

CITY COUNCIL OF THE CITY OF OXNARD

ORDINANCE NO. 2789

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OXNARD
REPEALING AND ADOPTING DIVISIONS 7 AND 8 OF ARTICLE 5
OF CHAPTER 16 OF THE CITY CODE, CONCERNING INCENTIVES
TO CREATE AFFORDABLE HOUSING

The City Council of the City of Oxnard does ordain as follows:

Part 1. Divisions 7 and 8 of Article 5 of Chapter 16 of the City Code are repealed.

Part 2. Divisions 7 and 8 of Article 5 of Chapter 16 of the City Code are adopted, to read:

“DIVISION 7. INCENTIVES TO CREATE AFFORDABLE HOUSING

SEC. 16-410. PURPOSE.

The purpose of this division is to specify how the city will implement compliance with Cal. Gov't Code, Section 65915 (“the statute”).

SEC. 16-411. DENSITY BONUSES AND INCENTIVES AND CONCESSIONS.

When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the city's jurisdiction that meets the requirements set out in Cal. Gov't Code Section 65915(b), the actions and procedures set out in sections 16-414 through 16-422 shall apply. The burden is on the applicant to show that the housing development meets such requirements.

SEC. 16-412. DEFINITIONS.

(A) AFFORDABLE HOUSING and AFFORDABLE UNITS – Units constructed for lower or very low income households, a senior citizen housing development, a mobilehome park that limits residency based on age requirements for housing for older persons, or units in a common interest development for persons and families of moderate income, all as defined in Cal. Gov't Code Section 65915(b)(1) and any other applicable federal and State laws.

(B) DENSITY BONUS – A density increase in the amount specified in the statute that is 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 to the city. The density bonus shall not be included when determining the number of housing units equal to the percent of the total specified in the statute. The density bonus shall apply to housing developments consisting of five or more dwelling units. The applicant may elect to accept a lesser percentage of density bonus than required by the statute.

(C) Terms used in this division that are also used in the statute shall have the meanings in this division that such terms have in the statute. If there is any inconsistency between this division and the statute, this division shall be construed in a manner consistent with the statute.

SEC. 16-413. FEES.

(A) An application for a density bonus permit shall be accompanied by the fee set by resolution of the city council.

(B) If an application for a density bonus permit requires an unusual amount or specialized type of study or evaluation by city staff, a consultant or legal counsel, city staff shall estimate the cost thereof and require the applicant to pay an additional fee or make one or more deposits to pay such cost before the study or evaluation is begun. On completion of the study or evaluation, and before the city council decides the application, city staff shall determine the actual cost of the work and the difference between the actual cost and the amount paid by the applicant, and shall require the applicant to pay any deficiency or shall refund to the applicant any excess.

SEC. 16-414. APPLICATION REQUIRED.

(A) When an applicant seeks a density bonus for a housing development that meets the criteria set out in Cal. Gov't Code Section 65915(b), or for the donation of land under circumstances that meet the criteria set out in Cal. Gov't Code Section 65915(g), the applicant shall file an application for a density bonus permit, whether or not the project also requires or has been granted a special use permit or other permits or approvals.

(B) The applicant for a housing development may request a meeting with city staff to discuss the specific incentives or concessions, and any waiver or reduction of development standards, requested in the application.

SEC. 16-415. CONTENT OF APPLICATION.

(A) The application for a density bonus permit shall include the following information:

(1) A description of the project, including the number of dwelling units, the number of affordable units and the location of the affordable units;

(2) A description of the density bonus and the incentives or concessions requested, if any, in accordance with Cal. Gov't Code Section 65915(d)(2);

(3) Any proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of Cal. Gov't Code Section 65915(b) at the densities or with the concessions or incentives permitted by the statute;

(4) The proposed sale or rental price of all units, and especially of the affordable units;

(5) The proposed method to guarantee that the applicant will establish the sales or rental prices as stated in the application;

(6) The proposed method of ensuring the continued affordability of all low and very low units that qualified the applicant for the award of the density bonus for at least 30 years, as required by Cal. Gov't Code Section 65915(c)(1);

(7) Whether the developer requests that the parking ratio for the project be as described in Cal. Gov't Code Section 65915(g);

(8) Other relevant information requested by city staff.

(B) The application for a density bonus permit for the donation of land shall include information required to show that the application meets the requirements of Cal. Gov't Code Section 65915(g)(2).

(C) The application for a density bonus permit for a housing development that conforms to the requirements of Cal. Gov't Code Section 65915(b) and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, shall include information as to how the applicant proposes to regulate attendance at the child care facility to conform to the requirements of Cal. Gov't Code Section 65915(h)(2)(B).

SEC. 16-416. EFFECT OF PROPOSAL FOR WAIVER OR REDUCTION OF DEVELOPMENT STANDARDS.

A proposal for the waiver or reduction of development standards shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to Cal. Gov't Code Section 65915(d).

SEC. 16-417. PROJECT DESIGN.

The applicant shall design the project so that the affordable units are dispersed throughout the project, have a number of bedrooms proportionate to the number of bedrooms in other units in the project, and do not differ in appearance, size or amenities from other units in the project; provided, however, that the interior appearance and amenities of affordable units may differ from other units in the project if a concession or incentive included in the findings referred to in section 16-419(D)(5) is granted, specifying such differences.

SEC. 16-418. STAFF RECOMMENDATION.

City staff may require the applicant to clarify, amplify, correct or otherwise supplement the application. After city staff deems the application to be complete, city staff shall make a recommendation to the planning commission concerning the density bonus and any concessions or incentives.

SEC. 16-419. PROCEDURES FOR PLANNING COMMISSION TO MAKE RECOMMENDATION.

(A) The secretary of the planning commission shall give notice as provided in Cal. Gov't Code Section 65091 of the planning commission's public hearing on the application for a density bonus permit. At the same time, the secretary shall also give the applicant written notice of the date, time and place of the hearing.

(B) The planning commission shall hold a public hearing on the application for a density bonus permit. The planning commission may continue the public hearing. Not more than 30 days after the close of the public hearing, the commission shall adopt a resolution recommending to the city council that the application be approved or denied, and stating any conditions to approval of the application.

(C) If the project meets the requirements set out in subsection (D), the planning commission shall recommend that a density bonus permit be granted, specifying the density bonus and any concessions or incentives, as required by the statute. The planning commission shall recommend approval of the concession or incentive requested by the applicant unless the planning commission makes a written finding, based on substantial evidence of any of the following:

(1) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Cal. Health and Safety Code Section 50052.5, or for rents for the targeted units to be set as specified in Cal. Gov't Code Section 65915(c).

(2) The concession or incentive would have a specified adverse effect, as defined in Cal. Gov't Code Section 65589.5(d)(2), on public health and safety or the physical environment or on any real property listed in 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.

(3) The concession or incentive would be contrary to State or federal law.

(D) Before recommending that a density bonus permit be granted, the applicant must show and the planning commission must make the following findings:

(1) If the application is for a housing project, that the project meets the criteria set out in Cal. Gov't Code Section 65915(b); or if the application is for the donation of land for housing, that all of the conditions set out in Cal. Gov't Code section 65915(g)(2) are met;

(2) If the application includes the waiver or reduction of development standards, that the waiver or reduction is necessary to prevent physically precluding the construction of the project at the densities or with the concessions or incentives permitted by the statute;

(3) The applicant has proposed a satisfactory method to guarantee that the sales or rental prices will be established as stated in the application;

(4) The applicant has agreed to execute the agreement referred to in section 16-421 or 16-422; and

(5) The affordable units are dispersed throughout the project, have a number of bedrooms proportionate to the number of bedrooms in other units in the project, and do not differ in appearance, size and amenities from other units in the project, except as provided in section 16-417.

SEC. 16-420. PROCEDURES FOR CITY COUNCIL TO DECIDE APPLICATION.

(A) Within 30 days of the date that the planning commission renders its decision, the city council shall hold a public hearing on the application for a density bonus permit and shall consider the planning commission's recommendation, which the city council may affirm, deny or modify. The city clerk shall give notice of the hearing as provided in Cal Gov't Code Section 65091. At the same time, the city clerk shall also give the applicant written notice of the date, time and place of the hearing. The city council may continue the public hearing.

(B) Within 30 days of the close of the public hearing, the city council shall adopt a resolution granting or denying the application for a density bonus permit. If the project meets the requirements set out in subsection (D) of section 16-419, the city council shall grant a density bonus permit, specifying the density bonus and any concessions or incentives, as required by the statute. The city council shall grant the concession or incentive requested by the applicant unless the city council makes a written finding, based on substantial evidence, of any of the following:

(1) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Cal. Health and Safety Code Section 50052.5, or for rents for the targeted units to be set as specified in Cal. Gov't Code Section 65915(c).

(2) The concession or incentive would have a specific adverse effect, as defined in Cal. Gov't Code Section 65589.5(d)(2), on public health or safety or the physical environment or on any real property listed in 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.

(3) The concession or incentive would be contrary to State or federal law.

(C) If the city council grants a density bonus permit, the resolution shall include the findings set out in subsection (D) (1) – (5) of section 16-419 and shall state any conditions on which the permit is approved.

(D) A density bonus permit shall automatically expire, without notice or hearing, two years after the date of adoption of the city council resolution granting the permit, unless by that date the project for which the permit was granted is complete or is substantially underway, as shown by issuance of a grading, foundation or building permit and the construction of substantial improvements.

SEC. 16-421. AGREEMENTS FOR LOW AND VERY LOW INCOME UNITS.

(A) No project may be granted a density bonus or a concession or incentive pursuant to Cal. Gov't Code Section 65915(1)(b)(A) or (B) unless the applicant executes an agreement in a form approved by both the city attorney and the director of housing or the secretary of the community development commission, ensuring the continued affordability of all low and very low income units that qualified the applicant for the award of the density bonus. The agreement shall be recorded before final map or parcel map approval or, if a map is not part of the project, before issuance of building permits.

(B) The term of the agreement shall be 30 years, or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

(C) The agreement shall set rents for the lower income density bonus units at an affordable rent as defined in Cal. Health and Safety Code Section 50053. The agreement shall require that owner-occupied units be made available at an affordable housing cost as defined in Cal. Health and Safety Code Section 50052.5.

(D) The agreement shall establish specific compliance standards and specific remedies available to the city if such compliance standards are not met. The agreement shall, among other things, specify the number of lower-income affordable units by number of bedrooms; standards for qualifying household incomes or other qualifying criteria, such as age; standards for maximum rents or sales prices; the person responsible for certifying tenant or owner incomes; procedures by which vacancies will be filled and units sold; required annual report and monitoring fees; restrictions imposed on lower-income affordable units on sale or transfer; and methods of enforcing such restrictions.

SEC. 16-422. AGREEMENTS FOR MODERATE INCOME UNITS IN A COMMON INTEREST DEVELOPMENT.

No project may be granted a density bonus or concession or incentive pursuant to Cal. Gov't Code Section 65915(b)(1)(D) unless the applicant executes an agreement in a form approved by both the city attorney and the director of housing or the secretary of the community development commission, ensuring that the initial occupant of the moderate-income units are persons and families of moderate income and that the units are offered at affordable housing cost, as described in Cal. Gov't Code Section 65915(c)(2). The agreement shall include requirements for equity sharing on resale of the moderate-income units, as set out in Cal. Gov't Code Section 65915(c)(2)(A), (B) and (C).

DIVISION 8. INCENTIVES TO CONVERT APARTMENTS TO AFFORDABLE CONDOMINIUM UNITS

SEC. 16-425. PURPOSE.

The purpose of this division is to adopt methods and procedures for processing applications to convert apartments to condominium units, some of which are set aside for moderate, low or lower income households, as set out in Cal. Gov't Code Section 65915.5 ("the statute").

SEC. 16-426. CONDOMINIUM DENSITY BONUS OR OTHER INCENTIVES.

When an applicant for approval to convert apartments to condominium units agrees to provide the percentage of units for moderate, low or lower income persons, families and households set out in the statute and agrees to pay the reasonably necessary administrative costs incurred by the city, the actions and procedures set out in sections 16-428 through 16-435 shall apply. The applicant shall *apply for and obtain a density bonus permit in order to be granted a density bonus or other incentives in accordance with the statute.*

SEC. 16-427. DEFINITIONS.

(A) *AFFORDABLE UNITS* - Units set aside for moderate, low or lower income households in accordance with the statute.

(B) *DENSITY BONUS* - An increase in units of 25 percent over the number of apartments, to be provided within the existing structure or structures proposed for conversion.

(C) Terms used in this division that are also used in the statute shall have the meaning in this division that such terms have in the statute. If there is any inconsistency between this division and the statute, this division shall be construed in a manner consistent with the statute.

SEC. 16-428. FEES.

(A) A preliminary proposal, referred to in section 16-429, and an application for a condominium density bonus permit, referred to in section 16-430, shall be accompanied by the fee set by resolution of the city council. City staff shall not act on a preliminary proposal or an application that is not accompanied by the fee.

(B) If a preliminary proposal or an application for a condominium density bonus permit requires an unusual amount or specialized type of study or evaluation by city staff, a consultant or legal counsel, city staff shall estimate the cost thereof and require the applicant to pay an additional fee or make one or more deposits to pay such cost before the study or evaluation is begun. On completion of the study or evaluation, and before city staff responds to the preliminary proposal or the city council decides the application, city staff shall determine the actual cost of the work and the difference between the actual cost and the amount paid by the applicant, and shall require the applicant to pay any deficiency or shall refund to the applicant any excess.

SEC. 16-429. PRELIMINARY PROPOSAL.

If a developer submits a preliminary proposal for the conversion of apartments to condominiums pursuant to the statute before submitting any formal requests for subdivision map approvals, city staff shall, within 90 days of receiving the proposal, notify the developer in writing that the city will apply the procedures set out in this division in order to comply with the statute.

SEC. 16-430. APPLICATION FOR CONDOMINIUM DENSITY BONUS PERMIT.

An application for a condominium density bonus permit shall include the following information, whether or not the project also requires or has been granted any other approvals or permits, including the special use permit required by section 16-381:

(A) A description of the project, including the number of condominium units, the number of affordable units, and the location of the affordable units:

(B) Whether the developer prefers that the city grant a density bonus or provide other incentives of equivalent financial value and if the latter, a description of such incentives, their financial value, and the basis for calculating that value;

(C) The proposed sale or rental price of all units, and especially of the affordable units;

(D) The proposed method to guarantee that the applicant will establish the sales or rental prices as stated in the proposal;

(E) The proposed method and length of time of ensuring for a specified number of years the continued affordability of the affordable units to subsequent purchasers who are persons and families of low and moderate income or lower income households; and

(F) Other relevant information requested by city staff.

SEC. 16-431. SUPPLEMENTING APPLICATION.

City staff may require the applicant to clarify, amplify, correct or otherwise supplement the application.

SEC. 16-432. PROJECT DESIGN.

The applicant shall design the project so that the affordable units are dispersed throughout the project, have a number of bedrooms proportionate to the number of bedrooms in other units in the project, and do not differ in appearance, size and amenities from other units in the project; provided, however, that the interior appearance and amenities of the affordable units may differ from other units in the project as an incentive granted for the project, as specified by the city council in the resolution granting the condominium density bonus permit.

SEC. 16-433. STAFF RECOMMENDATION.

After city staff deems the application to be complete, city staff shall make a recommendation to the planning commission concerning the density bonus or incentives of equivalent financial value.

Sec. 16-434. PROCEDURE TO DECIDE APPLICATION.

(A) The secretary of the planning commission shall give notice as provided in Cal. Gov't Code Section 65091 of the planning commission's public hearing on the application for a condominium density bonus permit. At the same time, the secretary shall also give the applicant written notice of the date, time and place of the hearing.

(B) The planning commission shall hold a public hearing on the application for a condominium density bonus permit. The planning commission may continue the public hearing. Not more than 30 days after the close of the public hearing, the commission shall adopt a resolution recommending to the city council that the application be approved or denied, and stating any conditions to approval of the application.

(C) If the planning commission recommends approval of a condominium density bonus permit, the commission may recommend a density bonus or incentives the same as or different from those requested by the applicant or recommended by city staff.

(D) Before recommending approval of a condominium density bonus permit, the applicant must show and the planning commission must make all of the following findings regarding the project and the proposed density bonus or other incentives recommended for approval:

- (1) The project meets the criteria set out in the statute.
- (2) The density bonus or incentives will not adversely affect or be materially detrimental to uses or property adjacent to the subject property or to the public health, safety or welfare.
- (3) The subject property is adequate in size and shape and served by adequate infrastructure to accommodate the density bonus or incentives.
- (4) If one or more incentives are recommended instead of a density bonus, such incentive or incentives are of equivalent financial value to a density bonus.
- (5) The applicant has proposed a satisfactory method to guarantee that the sales or rental prices will be established as stated in the application.
- (6) The applicant has agreed to a satisfactory method of ensuring for a specified number of years the continued affordability of the affordable units to subsequent purchasers who are persons and families of low and moderate income or lower income households.
- (7) The affordable units are dispersed throughout the project, have a number of bedrooms proportionate to the number of bedrooms in other units the project, and do not differ in appearance, size or amenities from other units in the project, except as specified by the planning commission in accordance with section 16-432.

(E) Within 30 days of the date that the planning commission renders its decision, the city council shall hold a public hearing on the application and shall consider the commission's recommendation, which the city council may affirm, deny or modify. The city clerk shall give notice of the hearing as provided in Cal. Gov't Code Section 65091. At the same time, the city clerk shall also give the applicant written notice of the date, time and place of the hearing. The city council may continue the public hearing.

(F) Within 30 days of the close of the public hearing, the city council shall adopt a resolution approving or denying the application for a condominium density bonus permit. If the city council approves a condominium density bonus permit, the city council may approve a density bonus or incentives the same as or different from those requested by the applicant or recommended by the commission.

(G) If the city council approves a condominium density bonus permit, the resolution shall include the finds set out in subsection (D)(1) through (7) of this section 16-434 and shall state any conditions on which the permit is approved.

SEC. 16-435. CONTINUED AFFORDABILITY.

No condominium density bonus permit shall be granted unless the developer agrees to a satisfactory method of ensuring for a specified number of years the continued affordability of the affordable units to subsequent purchasers who are persons and families of low and moderate income or lower income households."

Part 3. Within fifteen days after passage, the City Clerk shall cause this ordinance to be published one time in a newspaper of general circulation within the city. Ordinance No. _____ was first read on _____, 2008, and finally adopted on _____, 2009, to become effective thirty days thereafter.

AYES:

NOES:

ABSENT:

Dr. Thomas E. Holden, Mayor

ATTEST:

Daniel Martinez, City Clerk

APPROVED AS TO FORM:



Alan Holmberg, City Attorney