



Planning & Building Department

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Chapter 6-36 DENSITY BONUS

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6-3601 Purpose.

The purpose of this chapter is to:

- A. facilitate the production of affordable housing by providing incentives;
- B. implement the goals, policies and programs of the Housing Element of the Lafayette General Plan; and
- C. comply with Government Code section 65915.

6-3602 Definitions.

As used in this chapter, the following terms have the following meanings:

- A. "Affordable rent" means a rent, including a reasonable utility allowance as determined by the Planning and Building Department Director, for rental target units that does not exceed the following calculations pursuant to Health and Safety Code section 50053:
 1. Very low income: fifty percent (50%) of the AMI, adjusted for household size, multiplied by thirty percent (30%) and divided by twelve (12).
 2. Low income: sixty percent (60%) of the AMI, adjusted for household size, multiplied by thirty percent (30%) and divided by twelve (12).
- B. "Affordable sales price" means a sales price at which very low, low, or moderate income households can qualify for the purchase of target units, taking into account available financing, number of bedrooms and assumed household size, reasonable down payment, and affordable housing costs as defined in Health and Safety Code section 50052.5. The affordable sales price shall not exceed a price affordable to households based on the following calculations:
 1. Very low: household income at or below fifty percent (50%) of the AMI.
 2. Low: household income at or below seventy percent (70%) of the AMI.
 3. Moderate: household income at or below one hundred ten percent (110%) of the AMI.
- C. "AMI" mean the area median income for Contra Costa County.
- D. "Child care facility" means a child care facility other than a family day care home, including not limited to, infant centers, preschools, extended day care facilities, and school-age child care centers, pursuant to Government Code section 65915(h)(4).
- E. "Concession or incentive" means any of the following, pursuant to Government Code section 65915(k):
 1. A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Health and Safety Code sections 18901 et seq., including, but not limited to:

- a. Reduced minimum lot sizes and/or dimensions.
- b. Reduced minimum lot setbacks.
- c. Increased maximum lot coverage.
- d. Reduced on-site parking standards. Upon the request of the developer, the City shall require a vehicular parking ratio, inclusive of handicapped and guest parking, in the following ratios:
 - I. Zero to one bedroom: one onsite parking space.
 - II. Two to three bedrooms: two onsite parking spaces.
 - III. Four and more bedrooms: two and one-half parking spaces.

If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide "onsite parking" through covered parking or uncovered off-street parking, but not through on-street parking.

- 2. Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost and are compatible with the housing units and the existing or planned development in the area where the housing project will be located.
 - 3. Other regulatory incentives or concessions proposed by the applicant or the City that result in identifiable and actual cost reductions.
- F. "Condominium project" has the same meaning as set forth in Civil Code section 1351(f) for moderate income households.
 - G. "Density bonus" is defined as a density increase of at least five percent (5%), unless a lesser percentage is elected by the applicant, and no more than thirty-five percent (35%) over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the General Plan as of the date of application by the applicant to the City.
 - H. "Density bonus housing agreement" means a legally binding agreement between an applicant and the City to ensure that the requirements of this chapter are satisfied and that establishes, among other things, the number, size, location, terms and conditions of affordability, and production schedule of target units.
 - I. "Density bonus units" means those residential units approved pursuant to the provisions of this chapter that exceed the otherwise maximum residential density for the proposed housing development site.
 - J. "Development standard" means any ordinance, general plan element, specific plan, or other city condition, law, policy, resolution or regulation, as set forth in Government Code section 65915(o)(1).

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- K. "Housing cost" means the sum of actual or projected monthly payments for all of the following associated with for-sale target units: principal and interest on a mortgage loan, property taxes and assessments, fire and casualty insurance, and homeowner association fees.
- L. "Low income household" means persons and families whose income does not exceed the low income limits applicable to Contra Costa County, adjusted for household size, as published and periodically updated by the California Department of Housing and Community Development pursuant to Health and Safety Code section 50079.5.
- M. "Maximum residential development" means the maximum number of residential units permitted by the General Plan and applicable zoning district at the time of application, except for the provisions of this chapter.
- N. "Moderate income household" means persons and families whose income does not exceed the moderate income limits applicable to Contra Costa County, adjusted for household size, as published and periodically updated by the California Department of Housing and Community Development pursuant to Health and Safety Code section 50079.5.
- O. "Non-restricted unit" means any unit within a housing development that is not a target unit.
- P. "Qualifying resident" means a senior citizen or other person eligible to reside in senior citizen housing as defined under Civil Code section 51.3.
- Q. "Senior housing" means a housing development consistent with the State Fair Employment and Housing Act which has been designed to meet the physical and social needs of senior citizens and which otherwise qualifies as housing for older persons as defined in the federal Fair Housing Amendments Act of 1988.
- R. "Target unit" means a dwelling unit within a housing development that is affordable to and will be reserved for sale or rent to very low, low, or moderate income households, or to qualifying residents.
- S. "Very low income household" means persons and families whose income does not exceed the very low income limits applicable to Contra Costa County, adjusted for household size, as published and periodically updated by the California Department of Housing and Community Development pursuant to Health and Safety Code section 50079.5.

6-3603 Granting of density bonuses and incentives.

- A. The City shall either grant a density bonus and at least one concession or incentive, or provide other concessions or incentives of equivalent financial value (based on the land cost per dwelling unit) when the applicant for a housing development agrees or proposes to construct at least any one of the following:
 - 1. Ten percent (10%) of the total dwelling units for very low income households.

2. Twenty percent (20%) of the total dwelling units for low income households.
3. Fifty percent (50%) of the total dwelling units for qualifying residents.
4. Twenty percent (20%) of the total dwelling units in a condominium project for moderate income households.

B. 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 by the city.

6-3604 Number of density bonus units.

The City shall grant a density bonus, and incentives or concessions described in 6-3611, when an applicant for a residential development project seeks and agrees to construct at least any one of the following:

A. Ten percent (10%) of the total dwelling units of a residential development project for low income households; or

Density Bonus Calculation	
Percentage 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%

B. Five percent (5%) of the total dwelling units of a residential development project for very low income households; or

Density Bonus Calculation	
Percentage Very Low-Income Units	Percentage Density Bonus
5%	20%
6%	22.5%
7%	25%
8%	27.5%
9%	30%
10%	32.5%
11%	35%

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- C. A residential development project meeting the requirements of a Senior Citizen Housing Development or a mobile home park as defined under State law; or

Density Bonus Calculation: twenty (20%) percent

- D. Ten percent (10%) of the total dwelling units in a common interest development as defined in Section 1351 of the Civil Code, for persons and families of moderate income, provided that all units in the development are offered to the public for purchase.

Density Bonus Calculation	
Percentage Moderate-Income Units	Percentage Density Bonus
10%	5%
11%	6%
12%	7%
13%	8%
14%	9%
15%	10%
16%	11%
17%	12%
18%	13%
19%	14%
20%	15%
21%	16%
22%	17%
23%	18%
24%	19%
25%	20%
26%	21%
27%	22%
28%	23%
29%	24%
30%	25%
31%	26%
32%	27%
33%	28%
34%	29%
35%	30%
36%	31%
37%	32%
38%	33%
39%	34%
40%	35%

The applicant shall elect whether the density bonus shall be awarded on the basis of A, B, C, or D above. All density calculations resulting in fractional units shall be rounded up to the next whole number. The density bonus shall not be included when determining the number of dwelling units that is equal to five (5%) or ten percent (10%) of the total dwelling units.

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6-3605 Land donation.

When an applicant donates land to the City, the applicant shall be entitled to a fifteen percent (15%) increase above the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the General Plan for the entire residential development project as follows:

Density Bonus Calculation	
Percentage 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%

This increase shall be in addition to any density bonus mandated in Section 6-3604 A through D above, up to a maximum combined increase of thirty-five percent (35%) if the applicant seeks both the increase required under this section and the increase under Section 6-3604 A through D. All density bonuses resulting in fractional numbers of .5 or higher shall be rounded up to the next whole number. An applicant shall be eligible for the increased density bonus described in this section if all of the following conditions are met:

- A. The applicant donates and transfers the land to the City no later than the date of approval by the City of the final subdivision map, parcel map, or residential development application of the residential development project seeking the density bonus.
- B. 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

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ten percent (10%) of the number of residential units of the proposed residential development project seeking the density bonus.

C. The transferred land:

1. is at least one acre in size or of sufficient size to permit development of at least forty (40) units; and
2. has the appropriate General Plan designation and is appropriately zoned for affordable housing based on a density of at least the minimum default density as established by the State Department of Housing and Community Development; and
3. is or will be served by adequate public facilities and infrastructure; and
4. has appropriate zoning and development standards to make the development of the affordable units feasible; and
5. 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 no later than the date of approval of the final subdivision map, parcel map, or of the residential development project seeking the density bonus, except that the City may subject the proposed residential development project to subsequent design review, if the design is not reviewed by the City prior to the time of transfer.

D. The transferred land and the affordable units shall be subject to a deed restriction, which shall be recorded on the property at the time of dedication, ensuring continued affordability of the units for a term of at least thirty (30) years.

E. The land is transferred to the City or to another housing developer approved by the City.

F. The transferred land shall be within the boundary of the proposed residential development project or, if the City agrees, within one-quarter mile of the boundary of the proposed residential development project.

6-3606 Child care facilities.

When an applicant proposes to construct a residential development project that conforms to the requirements of Section 6-3604 A through D and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the residential development project, the City shall grant either of the following:

- A. 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; or
- B. An additional concession or incentive designated by the City to contribute to the economic feasibility of the construction of the child care facility.

The City shall require, as a condition of approving the residential development project, that the following occur:

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- A. 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 housing units are required to remain affordable pursuant to this Article; and
- B. Of the children who attend the child care facility, the children of very low income households, low income households, and moderate income households shall equal a percentage that is equal to or greater than the percentage of dwelling units that are made affordable to very low income households, low income households, or families of moderate income households pursuant to Section 6-3604 A through D.

Notwithstanding any requirement of this Article, the City shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

6-3607 Condominium conversions.

When an applicant for approval to convert apartments to a condominium project agrees to provide at least 33% of the total units of the proposed condominium project to households earning between 80% and 120% of median income, or 15% of the total units of the proposed condominium project to households earning less than 80% of median income, and agrees to pay for the reasonably necessary administrative costs incurred by the City, the City shall either (1) grant a density bonus or (2) provide other incentives of equivalent financial value.

For purposes of this section, "density bonus" means an increase in units of 25% over the number of apartments, to be provided within the existing structure or structures proposed for conversion.

For purposes of this section, "other incentives of equivalent financial value" shall not be construed to require the City to provide cash transfer payments or other monetary compensation but may include the reduction or waiver of requirements which the City might otherwise apply as conditions of conversion approval.

An applicant shall be ineligible for a condominium conversion density bonus or other incentives under this Section if the apartments proposed for conversion constitute a residential development project for which a density bonus or other incentives were previously provided under this Article.

6-3608 Design, distribution and timing of affordable housing.

Affordable housing units must be constructed concurrently with market-rate units. The affordable units shall be integrated into the residential development project and be comparable in infrastructure (including sewer, water and other utilities), construction quality and exterior design to the market-rate units. The affordable units must also comply with the following criteria:

- A. Rental residential development projects: When affordable units are required in rental residential development projects, the units should be integrated with the project as a whole. All affordable

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units shall reflect the range and numbers of bedrooms provided in the project as a whole, and shall not be distinguished by design, construction, or materials. All affordable units shall be reasonably dispersed throughout the project.

- B. Owner-occupied residential development projects: When affordable units are required in owner-occupied residential development projects, the units should be integrated with the project as a whole. Affordable units may be smaller in aggregate size and 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 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 units need not provide more than four bedrooms.

No building permits will be issued for market-rate units until permits for all affordable units have been obtained, unless affordable units are to be constructed in phases pursuant to a plan approved by the City. Market-rate units will not be inspected for occupancy until all affordable units have been constructed, unless affordable units are to be constructed in phases pursuant to a plan approved by the City.

6-3609 Requests for incentives or concessions.

The applicant must submit a density bonus application, as described in Section 6-3614 below, for the specific incentives or concessions that the applicant requests. The City shall grant the concession or incentive requested by the applicant unless the City makes a written finding, based upon substantial evidence, of either of the following:

- A. The concession or incentive is not required in order to provide for affordable housing costs;
- B. The concession or incentive would have a specific adverse impact upon public health and safety or the physical environment or on any real property that is listed in the Federal Register of Historic Resources, or the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low and moderate income households.

6-3610 Granting of incentives or concessions.

If the conditions of Section 6-3604 A, B, C or D are met by applicant, the following incentives or concessions may be granted:

- A. One incentive or concession for a residential development project that makes:
 1. at least ten percent (10%) of the total units affordable to lower income households; or
 2. at least five percent (5%) of the total units affordable to very low income households; or
 3. at least ten percent (10%) of the total units affordable to persons and families of moderate income in a common interest development.

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- B. Two incentives or concessions for a residential development project that makes:
 1. at least twenty percent (20%) of the total units affordable to lower income households; or
 2. at least ten percent (10%) of the total units affordable to very low income households; or
 3. at least twenty percent (20%) of the total units affordable to persons and families of moderate income in a common interest development.

- C. Three incentives or concessions for a residential development project that makes:
 1. at least thirty percent (30%) of the total units to lower income households; or
 2. at least fifteen percent (15%) of the total units to very low income households; or
 3. at least thirty percent (30%) of the total units affordable to persons and families of moderate income in a common interest development.

6-3611 Approval process for incentives or concessions.

Incentives (or concessions) are broken down into three tiers depending on their level of impact on residents of the project and/or the surrounding community. Concessions with an anticipated greater impact require a higher level of review and approval which encourages least impactful concessions/incentives through a simplified review process. The three tiers of approval are Zoning Administrator (administrative), Planning Commission, and City Council as outlined below.

If a single project requests concessions from different tiers, all requested concessions would be subject to the highest tier's review and approval. For example, if a proposed project requested two Tier 1 concessions and one Tier 2 concession, all concessions, including those from Tier 1, would be subject to hearing body approval under Tier 2.

- A. Tier 1: Zoning Administrator action
 1. waiving the public art requirement
 2. reducing processing fees
 3. deferring collection of impact fees to certificate of occupancy

- B. Tier 2: Planning Commission action
 1. reduction in building setbacks
 2. reduction of lot area standards, including allowing private streets to be included in the lot calculation
 3. reduction in open space/landscaping requirements
 4. reducing impact fees
 5. direct financial assistance through funding grants

- C. Tier 3: City Council action
 1. Any additional reductions or variations not specifically covered in Tiers 1 and 2.
 2. Deviation from any other development standards not addressed in Tiers 1 and 2.
 3. Density bonuses in excess of what is provided for under state law.

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6-3612 Compliance.

The provisions of this Article shall apply to all agents, successors and assignees of an applicant, developer, builder or property owner proposing a residential development project governed by this Article. No tentative map, use permit, special development permit or occupancy permit shall be issued for any residential development project unless exempt from or in compliance with the terms of this Article.

The City may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including but not limited to actions to revoke, deny or suspend any permit or development approval.

6-3613 Density bonus application.

In order to receive the concessions and/or incentives described in 6-3611, the applicant must submit to the City a density bonus application which will be reviewed concurrent with the development application.

At any time during the review process, the Planning and Building Department Director may require from the applicant additional information reasonably necessary to clarify and supplement the application or to determine the consistency of the proposed density bonus application with the requirements of this Article. The density bonus application should include, but not be limited to, the following:

- A. A description of the residential development project including the proposed total number of affordable housing units, senior housing units or mobile home park units;
- B. The zoning, General Plan designations, and assessor's parcel number(s) of the project site;
- C. A vicinity map and preliminary site plan, drawn to scale, including building footprints, driveway and parking layout.
- D. A description of the concessions or incentives requested.
- E. If an additional incentive(s) is requested, the application should describe why the additional incentive(s) is necessary to provide the affordable housing units.

6-3614 Siting.

Any affordable units constructed under the provisions of this ordinance shall be built on-site, unless otherwise waived by the City Council.

6-3615 Appeal.

An appeal of a decision made pursuant to this chapter is governed by sections 6-217 through 6-238 or section 8-2110.

