



Office of the City Manager

October 15, 2019

To: Honorable Mayor and Members of the City Council

From: *DWR* Dee Williams-Ridley, City Manager

Re: Local Density Bonus Criteria for Affordable Housing Projects

The Department of Planning and Development has promulgated a local Administrative Regulation to clarify how the City will implement a provision that allows additional density bonus beyond State mandates (Attachment 1). The regulation will facilitate affordable housing development, and is consistent with local and State density bonus law. The regulations are consistent with the goals of several active City Council referrals, including streamlining the approval process for projects with 50% or more affordable units (1/19/2016), and the creation of a pilot local density bonus program to promote affordable housing development (5/30/17).

In general, density bonus law provides applicants for development projects the right to receive a certain percentage of additional dwelling units and waivers of development standards if the project includes a specified percentage of units at certain affordability levels. The law also authorizes a local agency to grant additional density bonus units if the agency has a local ordinance (Gov. Code, § 65915(n)).

The City Council adopted a new density bonus ordinance in March 2019, codified in BMC Section 23C.14.040, that includes the option for a development applicant to request this additional bonus. BMC section 23C.14.040.A authorizes the adoption of Administrative Regulations to implement the ordinance.

The ordinance is silent on how a request for a local density bonus should be evaluated. Because a project proponent could request an extraordinary bonus well beyond the mandated 35%, staff have limited the allowance to projects with 90% or more units restricted for moderate or lower income.

Planning Department staff, in coordination with the City Attorney's Office, have adopted criteria for evaluating requests for additional local density bonuses. These criteria are identified in the attached Administrative Regulation. The requirements to qualify for a local density bonus are based on the requirements set forth in the California Environmental Quality Act (CEQA) for affordable housing infill projects. Staff have also established a cap on the bonus that will be available. Projects will be allowed to vary

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from the zoning ordinance-specified yard, height, parking, and other development regulations, but will be limited by the floor area ratio for the zoning district in which the project is located.

Requests for this additional bonus must be made as part of a complete development application and will be reviewed by staff as part of the overall development review process. When projects request ministerial approval under pertinent sections of Senate Bill 35 of 2017 (Government Code section 65913.4), this review will be conducted at the staff level. Staff will provide a copy of any approvals to the City Clerk, City Attorney, City Manager and City Council.

Attachment:

1. Administrative Regulation, Local Density Bonus Criteria for Affordable Housing Projects

cc: Paul Buddenhagen, Deputy City Manager
David White, Deputy City Manager
Timothy Burroughs, Director, Planning and Development Department
Jenny Wong, City Auditor
Mark Numainville, City Clerk
Matthai Chakko, Assistant to the City Manager

CITY OF BERKELEY ADMINISTRATIVE REGULATIONS

A.R. NUMBER: _____
ORIGINAL DATE: 10/8/2019
POSTED DATE: 10/8/2019
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SUBJECT: Local Density Bonus Criteria for Affordable Housing Projects

PURPOSE

The purpose of this regulation is to provide criteria for applying the City's local density bonus pursuant to Government Code section 65915(n) and Berkeley Municipal Code (BMC) section 23C.14.040.A.

POLICY

1. Paragraph (n) of the State Density Bonus Law, Government Code 65915(n), provides:

If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

BMC section 23C.14.040.A authorizes the adoption of Administrative Regulations to implement a local density bonus pursuant to Paragraph (n). This Administrative Regulation is adopted in furtherance of existing adopted public policy to encourage and facilitate, to the greatest extent possible, the development of affordable housing for all income levels throughout the City of Berkeley; in light of the ongoing housing crisis, including rising costs of development; in order to reduce public subsidies required to reimburse non-profit developers for costs incurred due to the timelines associated with discretionary permitting; and in order to increase likely eligibility for other public funds.

2. Under this Administrative Regulation, a housing development project may request and shall be granted a Density Bonus up to the maximum FAR for the zoning district in which the project is located, if the housing development project meets all of the following criteria:
 - a. The project meets all applicable requirements of Government Code sections 65915(b) and 65915(c).
 - b. The project contains at least 90% of total units for subject to a recorded affordability restriction of at least 55 years that ensures the units are affordable to households of no greater than moderate income (110% of Area Median Income). The requirements of this paragraph do not relieve the applicant of the obligation to comply with the requirements to provide affordable housing units in BMC Chapters 22.20, 23C.12, and 23E.20.

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- c. The project and other projects approved prior to the approval of the project can be adequately served by existing utilities, and the project applicant has paid, or has committed to pay, all applicable in-lieu or development fees.
 - d. The site of the project does not contain wetlands, does not have any value as a wildlife habitat, and the project does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and the project does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete. For the purposes of this subdivision, "wetlands" has the same meaning as in Section 328.3 of Title 33 of the Code of Federal Regulations and "wildlife habitat" means the ecological communities upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.
 - e. The site of the project is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code (the Cortese List).
 - f. The site of the project is subject to a preliminary endangerment assessment prepared by an environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity.
 - g. If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements as part of the development. If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements.
 - h. The project does not have a significant effect on historical resources pursuant to Section 21084.1.
 - i. The project site is not subject to a wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.
 - j. The project site is not exposed to an unusually high risk of fire or explosion from materials stored or used on nearby properties.
 - k. The project site is not subject to risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.

- l. The project site is not within a delineated earthquake fault zone, as determined pursuant to Section 2622, or a seismic hazard zone, as determined pursuant to Section 2696, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake fault or seismic hazard zone.
- m. The project site is not subject to landslide hazard, flood plain, flood way, or restriction zone, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.
- n. The project site is not located within the boundaries of a state conservancy.

PROCEDURE

Applications for additional density bonus pursuant to this Administrative Regulation shall include all materials required by the Application Materials Checklist for similar development applications and shall include information, in tabular and illustrative form, about the Base Project, Density Bonus Project, and Additional Density Bonus Project consistent with the application requirements in BMC section 23C.14.030 and the Procedures for Implementing State Density Bonus Law promulgated by the Zoning Officer of the City of Berkeley.

Requests under this section shall be subject to ministerial review by the Zoning Officer to confirm compliance with objective zoning and design review standards in effect at the time the application is made. Review shall be conducted as expeditiously as possible and in conformance with other applicable law. A written decision shall be issued to the applicant and a copy shall be provided concurrently to the City Clerk, who shall forward the report directly to the City Council, City Manager and City Attorney.

FEES

The fee for processing requests under this section shall be limited to actual costs incurred by the City.

<p>RESPONSIBLE DEPARTMENT: Planning and Development</p> <p>TO BE REVISED: Every 2 years</p>	<p>Approved by:</p> <p>_____</p> <p style="text-align: center;">Department Director</p> <p>_____</p> <p style="text-align: center;">City Manager</p>
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