

DRAFT ORDINANCE

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
AMENDING CHAPTER 29, "ZONING," OF THE TOWN CODE TO UPDATE
THE TOWN'S DENSITY BONUS ORDINANCE TO REFLECT CHANGES
MADE IN STATE LAW**

WHEREAS, Sections 65915 et seq. of the California Government Code, known as State Density Bonus Law, requires the Town of Los Gatos to provide a developer that proposes a housing development within the jurisdictional boundaries of the Town of Los Gatos containing affordable and other types of housing with a density bonus and other incentives; and

WHEREAS, California Government Code Section 65915(a) requires that all jurisdictions within the state adopt an ordinance that specifies how compliance with State Density Bonus Law will be implemented; and

WHEREAS, since adoption of the Town's density bonus ordinance, the State Legislature has passed, and the Governor has signed into law numerous changes to State Density Bonus Law; and

WHEREAS, the 2023-2031 Housing Element, which was adopted on June 4, 2024, and subsequently found in compliance with housing element law on July 10, 2024, by the California Department of Housing and Community Development, provides that the Town will update its density bonus ordinance to comply with State law amendments; and

WHEREAS, the Planning Commission has reviewed the proposed amendments to the Town Code, has found that the proposed amendments are consistent with goals and policies of the Town's General Plan, and recommends adoption of the proposed amendments by the Town Council; and

WHEREAS, the Town finds and determines that the proposed amendments to the Town Code are adopted pursuant to the Town's police power authority to protect the public health, safety, and welfare.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Los Gatos as follows:

SECTION I. Incorporation of Recitals.

The Town of Los Gatos Town Council finds that the above Recitals are true and correct and are incorporated herein by reference.

ATTACHMENT 1

SECTION II. Amendments to Chapter 29 of the Town of Los Gatos Town Code.

Sections 29.10.405 through 29.10.440 of Chapter 29 of the Town of Los Gatos Town Code are repealed and replaced with a new Division 8 of Article I of Chapter 29 to read as follows:

AFFORDABLE HOUSING DENSITY BONUS

Sections

29.10.410 Purpose.

29.10.420 Definitions.

29.10.430 Application requirements.

29.10.440 Review process.

29.10.450 Density bonus agreement.

29.10.460 Density bonus calculations.

29.10.470 Development standards.

29.10.480 Density bonus for commercial development.

29.10.490 Interpretation

Sec. 29.10.410. Purpose.

In accordance with California Government Code Sections 65915, et seq., this Division specifies how compliance with State Density Bonus Law will be implemented. Specifically, the purpose of this Division is to provide density bonuses, incentives, concessions, and waivers of development standards for the production of housing for very low-, low-, and moderate-income households, senior households, provision of daycare facilities, student housing, and donations of land, and for other housing types as provided by state law. In enacting this Division, it is also the intent of the Town to implement the goals, objectives, and policies of the Town's Housing Element of the General Plan.

Sec. 29.10.420. Definitions.

The definitions found in State Density Bonus Law shall apply to the terms contained in this Division. "Incentives" include "concessions" as defined in State Density Bonus Law.

Sec. 29.10.430. Application Requirements.

(a) An applicant for a "housing development" as defined in State Density Bonus Law shall be eligible for a density bonus and other regulatory benefits that are provided by State Density Bonus Law when the applicant seeks and agrees to provide housing as specified in Government Code Section 65915(b), (c), (f), (g), (h), and (v), or in Government Code Section 65195.5, or successor provisions. The density bonus calculations shall be made in accordance with State Density Bonus Law.

(b) The granting of a density bonus, incentive, or concession, pursuant to this Division, shall not be interpreted, in and of itself, to require a general plan amendment, development code amendment, zone change, other discretionary approval, or the waiver of a Town ordinance or

provisions of a Town ordinance unrelated to development standards.

(c) All requests for density bonuses, incentives, parking reductions, and waivers for a housing development shall be filed with and on a form provided by the Community Development Director, or their designee, concurrently with the filing of the planning application for the first discretionary or ministerial permit required for the housing development, whichever permit is earliest. The applicant shall be informed whether the application is complete consistent with Government Code Section 65943.

(d) The application shall include the required fee and the following minimum information:

1. For a requested density bonus.
 - a. Summary table showing the maximum number of dwelling units permitted by the zoning and general plan excluding any density bonus units, proposed affordable units by income level, proposed bonus percentage, number of density bonus units proposed, total number of dwelling units proposed on the site, and resulting density in units per acre.
 - b. Subparagraph of Government Code Section 65915(b)(1) under which the housing development qualifies for a density bonus and reasonable documentation demonstrating that the housing development is eligible for a bonus under that subparagraph.
 - c. Where the housing development is seeking an additional bonus, the subparagraph of Government Code Section 65915(v)(1) under which the housing development qualifies for an additional density bonus and reasonable documentation demonstrating that the housing development is eligible for the additional bonus under that subparagraph.
 - d. A tentative map or preliminary site plan, drawn to scale, showing the number and location of all proposed units, designating the location of proposed affordable units and density bonus units.
 - e. The zoning and general plan designations and assessor's parcel number(s) of the housing development site.
 - f. A description of all dwelling units existing on the site in the five-year period preceding the date of submittal of the application and identification of any units rented in the five-year period; subject to any form of rent control through a public entity's valid exercise of its police power; or subject to a recorded covenant ordinance, or law restricting rents to levels affordable to households of lower or very low income.
 - g. If dwelling units on the site are currently rented, income and household size of all residents of currently occupied units, if known. If any dwelling units on the site were rented in the five-year period, but are not currently rented, the income and household size of residents occupying the dwelling units when the site contained the maximum number of dwelling units, if known.
 - h. The phasing of the construction of the affordable housing units in relation to the nonrestricted units in the housing development.

- i. If a density bonus is requested for a land donation, the location of the land to be dedicated, proof of site control, and reasonable documentation that each of the requirements included in Government Code Section 65915 (g) can be met.
2. **Requested incentives.** Incentives are those defined by State Density Bonus Law. The number of incentives that may be requested shall be based upon the number the applicant is entitled to pursuant to State Density Bonus Law. The application shall include the following minimum information for each incentive requested, shown on a site plan (if appropriate):
 - a. The Town of Los Gatos's usual regulation and the requested regulatory incentive or concession.
 - b. Except where mixed-use zoning is proposed as a concession or incentive, reasonable documentation to show that any requested incentive will result in identifiable and actual cost reductions to provide for affordable housing costs or rents.
 - c. If approval of mixed-use zoning is proposed, reasonable documentation that nonresidential land uses will reduce the costs of the housing development, that the nonresidential land uses are compatible with the housing development and the existing or planned development in the area where the proposed housing development will be located, and that mixed-use zoning will provide for affordable housing costs and rents.
3. **Requested waivers.** For each waiver requested, the applicant shall include a list, and shown on a site plan (if possible), the Town's required development standard and the requested development standard.
4. **Parking reductions.** If a housing development is eligible for a density bonus pursuant to State Density Bonus Law, the applicant may request an on-site vehicular parking ratio specified in Government Code Section 65915(p). An applicant may request this parking reduction in addition to the incentives and waivers permitted by paragraphs (2) and (3) of this subsection. The application shall include a table showing parking required by the zoning regulations, parking proposed under State Density Bonus Law, paragraph under Government Code Section 65915(p) (or other statute) under which the project qualifies for the parking reduction, and reasonable documentation that the project is eligible for the requested parking reduction.
5. **Density bonus or incentive for a childcare facility in a housing development.** The application shall include reasonable documentation that all of the requirements included in Government Code Section 65915(h) can be met.

6. **Density bonus or incentive for a condominium conversion.** The application shall include reasonable documentation that all of the requirements included in Government Code Section 65915.5 can be met.

Sec. 29.10.440. Application review process.

(a) All requests under State Density Bonus Law shall be part of the planning application and shall be applied for, reviewed, and acted upon concurrently with the planning application by the approval body with authority to approve the development, within the timelines prescribed by California Government Code Section 65950 et seq. or other statute. Appeals of the planning application in accordance with the requirements of Division 4 of Chapter 29 of the Town Code shall include all requests under State Density Bonus Law if appeals are authorized for the discretionary or ministerial permit applied for.

(b) To ensure that an application for a housing development conforms with the provisions of State Density Bonus Law, the staff report presented to the decision-making body shall state whether the application conforms to the following requirements of State Density Bonus Law, as applicable:

1. The housing development provides the housing required by State Density Bonus Law to be eligible for a density bonus and any incentives, parking reduction, or waivers requested, including housing required to replace units rented or formerly rented to very low- and low-income households as required by California Government Code Section 65915(c)(3).
2. If applicable, the housing development provides the housing required by State Density Bonus law to be eligible for an additional density bonus under Government Code Section 65915(v)(1).
3. If an incentive is requested, reasonable documentation has been presented showing that any requested incentive will result in identifiable and actual cost reductions to provide for affordable housing or costs or rents; except that, if a mixed-use development is requested, the application must instead meet all of the requirements of Government Code Section 65915(k)(2).
4. If a waiver is requested, the development standards for which a waiver is requested would have the effect of physically precluding the construction of the housing development at the densities or with the incentives permitted.
5. The housing development is eligible for any requested parking reductions under Government Code Section 65915(p) or other statute.
6. If the density bonus is based all or in part on donation of land, the requirements of Government Code Section 65915(g) have been met.
7. If the density bonus or incentive is based all or in part on the inclusion of a child care facility or condominium conversion, the requirements included in Government Code Section 65915(h) or 65915.5, as appropriate, have been met.

(c) The decision-making body shall grant an incentive requested by the applicant unless it makes a written finding, based upon substantial evidence, of any of the following:

1. The proposed incentive 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; or
2. The proposed incentive would be contrary to state or federal law; or
3. The proposed incentive would have a specific, adverse impact upon the public health or safety 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 housing development unaffordable to 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 for the housing development was deemed complete as defined in Government Code Section 65589.5.

(d) The decision-making body shall grant the waiver of development standards requested by the applicant unless it makes a written finding, based upon substantial evidence, of any of the following:

1. The proposed waiver would be contrary to state or federal law; or
2. The proposed waiver would have an adverse impact on any real property listed in the California Register of Historic Resources; or
3. The proposed waiver would have a specific, adverse impact upon the public health or safety, and 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. 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 for the housing development was deemed complete as defined in Government Code Section 65589.5.

(e) 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 Town already has adequate child care facilities.

(f) A request for minor modification of an approved density bonus housing plan may be granted by the Town Manager, or their designee, if the modification substantially complies with the original density bonus housing plan and conditions of approval. Other modifications to the density bonus housing plan shall be processed in the same manner as the original plan.

Sec. 29.10.450. Density bonus housing agreement.

(a) If a density bonus, incentive, parking reduction, or waiver is approved pursuant to this Division, the applicant shall enter into a binding affordable housing agreement and/or restrictive covenant, as described below, with the Town, which sets forth the conditions and guidelines to be met in the implementation of State Density Bonus Law and that ensures

compliance with all of the provisions of this chapter. The agreement will also establish specific compliance standards and remedies available to the Town upon failure by the applicant to comply with State Density Bonus Law, this Division, or the affordable housing agreement.

(b) For rental projects, the applicant shall enter into an affordable housing agreement with the Town, running with the land, in a form approved by the Town Attorney, to be executed by the Town Manager, or their designee. The agreement shall require the continued affordability of all rental units that qualified the applicant for the receipt of the density bonus, incentive, waiver, or parking reduction 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; shall identify the type, size and location of each affordable unit; shall specify the eligible occupants; shall specify phasing of the affordable units in relation to the market-rate units; and shall contain other relevant provisions approved by the Town Attorney. Rents for the lower income density bonus units shall be set at an affordable rent as defined in State Density Bonus Law.

(c) For for-sale projects, the applicant shall enter into an affordable housing agreement with the Town of Los Gatos, running with the land, in a form approved by the Town Attorney, to be executed by the Town Manager, or their designee. The affordable housing agreement shall require that, the initial purchasers of those for-sale units that qualified the applicant for the receipt of the density bonus, incentive, waiver, or parking reduction are persons and families of lower or moderate income, as applicable, or if any for-sale unit is not purchased by an income-qualified household within one-hundred eighty (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; and shall contain other relevant provisions approved by the Town Attorney. The Town shall enforce an equity sharing agreement consistent with State Density Bonus Law unless it is in conflict with the requirements of another public funding source or law. The affordable housing agreement shall require the continued affordability of the for-sale units for 45 years.

(d) Where a density bonus, waiver, or parking reduction is provided for a market-rate senior housing development, the applicant shall enter into a restrictive covenant with the Town, running with the land, in a form approved by the Town Attorney, to be executed by the Town Manager, or their designee, to require the housing development to be operated as "housing for older persons" consistent with state and federal fair housing laws.

(e) The executed affordable housing agreement shall be recorded 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, whichever is earliest. The affordable housing agreement shall be binding on all future owners and successors in interest.

Sec. 29.10.460. Density bonus calculations.

(a) In determining the total number of units to be granted, each component of any density calculation, including base density and bonus density, resulting in fractional units shall be separately rounded up to the next whole number.

(b) When calculating the number of affordable units needed to qualify for a given density

bonus, any fractions of affordable dwelling units shall be rounded up to the next whole number.

(c) 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. 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.

(d) In determining the number of affordable units required to qualify a housing development for a density bonus pursuant to State Density Bonus Law, units added by a density bonus are not included in the calculations. Any on-site units that satisfy the Town of Los Gatos's inclusionary housing requirements in Division 6 of Chapter 29 of the Town Code and are required to 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.

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

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

Sec. 29.10.470. Development standards.

(a) Building permits and final inspections or certificates of occupancy shall be issued concurrently for the market rate units and for any affordable units that qualified the project for a density bonus, incentive, waiver, or parking reduction, so that the affordable units comprise the required percentage of total units.

(b) The external finish appearance of affordable units shall be indiscernable from that of the market rate units in the project. The internal finish of affordable units shall be identical to those of the market rate units in the project, except that the applicant may request Town approval of substitutions for luxury interior finishes, appliances, or fixtures, if such substitutions do not violate any other Town Code requirement.

(c) To comply with fair housing laws, the affordable units shall contain the same proportional mix of bedroom sizes as the market-rate units. 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, and the affordable units shall be located throughout the building and not isolated on one floor or to an area on a specific floor.

Sec. 29.10.480. Density bonus for commercial development.

A Commercial Development may request and receive a Development Bonus pursuant to the

provisions of Government Code Section 65915.7.

Sec. 29.10.490. Interpretation.

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

SECTION III. California Environmental Quality Act (CEQA) Considerations.

The Town Council finds that this Ordinance is exempt from the provisions of CEQA pursuant to CEQA Guidelines Section 15061(b)(3) (the common sense exemption) because it can be seen with certainty that there is no possibility that the adoption of this ordinance may have a significant effect on the environment, in that the ordinance merely implements the provisions of state law and includes no provisions beyond those included in State Density Bonus Law that may result in a direct or indirect impact on the physical environment.

SECTION IV. Severability.

In the event that a court of competent jurisdiction holds any Section, subsection, paragraph, sentence, clause, or phrase in this Ordinance unconstitutional, preempted, or otherwise invalid, the invalid portion shall be severed from this Ordinance and shall not affect the validity of the remaining portions of this Ordinance. The Town hereby declares that it would have adopted each Section, subsection, paragraph, sentence, clause, or phrase in this Ordinance irrespective of the fact that any one or more Sections, subsections, paragraphs, sentences, clauses or phrases in this Ordinance might be declared unconstitutional, preempted, or otherwise invalid.

SECTION V. Publication.

In accordance with Section 63937 of the Government Code of the State of California, this Ordinance takes effect 30 days from the date of its passage. The Town Council hereby directs the Town Clerk to cause this Ordinance or a summary thereof to be published or posted in accordance with Section 36933 of the Government Code of the State of California.

SECTION VI. Effective Date.

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the ___ day of _____ 20 , and adopted by the Town Council of the Town of Los Gatos at its regular meeting on the ___ day of _____ 20 , by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:

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

DRAFT