

ORDINANCE NO. 2022-___

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF LOS ALTOS AMENDING
CHAPTERS 1.12 (APPEALS), 14.02 (ZONING –
GENERAL PROVISIONS AND DEFINITIONS)
AND 14.28 (MULTI-FAMILY AFFORDABLE
HOUSING) OF THE LOS ALTOS MUNICIPAL
CODE**

WHEREAS, the City Council desires to amend Chapter 1.12 of the Los Altos Municipal Code to allow for the delegation of certain appeals to City staff or to City advisory bodies; and

WHEREAS, the City Council also desires to amend Chapter 14.02 of the Municipal Code to clarify that failure to maintain landscaping required of a development project is a nuisance; and

WHEREAS, the City Council also desires to clarify the City's inclusionary housing requirements for certain housing development projects; and

WHEREAS, the City Council also desires to update its density bonus ordinance in Chapter 14.28 of the Municipal Code to reflect current state law and existing City policies and practices; and

WHEREAS, this Ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the State Guidelines implementing the California Environmental Quality Act of 1970, as amended.

NOW THEREFORE, the City Council of the City of Los Altos does hereby ordain as follows:

SECTION 1. AMENDMENT OF CHAPTER 1.12 OF THE MUNICIPAL CODE. Section 1.12.090 is hereby added to the Los Altos Municipal Code, as follows:

1.12.090. Delegation of Authority.

The city council may, by resolution, delegate its powers under this chapter to another city official or body. Such resolution shall prescribe whether the decision of the official or body shall be final or whether it shall be appealable to the city council.

SECTION 2. AMENDMENT TO CHAPTER 14.02 OF THE MUNICIPAL CODE. Section 14.02.055 is hereby added to the Los Altos Municipal Code, as follows:

14.02.055. Landscaping Required in Connection with a Development Project.

Any landscaping required as an objective design standard or as a condition of project approval for a development project approved pursuant to this title shall be maintained by the property owner or occupant of the property for the life of the development project. Failure to do so shall constitute a nuisance.

SECTION 3. ARTICLE 1 OF CHAPTER 14.28 OF THE MUNICIPAL CODE. Chapter 14.28 of the Los Altos Municipal Code, Sections 14.28.010 to 14.28.030 inclusive, is hereby amended as follows, underlined text indicating additions and stricken text indicating deletions:

Article 1. Inclusionary Housing Requirements

14.28.010 Purpose; Definitions.

This ~~chapter~~ ~~article~~ provides the requirements and provisions for the production of affordable housing. ~~The definitions contained in Section 14.28.040.B., unless otherwise apparent from the context, shall be applicable to this chapter. As used in this article, the following terms have the following meanings unless otherwise apparent from the context:~~

- A. “Affordable housing unit” means a for-sale or rental dwelling unit affordable to households with extremely low, very low, low, or moderate incomes as published periodically by HCD for households in Santa Clara County or equivalent as approved by the community development director. Calculations for the required affordable housing resulting in fractional units shall be rounded up to the next whole number.
- B. “Dwelling unit” means a dwelling designated and intended for occupancy by a household.
- C. “HCD” means the California Department of Housing and Community Development or any successor agency.
- D. “Income, very low, low or moderate” means an annual income of a household that does not exceed the amounts designated for each income category as determined by HCD.
- E. “Multiple-family residential project” means a residential project exceeding four units or a mixed-use project.
- F. “Project” means the entire parcel of real property, including all structures thereon, all or part of which is intended to be rented or purchased for residential purposes.

14.28.020 Applicability.

All multiple-family residential projects that create five or more new dwelling units shall provide affordable housing as follows:

- A. For projects with five to nine units, affordable housing units shall be provided as follows:
 - 1. Fifteen (15) percent of the total units shall be designated as affordable, rental or ownership, at the moderate-, low- or very-low income level.
 - 2. As an alternative to providing the required affordable housing units, payment of an in-lieu fee is permitted.

- B. For projects with ten (10) or more units, affordable housing units shall be provided as follows:
1. Rental units. Twenty (20) percent designated as affordable at the low-income level or fifteen (15) percent designated as affordable at the very-low income level.
 2. Ownership units. Fifteen (15) percent of total units shall be designated as affordable housing units. ~~with a majority of the~~ A majority of the affordable housing units shall be designated as affordable at the moderate-income level. The remaining affordable housing units shall be designated as affordable at the low- and/or very-low income level.
- C. Nothing in this section is intended to prohibit a multiple-family residential project from providing additional affordable housing units beyond the minimum number of affordable units required at each income level.
- D. As used in paragraph 2 of subdivision (B) of this section, the term “majority” shall have the following meaning.
1. If 50% of the total affordable housing units required by subdivision (B) results in a number with a fractional remainder, then “majority” means 50% of the total affordable housing units rounded up to the nearest whole number.
 2. If 50% of the total affordable housing units required by subdivision (B) results in a whole number without a fractional remainder, then “majority” means 50% of the total affordable housing units plus one unit.

14.28.030 Standards. [No change.]

SECTION 4. ARTICLE 2 OF CHAPTER 14.28 OF THE MUNICIPAL CODE. Section 14.28.040 of the Los Altos Municipal Code is hereby repealed and replaced with a new Article 2 to Chapter 14.28, as set forth in **Attachment 1** to this ordinance.

SECTION 5. APPENDIX TO CHAPTER 14.28 OF THE MUNICIPAL CODE. Chapter 14.28 shall contain an appendix with tables summarizing various requirements of the state density bonus law. The appendix is set forth in **Attachment 2** to this ordinance and shall be updated from time to time by the city manager or designee, without further action of the city council, to reflect changes in state law.

SECTION 6. CONSTITUTIONALITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 7. PUBLICATION. This ordinance shall be published as provided in Government Code section 36933.

SECTION 8. EFFECTIVE DATE. This ordinance shall be effective upon the commencement of the thirty-first day following the adoption date.

The foregoing ordinance was duly and properly introduced at a regular meeting of the City Council of the City of Los Altos held on _____, 2022 and was thereafter, at a regular meeting held on _____, 2022 passed and adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Anita Enander, MAYOR

Attest:

Andrea Chelemengos, CMC, CITY CLERK

Article 2. Density Bonus Ordinance

§ 14.28.040. Title

This article shall be known and may be cited as the Los Altos Density Bonus Ordinance.

§ 14.28.042. Definitions

As used in this article, the following terms shall have the following meanings:

- A. “Concession” shall have the same meaning as the term “concession or incentive” pursuant to the state density bonus law, as currently defined in Government Code section 65915, subdivision (k).
- B. “Density bonus” means a density increase over the otherwise maximum allowable residential density for a housing development as of the date of application by the applicant, or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density.
- C. “Housing development” means any of the following:
 - 1. A development project for five or more residential units, including a mixed-use development;
 - 2. A subdivision consisting of residential units or unimproved residential lots;
 - 3. A common interest development as defined in section 4100 of the Civil Code consisting of residential units or unimproved residential lots;
 - 4. A project to convert and substantially rehabilitate an existing commercial building to residential use; or
 - 5. The substantial rehabilitation of an existing structure designed for human habitation that has been divided into two or more legally created independent living quarters, where the result of the rehabilitation would be a net increase in available residential units.
- D. “Identifiable and actual cost reduction to provide for affordable housing cost” means a reasonably quantifiable cost reduction that would be achieved for a housing development through a concession unless it can be shown that total cost reductions for all proposed concessions likely would exceed:
 - 1. In the case of a rental housing development, the approximate difference between the amount of the debt service that the development’s affordable units will support and the cost to construct those units; and
 - 2. In the case of a for-sale housing development, the approximate difference between the combined total restricted sales prices of the affordable units in the housing development and the combined unrestricted value of those units.

- E. “Maximum allowable residential density” means the maximum residential density allowed for a housing development under this title and the land element of the general plan. If the residential density allowed under this title is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail. For purposes of this definition, residential density shall be calculated based upon the gross acreage of a housing development, regardless of how it may be calculated by the city for other purposes. If a housing development is proposed to be located on any property that includes a parcel or parcels for which no maximum density is established by the general plan or zoning, then the maximum allowable residential density for the housing development shall be the base density as established by the applicant pursuant to section 14.28.050.C of this code.
- F. “On-menu concession” means any of the concessions listed in section 14.28.048 of this code. Every on-menu concession is conclusively presumed to achieve an identifiable and actual cost reduction to provide for affordable housing cost and is rebuttably presumed not to have a specific, adverse impact upon public health or safety.
- G. “Reasonable documentation to establish eligibility for a concession” means a credible written explanation or other documentation demonstrating to the reasonable satisfaction of the city manager or designee that a concession will achieve an identifiable and actual cost reduction to provide for affordable housing cost.
- H. “State density bonus law” means Government Code section 65915, et seq., as the same may be renumbered or amended from time to time.

§14.28.044. Application of this Article

This article shall apply to any housing development that is entitled to receive a density bonus pursuant to the state density bonus law.

§14.28.046. Adoption of State Density Bonus Law

The state density bonus law is hereby adopted by reference. This article contains an appendix with tables summarizing various requirements of the state density bonus law. These tables are provided for informational purposes only and shall be updated from time to time by the city manager or designee, without further action of the city council, to reflect changes in state law. Except as provided in a development agreement approved by the city council in its discretion pursuant to Government Code section 65864, et seq., an applicant for a housing development shall not be entitled to, and shall not be granted:

- A. A density bonus in excess of the maximum density bonus required under the state density bonus law;
- B. A number of concessions in excess of the maximum number of concessions required under the state density bonus law;
- C. Waivers to which the applicant is not otherwise entitled pursuant to the state density bonus law; and
- D. A parking ratio and other provisions for parking more favorable than required under the state density bonus law, except as otherwise provided pursuant to another provision of this code.

§14.28.048. On-Menu Concessions

Each type of on-menu concession listed below shall be applied only once to a housing development. If an applicant requests to apply one type of on-menu concession more than once to a housing development, then the request shall be treated as an off-menu concession request.

- A. Lot coverage. Up to a 20 percent increase in lot coverage limits.
- B. Lot width. Up to a 20 percent decrease in lot width requirements.
- C. Floor Area Ratio. In zone districts with a floor area ratio maximum, an increase in the maximum floor area equal to the floor area of the affordable units for the housing development, up to a 35 percent increase in floor area maximum.
- D. Height. Up to an eleven foot (11') increase in the allowable height.
- E. Yard/Setback. Up to a 20 percent decrease in the required width or depth of any individual yard or setback except along any property line that abuts a single-family R1 zoned property.
- F. Open Space. Up to a 20 percent decrease from an open space requirement.

§14.28.050. Application Procedures

- A. A density bonus request shall be considered by the approval authority for the housing development. An applicant for a density bonus pursuant to the state density bonus law shall submit a density bonus report together with the application for the housing development. The density bonus report shall contain the following:
 - 1. The basis under the state density bonus law on which the applicant is claiming a density bonus;
 - 2. An identification of the maximum density bonus to which the housing development is entitled on the basis requested;
 - 3. An identification of any concession(s) sought and, except for on-menu concessions, reasonable documentation to establish eligibility for the concession(s);
 - 4. An identification of any waiver(s) sought and a detailed explanation of why the development standard from which any waiver is sought would have the effect of physically precluding the construction of the housing development at the density and with any concession(s) or parking ratio reduction sought. If the basis for a waiver request is that the development standard from which the waiver is sought would preclude the housing development from providing the number of units to which the project is entitled under the state density bonus law, then the justification for the waiver shall include an analysis demonstrating the maximum number of units that could be provided without the waiver, assuming a housing development with the same average unit size as for the housing development proposed; and
 - 5. If the housing development is proposed on any property that includes a parcel or parcels with existing dwelling units or dwelling units that have been vacated or

demolished in the five-year period preceding the application, an explanation of how the project meets the state density bonus law's replacement housing requirements, if applicable, currently codified at Government Code section 65915, subdivision (c)(3).

- B. If the applicant's proposal for concessions or waivers changes after the application is complete, the applicant shall submit an amended density bonus report that includes all the information required under subdivision (A) above.
- C. If the housing development is proposed to be located on any property that includes a parcel or parcels for which no maximum density is established by the general plan or zoning, then the applicant shall determine a base density for the housing development by determining the maximum number of units that could be provided by a hypothetical housing development consistent with all applicable development standards. The average unit size for the hypothetical housing development shall be at least as large as the average unit size for the housing development proposed. The density bonus report for the housing development shall include calculations and rough drawings for the hypothetical housing development used to determine the base density.
- D. If the density bonus report submitted for a housing development is incomplete, city planning staff shall provide the applicant notice of such incompleteness pursuant to the Permit Streamlining Act, Government Code section 65920, et seq.
- E. If a proposed housing development would be inconsistent with the state density bonus law, then city planning staff shall provide the applicant notice of such inconsistency pursuant to the Housing Accountability Act, Government Code section 65589.5.

§14.28.052. Standards

Affordable units provided to meet state density bonus law requirements shall meet the standards set forth in section 14.28.030.C of this code.

§14.28.054. Affordable Housing Agreements

- A. Affordable rental units provided by a housing development to meet the requirements of this chapter shall be subject to an affordable housing agreement recorded against the housing development with a 99-year term commencing upon the issuance of certificates of occupancy; provided that a longer period shall apply if required by another public financing source or law. The form of the affordable housing agreement shall be approved by the city attorney.
- B. For-sale affordable units provided by a housing development to meet both the requirements of the state density bonus law and the city's inclusionary housing requirements shall be subject to a recorded affordable housing agreement approved as to form by the city attorney. The affordable housing agreement shall, at a minimum, require that:
 - 1. Each for-sale affordable unit shall be sold to an income qualified household at an affordable housing cost, as defined in the affordable housing agreement; and

2. Each for-sale affordable unit shall be sold to the initial purchaser subject to a recorded resale restriction agreement approved as to form by the city attorney, which shall:
 - a. Have a 55-year term or a longer term if required by another public financing source or law;
 - b. Restrict the resale price of the unit to an affordable housing cost, as defined in the resale restriction agreement; and
 - c. Require that if the unit is sold to a subsequent purchaser during the term of the agreement, the purchaser shall purchase the unit subject to a resale restriction agreement approved as to form by the city attorney with a new 55-year term or a longer term if required by another public financing source or law.
- C. Unless otherwise required by another public financing source or law, a for-sale unit provided to meet state density bonus law requirements that is not necessary to meet the city's inclusionary housing requirements shall be sold to an income qualified household subject to an equity sharing agreement as set forth in the state density bonus law.

APPENDIX TO AFFORDABLE HOUSING ORDINANCE

This appendix is a summary of current state law and is for reference purposes only. Applicants are encouraged to consult Government Code Section 65915 or successor statute, as the same shall be amended from time to time, for further information about state density bonus law. In case of any conflict between this appendix and state law, state law shall prevail.

Table A: Density Bonus Available to Housing Developments Providing at Least Ten (10) Percent of Units for Lower Income Households

Percentage of Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
16	29
17	30.5
18	32
19	33.5
20	35
21	38.75
22	42.5
23	46.25
24	50

Table B: Density Bonus Available to Housing Developments Providing at Least Five (5) Percent of Units for Very Lower Income Households

Percentage of Very Low Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35
12	38.75
13	42.5
14	46.25
15	50

Table C: Density Bonus Available to For-Sale Housing Developments Providing at Least Ten (10) Percent of Units for Moderate Income Households

Percentage Moderate-Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11

Appendix 2

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

41	38.75
42	42.5
43	46.25
44	50

Table D: Miscellaneous Bases for Density Bonus

Senior Citizen Housing Development -- Gov. Code, § 65915, subd. (b)(1)(C)	20% Density Bonus (calculated based on number of senior housing units)
10% of Total Units for Transitional Foster Youth, Disabled Veterans, or Homeless Persons -- Gov. Code, § 65915, subd. (b)(1)(E)	20% Density Bonus (calculated based on number of units for transitional foster youth, disabled veterans, or homeless persons)
20% of Total Units for Lower Income Students in Student Housing -- Gov. Code, § 65915, subd. (b)(1)(F)	35% Density Bonus (calculated based on number of student housing units)
100% Affordable Projects -- Gov. Code, § 65915, subd. (b)(1)(G)	No maximum density control if within one-half mile of a major transit stop
	Otherwise, 80% density bonus calculated based on the number of units for lower income households

Table E: Available Concessions

Number of Concessions	Bases
1	5% of Units for Very Low Income Households 10% of Units for Lower Income Households 10% of Units for Moderate Income Households 20% of Units for Lower Income Students in Student Housing Project
2	10% of Units for Very Low Income Households 17% of Units for Lower Income Households 20% of Units for Moderate Income Households
3	15% of Units for Very Low Income Households 24% of Units for Lower Income Households 30% of Units for Moderate Income Households
4	100% Affordable Housing Projects (if project is within one-half mile of a major transit stop, also entitled to a height increase of 33 feet or three stories)

Table F: Parking Ratios

<p>No parking required if requested by applicant for a project that is 100% affordable to lower income households and that:</p> <ol style="list-style-type: none"> 1. Has unobstructed access to a major transit stop within one-half mile of the project site. 2. Is for individuals ages 62 or older and either (a) is served by paratransit service; or (b) has unobstructed access to a fixed route bus service, as defined, within one-half mile of the project site. 3. Is a special needs housing development and either (a) is served by paratransit service; or (b) has unobstructed access to a fixed route bus service, as defined, within one-half mile of the project site. 4. Is a supportive housing development.
<p>No more than 0.5 on-site spaces per unit are required if requested by applicant for a project that has unobstructed access to a major transit stop within one-half mile of the project site if:</p> <ol style="list-style-type: none"> 1. At least 11% of the units are for very low income households. 2. At least 20% of the units are for low-income households.

3. At least 40% of the units are for moderate income households.
Standard Parking Ratios in All Other Cases Where Project Qualifies for Density Bonus: 1 on-site space per studio or 1-bedroom unit 1.5 on-site spaces per 2- or 3-bedroom unit 2.5 on-site spaces per larger unit