

ORDINANCE NO. 7,644-N.S.

RESCINDING SECTION 23C.12.050 OF THE BERKELEY MUNICIPAL CODE AND ADDING CHAPTER 23C.14 TO THE BERKELEY MUNICIPAL CODE; DENSITY BONUS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Section 23C.12.050 is hereby rescinded.

Section 2. That Chapter 23C.14 is hereby added to read as follows:

**Chapter 23C.14 Density Bonus**

<b>23C.14.010</b>	<b>Purpose</b>
<b>23C.14.020</b>	<b>Definitions</b>
<b>23C.14.030</b>	<b>Application Requirements</b>
<b>23C.14.040</b>	<b>Density Bonus Calculations and Procedures</b>
<b>23C.14.050</b>	<b>Incentives and Concessions</b>
<b>23C.14.060</b>	<b>Waivers and Reductions</b>
<b>23C.14.070</b>	<b>Qualifying Units</b>
<b>23C.14.080</b>	<b>Special Provisions</b>
<b>23C.14.090</b>	<b>Regulatory Agreements</b>

**23C.14.010 Purpose**

The purpose of this Chapter is to establish procedures and local standards for the implementation of California Government Code Sections 65915 - 65918 consistent with local zoning regulations and development standards, and to provide special provisions consistent with the intent of State and local law. Unless otherwise noted, all section references in this Chapter are to the California Government Code.

**23C.14.020 Definitions**

Whenever the following terms are used in this Chapter, they have the meaning established by this Section. Other capitalized terms have the meaning set forth in Berkeley Municipal Code Chapter 23A.08 and/or Chapter 23F.04, or in California Government Code Sections 65915 - 65918, as applicable.

- A. "Administrative Regulations" means guidelines and procedures promulgated by the Planning Director that may be modified from time to time to effectively implement this ordinance.
- B. "Base Project" means the maximum allowable residential density on a housing development site pursuant to the applicable zoning district or, where no density

standard is provided, as set forth in the Administrative Regulations before applying the density bonus.

- C. "Density Bonus" means those residential units, floor area, rental beds or bedrooms added to the Base Project pursuant to the provisions of Section 65915 and this Chapter.
- D. "Eligible Housing Development" has the meaning set forth in Section 65917.2.
- E. "Housing Development" has the meaning set forth in Section 65915(i).
- F. "Incentive and Concession" means an incentive or a concession as the terms are used in Section 65915 and in particular as defined in Section 65915(k) thereof. The City may request reasonable documentation from the applicant to support the request.
- G. "Qualifying Unit" means a unit that is provided at a below market-rate rent or sales price as set forth in Section 65915 in order to receive a Density Bonus and/or Waivers and Reductions and/or Incentives and Concessions.
- H. "Waiver and Reduction" means a waiver or a reduction as the terms are used in Section 65915 and in particular in Section 65915(e) thereof, and means any and all changes to or exemptions from physical lot development standards that are required to avoid precluding the construction of a Housing Development with Density Bonus Units, as set forth in Section 65915(e). The City may request reasonable documentation from the applicant to support the request.

### **23C.14.030 Application Requirements**

In addition to any other information required by this Title, an application for a Density Bonus must include the following information:

- A. How the proposed project will satisfy the eligibility requirements of Section 65915 or 65917.2.
- B. For those districts without density standards, a density bonus schematic as set forth in the Administrative Regulations;
- C. The requested Density Bonus pursuant to Berkeley Municipal Code Section 23C.14.040.
- D. Any Waivers and Reductions that are sought under Section 65915(e) that would be required to accommodate the Housing Development including the Density Bonus Units. The City may request reasonable documentation from the applicant to support the request.

- E. Any Incentives and Concessions that are sought under Section 65915(d) accompanied by documentation of resulting cost reductions to provide for affordable housing costs. The City may request reasonable documentation from the applicant to support the request.
- F. Any requested additional bonus units under Section 65915(n).
- G. Any requested parking reductions under Section 65915(p). The City may request reasonable documentation from the applicant to support the request.
- H. Whether the applicant elects to receive a Density Bonus that is less than that mandated by Section 65915, including a Density Bonus of 0 (zero). In such cases, the applicant retains their entitlement to Incentives and Concessions.
- I. Documentation of how project complies with regulations regarding replacement units as described in Section 65915(c)(3).

#### **23C.14.040 Density Bonus Calculations and Procedures**

- A. Density Bonuses must be calculated as set forth in Section 65915, 65917.2, and pursuant to the Administrative Regulations.
- B. Density Bonus requests must accompany Housing Development permit applications and will be decided upon concurrent with the underlying Permit for the project.

#### **23C.14.050 Incentives and Concessions**

- A. For purposes of this Chapter, the number of Incentives and Concessions are counted as follows:
  - 1. Any Incentive and Concession that would otherwise require discretionary approval by the Zoning Officer, Zoning Adjustments Board or City Council of any single dimensional lot development standard, such as height or setbacks, or any single quantitative lot development standard, such as parking or open space, counts as one.
  - 2. A proposed Incentive and Concession that would involve exceedance of a single physical lot development standard counts as one even if that exceedance would otherwise require more than one Permit (e.g., extra height may require Permits for height, Floor Area Ratio, and/or number of stories but would count as one Incentive and Concession for height).
  - 3. Where it is ambiguous as to whether a proposed Incentive and Concession involves one or more dimensional or quantitative lot development standards, the stricter interpretation shall apply, as determined by the Zoning Officer, Zoning Adjustments Board or City Council, as the case may be.

- B. The City shall grant Incentives and Concession unless findings are made as set forth in Section 65915(d)(1).
- C. The City is not required to deny a proposed Incentive and Concession solely because it is able to make a finding under Section 65915(d)(1). The City bears the burden of proof for the denial of a requested Incentive and Concession.
- D. Unless denied under Section 65915, Incentives and Concessions will be exempt from discretionary review or Permits under this Title, other than Design Review, and by law do not modify the CEQA review status of a project.

**23C.14.060 Waivers and Reductions**

- A. An applicant may submit to the City a proposal for Waivers and Reductions of development standards that physically preclude construction of a Housing Development and Density Bonus Units meeting the criteria of Section 65915(b).
- B. The City may negotiate changes to the requested Waivers and Reductions as part of the Use Permit and Design Review process, in coordination with the applicant, in order to address aspects of the project that may be of concern in the community or inconsistent with overarching principles of the General Plan, Zoning Ordinance and Design Guidelines.
- C. The City may deny Waivers and Reductions for the reasons set forth in Section 65915(e)(1).

**23C.14.070 Qualifying Units**

Qualifying Units must meet the standards set forth in subdivisions B, C, and D of Section 23C.12.040.

**23C.14.080 Special Provisions**

In addition to requirements set forth in Sections 65915 - 65918 and this Chapter, the following Special Provisions apply to Density Bonuses in the City of Berkeley.

- A. [RESERVED]

**23C.14.090 Regulatory Agreements**

Prior to issuance of a Certificate of Occupancy for a Housing Development that has received a Density Bonus, the applicant must enter into a regulatory agreement in a form provided by the City that implements Sections 65915 – 65918 and this Chapter.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on March 12, 2019, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: None.

