

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE ADDING A NEW CHAPTER 20.190 TO TITLE 20 OF THE SAN JOSE MUNICIPAL CODE AND AMENDING SECTION 5.08.450 OF CHAPTER 5.08 OF TITLE 5 OF THE SAN JOSE MUNICIPAL CODE TO IMPLEMENT CALIFORNIA GOVERNMENT CODE SECTIONS 65915 ET SEQ. (STATE HOUSING DENSITY BONUSES AND INCENTIVES LAW) AND PROVIDE AFFORDABLE HOUSING INCENTIVES CONSISTENT WITH THE SAN JOSE GENERAL PLAN

WHEREAS, pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that the proposed Ordinance is pursuant to, in furtherance of and within the scope of the previously approved program evaluated in the Final Program Environmental Impact Report for the Envision San José 2040 General Plan (the "FEIR"), for which findings were adopted by City Council through its Resolution No. 76041 on November 1, 2011, and Supplemental EIR Resolution No. 77617, adopted by City Council on December 15, 2015, and Addenda thereto and does not involve new significant impacts beyond those analyzed in the FEIR or the Supplemental EIR;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. A new chapter is added to Title 20 of the San José Municipal Code, to be numbered, entitled and to read as follows:

CHAPTER 20.190
AFFORDABLE HOUSING DENSITY BONUSES AND INCENTIVES

20.190.010 Purpose

The purpose of this Chapter is to:

- A. Specify how the City will implement the requirements of California Government Code Section 65915 *et seq.* ("State Housing Density Bonuses and Incentives Law"); and
- B. Facilitate the development of affordable housing consistent with the goals, objectives, and policies of the City's General Plan Housing Element as may be amended from time to time.

20.190.020 Definitions

- A. All terms used in this Chapter that are defined in the State Housing Density Bonuses and Incentives Law shall have meaning established by the State Housing Density Bonuses and Incentives Law, as the same may be amended from time to time. As of date of publication of the ordinance adopting this Chapter 20.190, the following terms are defined in the State Housing Density Bonuses and Incentives Law: Affordable Rent; Affordable Housing Cost; Child Care Facility; Density Bonus; Housing Development; Development Standard; Incentive; Low, Very Low, or Moderate Income; Maximum Residential Density; Qualifying Mobilehome Park; and Senior Citizen Housing Development.
- B. All terms used in this Chapter that are defined in Chapter 20.200 of this Code shall have the meaning established in Chapter 20.200. Where terms that are defined in the State Housing Density Bonuses and Incentives Law are inconsistent with the definitions of the same terms set forth in Chapter 20.200 of

this Code, the meaning of the terms in the State Housing Density Bonuses and Incentives Law shall prevail.

C. Whenever the following terms are used in this Chapter, they shall have the meaning established by this Section:

1. "Applicant" means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities who seeks a Discretionary Approval from the City for a Housing Development and also includes the owner of the property if the Applicant does not own the property on which the Housing Development is proposed.
2. "Approval Authority" means the person or body within the City that is authorized to provide initial Discretionary Approval of a Housing Development.
3. "Density Bonus Units" means those dwelling units granted pursuant to the provisions of this Chapter that exceed the otherwise Maximum Residential Density for a Housing Development Site that are established in the City's General Plan.
4. "Director" means the Director of Planning, Building and Code Enforcement.
5. "Discretionary Approval" means any approval related to a Housing Development that requires the exercise of judgment or deliberation by the Approval Authority including, but not limited to, development exceptions, variances, Development Permits, general plan and specific plan approvals

and amendments, zoning ordinances and amendments, and tentative maps.

6. "Non-Restricted Unit" means any dwelling unit within a Housing Development excluding the Restricted Affordable Units.
7. "Regulatory Agreement" means a recorded and legally binding agreement on a form approved by the City, executed by the Applicant and ensuring that the requirements of this Chapter are satisfied. A Regulatory Agreement, among other things, shall establish: the number of Density Bonus Units and Restricted Affordable Units, their size, location, terms and conditions of affordability or age restrictions for Senior Citizen Housing Development units, the identity of any Incentives and the development production schedule, and provision for the payment of the City's cost of monitoring compliance with the Regulatory Agreement and this Chapter.
8. "Restricted Affordable Unit" means a dwelling unit within a Housing Development that will be available at an Affordable Rent or Affordable Housing Cost as specified in the State Housing Density Bonuses and Incentives Law.
9. "State Housing Density Bonuses and Incentives Law" means Government Code Section 65915 *et seq.* and all amendments and additions thereto, now or hereinafter enacted, that impose requirements applicable to the City related to the provision of housing Density Bonus(es) and Incentives.
10. "Unobstructed Access" means having a path of travel that is always publicly accessible.

20.190.030 Density Bonuses

A. Density Bonus Units

The City will grant Density Bonus(es) if required by the State Housing Density Bonuses and Incentives Law when an Applicant timely requests such a Density Bonus for a Housing Development and agrees to execute and record a Regulatory Agreement providing for the construction and maintenance of Restricted Affordable Units or Senior Citizen Housing Development units as specified by the State Housing Density Bonuses and Incentives Law.

B. Density Bonus Calculations

The number of required Restricted Affordable Units, Senior Citizen Housing Development units and permitted Density Bonus Units shall be calculated in accordance with the State Housing Density Bonuses and Incentives Law.

C. Replacement of Pre-Existing Very Low or Low Income Units

1. An Applicant shall be ineligible for a Density Bonus or any other Incentives or waiver or modification of Development Standards under this Chapter if the Housing Development is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five (5) 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; or subject to any other form of rent or price control through a public entity's valid exercise of its police power; or

occupied by Low or Very Low Income households, unless the proposed Housing Development replaces those units, and either of the following applies:

- a. The proposed Housing Development, inclusive of the units replaced pursuant to this paragraph, contains Restricted Affordable Units at the percentages specified in the State Housing Density Bonuses and Incentives Law.
 - b. Each unit in the Housing Development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a Low or Very Low Income household.
2. For the purposes of Subsection C.1, "replace" shall mean either of the following:
- a. If any dwelling units described in Subsection C.1. are occupied on the date of submission of the application for a Housing Development, the proposed Housing Development shall provide at least the same number of units of equivalent size or type, or both, 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 households in occupancy. For unoccupied dwelling units described in Subsection C.1, in a development with occupied units, the proposed Housing Development shall provide units of equivalent size or type, or both, 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 in the same proportion of affordability as the

occupied units. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least fifty-five (55) years. If the proposed development is for-sale units, the units replaced shall be subject to Section 20.190.100.C.5.

- b. If all dwelling units described in Subsection C.1 have been vacated or demolished within the five (5) year period preceding the Application, the proposed Housing Development shall provide Restricted Affordable Units equal to or greater than the maximum number of Units of equivalent size or type, or both, as existed at any point in time in the five (5) year period 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, if known. If the incomes of the persons and families in occupancy at that time is not known, then one-half of the required units shall be made available at Affordable Rent or Affordable Housing Cost to, and occupied by, Very Low Income persons and families and one-half of the required units shall be made available for rent at Affordable Housing Cost to, and occupied by, Low Income persons and families. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least fifty-five (55) years. If the proposed development is for-sale units, the units replaced shall be subject to 20.190.100.C.5.

20.190.040 Additional Density Bonuses and State Incentives

A. Land Donation and Transfer for Very Low Income Units

The City will grant additional Density Bonuses if required by the State Housing Density Bonuses and Incentives Law for land donation and transfer for Very Low Income Restricted Affordable Units, when an Applicant requests an additional Density Bonus, the Applicant donates and transfers to the City, or a housing developer approved by the City, land that is acceptable to the City for the development of Very Low Income Restricted Affordable Units in accordance with the requirements of the State Housing Density Bonuses and Incentives Law.

B. Condominium Conversion

If required by the State Housing Density Bonuses and Incentives Law, the City will grant a Density Bonus, or at the City's option, provide other Incentives of equivalent financial value, for the conversion of apartments to condominiums, if no prior Density Bonus was awarded for the apartments, the Applicant agrees to pay for the reasonably necessary administrative costs incurred by the City pursuant to this Subsection B, and the Applicant: 1) is seeking approval to convert apartments to a condominium project; 2) requests an additional Density Bonus; and 3) agrees to provide Restricted Affordable Units as specified by the State Housing Density Bonuses and Incentives Law and this Chapter 20.190. Nothing contained in this Section shall be construed to require the City to approve a proposal to convert apartments to condominiums.

C. Child Care Facility

The City will grant an additional Density Bonus, if required by the State Housing Density Bonuses and Incentives Law, when an Applicant provides a Child Care Facility as specified in the State Housing Density Bonuses and Incentives Law, or at the City's option, provide an additional Incentive that contributes significantly to the economic feasibility of the construction of the Child Care Facility, unless the City finds, based upon substantial evidence, that the community has adequate Child Care Facilities. The Child Care Facility shall be required to 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 and the Child Care Facility shall meet or exceed the attendance percentages for children of Very Low, Low and Moderate Income as specified in the State Housing Density Bonuses and Incentives Law.

D. Maximum Parking Ratios

Upon the request of the Applicant, the City will apply the maximum parking ratios set forth in the State Housing Density Bonuses and Incentives Law for vehicular parking, inclusive of parking for people with disabilities and guest parking, in a Housing Development that qualifies for a Density Bonus, except where the City is allowed to impose a higher parking ratio under the State Housing Density Bonuses and Incentives Law, based on either an area-wide, or jurisdiction-wide, parking study conducted within the seven (7) years prior to the date of the request.

20.190.050 Development Standards for Restricted Affordable Units

A. Concurrent Construction

Restricted Affordable Units shall be constructed concurrently with Non-Restricted Units unless both the City and the Applicant agree within the Regulatory Agreement to an alternative schedule for construction.

B. Design Standards

Restricted Affordable Units shall be built on-Site and be dispersed within the Housing Development, except as approved by the City and expressly permitted in the Regulatory Agreement. The design, square footage, appearance and general quality of the Restricted Affordable Units shall be compatible with the design of the Non-Restricted Units in the Housing Development. In order to achieve compatibility, Restricted Affordable Units shall be located so as not to create a geographic concentration of Restricted Affordable Units within the Housing Development; the quality of exterior design and overall quality of construction of the Restricted Affordable Units shall be consistent with the exterior design of all Non-Restricted Units in the Housing Development; the design, square footage, appearance, finishes, features and general quality of the Restricted Affordable Units shall be functionally equivalent to the Non-Restricted Units; Restricted Affordable Units shall have functionally equivalent parking to Non-Restricted Units; and except as may be modified pursuant to a Regulatory Agreement, shall meet all Site, design, and construction standards included in Title 17 (Buildings and Construction), Title 19 (Subdivisions), and Title 20 (Zoning) of this Code, and shall also comply with all design guidelines included in applicable specific plans or otherwise adopted by the City Council, and all

administrative regulations adopted pursuant to Section 20.190.110 for the implementation of this Chapter 20.190.

20.190.060 City Density Development Incentives

A. General

In addition to the parking Incentive required by the State Housing Density Bonuses and Incentives Law, the City will provide up to three (3) Incentives as specified in this Section 20.190.060 to an Applicant for a Housing Development that qualifies for a Density Bonus based on the provision of Affordable Restricted Units, if required by the State Housing Density Bonuses and Incentives Law.

B. Parking and Setback Incentives

If an Applicant for a Housing Development that qualifies for a Density Bonus based on the provision of Restricted Affordable Units requests one of the following Incentives, the grant of the Incentive will be deemed to be required in order to provide the Affordable Restricted Units and, in the absence of substantial evidence to the contrary, will be deemed not to have a specific adverse impact upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and not to be contrary to state or federal law:

1. The following reduction in the number of parking spaces required under Chapter 20.90 of this Code, if over and above the reduction that is required under the State Housing Density Bonuses and Incentives Law:

TABLE 20-290

Restricted Affordable Units or Category	Reduced No. of Parking Spaces Required (if a reduction results in a negative number then the required number of parking spaces will be zero.)	
Very Low Income	0 to 1 bedroom unit	0
	2 to 3 bedroom unit	0.25
	4 or more bedroom unit	0.5
Low Income	0 to 1 bedroom unit	0.25
	2 to 3 bedroom unit	0.5
	4 or more bedroom unit	0.75
Moderate Income	0 to 1 bedroom unit	0.5
	2 to 3 bedroom unit	0.75
	4 or more bedroom unit	1

2. The following reduction in the Setback Area, Front that would otherwise be required under Chapter 20.30 of this Code:

TABLE 20-300

Housing Type	
Very Low Income	A 1 foot reduction in the otherwise applicable setback for a Housing Development with 5% Restricted Affordable Units; 1 additional foot reduction for each additional 2% increase in the number of Restricted Affordable Units; to a maximum 5 foot reduction.
Low Income	A 1 foot reduction in the otherwise applicable setback for a Housing Development with 10% Restricted Affordable Units; 0.5 additional foot reduction for each additional 2.5% increase in the number of Restricted Affordable Units; up to a maximum 5 foot reduction.
Moderate income	A 1 foot reduction in the otherwise applicable setback for a Housing Development with 10% Restricted Affordable Units; 0.5 additional foot reduction for each additional 7% increase in the number of Restricted Affordable Units; up to a maximum 5 foot reduction.

3. The following reduction in the Setback Area, Rear Interior that would otherwise be required under Chapter 20.30 of this Code:

TABLE 20-310

Housing Type	
Very Low Income	A 1 foot reduction in the otherwise applicable setback for a Housing Development with 5% Restricted Affordable Units; 1 additional foot reduction for each additional 2% increase in the number of Restricted Affordable Units; to a maximum 5 foot reduction.
Low Income	A 1 foot reduction in the otherwise applicable setback for a Housing Development with 10% Restricted Affordable Units; 0.5 additional foot reduction for each additional 2.5% increase in the number of Restricted Affordable Units; to a maximum 5 foot reduction.
Moderate income	A 1 foot reduction in the otherwise applicable setback for a Housing Development with 10% Restricted Affordable Units; 0.5 additional foot reduction for each additional 7% increase in the number of Restricted Affordable Units; to a maximum 5 foot reduction.

4. The following reduction in the Setback Area, Rear Corner that would otherwise be required under Chapter 20.30 of this Code:

TABLE 20-320

Housing Type			
Zone	R-1-8, R-1-5, R-1-2, R-1-1, R-1-1-RR, R-2	R-M	R-MH
Very Low Income	A 1 foot reduction in the otherwise applicable setback for a Housing Development with 5% Restricted Affordable Units; additional 1 foot reduction for each additional 2% increase in the number of Restricted Affordable Units; to a maximum 5 foot reduction.	A 1 foot reduction in the otherwise applicable setback for a Housing Development with 5% Restricted Affordable Units; additional 1 foot reduction for each additional 1% increase in the number of Restricted Affordable Units; to a maximum 5 foot reduction.	A 1 foot reduction in the otherwise applicable setback for a Housing Development with 5% Restricted Affordable Units; additional 1 foot reduction for each additional two percent 2% increase in the number of Restricted Affordable Units; to a maximum 3 foot reduction.

<p>Low Income</p>	<p>A 1 foot reduction in the otherwise applicable setback for a Housing Development with 10% Restricted Affordable Units; additional 0.5 foot reduction for each additional 2.5% increase in the number of Restricted Affordable Units; to a maximum 5 foot reduction.</p>	<p>A 1 foot reduction in the otherwise applicable setback for a Housing Development with 10% Restricted Affordable Units; additional 1 foot reduction for each additional 2% increase in the number of Restricted Affordable Units; to a maximum 5 foot reduction.</p>	<p>A 1 foot reduction in the otherwise applicable setback for a Housing Development with 10% Restricted Affordable Units; additional 1 foot reduction for each additional 5% increase in the number of Restricted Affordable Units; to a maximum 3 foot reduction.</p>
<p>Moderate income</p>	<p>A 1 foot reduction in the otherwise applicable setback for a Housing Development with 10% Restricted Affordable Units; additional 0.5 foot reduction for each additional 7% increase in the number of Restricted Affordable Units; to a maximum 5 foot reduction.</p>	<p>A 1 foot reduction in the otherwise applicable setback for a Housing Development with 10% Restricted Affordable Units; additional 1 foot reduction for each additional 3% increase in the number of Restricted Affordable Units; to a maximum 5 foot reduction.</p>	<p>A 1 foot reduction in the otherwise applicable setback for a Housing Development with 10% Restricted Affordable Units; additional 0.5 foot reduction for each additional 15% increase in the number of Restricted Affordable Units; to a maximum 3 foot reduction.</p>

5. Reduction in the number of vehicle parking spaces required under Chapter 20.90 of this Code, over and above the reduction that is required under the State Housing Density Bonuses and Incentives Law, as follows:

TABLE 20-330

	Vehicle Parking Required
SRO facilities within ½ mile of an existing major transit stop as defined in the California Public Resources Code Section 21064.3 as may be amended or an existing stop along a high-quality transit corridor as defined in the California Public Resources Code Section 21155 as may be amended - for each Very Low and Low Income Unit	0
SRO facilities not within ½ mile of existing transit stop - for each Very Low and Low Income Unit	.25 per unit

C. Other Incentives

If an Applicant requests any Incentive(s) other than those specified in Subsection B above and provides the Incentive information required in Section 20.190.080.B.3 below, the Incentive will be granted unless the Approval Authority makes a written finding, based upon substantial evidence, of any of the following:

1. The Incentive would not result in identifiable and actual cost reductions to provide for Affordable Housing Costs or Affordable Rents for the Restricted Affordable Restricted Units; or
2. The Incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Government Code Section 65589.5, upon public health and safety or the physical environment or on any real property that is 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 Housing Development unaffordable to Low- and Moderate-Income households.

3. The Incentive would be contrary to state or federal law.

D. Limitation on Total Number of Incentives Allowed

If any type of incentive has been granted for Restricted Affordable Units under any other provision of this Code, including but not limited to incentives for Inclusionary Units under Chapter 5.08 of this Code, such other incentives shall be counted toward the number of Incentives required under this Chapter 20.190.

20.190.070 Waiver or Modification of Development Standards

An Applicant may apply for a waiver or modification of Development Standards that will have the effect of physically precluding the construction of a Housing Development at the densities or with the Incentives permitted by this Chapter. The Applicant bears the burden of proving that the Development Standard(s) that is/are requested to be waived or modified will have the effect of physically precluding the construction of a Housing Development with the Density Bonus or Incentive requested under this Chapter.

20.190.080 Application Requirements and Timing

A. General

Any Density Bonus, Incentive, waiver, or modification sought by an Applicant shall be made pursuant to this Chapter.

B. Timing of Application and Information to be Submitted

1. An application for a Density Bonus, Incentive, waiver or modification of Development Standard shall be submitted to the Approval Authority and processed by the Approval Authority concurrently with the earliest date after the effective date of the ordinance adopting this Chapter 20.190 of the following requests for Discretionary Approval:
 - a. A request for an increase in general plan maximum housing density or approval of a change in use to allow residential development;
 - b. An application for zoning change or zoning amendment that would affect maximum housing density;
 - c. The first application for a Development Permit for a Housing Development; or
 - d. An application for subdivision map approval for a Housing Development.

2. No application or Density Bonus, Incentive, waiver or modification of Development Standard shall be deemed received until the following have been provided:
 - a. All fees for the application as set forth in the schedule of fees established by resolution of the City Council have been paid. No fee shall be deemed received until any negotiable instrument has been cleared and funds deposited on the City's account.

- b. All documents specified in this Chapter or on the application form have been filed.
3. The application shall be on a form prescribed by the Director and shall include the following information:
 - a. A brief description of the proposed Housing Development, including the total number of dwelling units, Restricted Affordable Units, and Density Bonus Units proposed.
 - b. The current zoning district(s) and general plan land use designation(s) and assessor's parcel number(s) of the project Site, and a description of any Density Bonus, Incentive, or waiver/ modification requested.
 - c. A vicinity map and preliminary Site plan, drawn to scale, including building footprints, driveway and parking layout.
 - d. If an Incentive is requested, a brief explanation as to the actual cost reduction achieved through the Incentive and how the cost reduction would result in identifiable and actual cost reductions to provide for Affordable Housing Costs or Affordable Rents for the Restricted Affordable Units.
 - e. If modification or waiver of a Development Standard is requested, an explanation of how the Development Standard would have the effect of physically precluding the construction of a Housing Development at the densities or with the Incentives permitted by this Chapter.

- f. A Site plan showing location of Non-Restricted Units, Restricted Affordable Units, and Density Bonus Units within the proposed Housing Development.
- g. Level of affordability of the Restricted Affordable Units and proposed method to ensure affordability.
- h. For Incentives that are not included within Subsection B. of Section 20.190.060, the Application must include:
 - i. Reasonable documentation that each requested Incentive will result in identifiable and actual reductions to provide the Restricted Affordable Units. Such evidence may include the submittal of the project pro forma to the Approving Authority, providing evidence that the requested Incentives would result in identifiable, financially sufficient, and actual cost reductions.
 - ii. The cost documentation shall include all of the following items:
 - a) The actual cost reduction achieved through the Incentive;
 - b) Evidence that the cost reduction will result in identifiable and actual reductions to provide the Restricted Affordable Units; and

- c) Such other information as may be requested by the Director of the Planning, Building and Code Enforcement Department or the Director of the Housing Department, or their designee(s), which additional financial information may include, but is not limited to, information regarding capital costs, equity investment, debt service, projected revenues, operating expenses, and such other information as either Director deems necessary to allow the Approving Authority to evaluate the financial information submitted by the Applicant.
 - d) If the application is for approval of Mixed Use where Mixed Use would not otherwise be allowable, evidence that the proposed non-residential use will reduce the cost of the Housing Development, and that the non-residential use is compatible with the proposed Housing Development and other existing or planned development in the area where the proposed Housing Development will be located.
4. If an Incentive, or waiver or modification of Development Standard is requested, submittal of information sufficient to allow the Approving Authority to assess whether any requested Incentive, or waiver or modification of Development Standard will have a specific adverse impact, or on any real property that is listed in the California Register of Historical Resources, or if there is such an impact, an analysis of potential methods to satisfactorily mitigate or avoid the specific adverse impact without

rendering the Housing Development unaffordable to Low-and Moderate-Income households, and the feasibility of such methods.

5. If an Incentive, or waiver or modification of Development Standard is requested, submittal of environmental information sufficient to allow the Approving Authority to assess whether any requested Incentive, or waiver or modification of Development Standard would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Government Code Section 65589.5, and to analyze whether there are feasible potential methods to satisfactorily mitigate or avoid the specific adverse impact without rendering the Housing Development unaffordable to Low- and Moderate-Income households. Submittal of such environmental information as is required for a project subject to the California Environmental Quality Act ("CEQA"), Public Resources Code Section 21000 *et seq.*, and the CEQA Guidelines shall be submitted in satisfaction of this requirement, even if the Housing Development would otherwise be exempt from CEQA.
6. If a waiver or modification of a Development Standard is requested, submittal of evidence that the Development Standard for which the waiver is requested will have the effect of physically precluding the construction of the Housing Development with the Density Bonus and Incentives requested.
7. If a Density Bonus or Incentive is requested for a land donation, the application shall identify the location of the land to be dedicated and shall include proof of Site control and evidence that all of the conditions for a land transfer Density Bonus that are specified in the State Housing Density Bonuses and Incentives Law will be met.

8. If a Density Bonus or Incentive is requested for a Child Care Facility, the application shall identify the location and square footage of the Child Care Facility and include evidence that all of the conditions for a Child Care Facility Density Bonus or Incentive that are specified in the State Housing Density Bonuses and Incentives Law will be met.
9. If a Density Bonus or Incentive is requested for a condominium conversion, the Applicant shall provide evidence that all of the conditions for a condominium conversion Density Bonus that are specified in the State Housing Density Bonuses and Incentives Law will be met.

20.190.090 Application Review and Approval Process

A. General

An application for a Density Bonus, Incentive, waiver or modification of Development Standards shall be acted upon by the Approval Authority. The granting of a Density Bonus or Incentive shall not be deemed approval of the entire project, nor to affect or constrain the exercise of discretion for any subsequent approval that may be required for the project. No application shall be accepted for a Density Bonus for a Site on which a prior Density Bonus has been approved, unless the Applicant waives any right to proceed with the project as approved with the prior Density Bonus.

B. Conditions of Approval

Before approving an application for a Density Bonus, Incentive, waiver or modification of Development Standards the Approval Authority must make the following findings based on evidence in the record, as applicable, that:

1. The Housing Development is eligible for a Density Bonus and any Incentives, waivers or modifications requested.
2. If the Density Bonus is based all or in part on donation of land, a finding that all of the requirements for a land transfer Density Bonus that are specified in the State Housing Density Bonuses and Incentives Law have been or will be met.
3. If the Density Bonus or Incentive request is based all or in part on the inclusion of a Child Care Facility, a finding that all of the requirements for a Child Care Facility Density Bonus that are specified in the State Housing Density Bonuses and Incentives Law have been or will be met.
4. If the Incentive request is for a Mixed-Use development, a finding that all the requirements for a Mixed-Use Incentive development approval that are specified in the State Housing Density Bonuses and Incentives Law have been or will be met.
5. If the Incentive includes a request for approval of condominium conversion, a finding that all the requirements for a condominium conversion Incentive that are specified in the State Housing Density Bonuses and Incentives Law have been or will be met.

C. Conditions for Denial

1. The Approval Authority may deny an application for a Density Bonus if the findings required by Subsection B.1 above, as applicable, cannot be made.
2. The Approval Authority may deny an application for an Incentive other than the Incentives specified in Section 20.190.060 based on a written finding based on substantial evidence that the Incentive will not result in identifiable and actual cost reductions to provide for Affordable Rent or Affordable Housing Cost.
3. The Approval Authority may deny an application for a waiver or modification of a Development Standard based on a written finding based on substantial evidence that application of the Development Standard will not have the effect of physically precluding the construction of the Housing Development at the densities or with the Incentives permitted by the State Housing Density Bonuses and Incentives Law.
4. The Approval Authority may deny an application for Incentive, waiver or modification if one of the following written findings is made, supported by substantial evidence:
 - a. The Incentive, waiver or modification of Development Standard would have a specific, adverse impact, as defined in Government Code Section 65589.5 (d)(2), upon public health or safety or the physical environment or on real property listed in the California Register of Historic Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without

rendering the Housing Development unaffordable to households of Low and Moderate Income. For the purpose of this Subsection, "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 that the application for the Housing Development was deemed complete; or

- b. The Incentive, waiver or modification of Development Standard is contrary to state or federal law.
5. Nothing in this Chapter 20.190 limits the City's right to deny an affordable housing project under Government Code Section 65589.5.
6. Nothing in this Chapter 20.190 shall be construed to require the City to grant a Density Bonus or Incentive or any Site or portion of a Site that is designated in the General Plan Land Use/Transportation Diagram for non-residential use.

20.190.100 Regulatory Agreement

A. General

Applicants for a Density Bonus, Incentive, waiver or modification of Development Standards shall enter into a Regulatory Agreement with the City. The terms of the draft Regulatory Agreement shall be reviewed and revised as appropriate by the Director and the City Attorney. The final Regulatory Agreement, as approved by the City Attorney, shall be executed by the Applicant and forwarded to the Approval Authority for final approval.

B. Timing of Agreement Approval

Approval of the Regulatory Agreement by the Approval Authority shall take place concurrently with the Discretionary Approval that is being processed with the Density Bonus application.

C. Agreement Terms and Conditions

The Regulatory Agreement shall include at a minimum all of the following:

1. The total number of dwelling units approved for the Housing Development, including the number of Restricted Affordable Units and/or Senior Citizen Housing Development units;
2. A description of the household income group to be accommodated by the Restricted Affordable Units, and the standards for determining the corresponding Affordable Rent or Affordable Housing Cost;
3. The location, dwelling unit sizes (square feet), and number of bedrooms of the Restricted Affordable Units and/or Senior Citizen Housing Development units;
4. Term of use restrictions for Restricted Affordable Units and/or Senior Citizen Housing Development units for the minimum period(s) of time, and age restrictions if applicable, specified in the State Housing Density Bonuses and Incentives Law;

5. Requirements to ensure that the initial occupants of all for-sale units that qualified the Applicant for the award of the Density Bonus are persons and families of Very Low, Low, or Moderate Income, as required, and that the units are offered at an Affordable Housing Cost, as that cost is defined in Section 50052.5 of the Health and Safety Code and/or meet the requirements for Senior Citizen Housing Development units as specified in the State Housing and Density Bonuses and Incentives Law. The Regulatory Agreement for for-sale Restricted Affordable Units shall include the following equity sharing provisions, unless it is in conflict with the requirements of another public funding source or law:
 - a. 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. The City shall recapture any initial subsidy, as defined in Subsection 5.d., and its proportionate share of appreciation, as defined in Subsection 5.c., which amount shall be used within five (5) years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote home ownership.
 - b. For purposes of this Section 20.190.100, 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 to the moderate-income household, 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.

- c. For purposes of this Section 20.190.100, the City's proportionate share of appreciation shall be equal to the ratio of the City's initial subsidy to the fair market value of the home at the time of initial sale.
6. A schedule for completion and occupancy of the Restricted Affordable Units;
7. A description of any Incentive, waiver or modification of Development Standards, if any, being provided by the City;
8. A description of remedies for breach of the Regulatory Agreement, including at the City's option, the identification of tenants or qualified purchasers as third party beneficiaries under the Regulatory Agreement;
9. A termination provision stating that any granted Density Bonus and Incentive(s) shall terminate with the demolition, destruction or other removal of the structure receiving the Density Bonus and/or Incentive(s);
10. A provision stating that the Regulatory Agreement shall be binding to all future owners and successors in interest; and
11. Other provisions to ensure implementation and compliance with this Chapter.

D. Recordation

Following execution of the Regulatory Agreement, the Regulatory Agreement shall be recorded on the property subject to the Regulatory Agreement.

20.190.110 Regulations

The Director is hereby authorized to promulgate forms, policies and regulations for the implementation of this Chapter, including but not limited to, applications for additional Incentives, waiver or modification of Development Standards, terms and conditions for the Regulatory Agreement as approved by the City Attorney, and applications for modification of the Regulatory Agreement.

SECTION 2. Section 5.08.450 of Chapter 5.08 of Title 5 of the San José Municipal Code, is amended to read as follows:

5.08.450 On-Site Inclusionary Housing Incentives

A. The Developer of a Residential Development providing all required Inclusionary Units upon the same site as the market-rate units pursuant to Section 5.08.400 may, at the Developer's sole option and concurrently with the submittal of the Affordable Housing Plan, and the earlier of the zoning or Planning Permit application for requests pursuant to Subsections 2_ and 3_ herein, submit a written request for density bonus, waivers one or more of the following on-site inclusionary housing development or incentives pursuant to California Government Code Section 65915 et seq. and Chapter 20.190 of this Code, :

~~1. Density Bonus. The Residential Development may receive a density bonus if the Residential Development includes the provision of affordable Inclusionary Units within the Residential Development that meets the minimum thresholds for density bonus pursuant to California Government Code Section 65915 et seq. For Residential Projects qualifying for a density bonus pursuant to this Subsection 1, the City shall, upon request of the Applicant at the time of~~

~~application for the First Approval, authorize a density bonus in the amount specified in California Government Code section 65915 unless such a density bonus would cause a specific adverse impact to the public health, safety and welfare, including but not limited to historic or natural resources or the environment. The City shall not provide any other incentives or concessions, other than those listed in this Section 5.08.450, in addition to such density bonus.~~

- ~~2. Flexible Parking Standards. The Developer may request a reduction in the maximum number of parking spaces required or other parking requirements for the Residential Development pursuant to Title 20 herein, which shall not cause a specific adverse impact to the public health, safety and welfare, including but not limited to historic or natural resources or the environment, and which also complies with the minimum requirements for the provision of parking for the disabled.~~
- ~~3. Reduction in Minimum Setback Requirements. The Developer may request a reduction in the minimum setback requirements for the Residential Development, which shall not cause a specific adverse impact to the public health, safety and welfare, including but not limited to historic or natural resources or the environment.~~
- ~~4. Alternative Unit Type. The Developer may request to provide Inclusionary Units within the Residential Development that are of a different Unit Type than the Market Rate Units within the Residential Development. The Inclusionary Units shall have the same bedroom count and percentage distribution among the units as the Market Rate Units.~~

- ~~5. Alternative Interior Design Standards. Except as may otherwise be required by federal or state law, the Developer shall provide the same amenities for the Inclusionary Units as the Market Rate Units, but may request to provide different but functionally equivalent amenities for the Inclusionary Units within the Residential Development than the Market Rate Units.~~
 - ~~6. City Process Assistance. The Developer may request the City to provide assistance to the Developer by explaining the City's development review process for the Residential Development, financing alternatives, and assistance in the sale or rental of the inclusionary units to qualified households at an Affordable Housing Cost. The City shall provide assistance as to the City's requirements for such Inclusionary Housing only, and shall not be considered in any manner an employee, agent or consultant of the Developer.~~
 - ~~7. Financial Subsidies. The Developer may apply for financial subsidies for the Inclusionary Units from any available federal and state funding sources, or may work with the City to apply for such sources on its behalf. The Developer may also apply for financial subsidy from City-administered funds for the difference in costs that results if the Developer provides more Inclusionary Housing Units or all units in the Residential Development as Inclusionary Units at an Affordable Housing Cost to households in income classifications that are lower than required for the Residential Development pursuant to Section 5.08.400.~~
- B. Affordable Housing Plan. The incentives requested by the Developer of the Residential Development shall be included in the proposed Affordable Housing Plan submitted at the time of application for the First Approval, and any incentives authorized by the City pursuant to ~~this Section 5.08.450~~Chapter 20.190 of this Code shall be included in the Affordable Housing Plan, if approved by the City, for the Residential Development.

~~C. Inclusionary Housing Guidelines. The provision of incentives pursuant to this Section 5.08.450 shall also be in accordance with the Inclusionary Housing Guidelines.~~

PASSED FOR PUBLICATION of title this _____ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk