CITY COUNCIL AGENDA REPORT

DEPARTMENT: Community Development Department **MEETING DATE:** September 16, 2025

STAFF REFERENCE: Jennifer Driver, Senior Planner **AGENDA LOCATION:** PH-1

GOVERNMENT CODE SECTION 84308 APPLIES: No

TITLE: Amendment to Title 17 (Zoning Code) of the Monrovia Municipal Code, Adding Chapter 17.38 ("Density Bonus") and Section 17.52.380 to the Monrovia Municipal Code, and Deleting Section 17.44.020 from the Monrovia Municipal Code; Introduction and First Reading of Ordinance No. 2025-09

OBJECTIVE: To establish local Density Bonus regulations and Affordable Housing Agreement requirements in Title 17 (Zoning) in compliance with State Law

BACKGROUND: As the City Council is aware, housing development has been a statewide priority in California for over 50 years. This priority stems from the passage of the State's Housing Element Law in 1969, which requires all cities and counties to engage in comprehensive planning to identify and address their housing needs as part of their General Plans. The Housing Element is a critical component of the General Plan because it establishes policies aimed at reducing regulatory barriers and lowering the cost of housing production, thereby promoting a more sustainable and equitable housing market.

Monrovia's Housing Element Commitment

Monrovia's current Sixth Cycle 2021-2029 Housing Element was certified by California's Department of Housing and Community Development (HCD) on December 29, 2022. One of the most critical sections of the Housing Element is the "Housing Plan." This plan integrates the City's long-term housing goals with short-term policies and programs that help guide housing decisions throughout the 2021-2029 planning period.

Since the Housing Element's certification, the City has made efforts to complete the housing programs that were noted in the State's certification letter as being *priority* actions. Noteworthy accomplishments include, but are not limited to, the implementation of by-right multifamily housing allowances, the adoption of objective design standards for multifamily development, the update of Accessory Dwelling Unit (ADU) regulations to reflect new State Law requirements, and the adoption of an Inclusionary Housing ordinance. As noted in this year's Annual Report on the Status of the General Plan, the next priority action to complete is the adoption of a Density Bonus Ordinance that incentivizes affordable housing development in compliance with State Law.

Density Bonus

One of the State's primary tools to streamline housing development reviews is the Density Bonus Law, which was enacted in 1979. Under Government (Gov't) Code Sections 65915–65918 (State Density Bonus Law), the State requires cities to incentivize the private production of on-site affordable and special-needs housing by granting additional units and concessions/incentives—such as increased height, reduced parking requirements, and modified setback standards—in exchange for dedicating a percentage of units as affordable. Over the decades, the Legislature has expanded eligibility to include deeper affordability tiers and new populations—seniors, childcare facilities, foster youth, disabled veterans, and students—and has refined bonus calculations and concession requirements with each update. While past Density Bonus projects reviewed by the City have focused on increases in the number of allowed housing units, the City has not experienced a Density Bonus application that serves these new

populations. Nevertheless, the proposed Ordinance does include requirements in alignment with State Law to accommodate future needs for these affordability tiers and populations.

State law requires every jurisdiction to adopt a local ordinance implementing these provisions. To align Monrovia's Zoning Code with the latest State Density Bonus Law requirements, staff proposes Ordinance No. 2025-09 ("Attachment A"), which consolidates Density Bonus regulations into Monrovia Municipal Code (MMC) Chapter 17.38. In summary, Ordinance No. 2025-09 achieves the following two goals:

1. It incorporates the State-mandated components, including key definitions, eligibility thresholds, application procedures, and review timelines, and removes obsolete provisions currently contained in Title 17 of the MMC. It does not establish any additional local concessions, incentives, waivers, parking reductions, or review processes beyond what is required by State law, and

2. It fulfills the City's commitment in Program 1.3 of the 6th Cycle 2021–2029 Housing Element to streamline review and facilitate the development of affordable housing. In short, the Ordinance implements the minimum requirements of State Density Bonus Law, ensuring local regulations remain consistent with State standards.

On August 13, 2025, the Planning Commission conducted a duly noticed public hearing on Ordinance No. 2025-09. At the conclusion of the hearing, the Commission unanimously recommended that the City Council adopt Ordinance No. 2025-09. Additional information regarding the Planning Commission's input after the public hearing may be found on page 7 of this report.

ANALYSIS: To meet the affordable housing goals outlined in the Housing Element, staff has prepared a new Density Bonus Ordinance which improves upon and replaces the obsolete Affordable Housing Ownership Incentive Program (MMC Section 17.44.020) and implements density bonuses and other concessions/incentives pursuant to Govt. Code Section 65915.

Monrovia's Proposed Density Bonus Ordinance (Ordinance No. 2025-09)
Proposed Ordinance No. 2025-09 aligns Monrovia's density bonus provisions with recent amendments to State Density Bonus Law and enhances the City's ability to support equitable, efficient, affordable housing development.

The proposed Ordinance introduces a comprehensive framework that:

- Includes all density bonus provisions provided for in State law—including Concessions, Incentives, Waivers, and parking reductions—in a new standalone chapter (Chapter 17.38);
- Updates definitions, eligibility criteria, application procedures, and review timelines;
- Clarifies how density bonus provisions interact with the City's Inclusionary Housing requirements (Chapter 17.42);
- Eliminates outdated or conflicting code sections, including the repeal of obsolete Section 17.44.020; and
- Establishes clear, objective procedures for reviewing Density Bonus projects that comply with the Housing Accountability Act (HAA), ensuring requests for Concessions, Incentives, Waivers, or parking reductions are evaluated consistently and any denials are supported by the findings required under State law.

The following summary provides an overview of the proposed Ordinance, including eligibility criteria, density bonus levels based on affordability, and the types of Concessions/Incentives and Waivers that may be granted. It also covers how the City will administer, monitor, and enforce these provisions to streamline the review process for qualifying housing projects and ensure long-term compliance with affordability requirements.

Project Eligibility

Any residential or mixed-use project with five or more dwelling units, regardless of whether the units are for sale or for rent, may qualify for a Density Bonus. To be eligible, a development must reserve a minimum percentage of its Base Density (the maximum number of units permitted under the existing zoning or land use designations) for affordable housing. Once the minimum threshold is met, the project becomes eligible for a corresponding automatic increase in allowable units. The increase is based on the proportion of affordable units that will be deed-restricted relative to the Base Density.

Affordability and Density Bonus Increase Requirements

State Density Bonus Law identifies three affordable income levels that qualify for density bonuses: Very Low Income, Low Income, and Moderate Income. The minimum required percentage of affordable units and the corresponding density bonuses for each category are summarized in **Table 1a** below:

Table 1a – Minimum Affordable Units and Density Bonuses

Income Level	Minimum Percentage Affordable Units	Density Bonus Increase
Very Low Income	5%	20%
Low Income	10%	20%
Moderate Income	10%	5%

The Density Bonus increases incrementally based on the percentage of affordable units, up to the maximums shown in **Table 1b**. The complete Density Bonus table, showing all qualifying percentages of affordability and corresponding density bonuses, is included in "Attachment B."

Table 1b– Maximum Affordable Units and Density Bonuses

Income Level	Maximum Percentage Affordable Units	Density Bonus Increase
Very Low Income	15%	50%
Low Income	24%	50%
Moderate Income	44%	50%

In some cases, a project may qualify for a "stacked density bonus" by exceeding the maximum affordability thresholds in multiple income categories. To be eligible for a stacked density bonus, the project must first meet the maximum percentage required in Table 1b for one income level, then provide additional affordable units in the Very Low or Moderate Income categories, as outlined in the following **Table 2a**. All affordability percentages and density bonus calculations are based on Base Density.

Table 2a – Additional Stacked Density Increase

Additional Percentage of Base Density	Density Bonus Percentage	
	Very-Low-Income	Moderate-Income
5%	20%	20%
6%	23.75%	22.5%
7%	27.5%	25%
8%	31.25%	27.5%
9%	35%	30%
10%	38.75%	32.5%
11%	-	35%
12%	-	38.75%
13%	-	42.5%
14%	-	46.25%
15%	-	50%

The stacked density bonus amounts listed in Table 2a are cumulative, meaning they are added to the bonus earned under Table 1b. For example, a development that provides 15% of the units for Very Low Income households (earning a 50% bonus) and an additional 15% of the units for Moderate Income

households (earning another 50% bonus) would be allowed a 100% density bonus (50% + 50%). A summary of available stacked density bonus increases is included in **Table 2b** in "Attachment B."

Concessions, , Waivers, and Parking Reductions

The purpose of a Density Bonus is to provide a range of incentives that help make affordable and special-needs housing developments financially feasible. In addition to increased density, some projects also will be entitled to certain concessions designed to further incentivize the development of affordable units. A project may be eligible for multiple types of assistance; however, project developers sometimes decide not to use all of the options available for their projects. The types of assistance that are available for an eligible project include:

1. **Concessions and Incentives.** The terms "Concession" and "Incentive" are used interchangeably in State Density Bonus Law. They allow for a reduction in a Development Standard or other land use requirements, such as height, setbacks, floor area ratio, or open space, or other regulatory incentives, which *result in identifiable and actual cost reductions* for the project. The number of Concessions/Incentives a project can receive depends on the percentage and income level of the affordable units provided. **Table 3** outlines the maximum number of Concessions/Incentives allowed based on the percentage of affordable units offered.

Table 3 – Concessions/Incentives

Number Allowed	Very-Low-Income Percentage	Low-Income Percentage	Moderate-Income Percentage	Low-Income Student Housing Percentage
1	5%	10%	10%	20%
2	10%	17%	20%	-
3	15%	24%	30%	-
4	16%	-	45%	-
5	100% of the units, excluding the manager's unit, with no more than 20% of the units being moderate income.			-

When a project includes a request for one or more Concessions/Incentives, the City will require the developer to provide sufficient documentation demonstrating that the requested relief is necessary *to make the housing project economically feasible*. The City must approve the request, unless the City makes any of the following findings based on substantial evidence:

- The Concession/Incentive would not result in identifiable and actual cost reductions to provide for affordable housing costs, or for rents for the targeted units to be set as specified in State Density Bonus Law,
- The Concession/Incentive would have a specific adverse impact on public health and safety, or on a registered Historical Resource, and/or
- The Concession/Incentive is contrary to state or federal law.

2. **Waivers or Reductions of Development Standards.** A Waiver may be requested for any Development Standard that would *physically prevent the project from being built* at the permitted density and with the granted Concessions/Incentives. There is no limit to the number of Waivers that may be requested and granted, and receiving a Waiver does not reduce the number of Concessions/Incentives that an applicant may otherwise qualify for.

   State Density Bonus Law does not prohibit the City from requesting the developer to demonstrate that the Waiver is necessary to make the project physically feasible. However, similar to Concessions/Incentives, the City must approve the request, unless the City makes any of the following findings based on substantial evidence:

   - The Waiver would have a specific adverse impact on public health and safety,
   - The Waiver would have a specific adverse impact on a registered Historical Resource,
   - The Waiver is contrary to state or federal law, and/or

- The Development Standard proposed to be waived or reduced would not physically preclude the construction of the project at the permitted density and with the granted Concessions/Incentives.

3. **Maximum Parking Requirements.** State Density Bonus Law limits the amount of parking a city can require for projects that qualify for a Density Bonus. These limits are lower than Monrovia's standard parking requirements for multifamily residential development and automatically apply to eligible projects. The maximum parking requirements are as follows:

    - 1 space per studio or one-bedroom unit,
    - 1.5 spaces per two- or three-bedroom unit, and
    - 2.5 spaces per unit with four or more bedrooms.

    It is important to note that developers may request further reductions below these limits by applying for a Concession/Incentive or Waiver, as permitted under State Density Bonus Law.

Application Process

In accordance with State Density Bonus Law, a request for any of the following must be submitted at the same time the formal application for a discretionary or ministerial permit is submitted: Density Bonus, Concession/Incentive, or Waiver of a development standard. No separate discretionary approval or additional project fees are needed to evaluate the request. The review process will occur concurrently with the discretionary or ministerial permit.

The proposed Ordinance outlines the following submittal requirements to ensure a clear and streamlined application process. In addition, to assist applicants further, staff will be preparing "City of Monrovia Density Bonus Guidelines" to summarize key provisions of the proposed Ordinance and State Density Bonus Law following the adoption of Ordinance 2025-09. These guidelines are intended to assist property owners, developers, and City staff with implementing the State Density Bonus Law and proposed MMC Chapter 17.38 in a user-friendly manner.

1. **Required Application Materials** (MMC Section 17.38.050) **–** Applicants must submit the following:

    - Project Summary – The summary must include the Base Density, the requested bonus percentage, total housing unit count, and affordability breakdown by income level.

    - Site and Floor Plans – Both the existing and proposed plans will be required.

    - Affordable Housing Plan – The affordable housing plan must provide the unit mix, location of affordable units, design features, and proposed covenant term (55 years for rental units or 45 years for ownership units).

    - Property Owner's Formal Letter Request – The letter shall detail Desired Bonus units, Concessions/Incentives, Waivers, and/or parking reductions.

    - Supporting Documentation – This includes justification for each requested Concession/Incentive or Waiver.

2. **Completeness Review –** Staff will review the submittal within 30 days (Gov't Code Section 65943) and notify the applicant of any deficiencies before formal review begins.

3. **Review and Decision –** The Decision-Making Body for an applicant's underlying permit (Community Development Director, Development Review Committee, Planning Commission, or City Council) will evaluate the application's conformity with State Density Bonus Law and proposed MMC Chapter 17.38. It is important to note: A denial of requested Concessions/Incentives or Waivers must be supported by written findings based on substantial evidence, as indicated earlier in this report.

4. **Post-Approval Requirements –** An Affordable Housing Agreement (MMC Section 17.52.380) will be required to be executed and recorded *before* issuance of building permits. Minor adjustments

related to unit floor plans and/or minor façade changes may be approved administratively so long as the overall Total Unit and Affordable Housing Unit counts remain unchanged.

Inclusionary Housing Ordinance and Density Bonus Ordinance Relationship

Projects subject to the City's recently adopted Inclusionary Housing Ordinance (MMC Chapter 17.42) may also become eligible for Density Bonuses and related incentives under State Density Bonus Law. In these cases, the Affordable Units required under the Inclusionary Housing Ordinance can be used to fulfill State Density Bonus eligibility thresholds.

Under this combined framework:

1. Developers must include required Inclusionary Units in the initial Density Bonus application;

2. Inclusionary percentages apply only to Base Units, and not to units added through a Density Bonus; and

3. The required Inclusionary Units may also be used to qualify for Density Bonus units, Concessions/Incentives, Waivers, or parking reductions under Gov't Code Section 65915.

Table 4 identifies the Inclusionary Housing requirements based on project size and the corresponding allowed Density Bonus based on the provided affordability level.

Table 4 – Inclusionary Housing and Density Bonus Relationship

Inclusionary Housing Requirements		Can Receive up to this Percentage Density Bonus with this Type of Affordability Percentage:		
Project Size/ Tenure Thresholds	Corresponding Affordability Percentage	Very Low Income	Low Income	Moderate Income
5-20 Rental Units	6%	22.5%	none*	none*
21-50 Rental Units	10%	32.5%	20%	none*
51+ Rental Units	15%	50%	27.5%	none*
5+ For-Sale Units	10%	32.5%	20%	5%

* Note: Density Bonus Law has no corresponding density bonus percentage for this affordability tier.

Based on these parameters, the following is an example that highlights a hypothetical Inclusionary Housing / Density Bonus project that streamlines both local and State-mandated affordability obligations.

> **Example:** A 50-unit rental project must set aside 10% of its **base** units (5 units) for affordability to satisfy Inclusionary Housing requirements. If those five units serve Very Low Income households, then the developer may increase total density by **32.5%** above the base allowance. This results in a total of 67 units, five of which are restricted to Very Low Income households in exchange for 17 additional Density Bonus Units.

In this example, the 5 Very Low Income units meet both the City's Inclusionary Housing and Density Bonus requirements.

Affordable Housing Implementation, Monitoring, and Enforcement

Similar to the City's Inclusionary Housing Ordinance, the proposed Density Bonus Ordinance requires participating projects to execute and record an Affordable Housing Agreement. To improve clarity and reduce redundancy, proposed Ordinance No. 2025-09 consolidates and relocates all Affordable Housing Agreement requirements for both Density Bonus and Inclusionary Housing projects into a new MMC section (Section 17.52.380) under Title 17 (Zoning), Chapter 17.52 (Administration). This new MMC Section 17.52.380 ensures that Inclusionary Housing and Density Bonus projects follow the same agreement process and enforcement framework, streamlining administration and improving consistency.

The requirements for the Affordable Housing Agreement outline the long-term affordability and compliance obligations, including but not limited to ongoing income verification, maximum allowed rental/sales prices, annual compliance reporting, equity provisions on resale, and remedies for noncompliance.

Planning Commission Public Hearing

Ordinance No. 2025-09 began its public review process on July 24, 2025, when the Notice of Public Hearing was published in the *Beacon Media News*.

Public Input Received Before the Planning Commission Hearing

Before the Planning Commission hearing on August 13, 2025, the City received one public comment letter from the California Housing Defense Fund (CHDF) ("Attachment C"). CHDF raised concerns that specific provisions of the draft ordinance could be inconsistent with California's Density Bonus Law and suggested the law should be implemented without additional restrictions. The letter also noted that requirements regarding affordable unit design, location, and access might affect the feasibility of some projects, such as those using Low-Income Housing Tax Credits (LIHTC).

The City Attorney's Office reviewed these comments and provided clarification regarding the Ordinance's alignment with State law. The City Attorney's analysis concluded that Government Code Section 65915(a)(1) requires a local ordinance to describe how the Density Bonus Law will be implemented, and Monrovia's draft ordinance fulfills this function by defining how affordable units, incentives/concessions, and waivers apply. Because State law does not prescribe specific unit sizes or physical characteristics, the ordinance is not in conflict with State requirements. Additionally, Government Code Section 65915(e)(1) allows developers to request waivers if a design, location, or access requirement would physically preclude a qualifying density bonus project.

Planning Commission hearing (August 13, 2025)

A public hearing was held on August 13, 2025. City staff presented the Ordinance, and City Consultant David Blumenthal, AICP (Sagecrest Planning + Environmental), was available for questions. After the presentation, Commissioners discussed the draft ordinance, and staff responded to the questions raised and summarized below.

1. *Does the ordinance change State parking, waiver, or concession standards, or add requirements beyond State law?*

   The Ordinance codifies only the minimum requirements of State Density Bonus Law (Government Code Section 65915). It does not alter State standards for parking, concessions, or waivers, nor does it add Monrovia-specific thresholds or processes.

2. *Are 100% affordable housing projects subject to California Constitution Article 34 voter approval?*

   No. Article 34 applies only to "low-rent housing projects" developed, owned, or financed by a public agency. Privately owned 100% affordable projects that do not use public financing or property tax exemptions are not considered Article 34 projects and therefore do not require voter approval. This ordinance relates to density bonuses and other incentives for developers to provide affordable units within larger projects, which is not covered by Article 34's requirements.

3. *Who decides whether to grant or deny a concession or waiver, and how is the decision justified?*

   Requests are reviewed by the appropriate decision-making body (Community Development Director, Development Review Committee, Planning Commission, or City Council). Applicants must demonstrate either (a) a cost reduction (Concessions/Incentives) or (b) that a development standard physically precludes the project (Waivers). The City also considers impacts to public safety or historic resources, and compliance with State or federal law. Any denial must include written findings as required by § 65915(d) and (e).

4. *Who monitors affordability requirements, and must the City report affordable units to the State?*

Property owners are responsible for verifying and re-verifying tenant eligibility, typically through income documentation, at initial occupancy and annually thereafter, pursuant to affordability covenants between the City and the developer. Affordability covenants are recorded and enforced locally for 55 years (rentals) or 45 years (ownership). Additionally, Planning staff maintains a database of all affordable units (Density Bonus, Inclusionary, senior, etc.) and submits an annual report to HCD. State law does not require HCD to pre-approve household eligibility determinations.

5. *Do density bonus concessions or waivers exempt a project from prevailing wage requirements?*

   Prevailing wage rules come from State and federal labor laws and cannot be waived through a Density Bonus application. Only City-established development standards may be waived through the Ordinance and State Density Bonus Law.

6. *How does the City determine maximum sales prices for affordable ownership units?*

   Sales prices are capped so that target-income households pay no more than 30% of gross income. The prices are calculated using AMI (Area Median Income) limits and assumptions for mortgage rates, taxes, insurance, and down payments. Covenants record the maximum price for the initial and all future sales.

7. *Can an affordable ownership unit transfer to an heir without first being offered to the City?*

   The Ordinance a establishes a right of first refusal for the City or a qualified non-profit after the affordability term expires and before a unit is advertised for sale, ensuring an opportunity to preserve the unit as affordable housing. The right of first refusal does not apply during the affordability period, and would not affect transfers to qualifying owners (including family members) during that period. In all cases, the recorded affordability covenant ensures the unit remains affordable during the required term.

8. *Why might affordable units have different interior finishes than market-rate units?*

   Affordable units are required to match market-rate units in outward appearance and amenities. Developers may, however, choose to use cost-effective interior finishes to help reduce production costs to offset overall construction costs for the project.

9. *May a developer subdivide existing units into "micro-units" to increase density?*

   Unless requested and approved as a Concession/Incentive or Waiver, units created through the use of the Density Bonus Law are required to comply with the City's minimum unit size requirements based on the number of bedrooms.

During the public testimony portion of the hearing, no individuals from the public spoke.

At the close of the public hearing, the Commission unanimously adopted Planning Commission Resolution No. 2025-0002 by a 7-0 vote, recommending approval of Ordinance No. 2025-09 to the City Council.

Ordinance No. 2025-09 fulfills the City's obligation to implement Program 1.3 of Monrovia's adopted 6th Cycle Housing Element and provides a means to increase the supply of affordable housing throughout Monrovia. It incorporates all the required components of State Density Bonus Law. It does not establish any additional local concessions, incentives, waivers, parking reductions, or review processes beyond what is required by State law. By aligning local regulations with State Law, streamlining the review process, and strengthening enforcement, the City will continue to increase on-site affordable housing and make significant progress toward its RHNA (Regional Housing Needs Allocation) targets.

ENVIRONMENTAL IMPACT: This Ordinance implements Program 1.3, in part, of the 6th Cycle Housing Element. An Initial Study/Mitigated Negative Declaration (IS/MND) was adopted for, and analyzed the

impacts of, the Housing Element and its Programs. Adopting this Density Bonus Ordinance is within the scope of that IS/MND and would not result in a new substantial change or introduce new information of substantial importance that was not previously considered in the IS/MND. This Ordinance is therefore exempt from further environmental analysis pursuant to California Code of Regulations (CCR) Section 15162(a); therefore, no further action is required under CEQA.

FISCAL IMPACT: There is no direct fiscal impact associated with the approval of this application.

OPTIONS: The following options are presented for consideration:

1. Introduce Ordinance No. 2025-09, amending Title 17 (Zoning Code) of the Monrovia Municipal Code by adding Chapter 17.38 ("Density Bonus") and Section 17.52.380 ("Affordable Housing Agreement") to the Monrovia Municipal Code and deleting Section 17.44.020 ("Affordable Housing Ownership Incentive Program") from the Monrovia Municipal Code, and find that the adoption of the Ordinance to be exempt from review under the California Environmental Quality Act, following the public hearing; or

2. Continue the Public Hearing and request more information from staff before taking action.

RECOMMENDATION: Staff recommends Option 1.

COUNCIL ACTION REQUIRED: If the City Council concurs, following the public hearing, the appropriate action would be a motion to introduce, read by title only, and waive further reading of Ordinance No. 2025-09.

ATTACHMENT “A”

Ordinance No. 2025-09

ORDINANCE NO. 2025-09

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONROVIA, CALIFORNIA, AMENDING MONROVIA MUNICIPAL CODE SECTIONS 17.04.080, 17.08.010, 17.08.020, 17.42.030 AND 17.42.120; ADDING CHAPTER 17.38 AND SECTION 17.52.380 TO THE MONROVIA MUNICIPAL CODE; AND DELETING SECTION 17.44.020 FROM THE MONROVIA MUNICIPAL CODE AND FINDING ADOPTION OF THE ORDINANCE TO BE CATEGORICALLY EXEMPT FROM REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

THE CITY COUNCIL OF THE CITY OF MONROVIA, CALIFORNIA does ordain as follows:

SECTION 1. On November 1, 2022, the City Council of the City of Monrovia adopted Resolution 2022-51, thereby adopting the 6th Cycle Housing Element for the 2021-2029 planning period.

SECTION 2. On December 29, 2022, the California Department of Housing and Community Development (HCD) certified the adopted Housing Element was in full compliance with State Housing Element Law (Article 10.6 of the California Government Code).

SECTION 3. Program 1.3 of the 6th Cycle Housing Element states the City will implement the Planning Housing Opportunities for Monrovia (Planning HOMe) program, which among other items includes updating the City's density bonus regulations.

SECTION 4. On August 13, 2025, the Planning Commission of the City of Monrovia conducted a duly noticed public hearing on Ordinance No. 2025-09. At the hearing, all interested persons were given the opportunity to be heard. The Planning Commission received and considered the staff report and all the information, evidence and testimony presented in connection with this Ordinance. Following the close of the public hearing, the Planning Commission adopted Resolution No. 2025-0002 recommending approval of Ordinance No. 2025-09 to the City Council.

SECTION 5. On September 16, 2025, the City Council of the City of Monrovia conducted a duly noticed public hearing on Ordinance No. 2025-09. At the hearing, all interested persons were given the opportunity to be heard. The City Council received and considered the staff report, the Planning Commission's recommendation, and all the information, evidence, and testimony presented in connection with this Ordinance.

SECTION 6. Pursuant to the California Environmental Quality Act ("CEQA") and the State CEQA Guidelines, the City Council in its own independent judgement has reviewed the whole record and has determined that Ordinance No. 2025-09 is exempt

from further environmental review pursuant to CEQA Guidelines Section 15162(a), because the proposed Monrovia Municipal Code amendments will implement Program 1.3, in part, of the City's 6th Cycle Housing Element. An Initial Study/Mitigated Negative Declaration (IS/MND) (SCH: 2022080729) was adopted for, and analyzed the impacts of, the Housing Element and its Programs. Adopting the density bonus ordinance is within the scope of that IS/MND and would not result in a new substantial change or introduce new information of substantial importance that was not previously considered in the IS/MND.

SECTION 7. The custodian of records for all materials that constitute the record of the proceedings upon which this decision is based is the City Clerk. Those documents are available for public review in the Office of the City Clerk located at 415 South Ivy Avenue, Monrovia, California 91016.

SECTION 8. The introductory paragraph of Section 17.04.080 of Chapter 17.04 of Title 17 (Zoning) of the Monrovia Municipal Code is hereby amended to read as follows:

"For the purpose of this title, words, phrases and terms shall have the meaning ascribed to them in this section. Also see §§ 17.08.030, 17.10.020, 17.12.005(B), 17.14.050(B), 17.24.170(B), 17.28.020, 17.28.100, 17.38.020, 17.40.040, 17.42.030, 17.44.005(A), 17.44.010(B), 17.44.050(B), 17.44.053(B), 17.44.055(B), 17.44.057(B), 17.44.103(B), 17.44.104(B), 17.44.105(B), 17.44.170(C), 17.44.190(K), 17.44.195(B), 17.44.215(A), 17.46.020, 17.46.060(F), 17.46.100(A), 17.46.120(A), and 17.52.327(B) for additional definitions. When consistent with the context, words used in the present tense include the future; words in the singular number include the plural; and those in the plural number include the singular; the word "shall" is mandatory; the word "may" is permissive."

SECTION 9. Section 17.04.080 of Chapter 17.04 of Title 17 (Zoning) of the Monrovia Municipal Code is hereby amended to add the following definitions to the list of terminology and general definitions in alphabetical order. Any existing term or definition not expressly amended herein shall remain unchanged:

"AFFORDABLE HOUSING AGREEMENT. A legally binding, recorded, written agreement between an applicant and the City that runs with the land, and is satisfactory to the City Attorney in form and substance, ensuring compliance with the requirements of Gov't Code Section 65915 and Chapters 17.38 and 17.42 of the Monrovia Municipal Code.

AFFORDABLE HOUSING COST. The maximum monthly amount allowed for an owner or renter to pay for an affordable unit in accordance with California Health and Safety Code Sections 50052.5 and 50053, adjusted for household size and income level, less the appropriate allowance for utilities and other permitted costs.

CHILDCARE FACILITY. Has the meaning set forth in Gov't Code Section 65915(h), and means a child daycare facility, other than a Family Day Care Home, including, but not limited to, infant centers, preschools, extended daycare facilities, and school-age

childcare centers. Childcare facility does not include public or private primary or secondary education facilities.

CONDOMINIUM CONVERSION. The conversion of existing apartments, or other rental units, into ownership property that consists of an undivided interest in common in a portion of real property coupled with a separate interest within the boundaries of the dwelling unit.

DECISION-MAKING BODY*.* The City decision-making body acting on an application for a housing development subject to the requirements of this Title, including the City Council, Planning Commission, Development Review Committee, or Community Development Director.

DENSITY BONUS. Has the meaning set forth in Gov't Code Sections 65915(f) and 65915.5(b), as either may be amended from time to time, and means a density increase over the maximum allowable residential density permitted under applicable zoning and Land Use Element of the General Plan as of the date of application. An applicant shall not be granted a Density Bonus greater than that permitted by Chapter 17.38 or by State law.

MAJOR TRANSIT STOP. Has the meaning set forth in Public Resources Code Sections 21064.3 and 21155(b) and means a site containing an existing rail or bus rapid transit station or the intersection of two (2) or more major bus routes with a frequency of service interval of 20 minutes or less during the morning and afternoon peak commute periods; or any other transit stop identified as a "major transit stop" by the Southern California Association of Governments (SCAG) in the most recent adopted version of the regional transportation plan.

SPECIFIC ADVERSE IMPACT. Has the meaning set forth in Gov't Code Section 65589.5(d)(2), and includes: 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 Revenue and Taxation Code Section 214(g)."

SECTION 10. Section 17.08.010 of Chapter 17.08 of Title 17 (Zoning) of the Monrovia Municipal Code is hereby amended to delete the "Affordable housing (with incentives)" use from the table of permitted uses (text to be deleted is shown in ~~strikethrough~~):

Use	Reference	RF RE RL	RM RM /R H	RH	NC	CR S RC C	RC M	O/ RD / LM	BE	M	P/ QP
Residential Uses											

~~Affordable housing (with incentives)~~	~~17.44.020~~		~~C~~	~~C~~	~~C~~						

SECTION 11. Section 17.08.020 of Chapter 17.08 of Title 17 (Zoning) of the Monrovia Municipal Code is hereby amended to add the following use alphabetically into the Special References Use/Activity table:

Special References Use/Activity	Requirement Review	Code Reference
Density Bonus	Director/DRC/PC/CC	Chapter 17.38

SECTION 12. Section 17.08.030 of Chapter 17.08 of Title 17 (Zoning) of the Monrovia Municipal Code is hereby amended to delete the term "Affordable housing" from the use type explanations (text to be deleted is shown in ~~strikethrough~~):

~~***AFFORDABLE HOUSING.*** Housing in which at least 20% of the dwelling units are "covenant restricted" for a minimum of 30 years for occupancy by low or moderate income households. The housing type may be single-family dwellings or multiple-family and shall be ownership housing.~~

SECTION 13. Chapter 17.38 is hereby added to Title 17 (Zoning) of the Monrovia Municipal Code to read as follows:

"CHAPTER 17.38
DENSITY BONUS

§ 17.38.010 INTENT AND PURPOSE

The purpose of this Chapter is to facilitate the development of affordable housing and to implement the goals, objectives, and policies of the City's Housing Element, to comply with Government (Gov't) Code Sections 65915 et seq., commonly referred to as State Density Bonus Law, as the same may be amended from time to time, which shall govern the interpretation and implementation of this Chapter. This Chapter provides regulations for considering density bonus, concession or incentive, or waiver or reduction of a development standard requests for the development of housing that is affordable to acutely-, extremely low-, very low-, low-, and moderate-income households; foster youth;

disabled veterans; homeless persons; lower-income students; and senior citizens or other qualified residents, in accordance with State Density Bonus Law. In the case of any conflict between this Chapter and State Density Bonus Law, the specific provisions of State Density Bonus Law will prevail.

§ 17.38.020 DEFINITIONS

The following definitions shall be applicable to this Chapter:

AFFORDABLE HOUSING UNIT (DENSITY BONUS). Means a residential dwelling unit in a housing development that is subject to affordability restrictions established in accordance with this Chapter and Gov't Code Section 65915. For rental housing, an affordable housing unit (density bonus) is one for which the allowable monthly housing expenses—including rent, utilities, and other permitted costs—do not exceed a specified proportion of the applicable county's median income (adjusted for household size) as determined by City guidelines and applicable State law. For ownership housing, an affordable housing unit (density bonus) is one sold at an affordable sales price and housing cost and is subject to resale restrictions that preserve affordability.

BASE DENSITY. Means the maximum number of dwelling units allowed under the Zoning Ordinance, specific plan, or the General Plan Land Use Element applicable to the project, or, if a range of density is permitted, base density means the greatest number of units allowed by the specific zoning district, specific plan, or the Land Use Element Designation applicable to the project.

COMMON INTEREST DEVELOPMENT. Has the meaning set forth in Civil Code Section 4100.

CONCESSION OR INCENTIVE. Has the meaning set forth in Gov't Code Section 65915(k), which is:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable and actual cost reductions, to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in Gov't Code Section 65915(c).

(2) Approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory concessions or incentives proposed by the developer or the city, county, or city and county that result in identifiable and actual cost reductions to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in Gov't Code Section 65915(c).

DEVELOPMENT STANDARD. Has the meaning set forth in Gov't Code Section 65915(o)(2), and means a site or construction condition, including, but not limited to, a height limitation, setback requirement, floor area ratio, an onsite open-space requirement, a minimum lot area per unit requirement, or a parking ratio that applies to a housing development pursuant to any ordinance, general plan element, specific plan, or other local condition, law, policy, resolution, or regulation.

DISABLED VETERAN. Has the meaning set forth in Gov't Code Section 18541 and means any veteran who is currently declared by the United States Veterans Administration to be ten percent (10%) 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.

EQUIVALENT SIZE DWELLING UNIT. A dwelling unit that replaces another dwelling unit and contains at least the same number of bedrooms as the unit being replaced.

FOSTER YOUTH. Has the meaning set forth in Education Code Section 66025.9 and 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.

HOMELESS PERSON. Homeless person shall have the same meaning as that phrase is defined in Section 11302 of the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Ch. 119).

HOUSING DEVELOPMENT. Has the meaning set forth in Gov't Code Section 65915(i), and 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 or unimproved residential lots, and either 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 do not have to be based upon individual subdivision maps or parcels. The Density Bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

LOWER INCOME STUDENT. Has the meaning set forth in Gov't Code Section 65915(o)(4) and 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 in 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.

SENIOR CITIZEN HOUSING DEVELOPMENT. Has the meaning set forth in Civil Code Section 51.3(b)(4) and means a housing development developed, substantially rehabilitated, or substantially renovated for, senior citizens that has at least 35 dwelling units. Any senior citizen housing development which is required to obtain a public report under Section 11010 of the Business and Professions Code and which submits its application for a public report after July 1, 2001, shall be required to have been issued a public report as a senior citizen housing development under Section 11010.05 of the Business and Professions Code. No housing development constructed prior to January 1, 1985, shall fail to qualify as a senior citizen housing development because it was not originally developed or put to use for occupancy by senior citizens.

SHARED HOUSING BUILDING. Has the meaning set forth in Gov't Code Section 65915(o)(7) and means a residential or mixed-use structure, with five or more shared housing units and one or more common kitchens and dining areas designed for permanent residence of more than 30 days by its tenants. The kitchens and dining areas within the shared housing building shall be able to adequately accommodate all residents. A "shared housing building" may include other dwelling units that are not shared housing units, provided that those dwelling units do not occupy more than 25 percent of the floor area of the shared housing building. A shared housing building may include 100 percent shared housing units.

SHARED HOUSING UNIT. Has the meaning set forth in Gov't Code Section 65915(o)(7) and means one or more habitable rooms, not within another dwelling unit, that includes a bathroom, sink, refrigerator, and microwave, is used for permanent residence, that meets the "minimum room area" specified in Section R304 of the California Residential Code (Part 2.5 of Title 24 of the California Code of Regulations), and complies with the definition of "guestroom" in Section R202 of the California Residential Code. "Shared housing unit" for purposes of a residential care facility for the elderly, as defined in Section 1569.2 of the Health and Safety Code, includes a unit without an individual kitchen where a unit may be shared by unrelated persons, and a unit where a room that may be shared by unrelated persons meets the "minimum room area" requirements of the California Residential Code.

STUDENT HOUSING DEVELOPMENT. Has the meaning set forth in Gov't Code Section 65915(o)(8) and means a development that contains bedrooms containing two or more

bedspaces that have a shared or private bathroom, access to a shared or private living room and laundry facilities, and access to a shared or private kitchen.

TOTAL UNITS OR TOTAL DWELLING UNITS. Has the meaning set forth in Gov't Code Section 65915(o)(9) and means a calculation of the number of units that:

1. Excludes unit(s) added by a Density Bonus awarded pursuant to this Chapter.
2. Includes unit(s) designated to satisfy the requirements of Chapter 17.42 (Affordable Housing Requirements).

For purposes of calculating a Density Bonus granted pursuant to this Chapter for a Shared Housing Building, "unit" means one Shared Housing Unit and its pro rata share of associated common area facilities.

UNOBSTRUCTED ACCESS. Access to 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.

WAIVER**.** A waiver or reduction of a Development Standard that would have the effect of physically precluding the construction of a development eligible for a Density Bonus at the density or with the Concessions or Incentives permitted by Gov't Code Section 65915.

VERY LOW VEHICLE TRAVEL AREA. Has the meaning set forth in Gov't Code Section 65915(o)(10) and means an urbanized area, as designated by the United States Census Bureau, where the existing housing development generates vehicle miles traveled per capita that is below 85 percent of either regional vehicle miles traveled per capita or city vehicle miles traveled per capita. For purposes of this paragraph, "area" may include a travel analysis zone, hexagon, or grid. For the purposes of determining "regional vehicle miles traveled per capita" pursuant to this paragraph, a "region" is the entirety of incorporated and unincorporated areas governed by a multicounty or single-county metropolitan planning organization, or the entirety of the incorporated and unincorporated areas of an individual county that is not part of a metropolitan planning organization.

§ 17.38.030 APPLICABILITY

(A) The provisions of this Chapter shall only apply to a Housing Development with five (5) or more residential dwelling units.

(B) Projects with special targeting, including Foster Youth, Disabled Veterans, Homeless Persons, or other populations with specific needs, may be subject to additional requirements or Concessions/Incentives, as provided in applicable local, state, or federal regulations.

§ 17.38.040 DENSITY BONUS CALCULATION

The following method shall be used in determining the total number of units to be granted, including how to calculate Base Density and bonus density as well as the resulting number of affordable units needed for a given Density Bonus project. An applicant shall not be granted a Density Bonus greater than that permitted by Chapter 17.38 or by State law.

(A) Calculation.

(1) Compliance with State Density Bonus Law. All Density Bonuses shall be consistent with Gov't Code Section 65915. If the calculation under this section would result in a lesser number of affordable housing units compared to State Density Bonus Law requirements, or undermines the goals of State Density Bonus Law, State Density Bonus Law shall take precedence over this section.

(2) 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.

(3) Increased Density Limit. A Housing Development shall not exceed the cumulative total of base units allowed under the applicable zoning plus any bonus density units permitted by State Density Bonus Law and this section. No Incentive, Concession, or Development Standard Waiver shall be used to exceed this combined maximum density.

(4) Election to Accept Lesser Density Bonus. An applicant for a Density Bonus may elect to provide a lesser percentage of Density Bonus increase than what is allowed, or no density increase, but shall remain eligible for Concessions or Incentives, Waivers, and eligible parking requirements provided the project meets the eligibility requirements of this section and State Density Bonus Law.

(5) Exclusion of Density Bonus Units. The Density Bonus units shall not be included in determining the number of affordable units required to qualify a Housing Development project for a Density Bonus.

(6) Minimum Density Requirements. No Concession, Incentive, or Waiver shall be used to avoid, reduce, or otherwise circumvent the minimum required density in any zone.

(7) Multiple Eligibility Categories. If a residential development project qualifies for a Density Bonus under more than one category, such as income-based eligibility, Senior Citizen Housing, or housing designated for transitional Foster Youth, Disabled Veterans, Homeless Persons, or Lower-Income Students, the applicant must identify which categories they are using to qualify for a Density Bonus. Density Bonuses from more than one category can be combined up to the maximum allowed under Gov't Code Section 65915.

§ 17.38.050 DENSITY BONUS APPLICATION REQUIREMENTS

(A) An application for a Density Bonus, Concession or Incentive, Waiver, or revised parking standard pursuant to this Chapter shall be submitted on a form prescribed by the Community Development Director or their designee and shall include at least the following information:

(1) A legal description, address, and assessor's parcel number(s) of the project site, and present and proposed (as applicable) zoning and General Plan Land Use designation.

(2) Summary project data table showing:

(a) Base Density permitted by the zoning and General Plan excluding any Density Bonus units;

(b) When subject to Chapter 17.42 (Affordable Housing Requirements), identify the required affordability percentage, number of required units, and the targeted household income;

(c) The proposed number and percentage of affordable units by income level;

(d) Proposed Density Bonus percentage;

(e) Number of Density Bonus units proposed;

(f) The total number of dwelling units proposed on the site and offsite, as applicable; and

(g) The project's conformance to all objective Development Standards.

(3) A detailed vicinity map showing the project location and location of any off-site units, and such details as the location of the nearest commercial retail, transit stop, potential employment locations, park or recreation facilities or other social or community service facilities.

(4) Existing site plan drawn to scale, showing existing project site, showing any structures to remain and/or be demolished.

(5) Affordable housing plan for Density Bonus purposes, which shall include, but not limited to, the following:

(a) Scaled site and floor plans showing building types (attached, semi-detached, detached), tenure (for-sale or rental), unit sizes, and the number and location of market-rate units, commercial space, and Affordable Housing Units (Density Bonus).

(b) Income category assigned to each identified Affordable Housing Unit (Density Bonus) location.

(c) The phasing of the construction of the Affordable Housing Units (Density Bonus) in relation to the nonrestricted units in the Housing Development.

(6) Replacement Housing Documentation.

(a) A description of all dwelling units that existed on the site at any time during the five-year period preceding the date of submittal of the application. This documentation shall include records of rental occupancy, income levels of tenants, and any recorded covenants, ordinances, or laws restricting rents to levels affordable to low or very-low income households.

(i) Affordable Rental Units Subject to Covenants or Restrictions. If the site currently contains, or previously contained within the preceding five years prior to application submittal, rental units subject to a recorded covenant, ordinance, or law restricting rents to levels affordable to persons and families of low or very low income, replacement housing is required.

(ii) Occupied Units by Low or Very Low Income Households. If the site currently contains units occupied by low or very low income households or contains units that were rented to such households within the five years preceding the application, replacement housing is required.

(b) If any of these conditions exist on the property, the application must identify how such units will be replaced in the Density Bonus project.

(7) A letter signed by the present owner stating what specific Density Bonus, Concessions or Incentives, and Waivers are being requested from the City, and if reduced parking pursuant to State Density Bonus Law is being requested.

(8) Requested Concessions or Incentives. Applicants may request Concessions and incentives as defined in State Density Bonus Law. The applicant shall not request a number of Concessions or Incentives in excess of the number permitted by State Density Bonus Law.

For each requested Concession or Incentive, the application shall include the following minimum documentation:

(a) A clear description of the standard proposed to be modified, and the specific relief requested.

(b) Documentation sufficient for the City to determine that granting the request will result in identifiable and actual cost reductions, as follows:

(i) For all Concessions or Incentives other than the approval of mixed-use zoning:

1. Reasonable documentation demonstrating that each requested Concession or Incentive results in identifiable and actual cost reductions to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in Gov't Code Section 65915.

(ii) If the requested Concession or Incentive involves the approval of mixed-use zoning, the applicant shall demonstrate that:

1. The inclusion of nonresidential land uses will reduce the Housing Development costs;

2. The proposed nonresidential land uses are compatible with the residential component of the housing project and surrounding existing or planned development; and

(9) Requested Waivers or Reductions of Development Standards.

(a) The applicant shall identify each requested Waiver, including a description of the specific Development Standard proposed to be modified.

(b) For each requested Waiver, the applicant shall provide sufficient information for the City to determine that the Development Standard would physically preclude the construction of the residential project at the proposed density and with the requested Concessions and Incentives.

(10) 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.

(11) Requested Parking Reductions. Identify whether a reduction in the required on-site vehicular parking ratio is requested pursuant to Gov't Code Section 65915(p), as may be amended from time to time. An applicant may request this parking reduction in addition to the Concessions or Incentives, and Waivers. The application shall include a table showing parking required by the zoning regulations, parking proposed under State Density Bonus Law, and sufficient documentation that the project is eligible for the requested parking reduction.

(12) Land Donation. Applications for a Density Bonus that include a land donation to the City pursuant to Gov't Code Section 65915(g) shall show the location of the land to be donated, provide proof of site control, and provide evidence that the applicant meets all of the eligibility criteria identified in Gov't Code Section 65915(g). The donation shall be documented in a form approved by the City Attorney, and shall be made no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(13) Child Daycare Facility. Applications for a Density Bonus that include a Childcare Facility shall show the location and square footage of the Childcare Facility and provide evidence that the Housing Development conforms to all of the requirements of Gov't Code Section 65915(h).

(14) Senior Citizen Housing. Applications for Density Bonus projects that include a Senior Citizen Housing Development, as defined in Sections 51.3 and 51.12 of the Civil Code, shall document that units in the Housing Development are occupied by senior citizens or other eligible persons under State Density Bonus Law.

(15) Condominium Conversion. Applications for a Density Bonus that include a request for a Condominium Conversion shall include sufficient documentation that the project meets all of the requirements identified in Gov't Code Section 65915.5.

§ 17.38.060 DENSITY BONUS APPLICATION PROCESS.

(A) Filing and Processing Requirements. An application for a Density Bonus, Concession or Incentive, Waiver, or parking reduction pursuant to State Density Bonus Law shall be submitted concurrently with the first application for a discretionary or ministerial permit required for the Housing Development, whichever is filed first. The application shall be on a form provided by the Community Development Director, or their designee, as provided in Section 17.38.050, and processed in compliance with this Chapter and Chapter 17.52 (Administration). No additional discretionary approval shall be required solely to grant a Density Bonus or related benefit under State Density Bonus Law. The City shall notify the applicant whether the application is complete pursuant to Gov't Code Section 65943. If the underlying permit is appealed, the appeal shall be processed in accordance with Monrovia Municipal Code Sections 2.52.060 or 2.52.070, as applicable to the initial decision, and shall include any associated requests for the project made under State Density Bonus Law.

(B) General Plan and Zoning Consistency. The granting of a Density Bonus, Concession or Incentive, Waiver, or parking reduction pursuant to this chapter shall not, in and of itself, be interpreted to require a General Plan Amendment, Zoning Map Amendment, Development Code Amendment, Zone Change, other discretionary approval, or the Waiver of any City ordinance or provision thereof that is unrelated to Development Standards.

(C) Review and Decision. To ensure that an application for a Housing Development conforms with the provisions of State Density Bonus Law, the Decision-Making Body shall determine whether the application conforms to the following requirements of State Density Bonus Law and this Chapter, as applicable:

(1) Replacement Housing. The Housing Development provides the housing required by State Density Bonus Law to be eligible for a Density Bonus and any Concessions or Incentives, Waivers or reductions of Development Standards, or parking reduction requested, including required replacement housing as required by Gov't Code Section 65915(c)(3), as may be amended from time to time.

(2) Stacked Density. If applicable, the Housing Development provides the housing required by State Density Bonus Law to be eligible for an additional Density Bonus under Gov't Code Section 65915(v)(1), as may be amended from time to time.

(3) Concession or Incentive Documentation. If a Concession or Incentive is requested, sufficient documentation has been presented showing that any requested Concession or Incentive will result in identifiable and actual cost reductions to provide for affordable housing costs or rents; or, if the approval of mixed-use zoning is requested, the application must meet all of the requirements of Gov't Code Section 65915(k)(2), as may be amended from time to time.

(4) Waiver. If a Waiver is requested, the applicant shall demonstrate that the Development Standard would have the effect of physically precluding the construction of the development eligible for a Density Bonus at the allowed density, or with the Concessions or Incentives permitted by Gov't Code Section 65915.

(5) Parking Reductions. The Housing Development is eligible for any requested parking reductions under Gov't Code Section 65915(p) or other applicable law.

(6) Land Donation Bonus. If the Density Bonus is based all or in part on donation of land, the applicant meets the requirements of Gov't Code Section 65915(g), as may be amended from time to time.

(7) Childcare Facilities and Condo Conversions. If the Density Bonus, Concession, or Incentive is based all or in part on the inclusion of a Childcare Facility or Condominium Conversion, the project meets the requirements included in Gov't Code Sections 65915(h) or 65915.5, as applicable, and as may be amended from time to time.

(D) Concession and Incentive Findings. The Decision-Making Body shall grant a Concession or Incentive requested by the applicant unless it makes a written finding, based upon substantial evidence, of any of the following:

(1) The Concession or Incentive does not result in identifiable and actual cost reductions to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in Gov't Code Section 65915;

(2) The Concession or Incentive 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 Concession or Incentive would be contrary to state or federal law.

(E) Waiver Findings. The Decision-Making Body shall grant the Waiver requested by the applicant unless it makes a written finding, based upon substantial evidence, of any of the following:

(1) The proposed Waiver would be contrary to state or federal law;

(2) The proposed Waiver would have an adverse impact on any real property listed in the California Register of Historical Resources;

(3) The proposed Waiver would have a Specific Adverse Impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the Specific Adverse Impact; or

(4) The Development Standard proposed to be waived or reduced would not physically preclude the construction of the development at the densities or with the Concessions or Incentives permitted by this Chapter.

(F) Childcare Center Findings. The Decision-Making Body shall approve an additional Density Bonus or Concession or Incentive for a Childcare Facility included in a Housing Development in accordance with Gov't Code Section 65915(h), unless it finds, based on substantial evidence, that the community has adequate Childcare Facilities.

(G) Minor Modifications. A request for a minor modification of an approved Density Bonus housing plan may be granted by the Community Development Director, or their designee, if the modification substantially complies with the original plan and all conditions of approval. Modifications to the Density Bonus housing plan that do not qualify as minor shall be processed in the same manner as the original plan. Permissible minor modifications may include, but are not limited to, revisions to

internal unit layout, minor façade refinements, or limited adjustments to the building footprint, provided such changes do not increase the overall density or reduce the number of Affordable Housing Units (Density Bonus). The Community Development Director, or their designee, shall document the rationale in writing when approving a minor modification.

§ 17.38.070 AFFORDABLE HOUSING AGREEMENT

The applicant approved for a Density Bonus, Concession or Incentive, Waiver, or parking reduction under this Chapter shall enter into a binding Affordable Housing Agreement as outlined in Section 17.52.380.

§ 17.38.080 DESIGN AND DISTRIBUTION OF AFFORDABLE UNITS

Affordable Housing Units (Density Bonus) shall be designed and distributed within the Housing Development as follows:

(A) Number of Bedrooms. Affordable Housing Units (Density Bonus) shall reflect the range of numbers of bedrooms provided in the Housing Development project as a whole. For purposes of this section, the range of numbers of bedrooms shall mean the percentage of units that contain a certain number of bedrooms (e.g., if 20% of the units in a project are two-bedroom units, then 20% of the affordable units shall be two-bedroom units). The Director shall have the authority to determine a project's compliance with this section.

(B) Comparable Quality and Facilities. Affordable Housing Units (Density Bonus) shall be constructed to the same quality and exterior design as the market-rate housing units. Additionally, the Affordable Housing Units (Density Bonus) shall have access to the same laundry, recreation, and other facilities that are made available to the market-rate housing units;

(C) Access. The occupants of the Affordable Housing Units (Density Bonus) shall have the same access to common entrances and any common areas including parking areas in that development as the occupants of the market-rate housing units.

(D) Size and Finish. Subject to the requirements of this section and the Monrovia Municipal Code, Affordable Housing Units (Density Bonus) may be smaller and have different interior finishes, appliances and features than the market-rate units.

(E) Location. Affordable Housing Units (Density Bonus) shall be distributed throughout the Housing Development.

§ 17.38.090 RELATION TO INCLUSIONARY HOUSING (CHAPTER 17.42)

(A) Residential development is also subject to the Inclusionary Housing Ordinance, as codified in Monrovia Municipal Code Chapter 17.42 (Affordable Housing Requirements). Affordable units that are physically constructed as part of a Housing Development and reserved for Very Low-, Low-, or Moderate-Income Households may be used to satisfy both the requirements of the Inclusionary

Housing Ordinance and qualify the project for benefits under State Density Bonus Law, provided the units meet the standards of both programs.

(B) For projects subject to either Chapter 17.42 or this Chapter 17.38, the applicant shall execute an Affordable Housing Agreement pursuant to MMC Section 17.52.380."

SECTION 14. Section 17.42.030 of Chapter 17.42 of Title 17 (Zoning) of the Monrovia Municipal Code is hereby amended to remove the following definitions from the list of terms and definitions in Section 17.42.030. Any existing term or definition not expressly amended herein shall remain unchanged (text to be deleted is shown in ~~strikethrough~~):

~~***"AFFORDABLE HOUSING PLAN AND AGREEMENT***. A legally binding, recorded, written agreement between an applicant and the City that runs with the land, and is satisfactory to the City Attorney in form and substance, ensuring compliance with the requirements of this chapter.~~

~~***AFFORDABLE HOUSING COST***. The maximum monthly amount allowed for an owner or renter to pay for an affordable unit in accordance with California Health and Safety Code Sections 50052.5 and 50053, adjusted for household size and income level, less the appropriate allowance for utilities."~~

SECTION 15. Section 17.42.120 of Chapter 17.42 of Title 17 (Zoning) of the Monrovia Municipal Code is hereby amended to read as follows:

"**§ 17.42.120 AFFORDABLE HOUSING AGREEMENT**
The applicant of a residential development project approved pursuant to this Chapter shall enter into a binding Affordable Housing Agreement with the City or the City's designee as specified in Section 17.52.380."

SECTION 16. Section 17.44.020 of Chapter 17.44 of Title 17 (Zoning) of the Monrovia Municipal Code shall be deleted in its entirety.

SECTION 17. Section 17.52.380 is hereby added to Chapter 17.52 of Title 17 (Zoning) of the Monrovia Municipal Code and shall read as follows:

"§ 17.52.380 AFFORDABLE HOUSING AGREEMENT
The applicant of a residential or mixed-use development project approved pursuant Chapter 17.38 (Density Bonus) or Chapter 17.42 (Affordable Housing Requirements) shall agree to construct, operate and maintain affordable units in accordance with an affordable housing agreement with the City or the City's designee. 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 Chapters 17.38 and 17.42. The Affordable Housing Agreement shall be recorded and binding upon all future owners and successors in interest.

(A) Review. The form and substance of the Affordable Housing Agreement shall be in form and content acceptable to the Director and City Attorney.

(B) Fees. The City Council may establish by resolution fees associated with the setting up and monitoring of the Affordable Housing Agreement.

(C) Contents. The Affordable Housing Agreement shall include at least the following terms:

(1) Identification of Affordable Units. The agreement shall identify the total number of affordable units and the total number of units approved for the housing development. Affordable Units shall be identified by address or unit number within a single address and legal description, type (floor area, number of bedrooms/baths, etc.), and designated household income category. The Affordable Housing Agreement shall also identify the total number of affordable units and total number of units required for the housing development, and shall specify that Affordable Units shall be completed on the same schedule as similarly located market rate units.

(2) Term of Affordability. Unless specified elsewhere in Title 17 of this Code or in federal, state, or local law, affordable units shall be subject to a minimum term of fifty-five (55) years for rental units and forty-five (45) years for for-sale units at the designated household income category. Such reservation period shall begin on the date a certificate of occupancy is granted for each affordable unit.

(3) Density Bonus Projects. For Density Bonus projects subject to Chapter 17.38, all information provided in the Density Bonus application pursuant to Section 17.38.050 shall be included in the agreement.

(4) Maximum Allowable Rent or Sales Price.

(a) Rental Unit Projects. 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:

1. The rules and procedures for qualifying tenants, establishing affordable rent, filling vacancies, and maintaining the affordable units for qualified tenants.

2. Provisions requiring owners to verify tenant incomes and maintain books and records to demonstrate compliance with Chapters 17.38 and 17.42.

3. 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.

4. 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.

5. 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.

6. 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 or, if no vacancies exist at the time of the conversion, the next market rate unit that becomes available, shall then immediately be designated as an affordable unit, and the owner shall immediately attempt to secure tenants in accordance with Chapters 17.38 and 17.42. 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.

7. Subletting of Affordable Units. No subletting or short-term occupancy of designated affordable units shall be allowed.

(b) Ownership Unit Projects. In the case of for-sale residential developments, as a condition of approval of the residential development, the City Affordable Housing Agreement shall include the following additional conditions governing the initial sale and use of Affordable Units during the applicable use period:

1. Affordable Units shall be sold to eligible very low-income, low-income or moderate-income households at an affordable sales price and housing cost, or to qualifying residents in the case of a senior citizen housing development.

2. Affordable Units shall be owner-occupied by eligible Very-Low-Income, Low-Income or Moderate-Income Households, or by qualifying residents in the case of a Senior Citizen Housing Development.

3. The initial purchaser of each affordable Housing Unit shall execute an Affordable Housing Agreement approved by the Director and City Attorney restricting the sale of the Affordable Housing Unit in accordance with Chapters 17.38 and 17.42 during the applicable use restriction period. Such agreement shall be recorded against the parcel containing the affordable housing unit, shall run with the land for the term of the restriction, and shall contain such provisions as the City may require to ensure continued compliance with Chapters 17.38 and 17.42.

4. The Affordable Housing Agreement shall stipulate that, when the terms of affordability expire on an affordable unit, the City and/or a Qualified Nonprofit Housing Organization identified by the City shall have a first right of purchase option sixty (60) days prior to the affordable unit being advertised on the market.

5. For Density Bonus projects subject to Chapter 17.38, the affordable unit is subject to an equity sharing agreement that complies with Gov't Code Section 65915(c)(2), as may be amended from time to time, unless such requirement conflicts with another public funding source or law, in which case the agreement may defer to the recapture provisions of that funding source.

6. Leasing, subleasing, or other non-owner occupancy of affordable ownership units shall be prohibited, unless expressly authorized by the City or the City's designee under limited circumstances.

7. Affordable units shall be completed on the same schedule as similarly located market rate units.

(5) Monitoring of Compliance with Agreement. A monitoring program shall be required, specifying the party responsible for certifying tenant incomes and sales/rental price, maintaining the required number of affordable units for the property, marketing and filling unit vacancies. The owner or applicant shall be required to comply with the City's monitoring and compliance activities.

(6) 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).

(7) Description of Density Bonus. A description of the Density Bonus, Concessions or Incentives, Waivers, and/or reduced parking requirements, if any, being provided by the City.

(8) Schedule. A schedule for completion and occupancy of the affordable units.

(9) Other Provisions. Other provisions deemed necessary by the Director or the City Attorney to ensure implementation and compliance with Chapters 17.38 and 17.42."

SECTION 18. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 19. This Ordinance shall apply to any residential development/entitlement application that has not been deemed complete prior to the effective date of this Ordinance.

SECTION 20. This Ordinance shall take effect thirty (30) days after its final passage and adoption. A summary of this Ordinance shall be published and a certified copy of the full text of this Ordinance shall be posted in the office of the City Clerk at least five (5) days prior to the City Council meeting at which this proposed Ordinance is to be adopted. Within fifteen (15) days after adoption of this Ordinance, the City Clerk is instructed to publish a summary of this Ordinance with the names of those City Council members voting for and against this Ordinance, and the City Clerk shall post in the office of the City Clerk a certified copy of the full text of the adopted Ordinance along with the names of those City Council members voting for and against this Ordinance or amendment at least until the day of such publication.

INTRODUCED this 16th day of September, 2025

PASSED, APPROVED, AND ADOPTED this 7th day of October, 2025.

BY:

Becky A. Shevlin, Mayor
City of Monrovia

ATTEST:

Alice D. Atkins, MMC, City Clerk
City of Monrovia

APPROVED AS TO FORM:

Craig A. Steele, City Attorney
City of Monrovia

ATTACHMENT “B”

Density Bonus Summary Tables

Attachment B – Density Bonus Summary Tables

Table 1 – Required Affordable Units and Allowed Density Bonus Increases

Required Affordability	Density Bonus Percentage		
Percentage of Base	Very-Low-Income	Low-Income	Moderate-Income
5%	20%	-	-
6%	22.5%	-	-
7%	25%	-	-
8%	27.5%	-	-
9%	30%	-	-
10%	32.5%	20%	5%
11%	35%	21.5%	6%
12%	38.75%	23%	7%
13%	42.5%	24.5%	8%
14%	46.25%	26%	9%
15%	50%	27.5%	10%
16%	50%	29%	11%
17%	50%	30.5%	12%
18%	50%	32%	13%
19%	50%	33.5%	14%
20%	50%	35%	15%
21%	50%	38.75%	16%
22%	50%	42.5%	17%
23%	50%	46.25%	18%
24%	50%	50%	19%
25%	50%	50%	20%
26%	50%	50%	21%
27%	50%	50%	22%
28%	50%	50%	23%
29%	50%	50%	24%
30%	50%	50%	25%
31%	50%	50%	26%
32%	50%	50%	27%
33%	50%	50%	28%
34%	50%	50%	29%
35%	50%	50%	30%
36%	50%	50%	31%
37%	50%	50%	32%
38%	50%	50%	33%
39%	50%	50%	34%
40%	50%	50%	35%
41%	50%	50%	38.75%
42%	50%	50%	42.5%
43%	50%	50%	46.25%
44%	50%	50%	50%
100%	80%	80%	80%

Table 2a – Additional Stacked Density Increase

Required Affordability	Density Bonus Percentage	
Percentage of Base	Very-Low-Income	Moderate-Income
5%	20%	20%
6%	23.75%	22.5%
7%	27.5%	25%
8%	31.25%	27.5%
9%	35%	30%
10%	38.75%	32.5%
11%	-	35%
12%	-	38.75%
13%	-	42.5%
14%	-	46.25%
15%	-	50%

Table 2b - Stacked Density Combinations

Required Affordability of Base Units			Density Bonus Percentage		
Required Base Affordability	Stacked Affordable Units*	Total Percentage Affordable*	Base Density Bonus:	Stacked Density Bonus (up to):	Maximum Total Density Bonus
44% M	6% M*	50%*	50%	22.5%	72.5%
	6% VL*	50%*	50%	23.75%	73.75%
24% L	15% M	39%	50%	38.75%	88.75%
	10% VL	34%	50%	50%	100%
15% VL	15% M	30%	50%	50%	100%
	10% VL	25%	50%	38.75%	88.75%

* Total affordable units (base + additional) cannot exceed 50% of the base density.

Table 3 – Incentives/Concessions

Number Allowed	Very-Low-Income Percentage	Low-Income Percentage	Moderate-Income Percentage	Low-Income Student Housing Percentage
1	5%	10%	10%	20%
2	10%	17%	20%	-
3	15%	24%	30%	-
4	16%	-	45%	-
5	100% of the units, excluding the manger's unit, with no more than 20% of the units being moderate income.			-

Table 4 – Inclusionary Housing and Density Bonus Relationship

Inclusionary Housing Requirements		Can Receive up to this Percentage Density Bonus with this Type of Affordability Percentage:		
Project Size/ Tenure Thresholds	Corresponding Affordability Percentage	Very Low Income	Low Income	Moderate Income
5-20 Rental Units	6%	22.5%	none*	none*
21-50 Rental Units	10%	32.5%	20%	none*
51+ Rental Units	15%	50%	27.5%	none*
5+ For-Sale Units	10%	32.5%	20%	5%

* Note: Density Bonus Law has no corresponding density bonus percentage for this affordability tier.

Table 5 – Projects Eligible for Density Bonuses

	Very-Low-Income	Low-Income	Moderate-Income
Units for Rent	5% of base units	10% of base units	--
Units for Sale	5% of base units	10% of base units	10% of base units
Shared Housing Building	5% of base units	10% of base units	--
Housing for Transitional Foster Youth	10% of base units	--	--
Housing for Disabled Veterans	10% of base units	--	--
Housing for Homeless Persons	10% of base units	--	--
College Students	--	20% of base units	--
Commercial Development	15% of base units	30% of base units	--
Condominium Conversion	15% of units converted	33% of units converted	33% of units converted
Senior Citizen Housing or Senior Shared Housing Building	At least 35 dwelling units or a mobile home park that limits residency based on age.		
Donation of Land	One-acre of land; 10% of base units	--	--

ATTACHMENT “C”

Public Comment

Aug 13, 2025

City of Monrovia
415 South Ivy Avenue
Monrovia, CA 91016

Re: Proposed Density Bonus Ordinance

By Email: planning@ci.monrovia.ca.us;

CC: aatkins@ci.monrovia.ca.us; dfeik@ci.monrovia.ca.us; jdriver@ci.monrovia.ca.us; sbermejo@ci.monrovia.ca.us; csteele@rwglaw.com; jmayer@ci.monrovia.ca.us

Dear Monrovia Planning Commission,

The California Housing Defense Fund ("CalHDF") submits this letter as a public comment concerning item PH-3 for the August 13, 2025 Planning Commission meeting, an ordinance that would implement the state Density Bonus Law ("DBL"; Gov. Code, § 65915 et seq.). While it is laudable that the City is passing a DBL ordinance, the proposed ordinance has serious legal problems. We urge the Planning Commission to address these problems before passing the ordinance.

The Density Bonus Law Preempts the City's Proposed Amendments to Its Ordinance

As background, the DBL preempts provisions in local ordinances that clash with the DBL. This is unambiguous. (See, e.g., *Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755, 771 ["The Density Bonus Law ... preempts any inconsistent local provisions."].) Furthermore, compliance with the DBL is mandatory: if a proposed project satisfies the terms of the DBL, then it is entitled to take advantage of the DBL, whatever the local government might think. (Gov. Code, § 65915, subd. (a)(1) ["local government shall comply with this section"].) This is consistent with the larger legal principle that state law overrides local rules that clash with it: the City "cannot choose to forgo application of land use policies imposed by the Legislature." (*Ailanto Properties, Inc. v. City of Half Moon Bay* (2006) 142 Cal.App.4th 572, 595.) There is no room for cities to add their own gloss on the DBL, and attempts to do so have no effect.

The bottom line is this: if a proposed development project complies with the terms of the DBL, it may use the DBL. It does not matter whether the local government has nominally

created additional hurdles that must be cleared before a project may use the DBL. As far as the DBL is concerned, those nominal hurdles do not exist.

The City's proposed DBL implementation ordinance on tonight's agenda would create such nominal hurdles.

Regulations on Affordable Units

City code section 17.38.080(A) requires that state DBL projects' affordable units include an equivalent number of bedrooms as market rate units, section 17.38.080(B) requires equivalent exterior design for the affordable units, sections 17.38.080(B) and (C) require access to the same common spaces/facilities, and section 17.38.080(E) require that the affordable units be distributed throughout the development.

Such provisions find no support in the text of the DBL and, in fact, clash with the text of the DBL, which makes no mention of the size or physical characteristics of the affordable units that can be used to claim a density bonus. (See generally Gov. Code, § 65915.) The DBL also – contradicting the purpose and effect of the City's proposed amendments – states that it is to be interpreted "liberally in favor of producing the maximum number of total housing units." (*Id.* at subd. (r); see also *id.* at subd. (u)(1) ["the intent behind the Density Bonus Law is to allow … a developer to include more total units in a project than would otherwise be allowed"].) The DBL, then, is intended to produce more housing units and more affordable housing units – note the emphasis on "total units" – and it is not intended to restrict the size or physical characteristics of those units.

Of note, the California Department of Housing and Community Development has issued technical guidance that, while not directly on point, clearly demonstrates that any type of housing unit can count towards the DBL's requirements. On November 15, 2024, HCD sent the City of Antioch a letter explaining that accessory dwelling units attached to larger primary dwelling units counted towards the DBL's "total unit" calculation and therefore could be used as affordable units to satisfy the requirements of the DBL. (See attached letter from HCD.) HCD's interpretation of state housing laws merits deference from the courts. (Cf. *Hoffmaster v. City of San Diego* (1997) 55 Cal.App.4th 1098, 1113, fn. 13 ["We substantially rely on the Department of Housing and Community Development's interpretation […] regarding compliance with the housing element law"]; see also *Boling v. Public Employment Relations Bd.* (2018) 5 Cal.5th 898, 911, citing *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12.)

In fact, it is easy to provide examples of how this code provision could inhibit a mixed-unit development. A developer might propose a mixed-income development with the affordable units in a separate building in order to establish eligibility for federal Low-Income Housing Tax Credits (LIHTC). This would be impossible given the City's requirement for the affordable

units to be distributed throughout the development. A LIHTC-funded building will be subject to strict design requirements and bedroom counts from the funding agency. Requiring equivalent design and bedroom count would inhibit such a development. Furthermore, requiring access to the same common spaces would be bizarre, meaning that residents of different buildings would have access to the other building's laundry facilities and common spaces.

We understand that it is a bad "look" for affordable units to be of different size, design, etc. than market rate units, and we understand the desire to have them distributed through the building with equivalent access to common spaces. However, this desire for equity inhibits real projects, with the result that fewer units will be produced and housing costs (and homelessness) will continue to worsen.

The City must therefore delete the provisions of City code sections 17.38.080(A), (B), (C), and (E), given that they clearly violate state law.

Density Bonus Applicants Would Be Able to Waive the City's Proposed Requirements

Furthermore, even assuming the City's proposed ordinance has an effect, the DBL allows a project proponent to waive those rules. (See Gov. Code, § 65915, subds. (d) [outlining concessions and incentives to which DBL projects are entitled], (e) [outlining waivers of local standards to which DBL projects are entitled], and (k) [defining concessions and incentives].) If the City refuses to allow such a waiver, the proponent may sue and collect attorney's fees and costs of suit. (*Id.* at subds. (d)(3) and (e)(1).)

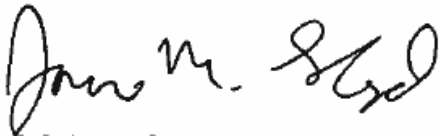
♦♦♦

Again, CalHDF applauds the City for implementing state law by passing a DBL ordinance. However, the City should be careful not to attempt to illegally limit the application of the DBL through this local ordinance. The City "cannot choose to forgo application of land use policies imposed by the Legislature." (*Ailanto Properties, Inc. v. City of Half Moon Bay* (2006) 142 Cal.App.4th 572, 595.)

CalHDF is a 501(c)(3) non-profit corporation whose mission includes advocating for increased access to housing for Californians at all income levels, including low-income households. You may learn more about CalHDF at www.calhdf.org.

Sincerely,

Dylan Casey
CalHDF Executive Director



James M. Lloyd
CalHDF Director of Planning and Investigations

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
651 Bannon Street, Suite 400
Sacramento, CA 95811
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov

November 15, 2024

Kevin Scudero, Community Development Director
City of Antioch
200 H Street
Antioch, CA 94531

Dear Kevin Scudero:

RE: City of Antioch State Density Bonus Law Implementation – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) received a request for technical assistance regarding the application of the State Density Bonus Law (SDBL)[1] to the housing development project proposed at 3001 Oakley Road (Project). The SDBL allows housing developments with at least five residential units to obtain increases in allowable density, incentives/concessions, development standard waivers, and, for qualifying projects, reductions in parking requirements, by providing affordable housing. The purpose of this letter is to provide technical assistance to the City of Antioch (City) regarding the ability of the project to use accessory dwelling units (ADUs) to qualify for the benefits of the SDBL.

Background

HCD understands the Project proposes the construction of 150 units (consisting of 52 duplex units, 51 single-family houses, and 47 ADUs) on two contiguous lots with a combined area of approximately 14.58 acres. All units in the project would be offered for rent and managed together as a single community. The Project seeks to deed restrict 11 of the ADUs as low-income units to obtain a 22 percent density bonus under the SDBL. This density bonus will enable the construction of eight of the 52 duplex units.

The City initially held the position that under State ADU Law,[2] the City was permitted to stagger the review of the primary units and ADU components of the project, such that the Project would be unable to use the ADUs to obtain a density bonus for the primary units. Following a meeting on September 3, 2024, where HCD provided verbal technical assistance that State ADU Law was meant to allow for simultaneous discretionary primary unit review and ministerial ADU review, the City concluded the Project would

[1] Gov. Code, § 65915.
[2] Gov. Code, § 66317, subd. (a).

have to deed restrict primary units as affordable in order to obtain a density bonus for the primary units.

Analysis

The SDBL requires that local governments grant certain housing developments density bonuses if the developments provide specified percentages of their pre-density bonus "total units" as deed restricted affordable housing. Therefore, the relevant question is:

Can deed restricted ADUs serve to qualify a project for a density bonus pursuant to the SDBL, even if the bonus sought is for primary units?

The answer is "yes," if all the ADUs in the project are counted towards the "total units" in the project. Although the SDBL makes no mention of ADUs in its text, it likewise does not expressly narrow the definition of unit to exclude ADUs. A project initially qualifies under the SDBL when the project's deed restricted affordable units meet or exceed the percentages specified in the SDBL, not when the project's deed restricted affordable *primary* units meet or exceed the specified percentages. ADUs are a type of housing unit that can be used to establish eligibility "*provided they are counted within the total units of the project*."[3]

However, a project may not deed restrict units to qualify under SDBL if the units are not counted toward the total unit count for the purposes of SDBL. Furthermore, deed restricting ADUs to achieve SDBL eligibility, where they only exist in relation to primary units, makes them a "dependent project" that renders all ADUs in the project, deed restricted or not, part of the total unit count.[4]

Applied to the Project, the development has 142 "total units,"[5] including 95 primary units and 47 ADUs. This means that to use ADUs as deed restricted units, at least 15 units (including ADUs only, if desired) would need to be deed restricted for low-income households to meet the 10-percent SDBL minimum. Alternatively, the Project could deed restrict only 10 *primary* units so that the 47 ADUs would not be counted toward the Project's "total units."

Qualifying for the SDBL with deed restricted ADUs would grant the project up to 29 bonus units, while qualifying with primary units would grant up to 19 bonus units; in

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[3] See HCD Letter of Technical Assistance to the City of Carlsbad, February 16, 2024, available at https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/carlsbad-hau565-ta-02162024.pdf, page 2. (Emphasis added.)

[4] See HCD Letter of Technical Assistance to the City of El Cajon, February 16, 2023, available at https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/el-cajon-hau484-ta-02162024.pdf.

[5] "Total units" means the number of units in the project excluding bonus units. See Gov. Code, § 65915, subd. (o)(8)(A).

either case, this is beyond the eight bonus units the Project seeks to obtain. What is not permitted, however, is for an applicant to include only a portion of the ADUs in the "total units" count – as proposed in the subject Project.

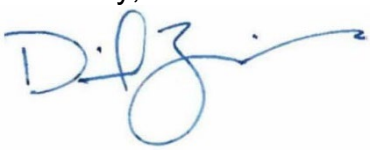
Note that using deed restricted ADUs to qualify for the SDBL is a choice for applicants that comes with responsibilities. In addition to considering whether the applicant should increase its number of total units by using deed restricted ADUs for eligibility, applicants must ensure the continued affordability of the ADUs for the duration of their deed restriction. The purpose of the SDBL is to ensure that deed restricted affordable units are built and continuously occupied by households at qualifying income levels. Enforcing this in ADUs can be challenging, especially if the development includes for-sale primary units or will be parceled off in the future. In the context of the Project, this is not an immediate issue because the applicant intends to own the Project as a single community and manage it collectively, but it may pose challenges in the future should that ownership and management structure change. In future projects where an applicant may be inclined to qualify under the SDBL by deed restricting ADUs, the City might consider imposing a recurring affordable unit monitoring fee as provided for in the SDBL.[6] This would help to ensure that the affordable ADUs are occupied by households at qualifying income levels.

Conclusion

Deed restricted affordable ADUs can be used to meet the requirements of the SDBL, provided that the developer can ensure the affordability of the ADUs and that all ADUs are counted as "total units" for the purposes of calculating the number of deed restricted units required for SDBL eligibility.

HCD remains committed to supporting the City of Antioch in facilitating housing at all income levels and hopes the City finds this clarification helpful. If you have questions or need additional information, please contact David Ying at david.ying@hcd.ca.gov.

Sincerely,



David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

[6] Gov. Code, § 65915.3 as created by AB 2430 (Chapter 273, Statutes of 2024), effective January 1, 2025.