

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

**Revised for July 21, 2022 Planning Commission Review**

**Section 1:** Subsection C(1) of Section 21.12.020 (Rules of Interpretation) of Chapter 21.12 (Interpretation of Implementation Plan Provisions) of Title 21 (Local Coastal Program Implementation Plan) the NBMC is hereby amended to read as follows:

C. Calculations.

1. Residential Density. ~~When~~ Except for projects that include a density bonus in accordance with Section 21.32.040(A), 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).

~~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:** Chapter 21.32 (Density Bonus) of Title 21 (Interpretation of Implementation Plan Provisions) the NBMC is hereby added, which shall read as follows:

**Chapter 21.32  
Density Bonus**

Sections:

- 21.32.010 Purpose.
- 21.32.021 Definitions.
- 21.32.030 Eligibility for Density Bonus and Incentives.
- 21.32.040 General Requirements.
- 21.32.050 Allowed Density Bonuses.
- 21.32.060 Parking Requirements in Density Bonus Projects.
- 21.32.070 Allowed Incentives or Concessions.
- 21.32.080 Waivers and Reductions of Development Standards.
- 21.32.090 Incentives for Housing with Child Care Facilities.
- 21.32.100 Condominium Conversions.
- 21.32.110 Design and Distribution of Affordable Units.
- 21.32.121 Replacement Units.
- 21.32.130 Continued Availability.
- 21.32.140 Occupancy and Resale of Ownership Units.
- 21.32.150 Approval Process.
- 21.32.160 Affordable Housing Agreement.

### **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 65918 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.

### **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 includes 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.
- E. “Development Standard” means a site or construction condition, including, but not limited to, a height limitation, setback requirement, floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a housing development pursuant to any ordinance, general plan policy, specific plan, or other local condition, law, policy, resolution, or regulation. Development standard shall not mean an impact fee, inclusionary housing requirement, or dedication of land.
- F. “Disabled Veteran” means any veteran who is currently declared by the United States Veterans Administration to be ten (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 an incentive that would result in a reduction in cost to the developer/property owner based upon the land cost per dwelling unit and shall be calculated based upon the difference in the value of the land with and without the density bonus.

- H. “Equivalent Size” means that the replacement units specified in Section 21.32.120 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 Person” shall have the same meaning as that phrase is 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 (5) 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 purposes of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one (1) development application but may include more than one subdivision map.
- 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 (2) or more major bus routes with a frequency of service interval of fifteen (15) minutes or less at the intersection of the two (2) routes during both the morning and afternoon peak commute hours.
- N. “Natural or Constructed Impediments” means a hindrance or obstruction that prevents pedestrian or bicycle access to a major transit stop. Natural or constructed impediments include, but are not limited to, freeways, rivers, mountains, harbors, 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” means a major transit stop that the income qualified resident of the housing development is able to walk or bike to from the residence without encountering natural or constructed impediments, which include, but are not limited to, freeways, rivers, mountains, harbors and other bodies of water, but does not include residential structures, shopping centers, parking lots, or rails used for transit with legal pedestrian access through the property.

### **21.32.025 Costal 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, incentive(s) or concession(s), or waiver or reduction of development standard(s) as provided by this chapter, a housing development or condominium conversion shall comply with the following requirements and satisfy all other applicable provisions of this Local Coastal Program Implementation Plan, except as otherwise provided by this Chapter.

- A. Eligibility Requirements. A housing development shall include only one (1) 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 housing 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 unit or 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 affordable to 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 affordable to lower-income college students.
7. A condominium conversion project where either thirty-three (33) percent of the units converted are affordable to low- or moderate-income households, or fifteen (15) percent of the units converted are affordable to 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 thirty-five (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.

B. Housing Development Not Eligible for a Density Bonus, Concession, Incentive, or Waiver. A housing development shall not be eligible for a density bonus, or any incentive, concession, or waiver of a development standard under this Chapter on a property containing existing affordable housing unless:

1. The housing development replaces the existing affordable units in accordance with all of the requirements set forth in Section 21.32.120; and
2. The housing development, inclusive of the units replaced pursuant to this paragraph, contains affordable units at least one (1) of the percentage levels set forth in Section 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.
- B. Mixed Income Development. If a housing development qualifies for a density bonus under more than one (1) income category; as senior housing; or as housing intended to serve transitional foster youth, disabled veterans, or homeless persons; the applicant shall select only one (1) of the above categories in the application. Density bonuses from more than one (1) category may not be combined.

- C. General Plan & Zoning Consistency. The granting of a density bonus, in and of itself, shall not be interpreted as requiring 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. Increased Density Limit. 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. Incentives, concessions, or development standard waivers shall not be used to increase density.
- F. Reduced Density. An applicant for a Density Bonus may elect to provide a lesser percentage of density increase than what is allowed authorized by Section 21.32.050 including, but not limited to, no increase in density, but shall remain eligible for concessions or incentives, waivers of development standards, and eligible parking requirements provided the project meets the eligibility requirements of this Section.

**21.32.050 Allowed Density Bonuses.**

A housing development that complies with one (1) of the eligibility levels in Section 21.32.030 is entitled to a density bonus as follows, unless a lesser percentage is proposed by the applicant.

- A. Density Bonus for Very Low, Low, and Moderate-Income Households. A housing development that is eligible for a density bonus pursuant to Section 21.32.030(A)(1) through Section 21.32.030(A)(4) is entitled to a density bonus calculated as follows:

TABLE 21.32-1

VERY LOW, LOW, AND MODERATE-

<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%</u>	<u>80%</u>	<u>80%</u>

Notwithstanding the foregoing, a cap on density will not apply if both of the following conditions are met:

1. One hundred (100) percent of the units in a housing development exclusive of a manager's units, are restricted and affordable to very-low and low-income households, except that no more than twenty (20) percent of the total units (including density bonus units) in the housing development are restricted and affordable to moderate-income households.
2. The housing development is located within one-half mile of a major transit stop with unobstructed access.

B. Density Bonus for Transitional Foster Youth, Disabled Veterans, or Homeless Persons. A housing development that is eligible for a density bonus at the level set forth in Section 21.32.030(A)(5) shall be entitled to a density bonus of twenty (20) percent.

- C. Density Bonus for Lower Income College Students. A student housing development that is eligible for a density bonus at the level set forth in Section 21.32.030(A)(6) shall be entitled to a density bonus of thirty-five (35) percent.
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 applicant or property owner shall provide evidence to the City that the housing development shall be subject to an operating agreement or lease with one (1) or more institution of higher education that all units shall be exclusively occupied by the students of the institution(s).
  3. The rent for affordable units shall be calculated at thirty (30) percent of sixty-five (65) percent of the area median income for a single-room occupancy unit.
  4. Priority for the 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 subsection.
  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. Density Bonus for Condominium Conversion. A condominium conversion that is eligible for a density bonus pursuant to Section 21.32.030(A)(7) shall be entitled to a density bonus of twenty-five (25) percent provided the condominium conversion meets all of the requirements in Section 20.32.100.
- E. Density Bonus for Senior Housing. A senior housing development that is eligible for a density bonus pursuant to Section 21.32.030(A)(8) shall be entitled to a density bonus of twenty (20) percent.
- F. Density 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 pursuant to Section 21.32.030(A)(9) is 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 Section 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 square-footage or acreage to permit development of the percentage of base units proposed; or
  - c. Sufficient square-footage or acreage to permit development of forty (40) units under the existing general plan and zoning designation.
3. The existing general plan and zoning designation of the donated land shall is zoned to accommodate at least 30 dwelling units per acre and is served by adequate public facilities and infrastructure or will be served by adequate public facilities and infrastructure by the housing development.

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 a housing development where no subdivision is required.
5. The City shall not approve the final subdivision map or issue building permits for the housing development unless and until all permits, other than building permits, for the development of very low-income housing have been issued for the donated and transferred land.
6. The donated and transferred land shall be within the boundary of the housing development, or upon approval of the reviewing authority, within one-quarter (1/4) mile of the boundary of the housing development.
7. The source of funding for the development of very low-income housing on the donated and transferred land shall be identified not later than the date of approval of the final subdivision map or issuance of building permits for the housing development.
8. The donated and transferred land and the affordable units shall be subject to a deed restriction recorded on the property at the time of transfer ensuring continued affordability of the units consistent with Section 21.32.130.

**21.32.060 Parking Requirements in Density Bonus Projects.**

A. Applicability. For a housing development that meets one (1) of the eligibility levels in Section 21.32.030, the applicant may request application of the parking requirements set forth herein. An applicant may request additional parking incentives beyond those provided in this section in compliance with Sections 21.32.070 and 21.32.080.

B. Number of Parking Spaces Required.

1. Parking Ratios. At the request of the applicant, the following minimum parking ratios apply to the housing development:

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

2. Within One-Half Mile (1/2) of Major Transit Stop. Notwithstanding subsection B(1), if a housing development provides at least twenty (20) percent low-income units or eleven (11) percent very low-income units and is located within one-half (1/2) mile of a major transit stop with unobstructed access; then upon the request of the developer, the City may not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds 0.5 spaces per bedroom.

3. Zero Parking. Notwithstanding subsection B(1), if a housing development consists solely of rental units affordable to lower income families; then upon the request of the developer, the City may not impose a vehicular parking ratio, inclusive of handicapped and guest parking, if either of the following criteria are met:
  - a. The housing development is located within one-half (½) mile of a major transit stop with unobstructed access from the housing development;
  - b. The housing development is a for-rent housing development for individuals who are 62 years of age or older that meet the definition in Sections 51.2 and 51.3 of the Civil Code and the housing development has either paratransit service or unobstructed access within one-half (½) mile to a fixed bus route that operates at least eight (8) times per day; or
  - c. The housing development is either a 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 housing development has either paratransit service or unobstructed access within one-half mile of a fixed bus route that operates at least eight (8) 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 (7) 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.

- C. Location of Parking. For purposes of this section, a housing 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 housing 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. The applicant shall include any request for incentive(s) or concession(s) listed in subsection (C) of this section 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. Except as provided in subsection (A) of this section, the review authority shall grant the following number of incentives or concessions:

1. One (1) incentive or concession for a housing development that includes at least ten (10) percent of the total units for low-income households, at least five (5) percent of the total units for very low-income households, at least twenty (20) of the total units for low-income students in a student housing development, or at least ten (10) percent of the total units for persons and families of moderate income in a for-sale housing development.
2. Two (2) incentives or concessions for a housing development that includes at least seventeen (17) percent of the total units for low-income households, at least ten (10) percent of the total units for very low-income households, or at least twenty (20) percent of the total units for persons and families of moderate income in a for-sale housing development.
3. Three (3) incentives or concessions for a housing development that includes at least twenty-four (24) percent of the total units for low-income households, at least fifteen (15) percent of the total units for very low-income households, or at least thirty (30) percent of the total units for persons and families of moderate income in a for-sale housing development.
4. Four (4) incentives or concession for projects that meet the criteria of Section 21.32.030(A)(4). If the housing development is located within one-half (½) mile of a major transit stop with unobstructed access, the housing development is eligible for a height increase of up to three (3) additional stories, or thirty-three (33) feet.

C. Type of Incentive or Concession. For the purposes of this chapter, “incentive” or “concession” mean 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. A mixed-use project in conjunction with the housing development, if the nonresidential portion of the mixed-use project will reduce the cost of the housing development; is compatible with the residential portion of the housing development; and is compatible with adjacent existing or planned development;
3. A reduction or waiver of any City imposed fee or dedication of land. Approval of a fee reduction or waiver of fee and/or dedication of land shall be at the sole discretion of the City Council and is not required to be approved; and/or
4. Other regulatory incentives that will result in identifiable, financially sufficient, and actual cost reductions.

### **21.32.080 Waivers or 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 is eligible for no cap on density pursuant Section 21.32.050(A) shall only be eligible for a waiver or reduction of development standards as provided in Section 21.32.070(B)(4), unless the review authority grants additional waivers or reductions.

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

A housing 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 21.30.030(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 meet the eligibility level in Section 21.32.030(A)(7), the City shall grant either a density bonus of up to twenty-five (25) percent pursuant to Section 21.32.050(D) 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, including, but is not limited to, staff costs, consultant fees, photocopy costs, and mailing fees, 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 meet the replacement requirements in Section 21.32.121.

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 may submit to the City a preliminary application for the condominium conversion on a form provided by the Director prior to the submittal of an application under Chapters 19.08 and 19.64. Within ninety (90) days of receipt of the

preliminary application, the City shall notify the applicant in writing whether the application is eligible for a condominium conversion pursuant to this section.

- E. Approval. An application for condominium conversion shall meet the requirements set forth in Chapter 19.64. Nothing in this section shall be construed to require the City to approve an application for a condominium conversion.

**21.32.110 Design and Distribution of Affordable Units.**

Affordable units shall be designed and distributed within the housing 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, 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.**

An application for a density bonus on any property with existing rental dwelling units or rental dwelling units that were vacated or demolished within the five (5) years preceding the application; and are/were subject to a recorded covenant that restricts rents to very low- or low-income households, or are/were occupied by very low- or low-income household shall be subject to the following:

- A. Occupied Units. For rental dwelling units that are occupied on the date of the application, the housing development shall provide at least the same number of affordable units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons or families in the same or lower income category as those households in occupancy.
- B. Vacant or Demolished Units. For rental dwelling units that have been vacated or demolished within the five (5) years preceding the application, the housing development shall provide at least the same number of affordable units of equivalent size as existed at the highpoint of those units in the five (5) years 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 income of the existing occupants or occupants within the past five (5) years is unknown to the City or the applicant, it shall be rebuttably presumed that the rental dwellings units were occupied by low-income and very low-income renter households 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:

- 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 housing development that includes for-sale units that are restricted and affordable to moderate-income households shall limit the occupancy and resale of the units as follows.

- A. Occupancy. 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; and
  - 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 forty-five (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. As part of the affordable housing agreement required pursuant to Section 21.32.160, the applicant shall enter into an equity sharing agreement with the City for the resale of affordable common interest units, unless it would be in conflict with the requirements of another public funding source or law. In lieu of an equity sharing agreement, the housing project could sell the units to a nonprofit housing corporation pursuant to Section 21.32.140(A)(2). 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 (5) 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 housing development 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 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 total number of units approved for the housing development.
  - 2. Term of Affordability. Unless specified elsewhere in this Chapter, a minimum term of fifty-five (55) years of the specified affordability shall be required. 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 or short-term occupancy of designated affordable units shall be allowed.
- b. Ownership Projects. In the case of for-sale housing developments, as a condition of approval of the housing development, the City shall require an affordable housing agreement that includes 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 expire 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:** Section 21.70.020 (Definitions of Specialized Terms and Phrases) of Title 21 (Local Coastal Program Implementation Plan) the NBMC is hereby amended to add the following definitions with all other definitions to remain unchanged:

“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 thirty (30) percent 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 persons and families whose income is greater than fifty (50) percent but does not exceed eighty (80) percent 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 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 persons and families whose income is greater than eighty (80) percent but does not exceed one hundred twenty (120) percent 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 thirty (30) percent but does not exceed fifty (50) percent 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.~~