



City of Santa Barbara California

PLANNING COMMISSION STAFF REPORT

REPORT DATE: May 5, 2016
AGENDA DATE: May 12, 2016
PROJECT ADDRESS: Density Bonus and Development Incentives Ordinance Amendment (SBMC §28.87.400)
TO: Planning Commission
FROM: Planning Division, (805) 564-5470, extension 4569
 Debra Andaloro, Principal Planner *DA*
 Elizabeth Limón, Project Planner *liz*

I. RECOMMENDATION

Staff recommends the Planning Commission:

- Hold a public hearing,
- Review the proposed Ordinance (Exhibit A) amending the Santa Barbara Municipal Code Section 28.87.400 to be consistent with California Government Code Sections 65915-65918 State Density Bonus Law, and
- Recommend that the Council adopt the proposed ordinance amendment.

II. BACKGROUND

The State of California has an adopted State Density Bonus Law (SDBL). This law allows applicants of residential units to receive a density bonus when a portion of the units are rented or sold at affordable rates. The SDBL was first enacted in 1979 to address the State's shortfall of affordable housing. The law requires local jurisdictions to provide incentives to applicants to include low income housing in new construction projects. The SDBL provisions supersede any local agency provisions.

The City's Density Bonus and Development Incentives ordinance has been in effect since the early 1980's. The City's ordinance has been amended many times to comply with changes in state legislation amending the SDBL, most recently in 2005.

The City's Density Bonus and Development Incentives ordinance is currently out of compliance with SDBL. This minor ordinance amendment will bring the City into compliance with SDBL.

III. DISCUSSION

Historically, the City's Density Bonus and Development Incentives ordinance provided density increases and incentives above and beyond those required by SDBL. Since 2005, legislation has been passed amending the SDBL in many key areas including increasing the percentage of affordable units that must be included in a project to qualify for development incentives. Since future legislative changes to SDBL are likely, staff's approach with very few exceptions is to simply refer to California Government Code Sections 65915-65918 SDBL (Exhibit A). This way, the City will remain in compliance as changes occur to the SDBL, avoiding the need for local ordinance amendments every time the state amends its statute.

The proposed ordinance amendment implements the 2015 General Plan Housing Element Policy H11 – Promote Affordable Units. The policy states: "The production of affordable housing units shall be the highest priority and the City will encourage all opportunities to construct new housing units that are affordable to extremely low, very low, low, moderate and middle income owners and renters." Amending the City's Density Bonus and Development Incentives ordinance is identified as a Housing Element Implementation Priority.

Exhibit B shows in ~~strikeout~~ / underline format the proposed changes to the City's existing Density Bonus and Development Incentives Municipal Code Section 28.87.400. The changes are briefly described below:

- **Section C. PROJECTS WHICH MEET THE CRITERIA SET FORTH IN STATE DENSITY BONUS LAW** (page 1) – This section shows the outdated City percentages of affordable housing required to be a qualifying housing development (e.g., 20% units for low income households, or 10% for very low income households, or 50% for senior citizens). The proposed ordinance would delete the outdated figures. Remaining text will direct the Government Code Section 65915 for current SDBL definitions (e.g., 10% for lower income households, 5% for very low income households, or specified senior development).
- **Section C.2.a LOT AREA MODIFICATION** (page2) – This section adds text explaining that the Community Development Director will determine whether a concession or incentive is required in order to provide for the affordable housing costs.
- **Section 28.87.500 DENIAL OF AFFORDABLE HOUSING PROJECTS** (pages 3-5) – The ordinance amendment proposes to delete this section of the City's Municipal Code because it simply reiterates existing SDBL. Government Code Section 65589.5 will apply whether or not there is a reference in the Municipal Code. Omitting the reference avoids the possibility of having the reference becoming outdated if future changes occur to the text, the statute number changes or the statute is repealed altogether.

IV. ENVIRONMENTAL REVIEW

SDBL provisions supersede City provisions and have been applied even when City ordinance provisions were not updated to be consistent. The proposed ordinance changes are limited to removing text from the City municipal code that has become outdated and is no longer relevant or in compliance with SDBL or in some cases unnecessarily redundant. As such, this ordinance amendment does not represent any change in development potential or potential density of development.

The City Environmental Analyst determined that this Density Bonus and Development Incentives ordinance amendment qualifies for an exemption from further environmental review under the California Environmental Quality Act (CEQA), per State CEQA Guidelines §15183 - *Projects Consistent with a Community Plan or Zoning*, based on a preliminary review for exemption and the certificate of determination on file (Exhibit C).

The project activity is within the scope of the 2011 General Plan and the Program EIR analysis for the General Plan. No further environmental document is required for this project pursuant to the California Environmental Quality Act (Public Resources Code §21083.3 and Code of Regulations §15183). City Council environmental findings adopted for the 2011 General Plan remain applicable for this implementing project.

V. CONCLUSION AND NEXT STEPS

Staff recommends that the Planning Commission discuss the proposed Density Bonus and Development Incentives ordinance amendment and forward a recommendation to City Council for adoption. Following the Planning Commission hearing, discussion and recommendation, the City's Density Bonus and Development Incentive ordinance will be presented to the Council Ordinance Committee in June 2016. Council will introduce and consider adoption the ordinance amendment in July 2016.

- Exhibit A: State Density Bonus Law (California Government Code Sections 65915-65918)
- Exhibit B: Draft Ordinance Showing Legislative Changes
- Exhibit C: Certificate of Determination Form for CEQA §15183 Determination

GOVERNMENT CODE

SECTION 65915-65918

65915. (a) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall provide the applicant with incentives or concessions for the production of housing units and child care facilities as prescribed in this section. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented. Failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.

(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f), and incentives or concessions, as described in subdivision (d), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

(D) Ten percent of the total dwelling units in a common interest development, as defined in Section 4100 of the Civil Code, for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), an applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), or (D) of paragraph (1).

(3) For the purposes of this section, "total units" or "total dwelling units" does not include units added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, the continued affordability of all very low and low-income rental units that qualified the applicant for the award of the density bonus for 55 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Rents for the lower income density bonus units shall be set at an affordable rent as defined in Section 50053 of the Health and Safety Code.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of all for-sale units

that qualified the applicant for the award of the density bonus are persons and families of very low, low, or moderate income, as required, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code. The local government shall enforce an equity sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following apply to the equity sharing agreement:

(A) Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The local government shall recapture any initial subsidy, as defined in subparagraph (B), and its proportionate share of appreciation, as defined in subparagraph (C), which amount shall be used within five years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote home ownership.

(B) For purposes of this subdivision, the local government's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

(C) For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the ratio of the local government's initial subsidy to the fair market value of the home at the time of initial sale.

(3) (A) An applicant shall be ineligible for a density bonus or any other incentives or concessions under this section if the housing development is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low income households, unless the proposed housing development replaces those units, and either of the following applies:

(i) The proposed housing development, inclusive of the units replaced pursuant to this paragraph, contains affordable units at the percentages set forth in subdivision (b).

(ii) Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.

(B) For the purposes of this paragraph, "replace" shall mean either of the following:

(i) If any dwelling units described in subparagraph (A) are occupied on the date of application, the proposed housing development shall provide at least the same number of units of equivalent size or type, or both, to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy. For unoccupied dwelling units described in subparagraph (A) in a development with occupied units, the proposed housing development shall provide units of equivalent size or type, or both, to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category in the same proportion of affordability as the occupied units. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement

units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) If all dwelling units described in subparagraph (A) have been vacated or demolished within the five-year period preceding the application, the proposed housing development shall provide at least the same number of units of equivalent size or type, or both, as existed at the highpoint of those units in the five-year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known. If the incomes of the persons and families in occupancy at the highpoint is not known, then one-half of the required units shall be made available at affordable rent or affordable housing cost to, and occupied by, very low income persons and families and one-half of the required units shall be made available for rent at affordable housing costs to, and occupied by, low-income persons and families. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(C) Paragraph (3) of subdivision (c) does not apply to an applicant seeking a density bonus for a proposed housing development if his or her application was submitted to, or processed by, a city, county, or city and county before January 1, 2015.

(d) (1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:

(A) The concession or incentive is not required in order 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 subdivision (c).

(B) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

(C) The concession or incentive would be contrary to state or federal law.

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.

(B) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common

interest development.

(C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of compliance with this section.

(e) (1) In no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

(2) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(f) For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable residential density as of the date of application by the applicant to the city, county, or city and county. The applicant may elect to accept a lesser percentage of density bonus. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
17	30.5
18	32
19	33.5
20	35

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Very Low Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(3) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of senior housing units.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Moderate-Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25

31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

(g) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county in accordance with this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density for the entire development, as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32
28	33
29	34
30	35

(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks an increase pursuant to both this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

(A) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned with appropriate development standards for development at the density described in paragraph (3) of subdivision (c) of Section 65583.2, and is or will be served by adequate public facilities and infrastructure.

(D) The transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, not later than the date of approval of the final subdivision map, parcel map, or residential development application, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government prior to the time of transfer.

(E) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of the transfer.

(F) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(G) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(H) A proposed source of funding for the very low income units shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.

(h) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or city and county shall not be required to provide a density bonus or concession for a child care facility if it finds, based

upon substantial evidence, that the community has adequate child care facilities.

(4) "Child care facility," as used in this section, means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and schoolage child care centers.

(i) "Housing development," as used in this section, means a development project for five or more residential units. For the purposes of this section, "housing development" also includes a subdivision or common interest development, as defined in Section 4100 of the Civil Code, approved by a city, county, or city and county and consists 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, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. 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.

(j) (1) The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. This provision is declaratory of existing law.

(2) Except as provided in subdivisions (d) and (e), the granting of a density bonus shall not be interpreted to require the waiver of a local ordinance or provisions of a local ordinance unrelated to development standards.

(k) For the purposes of this chapter, concession or incentive means any of the following:

(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, financially sufficient, and actual cost reductions.

(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 incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable, financially sufficient, and actual cost reductions.

(l) Subdivision (k) does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) This section does not supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources

Code).

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

(o) For purposes of this section, the following definitions shall apply:

(1) "Development standard" includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.

(2) "Maximum allowable residential density" means the density allowed under the zoning ordinance and land use element of the general plan, or if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. Where the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

(p) (1) Except as provided in paragraphs (2) and (3), upon the request of the developer, a city, county, or city and county shall not require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivisions (b) and (c), that exceeds the following ratios:

(A) Zero to one bedroom: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) Notwithstanding paragraph (1), if a development includes the maximum percentage of low- or very low income units provided for in paragraphs (1) and (2) of subdivision (f) and is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and there is unobstructed access to the major transit stop from the development, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds 0.5 spaces per bedroom. For purposes of this subdivision, a development shall have unobstructed access to a major transit stop if a resident is able to access the major transit stop without encountering natural or constructed impediments.

(3) Notwithstanding paragraph (1), if a development consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health and Safety Code, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds the following ratios:

(A) If the development is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and there is unobstructed access to the major transit stop from the development, the ratio shall not exceed 0.5 spaces per unit.

(B) If the development is a for-rent housing development for individuals who are 62 years of age or older that complies with Sections 51.2 and 51.3 of the Civil Code, the ratio shall not exceed

0.5 spaces per unit. The development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(C) If the development is a special needs housing development, as defined in Section 51312 of the Health and Safety Code, the ratio shall not exceed 0.3 spaces per unit. The development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(4) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide on-site parking through tandem parking or uncovered parking, but not through on-street parking.

(5) This subdivision shall apply to a development that meets the requirements of subdivisions (b) and (c), but only at the request of the applicant. An applicant may request parking incentives or concessions beyond those provided in this subdivision pursuant to subdivision (d).

(6) This subdivision does not preclude a city, county, or city and county from reducing or eliminating a parking requirement for development projects of any type in any location.

(7) Notwithstanding paragraphs (2) and (3), if a city, county, city and county, or an independent consultant has conducted an areawide or jurisdictionwide parking study in the last seven years, then the city, county, or city and county may impose a higher vehicular parking ratio not to exceed the ratio described in paragraph (1), based upon substantial evidence found in the parking study, that includes, but is not limited to, an analysis of parking availability, differing levels of transit access, walkability access to transit services, the potential for shared parking, the effect of parking requirements on the cost of market-rate and subsidized developments, and the lower rates of car ownership for low- and very low income individuals, including seniors and special needs individuals. The city, county, or city and county shall pay the costs of any new study. The city, county, or city and county shall make findings, based on a parking study completed in conformity with this paragraph, supporting the need for the higher parking ratio.

65915.5. (a) When an applicant for approval to convert apartments to a condominium project agrees to provide at least 33 percent of the total units of the proposed condominium project to persons and families of low or moderate income as defined in Section 50093 of the Health and Safety Code, or 15 percent of the total units of the proposed condominium project to lower income households as defined in Section 50079.5 of the Health and Safety Code, and agrees to pay for the reasonably necessary administrative costs incurred by a city, county, or city and county pursuant to this section, the city, county, or city and county shall either (1) grant a density bonus or (2) provide other incentives of equivalent financial value. A city, county, or city and county may place such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value as it finds appropriate, including, but not limited to, conditions which assure continued affordability of units to subsequent purchasers who are persons and families of low and moderate income or lower income households.

(b) For purposes of this section, "density bonus" means an increase in units of 25 percent over the number of apartments, to be provided within the existing structure or structures proposed for

conversion.

(c) For purposes of this section, "other incentives of equivalent financial value" shall not be construed to require a city, county, or city and county to provide cash transfer payments or other monetary compensation but may include the reduction or waiver of requirements which the city, county, or city and county might otherwise apply as conditions of conversion approval.

(d) An applicant for approval to convert apartments to a condominium project may submit to a city, county, or city and county a preliminary proposal pursuant to this section prior to the submittal of any formal requests for subdivision map approvals. The city, county, or city and county shall, within 90 days of receipt of a written proposal, notify the applicant in writing of the manner in which it will comply with this section. The city, county, or city and county shall establish procedures for carrying out this section, which shall include legislative body approval of the means of compliance with this section.

(e) Nothing in this section shall be construed to require a city, county, or city and county to approve a proposal to convert apartments to condominiums.

(f) An applicant shall be ineligible for a density bonus or other incentives under this section if the apartments proposed for conversion constitute a housing development for which a density bonus or other incentives were provided under Section 65915.

(g) An applicant shall be ineligible for a density bonus or any other incentives or concessions under this section if the condominium project is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low income households, unless the proposed condominium project replaces those units, as defined in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65915, and either of the following applies:

(1) The proposed condominium project, inclusive of the units replaced pursuant to subparagraph (B) of paragraph (3) of subdivision (c) of Section 65915, contains affordable units at the percentages set forth in subdivision (a).

(2) Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.

(h) Subdivision (g) does not apply to an applicant seeking a density bonus for a proposed housing development if their application was submitted to, or processed by, a city, county, or city and county before January 1, 2015.

65916. Where there is a direct financial contribution to a housing development pursuant to Section 65915 through participation in cost of infrastructure, write-down of land costs, or subsidizing the cost of construction, the city, county, or city and county shall assure continued availability for low- and moderate-income units for 30 years. When appropriate, the agreement provided for in Section 65915 shall specify the mechanisms and procedures necessary to carry out this section.

65917. In enacting this chapter it is the intent of the Legislature that the density bonus or other incentives offered by the city, county, or city and county pursuant to this chapter shall contribute significantly to the economic feasibility of lower income housing in proposed housing developments. In the absence of an agreement by a developer in accordance with Section 65915, a locality shall not offer a density bonus or any other incentive that would undermine the intent of this chapter.

65917.5. (a) As used in this section, the following terms shall have the following meanings:

(1) "Child care facility" means a facility installed, operated, and maintained under this section for the nonresidential care of children as defined under applicable state licensing requirements for the facility.

(2) "Density bonus" means a floor area ratio bonus over the otherwise maximum allowable density permitted under the applicable zoning ordinance and land use elements of the general plan of a city, including a charter city, city and county, or county of:

(A) A maximum of five square feet of floor area for each one square foot of floor area contained in the child care facility for existing structures.

(B) A maximum of 10 square feet of floor area for each one square foot of floor area contained in the child care facility for new structures.

For purposes of calculating the density bonus under this section, both indoor and outdoor square footage requirements for the child care facility as set forth in applicable state child care licensing requirements shall be included in the floor area of the child care facility.

(3) "Developer" means the owner or other person, including a lessee, having the right under the applicable zoning ordinance of a city council, including a charter city council, city and county board of supervisors, or county board of supervisors to make an application for development approvals for the development or redevelopment of a commercial or industrial project.

(4) "Floor area" means as to a commercial or industrial project, the floor area as calculated under the applicable zoning ordinance of a city council, including a charter city council, city and county board of supervisors, or county board of supervisors and as to a child care facility, the total area contained within the exterior walls of the facility and all outdoor areas devoted to the use of the facility in accordance with applicable state child care licensing requirements.

(b) A city council, including a charter city council, city and county board of supervisors, or county board of supervisors may establish a procedure by ordinance to grant a developer of a commercial or industrial project, containing at least 50,000 square feet of floor area, a density bonus when that developer has set aside at least 2,000 square feet of floor area and 3,000 outdoor square feet to be used for a child care facility. The granting of a bonus shall not preclude a city council, including a charter city council, city and county board of supervisors, or county board of supervisors from imposing necessary conditions on the project or on the additional square footage. Projects constructed under this section shall conform to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other health, safety, and zoning requirements generally applicable to construction in the zone

in which the property is located. A consortium with more than one developer may be permitted to achieve the threshold amount for the available density bonus with each developer's density bonus equal to the percentage participation of the developer. This facility may be located on the project site or may be located offsite as agreed upon by the developer and local agency. If the child care facility is not located on the site of the project, the local agency shall determine whether the location of the child care facility is appropriate and whether it conforms with the intent of this section. The child care facility shall be of a size to comply with all state licensing requirements in order to accommodate at least 40 children.

(c) The developer may operate the child care facility itself or may contract with a licensed child care provider to operate the facility. In all cases, the developer shall show ongoing coordination with a local child care resource and referral network or local governmental child care coordinator in order to qualify for the density bonus.

(d) If the developer uses space allocated for child care facility purposes, in accordance with subdivision (b), for purposes other than for a child care facility, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. If the developer fails to have the space allocated for the child care facility within three years, from the date upon which the first temporary certificate of occupancy is granted, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors in accordance with procedures to be developed by the legislative body of the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. A penalty levied against a consortium of developers shall be charged to each developer in an amount equal to the developer's percentage square feet participation. Funds collected pursuant to this subdivision shall be deposited by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors into a special account to be used for child care services or child care facilities.

(e) Once the child care facility has been established, prior to the closure, change in use, or reduction in the physical size of, the facility, the city, city council, including a charter city council, city and county board of supervisors, or county board of supervisors shall be required to make a finding that the need for child care is no longer present, or is not present to the same degree as it was at the time the facility was established.

(f) The requirements of Chapter 5 (commencing with Section 66000) and of the amendments made to Sections 53077, 54997, and 54998 by Chapter 1002 of the Statutes of 1987 shall not apply to actions taken in accordance with this section.

(g) This section shall not apply to a voter-approved ordinance adopted by referendum or initiative.

65918. The provisions of this chapter shall apply to charter cities.

28.87.400 Density Bonus and Development Incentives.

A. INTENT. The intent of this section is to provide incentives for the development of housing affordable to very-low income, low income, senior and other qualifying households. State Density Bonus Law (SDBL) law mandates the provision of density bonuses to senior, very-low, and low income households under certain circumstances. The City of Santa Barbara has created a separate density bonus program that complies with SDBL but is utilized for specific for ~~ertain other~~ development requests households. Both the State mandated and City created density bonus programs use terms defined in this section.

B. DEFINITIONS. The following words and phrases have the meaning indicated unless the context or usage clearly requires a different meaning:

1. Density. The number of residential units allowed on a parcel based on the lot area requirements specified in the zone and General Plan.

2. Density Bonus. A density increase over the otherwise maximum allowable residential density under the applicable Zoning Ordinance and Land Use Element of the General Plan as of the date of application by the ~~developer~~ applicant to the City.

C. PROJECTS WHICH MEET THE CRITERIA SET FORTH IN STATE DENSITY BONUS LAW.

1. Qualifying housing developments as defined in Government Code Section 65915.

~~When a developer of housing agrees or proposes to construct at least:~~

~~_____ a. 20% of the total units of a housing development for low income households; or~~

~~_____ b. 10% of the total units of a housing development for very low income households;~~

~~or~~

~~_____c. 50 percent of the total dwelling units of a housing development for senior citizens;~~

~~The~~ When an applicant proposes a project seeking a density bonus pursuant to the State density bonus law codified in Section 65915 of the California Government Code (SDBL), the applicant must submit the project for review by the Community Development Director or his/her designee to determine whether the project meets the criteria set forth in SDBL ~~State density bonus law~~. If the Director determines that the project meets the criteria of SDBL ~~State law~~, the project may be granted a density bonus, waivers or reductions of development standards, and at least one other incentives and concessions as required by SDBL State law; and Unless otherwise requested by the applicant, the application shall be processed as required by SDBL State law unless otherwise requested by the applicant. ~~The incentives and processing provisions required by State law are described in Government Code Section 65915.~~

2. Procedure for review of projects submitted under ~~SDBL State density bonus law~~. A project which meets all the requirements of State law shall be processed according to the usual discretionary review procedure, subject to the following exceptions:

a. LOT AREA MODIFICATION. Notwithstanding any other section in this Code, when a proposed project complies with all of the requirements of SDBL State density bonus law, and the density bonus requested is no more than the density bonus mandated by SDBL ~~State law~~ or is determined by the Community Development Director to be an incentive or concession required in order to provide for affordable housing costs, the Community Development Director or his/her designee shall deem the project's density consistent with the Zoning Ordinance, and exempt from the requirement for a lot area modification as set forth in Section 28.92.110.

b. NOTICE OF DESIGN REVIEW BOARD HEARING. When the Community

Development Director determines that a proposed project meets all the requirements of SDBL ~~State~~ law and the requirements of the residential zoning category in which the project is proposed, and does not cause any unavoidable, significant, environmental impacts, and requires design review as its only City discretionary approval, the appropriate Design Review Board (Single Family Design Board, Historic Landmarks Commission or Architectural Board of Review) will review the project. Notice of the meeting at which the project is considered by the Design Review Board will be provided in accordance with the requirements for noticing of public hearings in Municipal Code ~~Section 28.92.060~~ Chapter 22.22, 22.68, or 22.69, as applicable.

D. PROJECTS PROPOSED PURSUANT TO THE CITY'S AFFORDABLE HOUSING POLICIES AND PROCEDURES WHICH DO NOT MEET THE CRITERIA SET FORTH IN STATE DENSITY BONUS LAW.

1. Qualifying housing developments. When an developer applicant proposes a development ~~which does not meet the criteria listed above and requests a density bonus, the Community Development Director or his/her designee will review the project for consistency with the criteria of the City's density bonus program, described in the~~ pursuant to the City of Santa Barbara Affordable Housing Policies and Procedures Manual, the Community Development Director or his or her designee will review the project for consistency with the criteria of the City's density bonus program. ~~If the proposed project is determined to be consistent with the criteria of the City's density bonus program, it will be approved or disapproved under the provisions of that program.~~

2. Procedures for approval of projects which are consistent with the City density bonus program. ~~A project which does not meet all the requirements of State law, but does meet the~~

~~standards of the Projects determined by the Community Development Director to be consistent with the City density bonus program will be processed according to the discretionary review procedures in effect and applicable to the project.~~

~~28.87.500 Denial of Affordable Housing Projects.~~

~~— A. Affordable Housing Projects May Be Denied by the Planning Commission or City Council on Appeal. If at least 20% of a housing development's units are sold or rented to low income households, and the balance of the units are sold or rented to either low or moderate income households, it shall not be disapproved or conditioned in a manner which renders the project infeasible for development for the use of low and moderate income households unless the decision making body finds, based upon substantial evidence, one of the following, pursuant to California Government Code Section 65589.5:~~

~~—— 1. The project is not needed for the City to meet its share of the regional need of low and/or moderate income housing as outlined in the adopted Housing Element to the General Plan; or~~

~~—— 2. The project as proposed would have a specific, adverse impact upon the public health and safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the project unaffordable to low and/or moderate income households; or~~

~~—— 3. Denial of the project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the project unaffordable to low and/or moderate income households; or~~

~~—— 4. Approval of the project would increase the concentration of low income households~~

~~in a neighborhood that already has a disproportionately high number of low income households and there is no feasible method of approving the development at a different site, including sites identified in the adopted Housing Element, without rendering the development unaffordable to low and/or moderate income households; or~~

~~——— 5. The project is proposed on land zoned for resource preservation which is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project; or~~

~~——— 6. The project is inconsistent with the land use designation as outlined in the adopted General Plan or in any General Plan element as it existed on the date the application for the project was deemed complete.~~

~~— B. Findings. When a proposed housing development project complies with the applicable General Plan, Zoning and development policies in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence in the record that both of the following conditions exist:~~

~~——— 1. The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density, and~~

~~——— 2. There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph 1, other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.~~



City of Santa Barbara
CEQA CERTIFICATE OF DETERMINATION

To: File: 2016 Density Bonus and Development Incentives Ordinance Amendment
From: Elizabeth Limón, Project Planner
 Telephone: (805)564-5470 Email: Elimon@SantaBarbaraCA.gov
Subject: Certificate of Determination for Exemption from Environmental Review under CEQA Guidelines Section 15183
Project Location: City of Santa Barbara, County of Santa Barbara **General Plan Designation(s):** Citywide
Assessor's Parcel Number(s): Citywide **Zone(s):** Citywide
Project Applicant: City of Santa Barbara

Project Description: The proposed Density Bonus and Development Incentives Ordinance Amendment will revise City Municipal Code Section 28.87.400 to be consistent with California Government Code Sections 65915-65918 State Density Bonus Law. This amendment is intended to remove actual or potential conflicts with state law by removing Municipal Code provisions that either conflict with, or are redundant of, state law.

Project Environmental Findings: The City of Santa Barbara evaluated the proposed project and made the following determinations:

1. The project is consistent with the policies and densities established in the City of Santa Barbara General Plan.
2. A Program Environmental Impact Report was certified for the 2011 General Plan, which identified environmental effects of future citywide development under the General Plan, including significant effects, mitigated effects, and insignificant effects.
3. Pursuant to CEQA and CEQA Guidelines (Public Resources Code Section 21083.3 and California Code of Regulations, Title 14, Division 6, Chapter 3, Section 15183), environmental review for this project shall be limited to examination of any significant project-specific environmental effects not analyzed in the prior Environmental Impact Report for the 2011 General Plan.
4. Project-specific impacts:
 - The project will not result in significant project-specific environmental effects.
 - Potentially significant project-specific environmental effects will be substantially mitigated by uniformly applied development standards or policies and/or measures proposed as part of the project description, as identified in the *Preliminary Review* documentation. The project will not result in significant project-specific effects.
5. Mitigation measures:
 - Relevant mitigation measures from the General Plan Program EIR have been made part of the project.
 - No mitigation measures from the General Plan Program EIR are relevant or have been made part of the project.
6. A mitigation monitoring and reporting plan [was was not] adopted for this project.
7. A Statement of Overriding Considerations was adopted by City Council for the 2011 General Plan (Resolution 11-079), finding that the significant cumulative environmental effects of citywide development under the 2011 General Plan were outweighed by the benefits of the Plan and therefore deemed acceptable. The Statement of Overriding Considerations remains applicable for the current project.
8. Findings were made pursuant to the provisions of CEQA.

Exempt Status: Exempt per Section 15183 of the California Environmental Quality Act (CEQA) Guidelines (Projects Consistent with Community Plan or Zoning) and CEQA Statute (Section 21083.3 of California Public Resources Code)

The Program Environmental Impact Report for the 2011 General Plan and the record of current project permit review process may be viewed by the public at the City Planning Division office at 630 Garden Street, Santa Barbara.

<i>Elizabeth V. Limon</i>	Project Planner	April 26, 2016
Signature (City of Santa Barbara)	Title	Date