

Chapter 18.03

RESIDENTIAL DENSITY BONUS

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18.03.010 — Applicability.

The regulations set forth in this chapter apply in all RM (multiresidential) districts and in all CC, CR, CN and PO (commercial) districts. (Ord. 938 § 1, 2009)

18.03.020 — Purpose.

The residential density bonus provisions of this chapter are intended to provide incentives for the production of housing for very low, lower income, and moderate income or senior households in accordance with Sections 65915 and 65917 of the California Government Code. In enacting this chapter, it is the intent of the city of Capitola to facilitate the development of affordable housing and to implement the goals, objectives, and policies of the city's housing element. (Ord. 938 § 1, 2009)

18.03.030 — Density bonus.

A separate application by an applicant for a residential development project of five or more units, including such residential development projects that include as a component of the development a land donation or construction of a child care facility, or a senior citizen housing development as defined in California Civil Code Section 51.3, is eligible for a density bonus consistent with the requirements of California Government Code Section 65915. An applicant for a density bonus may also request concessions, incentives, reductions, or waivers consistent with the requirements of Sections 65915(d) and 65915(e).

The applicant may request a lesser density bonus than that which is available to the project under Section 65915; however, the city shall not be required to similarly reduce the number or type of units required to be provided pursuant to Sections 65915(b), 65915(c), and 65915(f). In calculating the density bonus for a project, each project shall be entitled to only one density bonus as provided in Section 65915(b)(2), and density bonuses from more than one category may not be combined. When calculating the number of required affordable units to qualify a project for a density bonus, any calculations resulting in fractional units shall be rounded up to the next larger integer. (Ord. 938 § 1, 2009)

18.03.040 — California Coastal Act.

Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 3000) of the Public Resources Code). (Ord. 938 § 1, 2009)

18.03.050 — Concession or incentive.

For purposes of this section, a concession or incentive shall mean a regulatory concession or incentive as defined in Section 65915(k) and as permitted by Section 65915(d). Developers requesting concessions and incentives shall submit a pro forma that demonstrates to the city that the requested concession or incentive results in identifiable, financially sufficient, and actual cost reductions to the project as required by Section 65915(k) and that the incentive or concession is required to provide for affordable housing costs. Nothing in this section requires the provision of

~~direct financial incentives for the residential development project, including but not limited to, the provision of financial subsidies, publicly owned land, fee waivers, or waiver of dedication requirements. The city at its sole discretion may choose to provide such direct financial incentives. Any such incentives may require payment of prevailing wages by the residential development project if required by state law. All concessions or incentives shall require the approval of the planning commission. (Ord. 938 § 1, 2009)~~

18.03.060 — Waiver or reduction.

~~For purposes of this section, a waiver or reduction shall mean a change to a development standard that would otherwise have the effect of physically precluding the construction of a development with any density bonus, concessions, or incentives permitted by this section. For purposes of this section, a development standard is as defined in Section 65915(o)(1). (Ord. 938 § 1, 2009)~~

18.03.070 — Parking.

~~Upon the written request of the developer, for a development project that qualifies for a density bonus, the city shall not require parking ratios that exceed the ratios identified in Section 65915(p)(1). For purposes of this section, on-site parking may be provided through tandem parking or uncovered parking but not on-street parking. (Ord. 938 § 1, 2009)~~

18.03.080 — Projects within affordable housing overlay zones.

~~If the development project is within an affordable housing overlay (AHO) district as defined and implemented in Section 17.40.020, the city may grant a density bonus greater than allowed by this section, if the applicant meets the AHO standards. A residential development project may utilize the AHO as an alternative to the use of state density bonus or may choose to utilize a state density bonus permitted by Section 65915 but may not utilize both the AHO and state density bonuses. (Ord. 938 § 1, 2009)~~

18.03.090 — Application.

~~An application for a density bonus, incentive, concession, waiver, modification, or revised parking standard pursuant to this section shall be submitted in conjunction with the first application for the development project and shall be processed concurrently with all other applications required for the project by the Capitola Municipal Code. The cost of reviewing any required data submitted as part of the application in support of a request for a concession or incentive, including but not limited to the cost to the city of hiring a consultant to review said data, shall be borne by the applicant. The application shall be submitted on a form provided by the city and shall include, at a minimum, the following information:~~

~~A. A site plan showing the total number of units, the number and location of the affordable or senior units qualifying the project for a density bonus, and the number and location of the proposed density bonus units;~~

~~B. The level of affordability of any proposed affordable units and their conformance with Section 65915(e);~~

~~C. A description of any requested incentives, concessions, waivers, or reductions of development standards, or modified parking standards. An application for an incentive or concession shall also include a pro forma demonstrating to the city that the requested concession or incentive results in an identifiable, financially sufficient, and actual cost reduction. Where the applicant is requesting the reduction or waiver of a development standard, the applicant shall submit evidence demonstrating that the application of the development standard would physically preclude construction of the project at the densities or with the concessions or incentives that the project is entitled to under this section.~~

~~D. If a density bonus is requested for a land donation pursuant to California Government Code Section 65915(g), the application shall show the location of the land to be dedicated and provide evidence that the requirements of Section 65915(g) have been met, thus entitling the project to the requested density bonus.~~

~~E. If a density bonus is requested for construction of a child care facility pursuant to California Government Code Section 65915(h), the application shall show the location and square footage of the proposed facility and provide evidence that the requirements of Section 65915(h) have been met, thus entitling the project to the requested density bonus. (Ord. 938 § 1, 2009)~~

~~18.03.100—Findings for approval of density bonus, concessions, incentives, waivers, or reductions.~~

~~A. Before approving a request for a density bonus, incentive, concession, parking reduction, or waiver, the review authority shall make the following findings, as applicable:~~

- ~~1. The residential development project is eligible for a density bonus and for any concessions, incentives, waivers, or parking reductions requested; conforms to all standards for affordability required by Section 65915(e); and includes a financing mechanism for all implementation and monitoring costs.~~
- ~~2. Any requested incentive or concession will result in identifiable, financially sufficient, and actual cost reductions based upon appropriate financial analysis and documentation required by this section.~~
- ~~3. If the density bonus is based all or in part on dedication of land, all of the requirements included in Section 65915(g) have been met.~~
- ~~4. If the density bonus, incentive, or concession is based all or in part on the inclusion of a child care facility, all of the requirements included in Section 65915(h) have been met.~~
- ~~5. If the incentive or concession includes mixed uses, all of the findings included in Section 65915(k)(2) can be made.~~
- ~~6. If a waiver or reduction of a development standard is requested, the development standard would have the effect of physically precluding the construction of the development project at the density or with the incentives or concessions permitted by Section 65915.~~

~~B. The review authority may deny a request for an incentive or concession for which the findings set forth in subsection A of this section can be made only if it makes a written finding, based upon substantial evidence, of one of the following:~~

- ~~1. The incentive or concession is not required to provide for affordable rents or affordable ownership costs, as provided in Section 65915(d)(1)(A); 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; or~~
- ~~3. The concession or incentive would be contrary to state or federal law.~~

~~C. The review authority may deny a request for a waiver or reduction for which the findings set forth in subsection A of this section can be made only if it makes a written finding, based upon substantial evidence, of one 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 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; 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 waiver or reduction would be contrary to state or federal law.~~

~~D. The review authority may deny a density bonus, incentive, or concession that is based on the provision of child-care facilities and for which the required findings can be made only if it makes a written finding, based on substantial evidence, that the city already has adequate child-care facilities. (Ord. 938 § 1, 2009)~~

18.03.110—Successor Government Code provisions:

All references to sections of the Government Code include all successor sections.

Table 14.16.030-1 Summary of State Density Bonus Requirements

The state density bonus law is codified at California Government Code Section 65915. In general, it requires the city to grant a density bonus, as well certain concessions and incentives, to qualifying residential development projects. The following chart provides a general overview of the requirements:

Type of Units*	% of Dedicated Units	Density Bonus**	Concessions or Incentives***
Lower Income	10%	20%	1-
(1.5% increase in density bonus for every 1% of dedicated units over 10% threshold (max 35% density bonus)-			
-	20%	35%	2-
-	30% or above	35%	3-
Very Low Income	5%	20%	1-
(2.5% increase in density bonus for every 1% increase in dedicated units over 5% threshold (max 35% density bonus)-			
10%	33%	2-	-
11%	35%	-	-
15% or above	35%	3-	-
Moderate Income (common interest development**** only where all of the units are offered for sale)	10%	5%	1-
(1% increase in density bonus for each 1% increase in dedicated units over 10% threshold (max 35% density bonus)-			
-	20%	15%	2-
-	30%	25%	3-
-	40% or above	35%	3

*—Section 65915 applies only to proposed developments of five or more units.

**—Section 65915(f) defines a “density bonus” as “a density increase over the otherwise maximum allowable residential density as of the date of the application by the applicant to the city.” Section 65915(e)(2) defines “maximum allowable residential density” as “the density allowed under the zoning ordinance and land use element of the general plan, or, if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. Where the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.”

***—A concession or incentive may be requested only if an application is also made for a density bonus, pursuant to Sections 65915(a) and 65915(d)(1). Concessions or incentives may be selected from only one category (very low,

~~low, or moderate). No concessions or incentives are available for land donation or senior housing. Day care centers may have one concession or a density bonus, at the city's option, but not both.~~

~~*** Pursuant to California Civil Code Section 1351, a "common interest development" means a community apartment project, a condominium project, a planned development, and a stock cooperative.~~

~~In addition, a developer/applicant can also qualify for a mandated density bonus in the following way:~~

Project	Threshold	Density Bonus	Concession or Incentive
Senior Housing (not-affordable)	35 Units dedicated to senior housing as defined in Civil Code §§ 51.3 & 51.12	20% of senior units	0

~~(Ord. 938 § 1, 2009)~~

Sections:

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18.03.010 – Purpose

This chapter establishes procedures to implement State Density Bonus Law, as set forth in California Government Code Sections 65915-65918, as may be amended from time to time. State Density Bonus Law provides density bonuses and other incentives to facilitate production of affordable and senior housing. This chapter also implements General Plan Housing Element policies to provide additional housing in Capitola for lower-income households, seniors, and persons with special needs.

18.03.020 – Definitions

A. State Density Bonus Law. Definitions in State Density Bonus Law apply to the terms in this chapter.

B. "Other Incentives". As used in this chapter, the term "other incentives" includes the following:

1. Incentives and concessions (Government Code Section 65915(k)).
2. Waiver or reduction of development standards (Government Code Section 65915(e)).
3. Reduced parking ratios (Government Code Section 65915(p)).

18.03.030 – Application Procedures

A. Concurrent Request. An applicant shall request a density bonus and other incentives concurrently with the first permit application required by the City for the housing development.

B. Submittal Requirements. An application for a density bonus and other incentives shall be filed on the form provided by the Community Development Department, together with all required information, materials and application fees.

C. Application Review.

1. The City shall review a request for a density bonus and other incentives concurrently with the permit application required for the housing development.
2. The City shall notify the applicant whether the application is complete in a manner consistent with the timelines specified in Government Code Section 65943.
3. When the City deems the application complete, the City shall provide the applicant with a determination of the following:
 - a. The amount of density bonus, calculated pursuant to Government Code Section 65915(f), for which the applicant is eligible.
 - b. If the applicant requests a parking ratio pursuant to Government Code Section 65915(p), the parking ratio for which the applicant is eligible.
 - c. If the applicant requests incentives and concessions pursuant to Government Code Section 65915(d) or waivers pursuant to Government Code Section 65915(e), whether the applicant has provided adequate information for the City to review and take action on the requested incentives and/or waivers.

D. City Action.

1. General.

- a. The City shall consider a request for a density bonus and other incentives concurrently with the permit application required for the housing development. The same review authority that acts on the permit application shall also act on density bonus and other incentive request.
- b. For permit applications that require a public hearing, a staff report shall describe project conformance with State Density Bonus Law as demonstrated by application materials submitted pursuant to Section 18.030.040.B (Submittal Requirements).

2. Incentives and Concessions. The City shall grant an incentive or concession (Government Code Section 65915(k)) requested by the applicant unless it makes a written finding, based upon substantial evidence, of any of the following:

- a. The proposed incentive or concession does not result in identifiable and actual cost reductions to provide for affordable housing costs, as defined in Health and Safety Code Section 50052.5; or for affordable rents, as defined in Health and Safety Code Section 50053.
- b. The proposed incentive or concession would be contrary to state or federal law; or
- c. The proposed incentive or concession would:
 - (1) Have a specific, adverse impact, as defined in Government Code Section 65589.5(2)(d), upon the public health or safety or on any real property that is listed in the California Register of Historic Resources; and
 - (2) There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the housing development unaffordable to low- and moderate-income households.

3. **Waiver or Reduction in Development Standards.** The City shall grant a waiver of development standards (Government Code Section 65915(e)) requested by the applicant unless it makes a written finding, based upon substantial evidence, of any of the following:
 - a. The proposed waiver would be contrary to state or federal law.
 - b. The proposed waiver would have an adverse impact on any real property listed in the California Register of Historic Resources.
 - c. The proposed waiver would:
 - (1) Have a specific, adverse impact, as defined in Government Code Section 65589.5(2)(d), upon the public health or safety; and
 - (2) There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the housing development unaffordable to low- and moderate-income households.
4. **Child Care Centers.** If a child care center complies with the requirements of Government Code Section 65915(h), the decision-making body may deny a density bonus or incentive that is based on the provision of child care facilities only if it makes a written finding, based on substantial evidence, that the City already has adequate child care facilities.
5. **Coastal Zone.** For a housing development within the coastal zone, the review authority must find that the requested density bonus or other incentive is consistent with the certified Local Coastal Program, with the exception of density. The granting of a density bonus or an incentive shall not be interpreted, in and of itself, to require a local coastal plan amendment.

E. Appeals. Appeals of the permit decision required for the housing development shall include all requests under State Density Bonus Law.

18.03.040 – General Provisions

A. Density Bonus Calculation.

1. All density bonus calculations resulting in fractional units are rounded up to the next whole number.
2. In determining the number of affordable units required to qualify for a density bonus, units added by a density bonus are not included in the calculations.

B. One Density Bonus Allowed.

1. Except where a housing development is eligible for an additional bonus pursuant to Government Code Section 65915(v), each housing development is entitled to only one density bonus.
2. If a housing development qualifies for a density bonus under more than one category, the applicant shall identify the category under which the density bonus is requested to be granted.

C. Density Bonus Amount.

1. The applicant may accept a lesser percentage of density bonus than the housing development is entitled to, or no density bonus, but no reduction is permitted in the percentages of affordable units required by State Density Bonus Law.
2. Regardless of the number of affordable units, no housing development is entitled to a density bonus greater than what is authorized under State Density Bonus Law.

D. Inclusionary Requirement.

1. On-site units that satisfy the City's inclusionary housing requirements in Municipal Code Chapter 18.02

(Affordable (Inclusionary) Housing) and will be constructed concurrently with the housing development may qualify the housing development for a density bonus if those units meet the requirements of State Density Bonus Law.

2. Payment of fees in lieu of providing affordable units under Municipal Code Section 18.02.050 (In-lieu housing fees and alternative compliance options) does not qualify a housing development for a density bonus.

E. Financial Incentives.

1. Nothing in this chapter requires the provision of direct financial incentives from the City for the housing development, including, but not limited to, the provision of financial subsidies, publicly owned land, fee waivers, or waiver of dedication requirements.
2. The City, at its sole discretion, may choose to provide such direct financial incentives.

18.03.050 – Affordable Unit Design and Construction

A. Timing. Building permits, final inspections, and certificates of occupancy shall be issued concurrently for the market rate units and for all affordable units that qualified the project for a density bonus, incentive, waiver, or parking reduction.

B. Appearance and Quality.

1. Affordable units shall be comparable in exterior appearance and overall quality of construction to market rate units in the same housing development.
2. Interior finishes and amenities may differ from those provided in the market rate units, but neither the workmanship nor the products may be of substandard or inferior quality as determined by the City.

C. Unit Size. To comply with fair housing laws, the affordable units shall contain the same proportional mix of bedroom sizes as the market-rate units.

D. Access to Amenities. In mixed-income buildings, the occupants of the affordable units shall have the same access to the common entrances and to the common areas, parking, and amenities of the project as the occupants of the market-rate housing units.

E. Location within Building. Affordable units shall be located throughout a building and not isolated on one floor or to an area on a specific floor.

18.03.060 – Regulatory Agreements

A. General.

1. If a density bonus or other incentive is approved pursuant to this chapter, the applicant shall enter into a binding affordable housing agreement or restrictive covenant, as described below, with the City. This agreement or covenant shall implement State Density Bonus Law and ensure compliance with this chapter.
2. The agreement or covenant shall be in a form approved by the City Attorney and executed by the City Manager or their designee.
3. The agreement or covenant shall be binding on all future owners and successors in interest.
4. The applicant shall record the agreement or covenant against the housing development prior to final or parcel map approval, or, where a map is not being processed, prior to issuance of building permits for the housing development.

B. Rental Projects: For affordable rental projects, the applicant shall enter into an affordable housing agreement with the City that:

1. Requires the continued affordability of all rental units that qualified the applicant for the density bonus or other incentive for a minimum of 55 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program;
2. Identifies the type, size and location of each affordable unit;
3. Specifies the eligible occupants;
4. Specifies phasing of the affordable units in relation to the market-rate units; and
5. Contains other relevant provisions approved by the City Attorney.

C. For-Sale Projects.

1. For projects with affordable for-sale units, the applicant shall enter into an affordable housing agreement with the City that requires the following:
 - a. The initial purchasers of those for-sale units that qualified the applicant for the density bonus or other incentive shall be persons and families of lower or moderate income, as applicable; and
 - b. If any for-sale unit is not purchased by an income-qualified household within 180 days after the issuance of the certificate of occupancy, then the unit(s) must be sold pursuant to a contract that satisfies the requirements of Revenue and Taxation Code Section 402.1(a)(10) to a qualified non-profit housing corporation as defined in State Density Bonus Law and that the units are offered at an affordable housing cost, as that cost is defined in Health and Safety Code Section 50052.5.
2. The agreement shall contain other relevant provisions approved by the City Attorney.
3. The City shall enforce an equity sharing agreement consistent with State Density Bonus Law unless it conflicts with the requirements of another public funding source or law.

D. Market-Rate Senior Projects. For market-rate senior projects, the applicant shall enter into a restrictive covenant with the City to require the housing development to be operated as "housing for older persons" consistent with state and federal fair housing laws.

18.03.070 – Interpretation

If any portion of this chapter conflicts with State Density Bonus Law or other applicable state law, state law shall supersede this chapter. Any ambiguities in this chapter shall be interpreted to be consistent with State Density Bonus Law. Statutory references in this ordinance include successor provisions.