

EXHIBIT B

AMENDED SMMC CHAPTER 20.305

CHAPTER 20.305 DENSITY BONUS

Sections:

Section 20.305.010	Purpose of Chapter
Section 20.305.020	Applicability
Section 20.305.030	State Density Bonuses
Section 20.305.040	Affordability and Occupancy Standards
Section 20.305.050	Requirements
Section 20.305.060	Additional Incentives
Section 20.305.070	Density Bonus Application
Section 20.305.080	Density Bonus Housing Agreement
Section 20.305.090	Commercial Development Bonus
Section 20.305.100	Processing Fee
Section 20.305.110	Enforcement
Section 20.305.120	Appeal Process
Section 20.305.130	Severability

Section 20.305.010 Purpose of Chapter

This chapter is intended to provide incentives for the production of housing for very low, low and moderate income households, and senior citizen households in accordance with the State's density bonus laws (sections 65915 through 65918 of the California Government Code. In enacting this chapter, it is the intent of the City to encourage and facilitate the development of affordable housing and to implement the goals, objectives, and policies of the City's Housing Element.

The regulations and procedures set forth in this chapter shall apply throughout the City. Sections of the California Government Code referenced in this chapter, and application forms for complying with this chapter, shall be available to the public.

Section 20.305.020 Applicability

This chapter applies when an applicant seeks a density bonus for a housing development within the City or for the donation of land for housing within the City. The City shall provide the applicant with incentives or concessions for the production of housing units and child care facilities as prescribed in Government Code Section 65915. The granting of the density bonus shall not be interpreted to require a General Plan amendment, Zone change, or other discretionary approval.

A. **Terms.** The following definitions apply for terms used throughout this chapter:

1. **Density Bonus.** A density increase over the otherwise maximum allowable gross residential density as of the date of submission of the density bonus application to the City, or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density. The amount of density increase to which the

applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in Government Code Section 65915.

2. **Density Bonus Housing Agreement.** A legally binding agreement between the developer and the City to ensure that the requirements of this chapter are satisfied.
3. **Density Bonus Unit.** An additional residential unit granted according to the provisions of this chapter that exceeds the otherwise maximum residential density of a development site.
4. **Housing Development.** A development project for five or more residential units, including mixed-use developments. For purposes of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels.
5. **Target Unit.** A unit designated to be occupied by a household meeting certain eligibility standards defined by the City.

Section 20.305.030 State Density Bonuses

- A. **Incentive Grant.** The City shall grant a density bonus after review by the City Council, as set forth in section 20.305.080 (Density Bonus Housing Agreement) to:
 1. Housing Development. An applicant or developer of a housing development who seeks and agrees to construct a housing development in compliance with the standards set forth in Government Code Section 65915, as amended from time to time;
 2. Donation of Land. An applicant for a tentative subdivision map, parcel map or other residential development approval who donates land to the City in accordance with the standards set forth in Government Code Section 65915, as amended from time to time;
 3. Child Care Facility. An applicant or developer of a housing development who proposes to construct a child care facility located on the premises of, as part of, or adjacent to, the housing development in accordance with the standards set forth in Government Code Section 65915, as amended from time to time;
 4. Condominium Conversions. An applicant or developer of a housing development who proposes to convert apartments to a condominium project in accordance with the standards set forth in Government Code Section 65915.5, as amended from time to time; and/or
 5. If requested by the applicant or developer of a housing development, and consistent with the applicable requirements of this chapter and Government Code Section 65915, the City may also grant any of the additional incentives listed in Section 20.305.060.
- B. **Calculation.** In determining the minimum number of density bonus units to be granted pursuant to this section, the maximum residential density for the site shall be increased as defined in Government Code Section 65915(f) and (g). When calculating the number of permitted density bonus units, any fraction of units shall be rounded to the next larger integer.

1. 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.
 2. In cases where a density increase less than what is provided for in Government Code Section 65915 is requested, no reduction shall be allowed in the number of target units required.
 3. An applicant who requests a density bonus pursuant to Government Code Section 65915 shall elect on what basis the bonus shall be awarded.
 4. The maximum combined mandated density increase shall be thirty-five (35) percent.
- C. **Limited Action.** The granting of a density bonus shall not be interpreted, in and of itself, to require a General Plan amendment, Zone change, or other discretionary approval.

Section 20.305.040 Affordability and Occupancy Standards

- A. **Documentation.** The City Council, by resolution, shall approve standard documents to ensure the continued affordability of target units consistent with Government Code Section 65915 and this section. The documents may include regulatory agreements, promissory notes, deeds of trust, resale restrictions, rights of first refusal, options to purchase, and/or other documents that shall be recorded against all target units. Affordability documents for target units offered for sale may also include subordinate shared appreciation documents permitting the City to recapture at resale the difference between the fair market rate price of the target unit at the time of sale, and the affordable price to the initial occupants at the time of the initial sale, plus the City's proportionate share of appreciation realized from an unrestricted sale in such amounts as deemed necessary by the City to replace the target units.
- B. **Rental Affordability Tenure.** Target units offered for rent to low or very-low income households shall be made available for rent consistent with Government Code Section 65915, and shall remain restricted and affordable to the designated income group for fifty-five (55) years or more. A term of affordability longer than fifty-five (55) years may be required if the residential development receives a subsidy of any type, including a loan, grant, construction or mortgage financing, mortgage insurance, or rental subsidy, and the subsidy program requires a longer term of affordability, or as prescribed in any guidelines adopted by the City for the Density Bonus Program. Rents for the lower income target units shall be set at an affordable rent, as that term is defined in Section 50053 of the California Health and Safety Code.
- C. **Ownership Affordability Tenure.**
1. Target units offered for sale to low, very-low or moderate income households shall be sold at an affordable cost to the initial occupants of the target units. At resale, the City shall enforce an equity-sharing agreement in accordance with Government Code Section 65915, unless such an agreement is in conflict with the requirements of another public funding source or law.
 2. For all other target units offered for sale other than to low, very low or moderate income households, any subordinate shared appreciation documents shall continue for a term of

fifty-five (55) years or more. If resale restrictions are used in lieu of shared appreciation documents, any resale restriction shall continue for a term of fifty-five (55) years or more. A term of affordability longer than fifty-five (55) years may be required if the residential development receives a subsidy of any type, including a loan, grant, construction or mortgage financing, mortgage insurance, or rental subsidy, and the subsidy program requires a longer term of affordability.

- D. **Principal Residence.** Any household that occupies a target unit must occupy that dwelling unit as its principal residence.
- E. **Occupancy Requirements.** No household may begin occupancy of a target unit until the household has been determined by the City or its designee to be eligible to occupy that dwelling unit, including, but not limited to, that the initial occupant of the target unit is a person or family of very low, low or moderate income, as required. The City Council, by resolution, shall establish guidelines for determining household income, maximum occupancy standards, affordable ownership cost, affordable rent, provisions for continued monitoring of tenant eligibility, and other eligibility criteria.
- F. **Eligibility Restrictions.**
 - 1. Any person who is a member of the City Council, the Planning Commission, and their immediate family members, and any person having any equity interest in the residential development, including a developer, partner, investor, or applicant and their immediate family members, is ineligible to rent, lease, occupy, or purchase a target unit. The City Council, by resolution, may establish guidelines for determination of “immediate family members.”
 - 2. An applicant shall be ineligible for a density bonus or other incentives or concessions according to the standards set forth in Government Code Section 65915 if (i) the housing development is proposed on any property that includes a parcel on which rental dwelling units are located, or if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance or law that restricts rents to levels affordable to persons and families of low or very low income; (ii) subject to any other form of rent or price control through the City’s valid exercise of its police power; or (iii) occupied by lower or very low income households, unless the proposed housing development replaces those units and either the proposed housing development, inclusive of the units replaced, contains affordable units at the percentages set forth in Government Code Section 65915, or each unit in the development, exclusive of the manager’s unit, is affordable to and occupied by either a low or very low income household.

Section 20.305.050 Requirements

- A. **Inclusionary Housing.** All residential projects, including density bonus projects, are subject to and must satisfy the requirements of any inclusionary housing policies or ordinances of the City.

- B. **Design.** All units within a density bonus project, including the density bonus units and the target units, must comply with all applicable building and housing codes. The design of the target units shall be consistent and compatible with the design of the total project development in terms of size, appearance, materials, and finished quality.
- C. **Agreement Conditions.** A density bonus housing agreement shall be a condition of all housing developments pursuant to this chapter. The relevant terms and conditions of the density bonus housing agreement shall be filed and recorded as a deed restriction on those individual lots or units of a project development that are designated for the location of the target units.
- D. **Construction.** Target units shall be constructed concurrent with market-rate units unless both the final decision-making authority of the City and the developer/applicant agree within the density bonus housing agreement to an alternative schedule for development.
- E. **On-Site Requirement.** Target units and density bonus units shall be built on-site, except as expressly permitted by this chapter or Government Code Section 65915 or subject to the discretion of the City, and, whenever reasonably possible, distributed throughout the project site.
- F. **Housing Options.** The target units created shall provide a range of housing options to specifically address the affordable housing needs and priorities of the residents of the City. This includes such factors as housing configuration (condominiums, townhouses, apartments, single-family occupancy, etc.); number of bedrooms; and certain amenities specific to the housing type such as facilities for older adults, students, and families.
- G. **Affordability Tenure.** Target units shall remain restricted and affordable, as determined pursuant to Section 20.305.040(B) and (C).

Section 20.305.060 Additional Incentives

An applicant or housing developer seeking a density bonus pursuant to this chapter may submit a proposal to the City for any of the following: (i) specific concessions or incentives; (ii) waivers or reductions of development standards; and/or (iii) parking ratios. The applicant or housing developer requesting the additional incentives may also request a meeting with the City to discuss such additional incentives.

A. **Concessions or Incentives.** An applicant may submit a proposal to the City for specific incentives or concessions that the applicant or housing developer requests. The number of concessions or incentives granted by the City shall be restricted in compliance with the standards set forth in Government Code Section 65915, as amended from time to time. The City shall grant the requested concession(s) or incentive(s), unless the City makes a written finding, based upon substantial evidence, of any finding included in this subsection or Government Code Section 65915. The City shall bear the burden of proof for the denial of any requested concession or incentive.

1. The concession or incentive does not result in identifiable and actual cost reductions to provide affordable housing costs, or for rents for the target units; or

2. The concession or incentive would have a specific, adverse impact upon the public health and safety or the physical environment, or on any real property listed in the California Register of Historical Resources, and for which there is no feasible method to mitigate or avoid the adverse impact without rendering the development unaffordable; or
3. The concession or incentive would be contrary to State or Federal law.

B. Waiver of Reduction of Development Standards. An applicant may submit a proposal to the City for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a housing development. A proposal for such a waiver or reduction of development standards shall not reduce or increase the number of concessions or incentives to which the City determines the applicant is entitled. The City shall grant the requested waiver or reduction of development standards, unless the City makes a written finding, based upon substantial evidence, of any finding included in this subsection or Government Code Section 65915. The City shall bear the burden of proof for the denial of any requested waiver or reduction of development standards.

1. The waiver or reduction of development standards would have a specific, adverse impact upon the public health and safety or the physical environment, or on any real property listed in the California Register of Historical Resources, and for which there is no feasible method to mitigate or avoid the adverse impact without rendering the development unaffordable; or
2. The waiver or reduction of development standards would be contrary to State or Federal law.

C. Parking. An applicant may submit a request to the City to limit the vehicular parking ratio of a housing development, inclusive of handicapped and guest parking, to the ratios listed under this subsection or any other ratio permitted under Government Code Section 65915, as amended from time to time. A request for limited parking ratios shall not reduce or increase the number of concessions or incentives to which the City determines the applicant is entitled.

1. Zero to one bedroom: one (1) onsite parking space
2. Two to three bedrooms: two (2) onsite parking spaces
3. Four and more bedrooms: two and one-half (2.5) parking spaces

4. Transit Stop. An applicant may submit a request to the City to limit the vehicular parking ratio of a housing development, inclusive of handicapped and guest parking, if the housing development is located within one-half mile of a major transit stop in accordance with the standards under Government Code Section 65915.

Section 20.305.070 Density Bonus Application

A. Required Items. The City shall provide a list of all documents and information required to be submitted with the density bonus application for the application to be deemed complete.

B. **Timeline for Review and Notification to Applicant of Completion.** The City shall process a density bonus application within thirty (30) days after receiving the application, and shall notify the applicant in writing whether or not the application is deemed complete in a manner consistent with Government Code Section 65943. If additional time is required for the City to review a density bonus application, the City shall inform the applicant in writing of the reason for the additional time necessary to review the application.

Section 20.305.080 Density Bonus Housing Agreement

- A. **Agreement Required.** Applicants/developers requesting a density bonus shall agree to enter into a density bonus housing agreement with the City. The terms of the draft agreement shall be reviewed and revised, as appropriate, by the Director, and approved by the City Manager.
- B. **Recordation.** Following execution of the agreement by all parties, the completed density bonus housing agreement, or memorandum thereof, shall be recorded and the conditions recorded as a deed restriction on the parcel(s) or unit(s) designated for the location of target units. The approval and recordation shall take place prior to final map approval, or, where a map is not being processed, prior to issuance of building permits for such parcels or units. The density bonus housing agreement shall be binding to all future owners and successors in interest.
- C. **Required Items.** In addition to the density bonus application required under Section 20.305.070, the density bonus housing agreement shall include the following:
1. The total number of units approved for the housing development, including the number of target units and density bonus units.
 2. A description of the household income group to be accommodated by the housing development, as outlined in section 20.305.030 (State Density Bonuses and Concessions), and the standards for determining the corresponding affordable rent or affordable sales price and housing cost.
 3. The household/unit size assumptions used for the purpose of calculating housing costs, which shall be as follows (unless an adjustment is agreed to by the City, or the applicable state or federal funding source has different requirements):
 - a. One (1)-bedroom units shall be based on the median income for a household of two (2)
 - b. Two (2)-bedroom units shall be based on the median income for a household of three (3)
 - c. Three (3)-bedroom units shall be based on the median income for a household of four (4)
 - d. Four (4)-bedroom units shall be based on the median income for a household of five (5)
 4. The location, unit size (square feet), and number of bedrooms of target units.
 5. Tenure of restrictions for target units of at least fifty-five (55) years, in accordance with section 20.305.050 (Requirements).
 6. A schedule for completion and occupancy of target units.

7. A description of the additional incentive(s), equivalent financial incentives, or direct financial assistance being provided by the City.
 8. A description of remedies for breach of the agreement by either party (the City may identify tenants or qualified purchasers as third-party beneficiaries under the agreement).
 9. For for-sale units, conditions governing the initial sale and resale of for-sale target units to eligible very-low- or low-income households or qualifying residents to ensure continued compliance with the restrictions of this chapter.
 10. For for-sale units, a condition requiring disclosure by the developer to the buyer of for-sale target units of the existence of the deed restrictions affecting the re-sale of the property.
 11. For rental units, conditions establishing rules and procedures for qualifying tenants, setting rental rates, filling vacancies, and operating and maintaining units as rental target units.
 12. For rental units, a method to annually monitor rental target units to ensure continued compliance with the restrictions of this chapter that identifies the number of bedrooms and monthly rent or cost of each target unit, the income of each person occupying said unit for the prior year, vacancy information for each target unit for the prior year, and any other information as required by the City.
 13. A provision allowing the City or its designee the first right of refusal to buy the rental or for-sale target unit(s) for the purposes of providing affordable housing.
 14. Other provisions needed to ensure implementation and compliance with this chapter and Sections 65915 through 65918 of the California Government Code.
- D. **Review.** For purposes of this chapter, the City shall act by and through the City Council or its designee, the City Manager.

Section 20.305.090 Commercial Development Bonus

- A. **Incentive Grant.** The City shall grant a development bonus to a commercial developer that enters into an agreement for partnered housing with a housing developer to contribute affordable housing through a joint project or two separate projects encompassing affordable housing.
- B. **Agreement for Partnered Housing.** The agreement for partnered housing shall be between the commercial developer and the housing developer, and shall identify how the commercial developer will contribute affordable housing. The City must approve any such agreement for partnered housing.
- C. **Construction.** Housing may be constructed on the site of the commercial development or on a site specified under Government Code Section 65915.7, as amended from time to time.

- D. **Housing Density Bonus and Additional Incentives.** A development bonus granted to a commercial developer shall not impact a housing developer's ability to receive a density bonus or other additional incentives from the City under this chapter.
- E. **City Council Review.** Any commercial development bonus project shall be reviewed by the City Council.
- F. **Sunset Provision.** This section shall remain in effect until January 1, 2022, and as of that date, is repealed, or until such time as the State repeals Government Code Section 65915.7.

Section 20.305.100 Processing Fee

- A. The City Council, by resolution, may establish fees for projects requesting density bonuses, additional incentives under Section 20.305.060 of this Chapter, and/or commercial development bonuses, and for the ongoing administration and monitoring of the target units and child care facilities. Any such fees shall be subject to the provisions of the regulatory agreement between the parties.
- B. A developer and/or subsequent owner of a target unit(s) shall be required to pay such fees as may be established by resolution of the City Council to recover the cost to the City of administration of the provisions of this chapter.

Section 20.305.110 Enforcement

The regulations of this chapter, including the terms of any density bonus housing agreement or documents prepared to administer the affordability and eligibility requirements per Section 20.305.040 (Affordability and Occupancy Standards), shall be enforced according to the provisions in chapter 20.550 (Enforcement and Penalty) of this Zoning Ordinance.

Section 20.305.120 Appeal Process

- A. An applicant may submit a request to appeal a decision of the Director to deny an application for a density bonus, incentive or concession submitted under this Chapter. A written appeal shall be filed with the Director, together with the payment of any required fee, within ten (10) days of the decision. The appeal request shall contain the reasons for the appeal and the grounds upon which the appeal is based. The Planning Commission shall hold a hearing on the appeal after giving notice thereof to the appellant in the manner prescribed in Chapter 20.505 (Noticing and Public Hearings) of this Zoning Ordinance. The Planning Commission shall consider the appeal and shall either affirm the decision of the Director or render its decision de novo on the appeal. The decision of the Planning Commission in the case of any such appeal shall be the final determination of the City.
- B. Any other denials issued by the Director or Planning Commission relating to the overall project approval shall be subject to the appeal provisions under Chapter 20.545 (Appeals and Revocation) of this Zoning Ordinance.

- C. An applicant may also elect to initiate judicial proceedings to contest the City's denial of an application for a density bonus, incentive or concession, as authorized under Government Code section 65915.

Section 20.305.130 Severability

If any provision of this chapter or the application thereof is held to be invalid, the remainder of the chapter and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.