding body may deny a request for an incentive or concession if it makes a written finding, based upon substantial evidence, of either of the following:

1. The incentive or concession is not required to provide for affordable rents or affordable ownership costs; or
2. The incentive or concession would have a specific adverse impact upon public health or safety, or the physical environment, or on any real property that is listed in the California Register of Historic Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low, very low and moderate income households. For the purpose of this subsection, "specific adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified,

written public health or safety standards, policies, or conditions, as they existed on the date that the application was deemed complete.

E. Reduction or Waivers of Development Standards: The Town shall not apply any development standard that would have the effect of precluding the construction of a proposed housing development meeting the requirements of these Guidelines at the densities or with the incentives permitted by these Guidelines. An applicant may submit with its application to the Town a proposal for the waiver or reduction of development standards. A reduction or waiver of development standards, the application of which would physically preclude the development, shall not reduce nor increase the number of incentives or concessions being requested.

Nothing in this subsection, however, shall be interpreted to require the Town to waive or reduce development standards if the waiver or reduction would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5 of the California Government Code, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which the Town determines there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Furthermore, the applicant shall be required to prove that the waiver or modification is necessary to make the affordable units economically feasible. The deciding body may deny a request for waiver if it makes a written finding, based upon substantial evidence, of either of the following:

1. The modification would have a specific adverse impact upon health, safety, or the physical environment, and there is no feasible method to satisfactorily mitigate or avoid specific adverse impact without rendering the development unaffordable to low, very low, and moderate income households. For the purpose of this subsection, "specific adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application was deemed complete; or
2. The modification would have an adverse impact on any real property that is listed in the California Register of Historic Resources; or
3. The incentive or concession would be contrary to State or Federal law

F. Parking Standard: Upon request by the applicant, the Town shall not require the proposed housing development eligible for a density bonus pursuant to these Guidelines to provide a parking ratio, including physically handicapped and guest parking, which exceeds the following:

- a. Zero to one bedrooms: one onsite parking space.
- b. Two to three bedrooms: two onsite parking spaces.
- c. Four and more bedrooms: two and one-half onsite parking spaces.

If the total number of parking spaces required for the proposed housing development is other than a whole number, the number shall be rounded up to the next whole number.

For purposes of this subsection, a development may provide onsite parking through tandem parking or uncovered parking, but not through on-street parking.

G. Design, Distribution, and Timing of Affordable Housing Units: Affordable Housing Units must be constructed concurrently with market-rate units. The Affordable Housing Units shall be integrated into the Housing Development Project; be similar in size; and have comparable infrastructure (including sewer, water, and other utilities), construction quality and exterior design to the market-rate units. The applicant may have the option of reducing the interior amenity level, provided that all of the units conform to the requirements of the Town's Building and Housing Codes and the Community Development Director finds that the reduction in the interior amenity level will provide a quality and healthy living environment. The Town strongly encourages the use of green building principles, such as the use of environmentally preferable interior finishes and flooring, as well as the installation of water and energy efficient hardware, wherever feasible.

The Affordable Housing Units must also comply with the following criteria:

1. Rental Residential Development Projects: When Affordable Housing Units are required in rental Residential Development Projects, the units should be integrated with the project as a whole. 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 exterior design, construction, or materials. All Affordable Housing Units shall be reasonably dispersed throughout the project.
2. Owner-occupied Residential Development Projects: When Affordable Housing Units are required in owner-occupied Housing Development Projects, the units should be integrated with the project as a whole. Affordable Housing Units may 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. All Affordable Housing Units shall reflect the range and numbers of bedrooms provided in the project as a whole, except that if the market-rate units provide more than four bedrooms, the 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 Town.

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

IV. APPLICATION REQUIREMENTS, REVIEW PROCEDURES, AND FINDINGS

A. Application Requirements: At the time the applicant of a proposed housing development, seeking a density bonus and concessions or incentives under these Guidelines files a

formal application for approval of the proposed development with the Community Development Department, the following information shall be submitted with the fees and required application(s):

1. Identification of the location, acreage, and the maximum number of base units allowed under the zoning and the land use designated under the General Plan without the Density Bonus.
2. Identification of the total number of units proposed, specifically identifying the Density Bonus units and the Affordable Units which will demonstrate eligibility under these guidelines.
3. Identification of the requested concessions or incentives or a list of any alternative concessions or incentives which would provide, in the developer's opinion, an equivalent financial value to the concession or incentive requested. This requirement does not impair the applicant from substituting a new incentive or concession from what is initially proposed; however, the identified incentives or concessions may not be changed once the environmental review for the proposed housing development has commenced. Any change subsequent to the environmental review process may require additional environmental review.
4. For waivers of development standards, evidence demonstrating that the development standard for which the waivers are requested would have the effect of physically precluding the construction of the residential development project at the density.
5. A pro forma demonstrating that any requested incentives and concessions result in identifiable, financially sufficient and actual cost reductions. The pro forma shall include: (a) the actual cost reduction achieved through incentive or concession; and (b) evidence that the cost reduction allows the developer to provide affordable rents or affordable sales prices that could not otherwise be provided. The information shall be sufficiently detailed to enable Town staff to examine the conclusions reached by the developer. The Town may require that any pro forma submitted pursuant to this section include information regarding capital costs, equity investment, debt service, projected revenues, operating expenses, and such other information as is required to evaluate the pro forma, including but not limited to the cost to the Town of hiring a consultant to review the pro forma.
6. Any additional information and materials required with a Planned Development and Architecture and Site Application.
7. Technical studies required by the Town to evaluate the applications.
8. If a density bonus is requested for land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the findings in Government Code Section 65915(h) can be made. If a density bonus or concession is requested for a child care facility, the application shall provide evidence that the findings in Governmental Code Section 69515 (i) can be made.
9. Other pertinent information as the Director of Community Development may require enabling the Town to adequately analyze the identifiable, financially sufficient and actual cost reductions of the proposed housing development with respect to the requested additional concession or incentive and other concessions or incentives which may be made available.

B. Review Procedures: Any request for a density bonus, incentive, concession, parking reduction, or waiver pursuant to these Guidelines shall be submitted as part of the first approval of any residential development project and shall be processed, reviewed, and approved or denied concurrently with the discretionary applications required for the project.

1. Planning Commission/Town Council. When a proposed housing development needs only Architecture and Site approval, then the Planning Commission will consider and act on the density bonus request when the Architecture and Site application is considered. If the project requires additional entitlements such as a planned development application review, then the Town Council will consider and act on the density bonus request concurrent with the applicable project entitlement/environmental clearance. Following Planning Commission consideration of the application, the Community Development Director and/or the Planning Commission may refer the application for a density bonus and any other entitlements to the Town Council for final consideration and action.

C. Required Findings: The Town shall grant a request for a density bonus, incentive, concession, parking reduction, or waiver, unless the deciding body can make the following written findings based on substantial evidence, as applicable:

1. The Town has adopted a housing element, and the Town has met or exceeded its share of the regional housing needs for the income category proposed for the development project;
2. The project as proposed would have a specific, adverse impact upon the public health or safety which cannot be satisfactorily mitigated without rendering it unaffordable to lower-income households;
3. The denial of the project or imposition of conditions is required in order to comply with State or Federal law and there is no feasible method to comply without rendering the development unaffordable to lower-income households;
4. The development project is proposed on land zoned for agriculture or resource preservation which is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, and which does not have adequate water or wastewater facilities to serve the project.
5. The development project is inconsistent with the Town's General Plan land use designation as it existed on the date the application was deemed complete, and the Town has adopted a housing element pursuant to state law.

D. Application and Administrative Fees: Application and administrative fees shall be charged to the applicant for the review of all materials submitted in accordance with these Guidelines and for future monitoring of the affordability of the project. The fee amount shall be established by Town Council resolution and will be included in the Town's Comprehensive Fee Schedule. Fees will be charged for staff and consultant time associated with the development review process, analysis of all pro formas and financial feasibility documents related to the request for the density bonus, project marketing, and compliance with the affordability requirements of the project.

V. DENSITY BONUS HOUSING AGREEMENT

A. Required Density Bonus Agreement and Terms of Agreement: Once the proposed Housing Development has received its approval for the development application and the Density Bonus, as described above, the developer shall file an application, including the payment of any processing fees with the Community Development Department for approval and finalization of the Density Bonus Housing Agreement in compliance with the following requirements:

1. A Density Bonus Housing Agreement must be executed prior to recording any final map for the underlying property or prior to the issuance of any building permit for the housing development, whichever comes first, unless the Community Development Director approves an alternative phasing plan. The Density Bonus Housing Agreement shall be binding on all future owners and successors of interests of the housing development.
2. The Density Bonus Housing Agreement shall:
 - a) Identify the type, size and location of each Affordable Housing Unit required hereunder;
 - b) Identify the term of the agreement, which would define the term of affordability of the required units;
 - c) Require that the Affordable Housing Units be constructed and completed by the developer as specified in these Guidelines and in accordance with state law;
 - d) Require that each Affordable Housing Unit be kept available only to members of the identified income group at the maximum affordable rent during the term of the agreement.
 - e) Identify the means by which such continued availability shall be secured and enforced and the procedures under which the Affordable Housing Units shall be leased and shall contain such other terms and provisions, the Town may require. The agreement, in its form and manner of execution, shall be in a form able to be recorded with the Santa Clara County Recorder.
 - f) The Density Bonus Housing Agreement shall be reviewed and approved by the Director of Community Development and Town Attorney. The agreement shall also include the procedures for annual submission of information, including any applicable review fees, sufficient to determine continued compliance with the agreement to the Director of Community Development.
3. Required Terms for the Continued Availability of Affordable Units:
 - a) Low and Very Low Income Households. A housing developer providing Low and Very Low income units in accordance with these Guidelines must continue to restrict those units to Low or Very Low Income households for a minimum of 30 years or longer term under another

regulatory agreement from the date of initial occupancy. A longer period of time may be specified if required by any construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program applicable to the housing development.

- b) Moderate Income Households. In the case of a Housing Development providing Moderate Income units, the initial occupant of the unit must be a person or family of Moderate Income.
 - (i). Upon resale, the seller of the unit shall retain the value of any improvements, the down payment, and the seller's proportionate share of appreciation. The Town shall recapture any Initial Subsidy and its Proportionate Share of Appreciation; which shall be used within five years for any of the purposes described in subdivision (e) of Section 3334.2 of the Health and Safety Code that promote home ownership.