



## **NOTICE OF AVAILABILITY OF DRAFT LOCAL COASTAL PROGRAM AMENDMENT RELATED TO DENSITY BONUS STANDARDS**

**NOTICE IS HEREBY GIVEN** that in accordance with applicable provisions of the Coastal Act and California Code of Regulations (CCR) §13515, a draft of the proposed amendment is available for public review and inspection at the Planning Division and at all branches of the Newport Beach Public Library for the following amendment to the Implementation Plan (IP) of certified Local Coastal Program (LCP):

**Density Bonus LCP Amendment (LC2020-004)** – An amendment to Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code updating regulations for granting density bonuses for housing development projects. This amendment is required to ensure the City’s standards are in compliance with California Government Code Section 65915, et. Seq (Density Bonuses and Other Incentives). A housing development project that includes a minimum percentage of affordable units is eligible for additional units above the otherwise allowed City-established maximum density and it is also eligible for reduced parking requirements, incentives/concessions, and waivers of development standards (PA2020-032).

The Planning Commission of the City of Newport Beach is scheduled to consider this item and make a recommendation to the City Council at a regular meeting to be held at 6:30 p.m. on Thursday, July 7, 2022, at the City of Newport Beach Council Chambers, 100 Civic Center Drive, Newport Beach, CA 92660. The date and time of the Planning Commission meeting has been noticed in accordance with City of Newport Beach notification requirements.

Furthermore, the City Council of the City of Newport Beach is tentatively scheduled to consider this item at a regular meeting to be held on Tuesday, August 9, 2022, at the City of Newport Beach Council Chambers, 100 Civic Center Drive, Newport Beach, CA 92660. The date and time of the City Council meeting will be noticed in accordance with City of Newport Beach notification requirements.

For questions regarding this Amendment, please contact Jaime Murillo, AICP, Principal Planner, at 949-644-3209 or [jmurillo@newportbeachca.gov](mailto:jmurillo@newportbeachca.gov).

## Proposed Local Coastal Program Amendment

### Proposed Local Coastal Program Amendment No. LC2020-004 Related to Density Bonus Standards (PA2020-032)

**Section 1:** Newport Beach Municipal Code (NBMC) Subsection C of Section 21.12.020 is hereby amended to read as follows:

#### C. Calculations.

1. Residential Density. When the number of dwelling units allowed on a site is calculated based on the minimum site area per dwelling unit, any fraction of a unit shall be rounded down to the next lowest whole number. For example, where a residential zoning district requires a minimum site area per dwelling unit of one thousand five hundred (1,500) square feet; a site of ten thousand (10,000) square feet would be allowed six dwelling units (10,000 sq. ft./1,500 sq. ft. per dwelling unit = 6.66 dwelling units, which is rounded down to six (6) dwelling units. Exception: refer to Section 21.32.040.A for projects that propose a density bonus.

~~Example: Ten thousand (10,000) sq. ft. site area/one thousand five hundred (1,500) sq. ft. per unit = 6.66 dwelling units. This would be rounded down to six dwelling units.~~

**Section 2:** Newport Beach Municipal Code (NBMC) Chapter 21.32 is hereby added, which shall read as follows:

#### CHAPTER 21.32 DENSITY BONUS

##### 21.32.010 Purpose.

The purpose of this chapter is to provide a means for granting density bonuses and incentives in compliance with Government Code Sections 65915 through 65917 as the same may be amended from time to time. This chapter provides regulations for considering density bonus and incentive requests for the development of housing that is affordable to lower-, low-, and moderate-income households, foster youth, disabled veterans, homeless persons, lower-income students, senior citizens, and childcare. If there is a conflict between any provision and State law, State law shall control and the Director and decision makers are empowered to implement State law when in conflict with the provisions contained in this Chapter.

##### 21.32.020 Definitions.

As used in this chapter, the following words shall have the following meanings:

- A. "Affordable Housing" means housing for which the allowable housing expenses paid by a qualifying household shall not exceed a specified fraction of the county

median income, adjusted for household size. This shall include housing designated for extremely low-, very low-, low-, and moderate-income households.

- B. “Childcare Facility” means a child day care facility, other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and school-age childcare center. “Childcare facility” does not include public or private primary or secondary education facilities.
- C. “Condominium Conversion” means the conversion of apartments, or other rental units, into ownership property that consist of an undivided interest in common in a portion of real property coupled with a separate interest within the boundaries of the dwelling unit.
- D. “Density Bonus” means a density increase over the maximum allowable residential density under applicable zoning and Land Use Element of the General Plan as of the date of application. If elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density may be requested, but the applicant remains eligible for concessions or incentives, waivers of development standards, and eligible parking requirements provided the project meets the eligibility requirements of this section.
- E. “Development Standard” means a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan policy, specific plan, or other local condition, law, policy, resolution, or regulation.
- F. “Disabled Veteran” means any veteran as who is currently declared by the United States Veterans Administration to be 10 percent or more disabled as a result of service in the armed forces. Proof of such disability shall be deemed conclusive if it is of record in the United States Veterans Administration.
- G. “Equivalent Financial Value” means the cost to the developer/property owner based on the land cost per dwelling unit. The land cost per dwelling unit is determined by the difference in the value of the land with and without the density bonus.
- H. “Equivalent Size” means that the replacement units contain at least the same total number of bedrooms as the units being replaced.
- I. “Foster Youth” means a person in California whose dependency was established or continued by a court of competent jurisdiction, including a tribal court, on or after the youth's 13th birthday and who is no older than 25 years of age at the commencement of the academic year.

- J. “Homeless Persons” means the same as defined in Section 11302 of the federal McKinney-Vento Homeless Assistance Act (42U.S.C. Ch. 119).
- K. “Housing Development” means a development project for five or more residential dwelling units, including mixed-use developments, subdivisions, or common interest development. A “Housing Development” may consist of residential units, unimproved residential lots, a project to substantially rehabilitate and convert an existing commercial building to residential use, or the substantial rehabilitation of an existing multifamily dwelling where the result of the rehabilitation would result in a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.
- L. “Lower Income Student” means a student who has a household income and asset level that does not exceed the level for Cal Grant A or Cal Grant B award recipients as set forth Education Code Section 69432.7(k)(1). The eligibility of a student to occupy a unit for lower income students under this section shall be verified by an affidavit, award letter, or letter of eligibility provided by the institution of higher education in which the student is enrolled or by the California Student Aid Commission that the student receives or is eligible for financial aid, including an institutional grant or fee waiver from the college or university, the California Student Aid Commission, or the federal government.
- M. “Major Transit Stop” means a site containing an existing rail transit station or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less at the intersection of the two routes during both the morning and afternoon peak commute hours.
- N. “Natural or Constructed Impediments” means a hindrance or obstruction that prevents access to transit. Natural or constructed impediments include, but are not limited to, freeways, rivers, mountains, and bodies of water, but does not include residential structures, shopping centers, parking lots, or rails used for transit.
- O. “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 the application was deemed complete. The following shall not constitute a specific, adverse impact upon the public health or safety: (1) inconsistency with the zoning ordinance or general plan land use designation, or (2) the eligibility to claim a welfare exemption under subdivision (g) of Section 214 of the Revenue and Taxation Code.

- P. “Transitional Foster Youth” means a person whose dependency was established or continued by the court on or after the youth’s 16th birthday and who is no older than 25 years of age at the commencement of the academic year.
- Q. “Unobstructed Access to a Major Transit Stop” means a resident is able to access the major transit stop without encountering natural or constructed impediments, which include, but is not limited to, freeways, rivers, mountains, and bodies of water, but does not include residential structures, shopping centers, parking lots, or rails used for transit.

#### 21.32.025 Coastal Act Consistency

- A. California Government Code Section 69515(m) provides that density bonus law shall not be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976.
- B. A requested density bonus and any requested incentive, concession, waiver, modification, or modified parking standard shall comply with all applicable standards and use regulations of the certified Local Coastal Program Implementation Plan, with the exception of the development standards waived, reduced, or modified through density bonus provisions. In no case shall the coastal resource protection development regulations of Sections 21.28.040 (Bluff (B) Overlay District), 21.28.050 (Canyon (C) Overlay District), 21.28.015(D)(Waterfront Development), 21.30.015(E)(2) (Development in Shoreline Hazardous Areas) and 21.30.100 (Scenic and Visual Quality Protection), or Chapters 21.30A (Public Access and Recreation) Chapter 21.30B (Habitat Protection) be waived, reduced, or modified.

#### 21.32.030 Eligibility for Density Bonus and Incentives.

In order to be eligible for a density bonus, incentives or concessions, or waiver or reduction of development standards as provided by this chapter, a proposed housing development or condominium conversion project shall comply with the following requirements and satisfy all other applicable provisions of this Zoning Code, except as otherwise provided by this chapter.

- B. Eligibility Requirements. A housing development shall include at least one of the following:
1. A minimum of five (5) percent of the total number of units of a housing development as restricted and affordable to very low-income households.
  2. A minimum of ten (10) percent of the total number of units of a housing development as restricted and affordable to low-income households.
  3. A minimum of ten (10) percent of the total units in a for-sale housing development as restricted and affordable to moderate-income households; provided, that all units in the development are offered to the public for purchase.

4. One hundred (100) percent of all units in a housing development, exclusive of a manager's units, as restricted and affordable to lower-income households, except that no more than twenty (20) percent of the units in the development, including total units and density bonus units, may be for moderate-income households.
  5. A minimum of ten (10) percent of the total units of a housing development project for transitional foster youth, disabled veterans, or homeless persons provided at the same affordability level as very low-income units.
  6. A minimum of twenty (20) percent of the total units of a housing development are for lower-income college students.
  7. A condominium conversion project where either thirty-three (33) percent of the units converted are for low- or moderate-income households, or fifteen (15) percent of the units converted are for very low- or extremely low-income households.
  8. A senior citizen housing development as defined in Civil Code Sections 51.3 and 51.12 that has at least 35 dwelling units or a mobile home park that limits residency based on age requirements for housing older persons in compliance with Civil Code Sections 798.76 or 799.5.
  9. The applicant for a housing development project donates at least one (1) acre of land to the City of Newport Beach for very low-income units, provided the land has the appropriate general plan designation, zoning, permits and approvals, and access to public facilities needed for such housing.
- C. Housing Development Not Eligible for a Density Bonus, Concession, Incentive, or Waiver. A housing development is not eligible for a density bonus, or any other incentive, concession, or waiver under this Chapter, for a proposed housing development involving a property containing existing affordable housing unless:
1. The proposed housing development replaces the existing affordable units pursuant to Section 21.32.120; and
  2. The proposed housing development, inclusive of the units replaced pursuant to this paragraph, contains affordable units at the percentages set forth in 21.32.030(A).

#### 21.32.040 General Requirements

- A. Fractional Units. The calculation of a density bonus in compliance with this section that results in fractional units, including base density and bonus density, shall be rounded up to the next whole number, as required by State law.

- B. Mixed Income Development. If a housing development qualifies for a density bonus under more than one income category or additionally as senior housing or as housing intended to serve transitional foster youth, disabled veterans, or homeless persons, the applicant shall select the category under which the density bonus is granted. Density bonuses from more than one category may not be combined.
- C. Requirements for Amendments or Discretionary Approval. The granting of a density bonus shall not be interpreted to require a General Plan amendment, Zoning Map amendment, or other discretionary approval.
- D. Financial Incentives. The provisions of this chapter shall not be interpreted to require or limit the City from providing direct financial incentives, including the provision of publicly owned land or the waiver of fees or dedication requirements.
- E. Maximum Number of Dwelling Units. A housing development shall not exceed the cumulative total of base units allowed by the underlying zone and the bonus density units allowed by Section 21.32.050.

21.32.050 Allowed Density Bonuses.

A housing development that complies with the eligibility requirements of Section 21.32.030 shall be entitled to density bonuses as follows, unless a lesser percentage of density increased is proposed by the applicant.

- A. Bonus for units for Very Low, Low, and Moderate-Income Households. A housing development that is eligible for a bonus in compliance with the criteria in Section 21.32.030(A)(1) through Section 21.32.030(A)(4) shall be entitled to a density bonus calculated as follows:

TABLE 21.32-1

VERY LOW, LOW, AND MODERATE-INCOME

<u>Percentage of Base Units Proposed</u>	<u>Density Bonus Percentage</u>		
	<u>Very Low Income</u>	<u>Low Income</u>	<u>Moderate Income</u>
<u>5%</u>	<u>20%</u>	<u>-</u>	<u>-</u>
<u>6%</u>	<u>22.5%</u>	<u>-</u>	<u>-</u>
<u>7%</u>	<u>25%</u>	<u>-</u>	<u>-</u>
<u>8%</u>	<u>27.5%</u>	<u>-</u>	<u>-</u>
<u>9%</u>	<u>30%</u>	<u>-</u>	<u>-</u>
<u>10%</u>	<u>32.5%</u>	<u>20%</u>	<u>5%</u>
<u>11%</u>	<u>35%</u>	<u>21.5%</u>	<u>6%</u>
<u>12%</u>	<u>38.75%</u>	<u>23%</u>	<u>7%</u>
<u>13%</u>	<u>42.5%</u>	<u>24.5%</u>	<u>8%</u>

<u>14%</u>	<u>46.25%</u>	<u>26%</u>	<u>9%</u>
<u>15%</u>	<u>50%</u>	<u>27.5%</u>	<u>10%</u>
<u>16%</u>	<u>50%</u>	<u>29%</u>	<u>11%</u>
<u>17%</u>	<u>50%</u>	<u>30.5%</u>	<u>12%</u>
<u>18%</u>	<u>50%</u>	<u>32%</u>	<u>13%</u>
<u>19%</u>	<u>50%</u>	<u>33.5%</u>	<u>14%</u>
<u>20%</u>	<u>50%</u>	<u>35%</u>	<u>15%</u>
<u>21%</u>	<u>50%</u>	<u>38.75%</u>	<u>16%</u>
<u>22%</u>	<u>50%</u>	<u>42.5%</u>	<u>17%</u>
<u>23%</u>	<u>50%</u>	<u>46.25%</u>	<u>18%</u>
<u>24%</u>	<u>50%</u>	<u>50%</u>	<u>19%</u>
<u>25%</u>	<u>50%</u>	<u>50%</u>	<u>20%</u>
<u>26%</u>	<u>50%</u>	<u>50%</u>	<u>21%</u>
<u>27%</u>	<u>50%</u>	<u>50%</u>	<u>22%</u>
<u>28%</u>	<u>50%</u>	<u>50%</u>	<u>23%</u>
<u>29%</u>	<u>50%</u>	<u>50%</u>	<u>24%</u>
<u>30%</u>	<u>50%</u>	<u>50%</u>	<u>25%</u>
<u>31%</u>	<u>50%</u>	<u>50%</u>	<u>26%</u>
<u>32%</u>	<u>50%</u>	<u>50%</u>	<u>27%</u>
<u>33%</u>	<u>50%</u>	<u>50%</u>	<u>28%</u>
<u>34%</u>	<u>50%</u>	<u>50%</u>	<u>29%</u>
<u>35%</u>	<u>50%</u>	<u>50%</u>	<u>30%</u>
<u>36%</u>	<u>50%</u>	<u>50%</u>	<u>31%</u>
<u>37%</u>	<u>50%</u>	<u>50%</u>	<u>32%</u>
<u>38%</u>	<u>50%</u>	<u>50%</u>	<u>33%</u>
<u>39%</u>	<u>50%</u>	<u>50%</u>	<u>34%</u>
<u>40%</u>	<u>50%</u>	<u>50%</u>	<u>35%</u>
<u>41%</u>	<u>50%</u>	<u>50%</u>	<u>38.75%</u>
<u>42%</u>	<u>50%</u>	<u>50%</u>	<u>42.5%</u>
<u>43%</u>	<u>50%</u>	<u>50%</u>	<u>46.25%</u>
<u>44%</u>	<u>50%</u>	<u>50%</u>	<u>50%</u>
<u>100%</u>	<u>80% <sup>(1)</sup></u>	<u>80% <sup>(1)</sup></u>	<u>80%</u>

Notes:

(1) Additional density may be provided pursuant to Section 21.32.050.A.1

1. There shall be no maximum on density provided both of the following apply:
  - a. One hundred (100) percent of all units in a housing development, exclusive of a manager's units, as restricted and affordable to lower-income households, except that no more than twenty (20) percent of the units in the development, including total units and density bonus units, may be for moderate-income households.
  - b. The housing development is located within one-half mile of a major transit stop.



- B. Bonus for units for transitional foster youth, disabled veterans, or homeless persons. A housing development that is eligible for a bonus in compliance with the criteria in Section 21.32.030(A)(5) shall be entitled to a 20% density bonus.
- C. Bonus for units for lower income college students. A student housing development that is eligible for a bonus in compliance with the criteria in Section 21.32.030(A)(6) shall be entitled to a 35% density bonus.
1. All units in the student housing development will be used exclusively for undergraduate, graduate, or professional students enrolled full time at an institution of higher education accredited by the Western Association of Schools and Colleges or the Accrediting Commission for Community and Junior Colleges.
  2. The developer/applicant shall provide evidence to the City that they have entered into an operating agreement or lease with one or more institutions of higher education for the institution or institutions to occupy all units of the student housing development with students from that institution or institutions.
    - a. An operating agreement or lease entered into pursuant to this section shall not be considered to be violated or breached if, in any subsequent year, there are not sufficient students enrolled in an institution of higher education to fill all units in the student housing development.
  3. The rent provided in the applicable units of the development for lower income students shall be calculated at thirty (30) percent of sixty-five (65) percent of the area median income for a single-room occupancy unit type.
  4. Priority for the applicable affordable units shall be given to lower income students experiencing homelessness. A homeless service provider, as defined in paragraph (3) of subdivision (e) of Section 103577 of the Health and Safety Code, or institution of higher education that has knowledge of a person's homeless status may verify a person's status as homeless for purposes of this subclause.
  5. For purposes of calculating a density bonus granted pursuant to this section, the term "unit" shall mean one (1) rental bed and its pro rata share of associated common area facilities.
- D. Bonus for condominium conversion. A condominium conversion that is eligible for a bonus in compliance with the criteria in Section 21.32.030(A)(7) shall be entitled to a 25% density bonus, provide the condominium conversion complies with Section 21.32.100.
- E. Bonus for units for senior housing. A senior housing development that is eligible for a bonus in compliance with the criteria in Section 21.32.030(A)(8) shall be entitled to a 20% density bonus.

F. Bonus for donating land for very low-income units. A housing development that includes the donation of land for the development of very low-income housing in compliance with the criteria in Section 21.32.030(A)(9) shall be entitled to a density bonus calculated as follows:

TABLE 21.32-2

LAND DEDICATED TO ACCOMMODATE VERY LOW-INCOME

<u>Percentage of Base Units Proposed</u>	<u>Density Bonus Percentage</u>
<u>10%</u>	<u>15%</u>
<u>11%</u>	<u>16%</u>
<u>12%</u>	<u>17%</u>
<u>13%</u>	<u>18%</u>
<u>14%</u>	<u>19%</u>
<u>15%</u>	<u>20%</u>
<u>16%</u>	<u>21%</u>
<u>17%</u>	<u>22%</u>
<u>18%</u>	<u>23%</u>
<u>19%</u>	<u>24%</u>
<u>20%</u>	<u>25%</u>
<u>21%</u>	<u>26%</u>
<u>22%</u>	<u>27%</u>
<u>23%</u>	<u>28%</u>
<u>24%</u>	<u>29%</u>
<u>25%</u>	<u>30%</u>
<u>26%</u>	<u>31%</u>
<u>27%</u>	<u>32%</u>
<u>28%</u>	<u>33%</u>
<u>29%</u>	<u>34%</u>
<u>30%</u>	<u>35%</u>

1. Any increase authorized by this subsection may be approved in addition to any increase in density allowed by Sections 21.32.030 up to a maximum combined density increase of thirty-five (35) percent.
2. The donated land shall be the greater of:
  - a. One (1) acre;
  - b. Sufficient size to permit development of the percentage of base units proposed; or,

- c. Sufficient size to permit development of forty (40) units.
- 3. The donated land shall have the appropriate general plan designation, is appropriately zoned with development standards and accommodate development a density of at least 30 dwellings per acre and is or will be served by adequate public facilities and infrastructure.
- 4. The land shall be donated and transferred to the City or a housing developer that is approved by the City. The applicant shall donate and transfer the land no later than the date of approval of the final subdivision map, or issuance of building permits for the residential development if no subdivision is proposed.
- 5. The transferred land shall have 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, not later than the date of approval of the final subdivision map or issuance of building permits for the residential development.
- 6. The transferred land shall be within the boundary of the proposed development, or if the review authority agrees, within one-quarter (1/4) mile of the boundary of the proposed development.
- 7. A proposed source of funding for the very low-income units shall be identified not later than the date of approval of the final subdivision map or issuance of building permits for the residential development.
- 8. The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with Section 21.32.130, which shall be recorded on the property at the time of transfer.

21.32.060 Parking Requirements in Density Bonus Projects.

A. Applicability. This section applies to a development that meets the requirements of Section 21.32.030 but only at the request of the applicant. An applicant may request additional parking incentives beyond those provided in this section in compliance with Section 21.32.070. A request pursuant to this section shall neither reduce nor increase the number of incentives, concessions, or waivers to which the applicant is entitled pursuant other sections of this code.

B. Number of Parking Spaces Required.

- 1. Parking Ratios. At the request of the applicant, the following parking ratios shall apply. Notwithstanding the requirements below, the applicant may provide additional parking in excess of the minimum required parking identified in this section:

<u>Dwelling Unit Size</u>	<u>Onsite Parking per Unit</u>
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<u>Studio to 1 Bedroom</u>	<u>1 space</u>
<u>2 to 3 Bedroom</u>	<u>1.5 spaces</u>
<u>4 or more Bedroom</u>	<u>2.5 spaces</u>

2. Within ½ Mile of Major Transit Stops. Notwithstanding subsection B(1), if a development includes the at least 20 percent low-income units or 11 percent very low-income units, is located within one-half (½) mile of a major transit stop, and there is unobstructed access to the major transit stop from the development, then, upon the request of the developer, the City shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds 0.5 spaces per bedroom. For purposes of this section, a development shall have unobstructed access to a major transit stop if a resident is able to access the major transit stop without encountering natural or constructed impediments.
  
3. Zero Parking. Notwithstanding subsection B(1), if a development consists solely of rental units, exclusive of a manager’s unit or units, with an affordable housing cost to lower income families, then upon the request of the developer, the City shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, if the development meets either of the following criteria:
  - a. The development is located within one-half (½) mile of a major transit stop and there is unobstructed access to the major transit stop from the development;
  - b. The development is a for-rent housing development for individuals who are 62 years of age or older that complies with Sections 51.2 and 51.3 of the Civil Code and the development has either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day; or
  - c. The development is either special needs housing development, as defined in Section 51312 of the Health and Safety Code, or supportive housing development, as defined in Section 50675.14 of the Health and Safety Code, and the development has either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.
  
4. Notwithstanding paragraphs (2) and (3), if the City or an independent consultant has conducted an areawide or jurisdiction-wide parking study in the last seven years, then the City may impose a higher vehicular parking ratio not to exceed the ratio described in paragraph (1), based upon substantial evidence found in the parking study, that includes, but is not

limited to, an analysis of parking availability, differing levels of transit access, walkability access to transit services, the potential for shared parking, the effect of parking requirements on the cost of market-rate and subsidized developments, and the lower rates of car ownership for low-income and very low income individuals, including seniors and special needs individuals. The City shall pay the costs of any new study. The City shall make findings, based on a parking study completed in conformity with this paragraph, supporting the need for the higher parking ratio.

- C. Location of Parking. For purposes of this section, a development may provide on-site parking through uncovered or tandem parking, but not through on-street parking.
- D. Rounding of Partial 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.

#### 21.32.070 Allowed Incentives or Concessions .

- A. Applicant Request and City Approval. An applicant for a density bonus project may also submit a proposal that includes any of the incentives or concessions listed in subsection (C) of this section. The applicant shall file the request concurrently with the application for project approval. The applicant shall provide documentation establishing that an incentive or concession is necessary to make the housing units economically feasible. When an applicant makes a request for an incentive or concession, the review authority shall grant the request unless one or more of the following findings is made, based on substantial evidence:
  - 1. The incentive or concession is not required in order to provide affordable housing costs or for rents for the targeted units to be set as specified in Section 21.32.130(B);
  - 2. The incentive or concession would have a specific adverse impact upon public health and safety, 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; or
  - 3. The incentive would be contrary to State or Federal law.
- B. Number of Incentives or concessions. The review authority shall grant the following number of incentives or concessions, except as provided in subsection (A) of this section.
  - 1. One incentive or concessions. One incentive or concessions for a project that includes at least ten (10) percent of the total units for low-income households, at least five (5) percent for very low-income households, at least twenty (20) for low-income students in a student housing development, or at least ten (10) percent

for persons and families of moderate income in a development which the units are for sale.

2. Two incentives or concessions. Two incentives or concessions for a project that includes at least seventeen (17) percent of the total units for low-income households, at least ten (10) percent for very low-income households, or at least twenty (20) percent for persons and families of moderate income in a development which the units are for sale.
3. Three incentives or concessions. Three incentives or concessions for a project that includes at least twenty-four (24) percent of the total units for low-income households, at least fifteen (15) percent for very low-income households, or at least thirty (30) percent for persons and families of moderate income in a development which the units are for sale.
4. Four incentives or concessions. Four incentives or concession for projects meeting the criteria of Section 21.32.030(A)(4).
  - a. If the project is located within one-half (½) mile of a major transit stop, the applicant shall also receive a height increase of up to three (3) additional stories, or thirty-three (33) feet.

C. Type of incentives or concession. For the purposes of this chapter, “incentive or concession” means any of the following:

1. A reduction in the development standards, including but not limited to, a height limitation, a setback requirement, a floor area ratio, an open space requirement, or parking ratio (in excess of the provisions identified in Section 21.32.060), or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission in compliance with Health and Safety Code Section 18901 et seq., that would otherwise be required, that results in identifiable, financially sufficient, and actual cost reductions;
2. Approval of mixed-use project in conjunction with the housing development, if nonresidential land uses will reduce the cost of the housing development, and the nonresidential land uses are compatible with the housing project and the existing or planned development in the area where the project will be located; and/or
3. Other regulatory incentives proposed by the applicant or the City that will result in identifiable, financially sufficient, and actual cost reductions.

#### 21.32.080 Waivers and Reductions of Development Standards.

In addition to requesting an incentive or concession, an applicant for a density bonus may also submit a proposal to the City to waive or reduce an unlimited number of

development standards that would otherwise preclude or inhibit construction of the housing development at the densities or with the incentives permitted by this Chapter.

- A. When an applicant makes a request for a waiver, the review authority shall grant the request unless, based on substantial evidence, any of the following findings are made:
1. The waiver or reduction of development standards would have a specific adverse impact upon public health or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.
  2. The waiver or reduction of development standards would have an adverse impact on any real property listed in the California Register of Historical Resources
  3. The waiver or reduction of development standards would be contrary to State or Federal law.
- B. Notwithstanding Section 21.32.080(A), a housing development that receives a waiver from any maximum controls on density pursuant Section 21.32.050(A)(1) shall only be eligible for a waiver or reduction of development standards as provided for in Section 21.32.70(B)(4), unless the City agrees to provide additional waivers or reductions.
- C. A proposal for the waiver or reduction of development standards pursuant to section shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled.

#### 21.32.090 Incentives for Housing with Child Care Facilities.

A residential development that complies with the income requirements of Section 21.32.030(A) and also includes a childcare facility, other than a large or small family day care home, that will be located on the same site as the development, shall be eligible for the following incentives in addition to the incentives provided for the affordable housing.

- A. Incentives. The City shall grant a housing development that includes a childcare facility either of the following incentives:
1. An amount of residential floor area equal to or greater than the floor area of the childcare facility; or
  2. An incentive that contributes to the economic feasibility of the childcare facility (e.g., reduction of development standards, reduced parking requirements, monetary contribution) as provided in Section 21.32.070(C).
- B. Requirements to Qualify for Incentives. The City shall require, as a condition of approving the housing development, that:

1. The childcare 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 density bonus units are required to remain affordable in compliance with Section 21.32.130; and
  2. Of the children who attend the childcare facility, the children of very low-income households, low-income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low-income households, lower-income households, or families of moderate income in compliance with Section 20.30.030(A).
- C. Incentive Not Required. The City shall not be required to provide a density bonus for a childcare facility if it finds, based upon substantial evidence, that the community has adequate childcare facilities.

#### 21.32.100 Condominium Conversions

- A. Density Bonus. When an applicant proposes to convert apartments to condominiums, which meets the provisions of Section 21.32.030.A.7, the City shall grant either grant a density bonus to create additional units on the project site or other incentive of equivalent financial value, provided:
1. The applicant agrees to pay for the reasonably necessary administrative costs incurred by the City; and
  2. The City places such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value as it finds appropriate, including, but not limited to, conditions which assure continued affordability of units to subsequent purchasers who are persons and families of very low-, low- and moderate-income households.
- B. Replacement Units. All units within the condominium conversion shall comply with replacement provisions of Section 21.32.120.
- C. Ineligible Requests. Apartments which are proposed for conversion to condominiums shall be ineligible for a density bonus or other incentive under the section if the apartments were previously granted a density bonus, concession, incentives, or waiver or reduction of development standards.
- D. Preapplication Process. An applicant for approval to convert apartments to a condominium project may submit to the City a preliminary proposal for the condominium conversion prior to the submittal of any formal subdivision map approvals. The City shall, within 90 days of receipt of a written proposal, notify the applicant in writing of the manner in which it will comply with this section.
- E. Approval Not Guaranteed. Nothing in this section shall be construed to require the City to approve a proposal to convert apartments to condominiums



21.32.110 Design and Distribution of Affordable Units.

Affordable units shall be designed and distributed within the residential development as follows:

- A. Number of Bedrooms. Affordable units shall reflect the range of numbers of bedrooms provided in the residential development project as a whole;
- B. Comparable Quality and Facilities. Affordable units shall be comparable in the facilities provided (e.g., laundry, recreation, etc.) and in the quality of construction and exterior design to the market-rate units;
- C. Access. In mixed-income multi-unit structures, the occupants of the affordable housing units shall have the same access to common entrances and any common areas including parking areas in that structure as the occupants of the market-rate housing units;
- D. Size. Affordable units may be smaller and have different interior finishes and features than the market-rate units; and
- E. Location. Affordable units shall be distributed within the residential development, unless clustering is allowed by the review authority. Notwithstanding this, in a mixed-income multi-unit structure, affordable units shall not be isolated to a specific floor or an area of a specific floor.

21.32.120 Replacement Units.

Any proposed housing development, which request a density bonus, incentive, concession, or waiver that is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant that restricts rents to very low- or low-income households; or was occupied by very low- or low-income household, shall be subject to the following:

- A. Occupied Units. For dwelling units that are occupied on the date of application, the proposed housing development shall provide at least the same number of units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy.
- B. Vacant or Demolished Units. For dwelling units that have been vacated or demolished within the five-year period preceding the application, the proposed housing development shall provide at least the same number of units of equivalent size as existed at the highpoint of those units in the five-year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time.

C. Unknown Household Income. If the incomes of the persons and families in occupancy of the units is not known, it shall be rebuttably presumed that low-income and very low-income renter households occupied these units in the same proportion of low-income and very low-income renter households to all renter households within the City as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database.

#### 21.32.130 Continued Availability.

The units that qualified the housing development for a density bonus and other incentives shall continue to be available as affordable and/or senior units in compliance with the following requirements as required by Government Code Section 65915(c).

A. Duration of Availability. The applicant shall agree to, and the City shall ensure the continued availability of the units that qualified the housing development for a density bonus and other incentives for at least fifty-five (55) years, or a longer time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

B. Affordable Costs. The rents and owner-occupied costs charged for the housing units shall not exceed the following amounts during the period of continued availability required by this section:

1. Rental Units. Rents for density bonus units shall be set at an affordable rent as defined in Health and Safety Code Section 50053; and
2. Owner-Occupied Units. Owner-occupied units shall be available at an affordable housing cost as defined in Health and Safety Code Section 50052.5.

#### 21.32.140 Occupancy and Resale of Ownership Units.

A. Occupancy. An applicant shall agree to, and the City shall ensure, that the initial occupants of a for-sale unit, which qualified the applicant for the award of the density bonus, meets either of the following conditions:

1. The unit is initially occupied by a person or family of very low, low, or moderate income, as required, and it is offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code and is subject to an equity sharing agreement.
2. The unit is purchased by a qualified nonprofit housing corporation pursuant a contract that is recorded to the property, and all of the following are satisfied:
  - a. The nonprofit housing corporation is organized pursuant to Internal Revenue Code Section 501(c)(3) and has received a welfare exemption under Revenue and Taxation Code Section 214.15 for properties intended to be

sold to low-income families who participate in a special no-interest loan program.

- b. The contract restricts the use of the land for at least thirty (30) years to owner-occupied housing that is available at an affordable housing cost.
  - c. The contract includes a deed of trust on the property in favor of the nonprofit corporation to ensure compliance with the terms of the program, which has no value unless the owner fails to comply with the covenants and restrictions of the terms of the home sale.
  - d. The City Attorney finds that the long-term deed restrictions in the contract serve a public purpose.
  - e. A repurchase option that requires a subsequent purchaser of the property that desires to sell or convey the property to offer the qualified nonprofit corporation the right to repurchase the property prior to selling or conveying that property to any other purchaser.
  - f. Affordability restrictions on the sale and conveyance of the property that ensure that the property will be preserved for lower income housing for at least 45 years for owner-occupied housing units and will be sold or resold only to persons or families of very low, low, or moderate income.
- B. Resale. The City shall enforce an equity sharing agreement for the resale of affordable common interest units, unless it would be in conflict with the requirements of another public funding source or law. The following requirements apply to the equity sharing agreement:
1. Upon resale, the seller of the unit shall retain the value of any improvements, the down payment, and the seller's proportionate share of appreciation; and
  2. The City shall recapture any initial subsidy and its proportionate share of appreciation, which shall then be used within five years for any of the purposes described in Health and Safety Code Section 33334.2(e) that promote home ownership. For the purposes of this section:
    - a. The City's initial subsidy shall be equal to the fair market value of the home at the time of initial sale, minus the initial sale price, plus the amount of any down payment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value;
    - b. The City's proportionate share of appreciation shall be equal to the ratio of the initial subsidy to the fair market value of the home at the time of initial sale; and

- c. The initial subsidy shall include any incentives granted by the City and shall be equal to the monetary equivalent of the incentives.

#### 21.32.150 Approval Process

An applicant requesting a density bonus, incentive, concession, or waiver pursuant to this chapter shall require approval of an Affordable Housing Implementation Plan, pursuant to Sections 20.50.030 and 20.52.015.

#### 21.32.160 Affordable Housing Agreement.

The applicant approved for a density bonus, concession, incentive, or waiver under this chapter shall agree to construct, operate and maintain the affordable units in accordance with an Affordable Housing Agreement. The affordable housing agreement shall be executed in a recordable form prior to the issuance of a building permit for any portion of a residential development project subject to the requirements of this chapter. The Affordable Housing Agreement shall be binding upon all future owners and successors in interest.

- A. Review. The terms of the Affordable Housing Agreement shall be reviewed and revised as appropriate by the City's Community Development Director and City Attorney.
- B. Fees. The City may establish fees associated with the setting up and monitoring of the affordable units.
- C. Contents. The Affordable Housing Agreement shall include at least the following:
  - 1. Identification of Affordable Units. Affordable units shall be identified by address and legal description, type (floor area, number of bedrooms/baths, unit size, etc.), and designated household income category. The Affordable Housing Agreement shall also identify the total number of affordable units and the total number of units approved for the housing development.
  - 2. Terms of Affordability. Unless specified elsewhere in this chapter, tenure of use restrictions for the affordable units of a minimum of fifty-five (55) years or a longer period if required by the construction or mortgage financing assistance program, or mortgage insurance program or rental subsidy program. Such reservation period shall begin on the date a certificate of occupancy is granted for the affordable units.
  - 3. Maximum Allowable Rent or Sales Price.
    - a. Rental Housing Developments. In the case of rental housing developments, the Affordable Housing Agreement shall provide for the following conditions governing the use of the affordable housing units during the use restriction period:

- i. The rules and procedures for qualifying tenants, establishing affordable rent, filling vacancies, and maintaining the affordable units for qualified tenants.
  - ii. Provisions requiring owners to verify tenant incomes and maintain books and records to demonstrate compliance with this chapter.
  - iii. Provisions requiring owners to submit an annual report to the City, which includes the name, address and income of each person occupying each affordable unit, and which identifies the bedroom size and monthly rent or cost of each affordable unit.
  - iv. Determination of Rent. A maximum rent schedule shall be submitted to the City prior to the issuance of an occupancy permit for the affordable units, and updated annually on the anniversary date of occupancy.
  - v. Deposit Amount. Total move-in costs for eligible tenants occupying affordable units shall be limited to first month's rent plus a security/cleaning deposit not to exceed one month's rent.
  - vi. Upward Mobility Allowance. When a tenant occupying an affordable unit no longer qualifies under the income requirements, verified through the monitoring program required as part of the Affordable Housing Agreement, that tenant may then be charged market rate rent. If this occurs, any currently vacant unit of similar type to the affordable unit in question shall then be designated as an affordable unit, and the owner shall immediately attempt to secure tenants in accordance with this chapter. The owner is required to maintain at all times during the use restriction the minimum number of affordable units identified in the Affordable Housing Agreement.
  - vii. Subletting of Affordable Units. No subletting of designated affordable units shall be allowed.
- b. Ownership Projects. 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 affordable units during the applicable use period:
- i. Affordable units shall, upon initial sale, be sold to eligible very low- and low-income households at an affordable sales price and housing cost, or to qualifying residents in the case of a senior citizen housing development.
  - ii. Affordable units shall be initially owner-occupied by eligible very low- or low-income households, or by qualifying residents in the case of a senior citizen housing development.

- iii. The initial purchaser of each affordable housing unit shall execute an instrument or agreement approved by the City restricting the sale of the affordable housing unit in accordance with this chapter during the applicable use restriction period. Such instrument or agreement shall be recorded against the parcel containing the affordable housing unit and shall contain such provisions as the City may require to ensure continued compliance with this chapter and State Density Bonus Law.
  - iv. Sale Clause. The Affordable Housing Agreement shall stipulate that, when the terms of affordability have expired on an affordable unit, the City and/or a non-profit housing organization shall have a first right of purchase option sixty (60) days prior to the affordable unit being advertised on the market.
  - v. Rental of For-Sale Units. Rental of affordable units shall not be allowed.
  - vi. Monitoring of Compliance to Agreement. A monitoring program shall be required, specifying the party responsible for certifying tenant incomes and sales price, maintaining the required number of affordable units and each affordable unit's property, and marketing and filling unit vacancies.
- c. Equity Sharing Agreements. When an equity sharing agreement is required by this chapter, the Affordable Housing Agreement shall specify the equity sharing agreement comply with Section 21.32.140.
- 4. Remedies. Description of remedies for breach of the Affordable Housing Agreement by either party (the City may identify tenants or qualified purchasers as third-party beneficiaries under the agreement).
  - 5. Description of Density Bonus. A description of the incentives and/or concessions, if any, being provided by the City.
  - 6. Schedule. A schedule for completion and occupancy of the affordable units.
  - 7. Other Provisions. Other provisions to ensure implementation and compliance with this chapter.

**Section 3:** Newport Beach Municipal Code (NBMC) Section 21.70.020 is hereby amended to amend the following definitions to read as follows:

~~“Density bonus” See Section 21.32.020. means, as defined by Government Code Section 65915 et seq., an increase over the maximum density otherwise allowed by the applicable zoning district that is granted to the owner/developer of a housing project who agrees to construct a prescribed percentage of dwelling units that are affordable to very-low and low-income households. See “Very low-income household” and “Low-income household.”~~

“Extremely low-income household” means persons and families whose income does not exceed 30% of the area median income for Orange County, as published by the California Department of Housing and Community Development, adjusted for family size and revised annually.

“Low-income household” means a household persons and families whose income is greater than 50% but does not exceed 80% of the area median income for Orange County, as published by the California Department of Housing and Community Development, adjusted for family size and revised annually. whose income is between fifty (50) percent and eighty (80) percent of the Orange County median income (“Area median income”), adjusted for actual household size, as determined by the California Department of Housing and Community Development.

“Moderate-income household” means a household persons and families whose income is greater than 80% but does not exceed 120% of the area median income for Orange County, as published by the California Department of Housing and Community Development, adjusted for family size and revised annually. a household whose income is between eighty (80) percent and one hundred twenty (120) percent of the Orange County median income (“Area median income”), adjusted for actual household size, as determined by the California Department of Housing and Community Development.

“Very low-income household” means persons and families whose income is greater than 30% but does not exceed 50% of the area median income for Orange County, as published by the California Department of Housing and Community Development, adjusted for family size and revised annually. a household whose income is fifty (50) percent or less of the Orange County median income (“Area Median Income”), adjusted for actual household size, as determined by the California Department of Housing and Community Development.