

IN THE CITY COUNCIL OF THE CITY OF SAN LEANDRO

ORDINANCE NO. 2004-017

AN ORDINANCE AMENDING ARTICLE 24, SECTION 5-2418 OF THE SAN LEANDRO ZONING CODE AND ADOPTING A NEW PART VI, ARTICLE 31 TO INCORPORATE A NEW RESIDENTIAL DENSITY BONUS ORDINANCE

The City Council of the City of San Leandro does ORDAIN as follows:

Section 1. Section 5-2418 of the San Leandro Zoning code is amended to read as follows:

"5-2418 Density Bonus for Including Low- and Moderate-Income Housing
Consistent with the requirements of Section 65915.5 of the California Government Code, the City shall offer a density bonus to condominium conversions including low- or moderate-income housing units or lower-income household units. When an applicant for approval to convert apartments to a condominium project agrees to provide at least 33 percent of the total units of the proposed condominium project to persons of low- or moderate-income, as defined in Section 50093 of the California Health and Safety Code, or 15 percent of the total units to lower-income households, as defined in Section 50079.5 of the California Health and Safety Code, the City shall either (1) grant a 25 percent density bonus or (2) provide other incentives of equivalent financial value. Any density bonus provided under this section shall be governed by the requirements of Part VI, Article 31.

- A. For purposes of this section, "density bonus" means an increase in units of 25 percent over the number of apartments to be provided within the existing structure or structures proposed for conversion. "Other incentives of equivalent financial value" shall not be construed to require the City to make any cash transfer payments or other monetary compensation to the subdivider, but may include the reduction or waiver of any required fees or the condominium conversion standards prescribed in Section 5-2412.
- B. An applicant shall be ineligible for a density bonus or other incentives under this section if the apartments proposed for conversion constitute a housing development for which a density bonus or equivalent financial incentive was provided under the provisions of Part VI, Article 31.

Section 2. A new Part VI, Article 31 is added to the San Leandro Zoning Code to read as follows:

Article 31 Residential Density Bonus

6-3100 Purpose And Intent

This Density Bonus Ordinance is intended to provide incentives for the production of housing for very low, lower income, or senior households in accordance with Sections 65913.4, 65915 and 65917 of the California Government Code. In enacting this Article, it is the intent of the City of San Leandro to facilitate the development of affordable housing and to implement the goals, objectives, and policies of the City's Housing Element.

The regulations and procedures set forth in this Article shall be publicized by the City and shall apply throughout the City. Sections of the California Government Code referenced in this Article and application forms for complying with this Article, shall be available to the public.

6-3102 Definitions

Whenever the following terms are used in this Article, they shall have the meaning established by this section:

- A. Additional Incentives means such regulatory concessions as specified in California Government Code Subsections 65915 (d) and (h) to include, but not be limited to, the reduction of site development standards or zoning code requirements, direct financial assistance, approval of mixed-use zoning in conjunction with the housing development, or any other regulatory incentive which would result in identifiable cost avoidance or reductions that are offered in addition to a Density Bonus. (See 6-3108 of this Article.)
- B. Affordable Rent means monthly housing expenses, including a reasonable allowance for utilities, for rental Target Units reserved for Very Low or Lower Income Households, not exceeding the following calculations:
 - 1. Very Low Income. 50 percent of the area median income for Oakland, California, Primary Metropolitan Statistical Area (PMSA), adjusted for household size, multiplied by 30 percent and divided by 12.
 - 2. Lower Income: 60 percent of the area median income for Oakland, California PMSA, adjusted for household size, multiplied by 30 percent and divided by 12.
- C. Affordable Sales Price means a sales price at which Lower or Very Low Income Households can qualify for the purchase of Target Units, calculated on the basis of underwriting standards of mortgage financing available for the development.
- D. Approval Authority means a person or body that is authorized to approve the Housing Development as specified in the San Leandro Zoning Code.
- E. Density Bonus means a minimum density increase of at least 25 percent over the otherwise Maximum Residential Density.
- F. Density Bonus for Condo Conversion means a density bonus provision under Section 65915.5 of the California Government Code. (See Article 24, Section 5-2418 of the San Leandro Zoning Code)

- G. Density Bonus Housing Agreement means a legally binding agreement between a developer and the City to ensure that the requirements of this Article are satisfied. The agreement, among other things, shall establish: the number of Target Units; their size; location; terms and conditions of affordability; and production schedule. (See 6-3112 of this Article.)
- H. Density Bonus Units means those residential units granted pursuant to the provisions of this Article which exceed the otherwise Maximum Residential Density for the development site.
- I. Equivalent Financial Incentive means a monetary contribution, based upon a land cost per dwelling unit value, equal to one of the following:
1. A Density Bonus and an Additional Incentive(s); or
 2. A Density Bonus, where an Additional Incentive(s) is not requested or is determined to be unnecessary. (See 6-3106 of this Article.)
- J. 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, including any loan insurance fees, property taxes and assessments, fire and casualty insurance, property maintenance and repairs, homeowner association fees, and a reasonable allowance for utilities.
- K. Housing Development means construction projects consisting of five or more residential units, including single-family, multi-family, and mobile homes for-sale or rent, pursuant to this Article. The Housing Development also includes a project that substantially rehabilitates and converts an existing commercial building or the substantial rehabilitation of an existing multifamily dwelling where the result would be a net increase in available residential units.
- L. Lower Income Household means households whose income does not exceed the lower income limits (80% of the AMI) applicable to the Oakland, California PMSA, as published and periodically updated by the State Department of Housing and Community Development pursuant to Section 50079.5 of the California Health and Safety Code.
- M. Maximum Residential Density means the maximum number of residential units permitted by the City's Zoning Code at the time of application, excluding the provisions of this Article. If the housing development is within a planned development overlay zone, the maximum residential density shall be determined on the basis of the general plan and the maximum density of the base zoning.
- N. Non-Restricted Unit means all units within a Housing Development excluding the Target Units.
- O. Qualifying Resident means senior citizens or other persons eligible to reside in Senior Citizen Housing.

- P. Senior Citizen Housing means a housing development consistent with the California Fair Employment and Housing Act (Government Code Section 12900 et. seq., including 12955.9 in particular), which has been designed to meet the physical and social needs of senior citizens, and which otherwise qualifies as housing for older persons as that phrase is used in the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and implementing regulations (24 CFR, part 100, subpart E), and as that phrase is used in California Civil Code Section 51.2 and 51.3.
- Q. Target Unit means a dwelling unit within a Housing Development which will be reserved for sale or rent to, and affordable to, Very Low or Lower Income Households, or Qualifying Residents.
- R. Very Low Income Household means households whose income does not exceed the very low income (50 percent of the AMI) limits applicable to the Oakland, California, PMSA, as published and periodically updated by the State Department of Housing and Community Development pursuant to Section 50105 of the California Health and Safety Code.

6-3104 Implementation.

The City shall grant either: a Density Bonus, or a Density Bonus with an Additional Incentive(s), or Equivalent Financial Incentives, as set forth in 6-3108 of this Article, to an applicant or developer of a Housing Development, who agrees to provide the following:

- A. At least 20 percent of the total units of the Housing Development (less the density bonus units) as Target Units affordable to Lower Income Households; or
- B. At least 10 percent of the total units of the Housing Development (less the density bonus units) as Target Units affordable to Very Low Income Households; or
- C. At least 50% of total units if a senior citizen development (residents over 62 years of age).

In determining the minimum number of Density Bonus Units to be granted pursuant to this Section, the Maximum Residential Density for the site shall be multiplied by 0.25. When calculating the number of permitted Density Bonus Units, any fractions of units shall be rounded to the next larger integer.

In determining the number of Target Units to be provided pursuant to this Section, the Maximum Residential Density shall be multiplied by .10, where Very Low Income Households are targeted, or by .20 where Lower Income Households are targeted. The Density Bonus Units shall not be included when determining the total number of Target Units in the Housing Development. When calculating the required number of Target Units, any resulting decimal fraction shall be rounded to the next larger integer.

In cases where a density increase of less than 25 percent is requested, no reduction will be allowed in the number of Target Units required. In cases where a density increase of more than 25 percent is requested, the requested density increase, if granted, shall be considered an Additional Incentive, as outlined in 6-3108 of this Article.

In cases where the developer agrees to construct more than 20 percent of the total units for Lower Income Households, or more than 10 percent of the total units for Very Low Income Households, the developer is entitled to only one Density Bonus and an Additional Incentive(s) pursuant to 6-3108 of

this Article. Similarly, a developer who agrees to construct Senior Citizen Housing with 20 of the units reserved for Lower Income Households or 10 percent for Very Low-Income Households is still only entitled to one Density Bonus and an Additional Incentive(s). The City may, however, grant multiple Additional Incentives to facilitate the inclusion of more Target Units than are required by this Article.

6-3106 Development Standards

Target Units shall be constructed concurrently with Non-Restricted Units unless both the City and the developer/applicant agree within the Density Bonus Housing Agreement to an alternative schedule for development.

Target Units shall remain restricted and affordable to the designated group for a period of 55 years for rental units or 45 years for for-sale units.

In determining the maximum Affordable Rent or Affordable Sales Price of Target Units the following household and unit size assumptions shall be used, unless the Housing Development is subject to different assumptions imposed by other governmental regulations:

<u>Type of Unit</u>	<u>Household Size</u>
SRO (residential hotel) unit	75% of 1 person
0 bedroom (studio)	1 person
1 bedroom	2 person
2 bedroom	3 person
3 bedroom	4 person
4 bedroom	5 person

Target Units should be built on-site wherever possible, should be dispersed randomly throughout a Residential Development, and be constructed and occupied concurrently with or prior to the construction and occupancy of market-rate units or development. The number of bedrooms of the Target Units should be equivalent to the bedroom mix of the non-Target units of the Housing Development; except that the Developer may include a higher proportion of Target Units with more bedrooms. The design and appearance of the Target Units shall be compatible with the design of the total Housing Development. Housing Developments shall comply with all applicable development standards, except those which may be modified as provided by this Article.

Circumstances may arise in which the public interest would be served by allowing some or all of the Target Units associated with one Housing Development to be produced and operated at an alternative development site. Where the developer and the City form such an agreement, the resulting linked developments shall be considered a single Housing Development for purposes of this Article. Under these circumstances, the developer shall be subject to the same requirements of this Article for the Target Units to be provided on the alternative site.

A Density Bonus Housing Agreement shall be made a condition of any tentative map, parcel map, planned development or conditional use permits, or building permit for all Housing Developments pursuant to this Article. The Agreement shall be recorded as a restriction on the parcel or parcels on which the Target Units will be constructed. The Agreement shall be consistent with 6-3112 of this Article.

6-3108 Development Incentives

The City shall provide a Density Bonus and an Additional Incentive(s), for qualified Housing Developments, upon the written request of a developer, unless the City makes a written finding that the Additional Incentive(s) is not necessary to make the Housing Development economically feasible and to accommodate a Density Bonus.

The development incentive(s) granted shall contribute significantly to the economic feasibility of providing the Target Units. Applicants seeking a waiver or modification of development or zoning standards shall show that such waivers or modifications are necessary to make the Housing Development economically feasible in accordance with Government Code Section 65915(e). This requirement may be satisfied by reference to applicable sections of the City's General Plan Housing Element

The need for incentives will vary for different Housing Developments. Therefore, the allocation of Additional Incentives shall be determined on a case-by-case basis. The Additional Incentives may include, but are not limited to, any of the following:

- A. A reduction of site development standards or a modification of zoning code or architectural design requirements which exceed the minimum building standards provided in Part 2.5 (commencing with Section 18901) of Division 13 of the California Health and Safety Code. These may include, but are not limited to, one or more of the following:
 - 1. Reduced minimum lot sizes and/or dimensions.
 - 2. Reduced minimum lot setbacks.
 - 3. Reduced minimum outdoor and/or private outdoor living area.
 - 4. Increased maximum lot coverage.
 - 5. Increased maximum building height and/or stories.
 - 6. Reduced on-site parking standards, including the number or size of spaces and garage requirements.
 - 7. Reduced minimum building separation requirements.
 - 8. Reduced street standards, e.g., reduced minimum street widths.
- B. Allow the Housing Development to include non-residential uses and/or allow the Housing Development within a non-residential zone;
- C. Other regulatory incentives or concessions proposed by the developer or the City which result in identifiable cost reductions or avoidance;
- D. A Density Bonus of more than 25 percent;
- E. Deferred planning, plan check, construction permit, and/or development impact fees (e.g., capital facilities, park, or traffic fees); and
- F. Direct financial aid (e.g., redevelopment set-aside, Community Development Block Grant funding) in the form of a loan or a grant to subsidize or provide low interest financing for on or off site improvements, land or construction costs.

The City may offer an Equivalent Financial Incentive in lieu of granting a Density Bonus and an Additional Incentive(s). The value of the Equivalent Financial Incentive shall equal at least the land

cost per dwelling unit savings that would result from a Density Bonus and must contribute significantly to the economic feasibility of providing the Target Units pursuant to this Article.

6-3110 Application Requirements and Review

An application pursuant to this Article shall be processed concurrently with any other application(s) required for the Housing Development. Final approval or disapproval of an application shall be made by the Approval Authority unless direct financial assistance is requested. If direct financial assistance is requested, the City Council shall have the authority to make the final decision on the application.

An applicant/developer proposing a Density Bonus for a Housing Development pursuant to this Article shall submit an application with the following information:

- A. A brief description of the proposed Housing Development, including the total number of units, Target Units, and Density Bonus Units proposed;
- B. The zoning and general plan designations and assessors 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; and
- D. If an Additional Incentive(s) is requested, the application should describe why the Additional Incentive(s) is necessary to provide the Target Units, in accordance with 6-3108 of this Article;

Within 90 days of receipt of the preliminary application, the City shall provide to an applicant/developer, a letter which identifies project issues of concern, the maximum financial assistance that the Community Development Director can support when making a recommendation to the Approval Authority, and the procedures for compliance with this Article.

The Community Development Director shall inform the applicant/developer that the requested Additional Incentives shall be recommended for consideration with the proposed Housing Development, or that alternative or modified Additional Incentives pursuant to 6-3108 shall be recommended for consideration in lieu of the requested Incentives. If alternative or modified Incentives are recommended by the Community Development Director, the recommendation shall establish how the alternative or modified Incentives can be expected to have an equivalent affordability effect as the requested Incentives.

6-3112 Density Bonus Housing Agreement

Applicants/Developers requesting a Density Bonus shall agree to enter into a Density Bonus Housing Agreement with the City. The terms of the draft agreement shall be reviewed and revised as appropriate by the Community Planning Director, who shall formulate a recommendation to the Approval Authority for final approval.

Following execution of the agreement by all parties, the completed Density Bonus Housing Agreement, or memorandum thereof, shall be recorded and the conditions filed and recorded on the parcel or parcels designated for the construction of Target Units. The approval and recordation shall take place prior to final map approval, or, where a map is not being processed, prior to issuance of

building permits for such parcels or units. The Density Bonus Housing Agreement shall be binding to all future owners and successors in interest.

A. The Density Bonus Housing Agreement shall include at a minimum the following:

1. The total number of units approved for the Housing Development, including the number of Target Units;
2. A description of the household income group to be accommodated by the Housing Development, as outlined in 6-3104 of this Article, and the standards for determining the corresponding Affordable Rent or Affordable Sales Price and Housing Cost;
3. The location, unit sizes (square feet), and number of bedrooms of Target Units;
4. Tenure of use restrictions for Target Units of at least 55 years for rental units and 45 years for for-sale units, in accordance with 6-3106 of this Article;
5. A schedule for completion and occupancy of Target Units;
6. A description of the Additional Incentive(s) or Equivalent Financial Incentives being provided by the City;
7. A description of remedies for breach of the agreement by either party (the City may identify tenants or qualified purchasers as third party beneficiaries under the agreement); and
8. Other provisions to ensure implementation and compliance with this Article.

B. In the case of for-sale Housing Developments, the Density Bonus Housing Agreement shall provide for the following conditions governing the initial sale and use of Target Units during the applicable use restriction period:

1. Target Units shall, upon initial sale, be sold to eligible Very Low or Lower Income Households at an Affordable Sales Price and Housing Cost, or to Qualified Residents (i.e., maintained as Senior citizen housing) as defined by this Article;
2. The initial purchaser of each Target Unit shall execute an instrument or agreement approved by the City restricting the sale of the Target Unit in accordance with this Article during the applicable use restriction period. Such instrument or agreement shall be recorded against the parcel containing the Target Unit and shall contain such provisions as the City may require in order to ensure continued compliance with this Article and the state Density Bonus Law;
3. Renewed restrictions will be entered into on each change of ownership, with a 45-year renewal term, upon transfer of an owner-occupied Target Unit prior to

the expiration of the 45-year affordability period not be subject to any requirement of this Article thereafter;

4. Target units may be refinance if the loan-to resale value does not exceed 100 percent and the home owners receive no cash out except cash that would be used for major rehabilitation;
5. The maximum sales price permitted on resale of the Target Unit designated for owner-occupancy shall be the lower of: (1) fair market value or (2) the seller's lawful purchase price, increased by the lesser of (i) the rate of increase of Area Median Income during the seller's ownership or (ii) the rate at which the consumer price index increased during the seller's ownership. To the extent authorized in any resale restrictions or operative Density Bonus Housing Agreement, sellers may recover at time of sale, the market value of capital improvements made by the seller and the seller's necessary and usual costs of sale, and may authorize an increase in the maximum allowable sales price to achieve such recovery feasible;
6. Title in the Target Unit may change due to changes in circumstance, including death, marriage and divorce. Except as otherwise provided, if a change in title is occasioned by events that change the financial situation of the Household so that it is no longer income-eligible, then the property must be sold to an income-eligible Household within 180 days. Upon the death of one of the owners, title in the property may transfer to the surviving joint tenant without respect to the income-eligibility of the Household. Upon the death of a sole owner or all owners and inheritance of the Target Unit by a non-income-eligible child or step child of one or more owners, there will be a one year compassion period between the time when the estate is settled and the time when the property must be sold to an income-eligible Household. Inheritance of an Target Unit by any other person whose Household is not income-eligible shall require resale of the unit to an income-eligible Household as soon as is feasible but not more than 180 days; and
7. Target Units shall remain owner occupied. No renting or leasing shall be allowed.

C. In the case of rental Housing Developments, the Density Bonus Housing Agreement shall provide for the following conditions governing the use of Target Units during the use restriction period:

1. Rental units will be offered to eligible Households at an Affordable Rent. The owner of rental Target Units shall certify each tenant Household's income to the City or City's designee at the time of initial rental and annually thereafter. The owner must obtain and review documents that demonstrate the prospective

renter's total income, such as income tax returns or W-2s for the previous calendar year, and submit such information on a form approved by the City.

2. Selection of Tenants. The owners of rental Target Units may fill vacant units by selecting income-eligible Households from the Section 8 Housing Choice Voucher Waiting List maintained by the Alameda County Housing Authority or any other list maintained by the City or City's designee. Alternatively, owners may fill vacant units through their own selection process, provided that they publish notices of the availability of Target Units according to guidelines established by the Approval Authority;
3. Annual Report. The owner shall submit an annual report summarizing the occupancy of each Inclusionary Unit for the year, demonstrating the continuing income-eligibility of the tenant. The City Manager may require additional information if he or she deems it necessary;
4. Subsequent Rental to Income-Eligible Tenant. The owner shall apply the same rental terms and conditions to tenants of Target Units as are applied to all other tenants, except as required to comply with this Article (for example, rent levels, occupancy restrictions and income requirements) or with other applicable government subsidy programs. Discrimination against persons receiving housing assistance is prohibited;
5. Changes in Tenant Income. If, after moving into a Target Unit, a tenant's Household income exceeds the limit for that unit, the tenant Household may remain in the unit as long as his or her Household income does not exceed 140 percent of the income limit. Once the tenant's income exceeds 140 percent of the income limit, the following shall apply:
 - a). If the tenant's income does not exceed the income limits of other Target Units in the Residential Development, the owner may, at the owner's option, allow the tenant to remain in the original unit and redesignate the unit as affordable to Households of a higher income level, as long as the next vacant unit is re-designated for the income category previously applicable to the tenant's Household. Otherwise, the tenant shall be given one year's notice to vacate the unit. If during the year, a Target Unit becomes available and the tenant meets the income eligibility for that unit, the owner shall allow the tenant to apply for that unit;
 - b). If there are no units designated for a higher income category within the Development that may be substituted for the original unit, the tenant shall be given one year's notice to vacate the unit. If within that year, another unit in the Residential Development is vacated, the owner, at the owner's option, may allow the tenant to remain in the original unit and raise the tenant's rent to market-rate and designate the

newly vacated unit as a Target Unit affordable at the income-level previously applicable to the unit converted to market rate. The newly vacated unit must be comparable in size (for example, number of bedrooms, bathrooms, square footage, etc.) as the original unit.

Section 3. Effective Date and Publication

Passed and adopted on the 15th day of November, 2004.