

822-2.202 Title.

This chapter is known and may be cited as the residential density bonus ordinance. (Ords. 2004-45 § 3, 2001-06 § 2).

822-2.204 Purposes.

The purposes of this chapter are to provide incentives for the production of housing for very low income, lower income, moderate income, or senior households; to facilitate the development of affordable housing; to implement the goals, objectives, and policies of the county general plan's housing element; and to establish procedures for complying with Government Code Section 65915. (Ords. 2004-45 § 3, 2001-06 § 2).

822-2.206 Definitions.

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

(a) "Affordable rent" means a rent, including a reasonable utility allowance as determined by the director, for rental target units that does not exceed the following calculations pursuant to Health and Safety Code Section 50053:

(1) Very low income: fifty percent of the area median income (AMI) for Contra Costa County, adjusted for household size, multiplied by thirty percent and divided by twelve.

(2) Lower income: sixty percent of the AMI for Contra Costa County, adjusted for household size, multiplied by thirty percent and divided by twelve.

(b) "Affordable sales price" means a sales price at which lower, very low, or moderate income households can qualify for the purchase of target units, taking into account available financing, number of bedrooms and therefore, assumed household size, reasonable down payment, and affordable housing costs as defined in Health and Safety Code Section 50052.5. The affordable sales price for lower income households must not exceed a price affordable to households whose income is at or below seventy percent AMI. The affordable sales price for very low income households must not exceed a price affordable to households whose income is at or below fifty percent AMI. The affordable sales price for moderate income households must not exceed a price affordable to persons and families whose income is at or below one hundred ten percent AMI.

(c) "Child care facility" means, pursuant to Government Code Section 65915(h)(4), a child care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and school-age child care centers.

(d) "Concession or incentive" means, pursuant to Government Code Section 65915(k), any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Health and Safety Code Sections 18901 et seq., including, but not limited to:

(A) Reduced minimum lot sizes and/or dimensions;

(B) Reduced minimum lot setbacks;

(C) Increased maximum lot coverage;

(D) Increased maximum building height and/or stories;

(E) Reduced on-site parking standards, including the number or size of spaces and configuration;

(F) Reduced minimum building separation requirements;

(G) Alternate standards and design for road and streetscapes.

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing

project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the county that result in identifiable and actual cost reductions.

(e) "Condominium project" has the meaning set forth in Civil Code Section 1351(f), for persons and families of moderate income as defined in Health and Safety Code Section 50093.

(f) "Density bonus" means, pursuant to Government Code Section 65915(g), either of the following:

(1) For noncondominium housing developments, a minimum density increase of at least twenty-five percent over the otherwise maximum residential density under the land use element of the Contra Costa County general plan and applicable zoning unless a lesser percentage is elected by the developer.

(2) For condominium projects, a minimum density increase of at least ten percent over the otherwise maximum residential density under the land use element of the Contra Costa County general plan and applicable zoning unless a lesser percentage is elected by the developer.

(g) "Density bonus housing agreement" means a legally binding agreement between a developer and the county to ensure that the requirements of this chapter are satisfied and that establishes, among other things, the number, size, location, terms and conditions of affordability and production schedule of target units.

(h) "Density bonus units" means those residential units granted pursuant to the provisions of this chapter that exceed the otherwise maximum residential density for the development site.

(i) "Development standard" has the meaning set forth in Government Code Section 65915(o)(1).

(j) "Director" means the community development director.

(k) "Housing cost" means the sum of actual or projected monthly payments for all of the following associated with for-sale target units: principal and interest on a mortgage loan, property taxes and assessments, fire and casualty insurance and homeowner association fees.

(l) "Housing development" means, pursuant to Government Code Section 65915(i), new construction, rehabilitation or conversion projects consisting of five or more residential units, including single-family, and multifamily homes for sale or rent.

(m) "Lower income household" means a household whose income does not exceed the lower income limits applicable to Contra Costa County, adjusted for household size, as published and periodically updated by the State Department of Housing and Community Development pursuant to Health and Safety Code Section 50079.5. The income limit for lower income households in Contra Costa County is eighty percent of the area median income.

(n) "Maximum residential density" means the maximum number of residential units permitted by the county's general plan land use element and applicable zoning district at the time of application, apart from the provisions of this chapter.

(o) "Moderate income household" means persons and families whose income does not exceed the moderate income limits applicable to Contra Costa County, adjusted for household size, as published and periodically updated by the State Department of Housing and Community Development pursuant to Health and Safety Code Section 50093. The income limit for moderate income households in Contra Costa County is one hundred twenty percent of the area median income.

(p) "Nonrestricted unit" means any unit within a housing development that is not a target unit.

(q) "Qualifying resident" means a senior citizen or other person eligible to reside in senior citizen housing as defined under Civil Code Section 51.3.

(r) "Senior citizen housing" means a housing development consistent with the California Fair Employment and Housing Act (Government Code Sections 12900 et seq., including Section 12955.9), 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 (42 U.S.C. Sections 3601 et seq., 3607), and implementing regulations (24 CFR 100 et seq.), and as set forth in Civil Code Section 51.3.

(s) "Target unit" means a dwelling unit within a housing development that is affordable to and will be reserved for sale or rent to very low income households, lower income households, moderate income households or qualifying residents.

(t) "Very low income household" means a household whose income does not exceed the very low income limits applicable to Contra Costa County adjusted for household size, as published and periodically updated by the State Department of Housing and Community Development pursuant to Health and Safety Code Section 50105. The income limit for very low income households in Contra Costa County is fifty percent of the area median income. (Ords. 2004-45 § 3, 2001-06 § 2).

Article 822-2.4. Density Bonuses

822-2.402 Granting.

(a) The county shall either grant a density bonus and at least one concession or incentive, or provide other concessions or incentives of equivalent financial value (based upon the land cost per dwelling unit), when the applicant for a housing development agrees or proposes to construct at least any one of the following:

- (1) Ten percent of the total dwelling units for very low income households;
- (2) Twenty percent of the total dwelling units for lower income households;
- (3) Fifty percent of the total dwelling units for qualifying residents;
- (4) Twenty percent of the total dwelling units in a condominium project for moderate income households.

(b) The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, zoning change or other discretionary approval. (Ords. 2004-45 § 3, 2001-06 § 2).

822-2.404 Number of density bonus units.

(a) In determining the minimum number of density bonus units to be granted pursuant to this chapter, the maximum residential density for the site shall be multiplied by 0.25 for noncondominium housing developments or by 0.10 for condominium projects, unless a lesser number is requested by the developer.

(b) When calculating the number of permitted density bonus units, any fractions of units shall be rounded up to the next larger integer. (Ords. 2004-45 § 3, 2001-06 § 2).

822-2.406 Number of target units.

(a) In determining the number of target units to be provided pursuant to this chapter, the maximum residential density shall be multiplied by 0.10 where very low income households are targeted, by 0.20 where lower income households are targeted, by 0.20 where moderate income households within condominium projects are targeted, or by 0.50 where senior citizen housing is 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.

(b) In cases where a density increase of less than twenty-five percent is requested for noncondominium projects or a density increase of less than ten percent is requested for condominium projects, no reduction will be allowed in the number of target units required. In cases where a density increase of more than twenty-five percent is requested for noncondominium projects or a density increase of more than ten percent is requested for

condominium projects, the requested density increase, if granted, shall be considered another concession or incentive. (Ords. 2004-45 § 3, 2001-06 § 2).

822-2.408 Maximums.

(a) An applicant is entitled to one density bonus and one concession or incentive under the following circumstances:

- (1) Where the applicant agrees to construct more than twenty percent of the total units for lower income households;
- (2) Where the applicant agrees to construct more than ten percent of the total units for very low income households;
- (3) Where the applicant agrees to construct more than twenty percent of the total units for moderate income households in a condominium project;
- (4) Where the applicant agrees to construct senior citizen housing with more than fifty percent of the units reserved for qualifying residents.

(b) An applicant who agrees to construct twenty percent of the total units for lower income households and ten percent of the total units for very low income households is entitled to one density bonus and two concessions or incentives.

(c) The county may grant multiple additional concessions or incentives to facilitate the inclusion of more target units than are required by this chapter. (Ords. 2004-45 § 3, 2001-06 § 2).

822-2.410 Time periods of affordability.

Target units shall remain restricted and affordable to the designated group for a minimum period of ten years for condominium projects and thirty years for all other housing developments. A longer period of time may be specified if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. (Ords. 2004-45 § 3, 2001-06 § 2).

822-2.412 Determining affordability.

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 conditions imposed by other governmental regulations:

Single-room occupancy unit (residential hotel)	75% of 1 person
0 bedroom (studio)	1 person
1 bedroom	2 persons
2 bedroom	3 persons
3 bedroom	4 persons
4 bedroom	6 persons

(Ords. 2004-45 § 3, 2001-06 § 2).

822-2.414 Child care facilities.

(a) When an applicant proposes to construct a housing development and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, the county shall grant either of the following:

(1) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility;

(2) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(b) The county will require, as a condition of approving the development with a child care facility, that the following occur:

(1) The child care facility shall remain in operation for a period of time that is as long as or longer than the longest period of time during which the density bonus units are required to remain affordable pursuant to Section 822-2.410.

(2) Of the children who attend the child care facility, the children of very low income households, lower income households, or moderate income households 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 moderate income households pursuant to Section 822-2.402. (Ords. 2004-45 § 3, 2001-06 § 2).

Article 822-2.6. Review

822-2.602 Applications.

(a) An applicant may submit a written proposal for the specific concessions or incentives that the applicant requests. The county will grant the concession or incentive requested by the applicant unless the county makes a written finding pursuant to Government Code Section 65915(d).

(b) An applicant may seek a waiver or modification of development or zoning standards and if so, shall show that the waiver or modification is necessary to make the housing development economically feasible as provided in subsections (e) and (f) of Government Code Section 65915. For purposes of this chapter, any waiver or modification to the requirements of the involved zoning district shall not be considered a variance. The county is not required to waive or reduce development standards if, pursuant to Government Code Section 65915(e), the waiver or reduction would have a specific adverse impact upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

(Ords. 2004-45 § 3, 2001-06 § 2).

822-2.604 Processing.

An application made pursuant to this chapter is considered to be a component of a housing development application and will be processed pursuant to Section 26-2 of this code. A housing development application that includes a request for a concession or incentive must include the specific concession or incentive(s) requested.

(Ords. 2004-45 § 3, 2001-06 § 2).

822-2.606 Preliminary application.

(a) An applicant proposing a housing development pursuant to this chapter may submit a preliminary application prior to the submittal of any formal request for approval of a housing development. A preliminary application should include the following information:

(1) A brief description of the proposed housing development, including the total number of units, target units and density bonus units proposed;

(2) The zoning and general plan designations and assessors parcel number(s) of the project site;

(3) A vicinity map and preliminary site plan, drawn to scale, including building footprints, preliminary elevations, driveway and parking layout.

(b) Applicants are encouraged to schedule a preapplication meeting with the director to

discuss and identify potential application issues, including prospective concessions or incentives. (Ords. 2004-45 § 3, 2001-06 § 2).

Article 822-2.8. Development Standards

822-2.802 Time of construction.

Target units must be constructed concurrently with nonrestricted units unless the county and developer agree within the density bonus housing agreement to an alternative schedule for development. (Ords. 2004-45 § 3, 2001-06 § 2).

822-2.804 Availability.

The first target unit shall be made available for occupancy not later than the time at which the first nontargeted dwelling unit of the housing development is available for occupancy. (Ords. 2004-45 § 3, 2001-06 § 2).

822-2.806 Design.

Except as provided in Section 822-2.808, target units shall be built on-site and dispersed throughout the housing development wherever feasible. In addition, the number of bedrooms of the target units shall be equivalent to the bedroom mix of the nontarget 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. (Ords. 2004-45 § 3, 2001-06 § 2).

822-2.808 Alternate location.

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 constructed and operated at an alternative development site. In appropriate cases, the developer and the county may enter into a written agreement to permit target units to be constructed and operated at a designated alternative development site. The resulting developments shall be considered a single housing development for purposes of this chapter. Under these circumstances, when the target units are to be provided on the alternative site, the developer is subject to the same requirements of this chapter. (Ords. 2004-45 § 3, 2001-06 § 2).

822-2.810 Compliance.

Housing developments shall comply with all applicable development standards, except those that may be modified as provided by this chapter. (Ords. 2004-45 § 3, 2001-06 § 2).

Article 822-2.10. Density Bonus Housing Agreement

822-2.1002 Execution of agreement.

(a) Applicants or developers requesting a density bonus shall sign a density bonus housing agreement. The agreement shall be in a form provided by the director. The director shall submit the proposed agreement to the board of supervisors for approval on behalf of the county.

(b) Following execution of the agreement, the completed density bonus housing agreement will be recorded. The conditions from the agreement shall be filed and recorded on the parcel or parcels designated for the construction of target units. The approval and recordation shall take place before final map approval, or, where a map is not being processed, before the issuance of building permits for parcels with target units. The density bonus housing agreement shall be binding on all future owners and successors in interest and shall so provide in its terms. (Ords. 2004-45 § 3, 2001-06 § 2).

822-2.1004 Condition of approval.

A density bonus housing agreement shall be made a condition of approval for all housing development projects that receive a density bonus. (Ords. 2004-45 § 3, 2001-06 § 2).

822-2.1006 Terms in agreement.

The density bonus housing agreement shall include the following information:

- (a) The total number of units approved for the housing development, including the number of target units;
- (b) A description of the affordability and occupancy restrictions for the target units (i.e., very low income households, lower income households, moderate income households or qualifying residents), including the standards for determining the corresponding affordable rent or affordable sales price and housing cost;
- (c) The location, unit sizes (in square feet), and number of bedrooms of all units in the development, including the target units;
- (d) Tenure of use restrictions for target units of at least ten or thirty years, in accordance with Section 822-2.410;
- (e) A schedule of completion and occupancy of all units in the development, including the target units;
- (f) A description of all concessions or incentives;
- (g) If applicable, tenure of use restrictions and attendance restrictions for child care facilities, in accordance with Section 822-2.414(b);
- (h) A description of remedies for breach of the agreement by either party;
- (i) Other provisions to ensure implementation and compliance with this chapter. (Ords. 2004-45 § 3, 2001-06 § 2).

822-2.1008 For sale housing development terms.

In the case of for sale housing developments, the density bonus housing agreement shall provide for the following terms governing the initial sale and use of target units during the applicable tenure of use restriction period:

- (a) Target units shall, upon initial sale, be sold at an affordable sales price and housing cost to eligible very low income households, lower income households, moderate income households, or qualified residents (i.e., maintained as senior citizen housing) as defined by this chapter.
- (b) Target units shall be owner-occupied initially by eligible very low or lower income households, or by moderate income households in the case of condominium projects, or by qualified residents in the case of senior citizen housing.
- (c) The initial purchaser of each target unit shall execute an instrument or agreement in the form of a deed restriction approved by the director restricting the sale of the target unit in accordance with the provisions of this chapter during the applicable tenure of use restriction period. This deed restriction shall be recorded against the parcel containing the target unit and shall contain those provisions that the director may require to ensure continued compliance with this chapter and statutory requirements (Government Code

Section 65915 et seq.) and to put subsequent purchasers on notice of the conditions and terms during the applicable use restriction period. (Ords. 2004-45 § 3, 2001-06 § 2).

822-2.1010 Rental housing development terms.

In the case of rental housing developments, the density bonus housing agreement shall include the following terms and conditions governing the use of target units during the use restriction period:

(a) The methodology and procedures for qualifying tenants as very low income households, lower income households, moderate income households, or qualified resident households; for establishing affordable rent; for filling vacancies; and for maintaining target units for qualified tenants.

(b) Provisions requiring owners of the rental housing developments to verify tenant incomes and rents, and maintain books and records in a form approved by the director, to demonstrate compliance with this chapter.

(c) Provisions requiring owners of the rental housing developments to submit an annual report to the director. The report must include the name, address, household size, and income of each person occupying target units identify the number of bedrooms and monthly rent or cost (including utility allowance) of each target unit. Tenants in rental housing developments shall provide consent to the owners to allow these disclosures. (Ords. 2004-45 § 3, 2001-06 § 2).