



Office of the City Manager

REVISED AGENDA MATERIAL

Meeting Date: March 12, 2019

Item Number: 19

Item Description: Density Bonus Ordinance Revisions - Repeal Existing Section 23C.12.050 (State of California Density Bonus Requirements) and Adopt New Chapter 23C.14 (Density Bonus)

Supplemental/Revision Submitted By: Timothy Burroughs, Director, Planning and Development Department

“Good of the City” Analysis:

The analysis below must demonstrate how accepting this supplement/revision is for the “good of the City” and outweighs the lack of time for citizen review or evaluation by the Council.

The attached version of the proposed Ordinance has been revised to more clearly express the intent of the City and to ensure conformance with new State law.

In particular, the proposed Ordinance clarifies that the City may request reasonable documentation from an applicant to support the applicant’s request for an “incentive and concession” sought under State Density Bonus Law.

Consideration of supplemental or revised agenda material is subject to approval by a two-thirds roll call vote of the City Council. (BMC 2.06.070)

A minimum of **42 copies** must be submitted to the City Clerk for distribution at the Council meeting. This completed cover page must accompany every copy.

Copies of the supplemental/revised agenda material may be delivered to the City Clerk Department by 12:00 p.m. the day of the meeting. Copies that are ready after 12:00 p.m. must be delivered directly to the City Clerk at Council Chambers prior to the start of the meeting.

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.

ORDINANCE NO. -N.S.

RESCINDING SUB-SECTION 23C.12.050 OF THE BERKELEY MUNICIPAL CODE
AND ADDING CHAPTER 23C.14 TO THE BERKELEY MUNICIPAL CODE

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

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 That Sub-Section 23C.12.050 is hereby rescinded.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

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

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](#), ~~[65916](#)~~, ~~[and 65917](#)~~ - [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](#), ~~[65916](#)~~, ~~[and - 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.

1 B. “Base Project” means the maximum allowable residential density (~~lots,~~ number and
 2 ~~type-size~~ of residential units, floor area ratio, or number of beds or bedrooms, as
 3 appropriate) on a housing development site pursuant to the applicable zoning district
 4 or, where no density standard is provided, as set forth in the Administrative
 5 Regulations before applying the density bonus.
 6

7 C. "Density Bonus ~~Units~~" means those ~~lots,~~ residential units, floor area, rental beds or
 8 bedrooms added to the Base Project pursuant to the provisions of Section 65915
 9 and this Chapter.
 10

11 D. “Eligible Housing Development” has the meaning set forth in Section 65917.2.
 12

13 E. “Floor Area Ratio” has the meaning set forth in Section 65917.2.
 14

15 ~~D.F.~~ “Housing Development” has the meaning set forth in Section 65915 (i).
 16

17 ~~E.G.~~ “Incentive and Concession” means an incentive or a concession as the terms are
 18 used in Section 65915 and in particular as defined in Section 65915(k) thereof. The
 19 City may request reasonable documentation from the applicant to support the
 20 request.
 21

22 ~~F.H.~~ “Qualifying Unit” means a unit that is provided at a below market-rate rent or
 23 sales price as set forth in Section 65915 in order to receive a Density Bonus and/or
 24 Waivers and Reductions and/or Incentives and Concessions.
 25

26 ~~—“Section 65915” means California Government Code Section 65915, as it may be~~
 27 ~~amended from time to time.~~
 28

29 ~~H.I.~~ “Waiver and Reduction” means a waiver or a reduction as the terms are used in
 30 Section 65915 and in particular in Section 65915(e) thereof, and means any and all
 31 changes to or exemptions from physical lot development standards that are required
 32 to avoid precluding the construction of a Housing Development with Density Bonus
 33 Units, as set forth in Section 65915(e). The City may request reasonable
 34 documentation from the applicant to support the request.
 35

36 **23C.14.030 Application Requirements**
 37

38 In addition to any other information required by this Title, an application for a Density
 39 Bonus must include the following information:
 40

41 A. How the proposed project will satisfy the eligibility requirements of Section 65915 or
 42 65917.2.
 43

44 B. For those districts without density standards, a density bonus schematic as set forth
 45 in the ~~administrative~~ Administrative regulations ~~Regulations~~;
 46

- 1 C. The ~~proposed size of the requested~~ Density Bonus pursuant to Section 23C.14.040.
- 2
- 3 D. Any Waivers and Reductions that are sought under Section 65915(e) that would be
- 4 required to accommodate the Housing Development including the Density Bonus
- 5 Units. The City may request reasonable documentation from the applicant to support
- 6 the request.
- 7
- 8 E. Any Incentives and Concessions that are sought under Section 65915(d)
- 9 accompanied by documentation of resulting cost reductions to provide for affordable
- 10 housing costs. The City may request reasonable documentation from the applicant
- 11 to support the request.
- 12
- 13 F. Any requested additional bonus units under Section 65915(n).
- 14
- 15 G. Any requested parking reductions under Section 65915(p). The City may request
- 16 reasonable documentation from the applicant to support the request.
- 17
- 18 H. ~~As~~ Whether the applicant ~~may~~ elects ~~in writing~~ to receive a Density Bonus
- 19 that is less than that mandated by Section 65915, including a Density
- 20 Bonus of 0 (zero). In such cases, the applicant ~~will~~ retains their entitlement
- 21 to Incentives and Concessions.
- 22
- 23 I. Documentation of how project complies with regulations regarding
- 24 replacement units as described in Section 65915(c)(3).
- 25

26 **23C.14.040 Density Bonus Calculations and Procedures**

- 27
- 28 A. Density Bonuses must be calculated as set forth in Section 65915,
- 29 65917.2, and pursuant to the Administrative Regulations.
- 30
- 31 B. Density Bonus requests must accompany Housing Development permit
- 32 applications and will be decided upon by the highest governing body
- 33 concurrent with the underlying Permit for the project.
- 34

35 **23C.14.050 Incentives and Concessions**

- 36
- 37 A. For purposes of this Chapter, the number of Incentives and Concessions are
- 38 counted as follows:
- 39
- 40 1. Any Incentive and Concession that would otherwise require discretionary
- 41 approval by the Zoning Officer or Zoning Adjustments Board of any single
- 42 dimensional lot development standard, such as height or setbacks, or any single
- 43 quantitative lot development standard, such as parking or open space, counts as
- 44 one.
- 45

1 2. A proposed Incentive and Concession that would involve exceedance of a single
 2 physical lot development standard counts as one even if that exceedance would
 3 otherwise require more than one Permit (e.g., extra height may require Permits
 4 for height, FAR, and/or number of stories but would count as one Incentive and
 5 Concession for height).
 6

7 3. Where it is ambiguous as to whether a proposed Incentive and Concession
 8 involves one or more dimensional or quantitative lot development standards, the
 9 stricter interpretation shall apply, as determined by the Zoning Officer and Zoning
 10 Adjustments Board, as the case may be.
 11

12 B. In determining whether it can make the finding set forth in Section 65915(d)(1)
 13 related to the necessity for, efficacy of and adverse effects of a requested Incentive
 14 and Concession, the City will base its determination and any finding on a
 15 ~~comparison of the project including the Density Bonus and requested Incentives and~~
 16 ~~Concessions to the relative impacts of the Base Project and the proposed project.~~
 17

18 C. The City is not required to deny a proposed Incentive and Concession solely
 19 because it is able to make a finding under Section 65915(d)(1). The City bears the
 20 burden of proof for the denial of a requested Incentive and Concession, and may not
 21 require the applicant to prepare a pro forma.
 22

23 D. Unless denied under Section 65915, Incentives and Concessions will be exempt
 24 from discretionary review or Permits under this Title, other than design review, and
 25 do not modify the CEQA review status of a project.
 26

27 ~~D. Incentives and Concessions must be justified based on the financial needs of the~~
 28 ~~project, including reduced costs and increased revenue, to provide for the affordable~~
 29 ~~housing costs of the qualifying units and for the project overall.~~
 30

31 **23C.14.060 Waivers and Reductions**
 32

33 A. An applicant may submit to the City a proposal for Waivers and Reductions of
 34 development standards that physically preclude construction of a development
 35 Housing Development project and Density Bonus Units meeting the criteria of
 36 Section 65915(b).
 37

38 ~~A. The applicant may request, and the City shall hold, a meeting to discuss Waivers~~
 39 ~~and Reductions.~~
 40

41 B. The City may negotiate changes to the requested Waivers and Reductions as part of
 42 the Use Permit and Design Review process, in coordination with the applicant, in
 43 order to address aspects of the project that may be of concern in the community or
 44 inconsistent with overarching principles of the General Plan, zoning ordinance and
 45 design guidelines.
 46

1 ~~B.C.~~ The City may deny Waivers and Reductions if a Waiver or Reduction ~~would have~~
 2 ~~adverse impacts and/or there is no mitigation for such impacts, as described in for~~
 3 ~~the reasons set forth in~~ Section 65915(e)(1).

4
 5 **23C.14.070 Qualifying Units**

6
 7 ~~Upon completion of project construction,~~ Qualifying Units must be ~~reasonably dispersed~~
 8 ~~throughout the Housing Development, be~~ of the same size and contain, on average, the
 9 same number of bedrooms as the non-Qualifying Units in the project, and must be
 10 comparable to the non-Qualifying Units in terms of design, use, appearance, materials
 11 and finish quality. ~~In determining whether dispersal of Qualifying Units is reasonable,~~
 12 ~~the decision-making body may consider special benefits provided by, as well as special~~
 13 ~~constraints on, the project.~~

14
 15 **23C.14.080 Special Provisions**

16
 17 In addition to requirements set forth in Sections 65915 - 65918 and this Chapter, the
 18 following Special Provisions apply to Density Bonuses in the City of Berkeley.

19
 20 A. [RESERVED]

21
 22 ~~B. In addition to other required findings, Special Provisions may be awarded only when~~
 23 ~~the City finds that the Density Bonus project complies with the purposes of the~~
 24 ~~district in which the project is located.~~

25
 26 **23C.14.090 Regulatory Agreements**

27
 28 Prior to issuance of a Certificate of Occupancy for a Housing Development that has
 29 received a Density Bonus, the applicant must enter into a regulatory agreement in a
 30 form provided by the City that implements Sections 65915 - 65918 and this Chapter.

31
 32
 33
 34
 35 Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the
 36 display case located near the walkway in front of Council Chambers, 2134 Martin Luther
 37 King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each
 38 branch of the Berkeley Public Library and the title shall be published in a newspaper of
 39 general circulation.