

<b>Topic:</b>	Affordable Housing; Incentive Zoning; Density
<b>Resource Type:</b>	Regulations
<b>State:</b>	California
<b>Jurisdiction Type:</b>	Municipal
<b>Municipality:</b>	City of Modesto
<b>Year (adopted, written, etc.):</b>	1991
<b>Community Type – applicable to:</b>	Urban; Suburban
<b>Title:</b>	City of Modesto Density Bonus Ordinance
<b>Document Last Updated in Database:</b>	May 7, 2017

### ***Abstract***

Under the Density Bonus Ordinance, Modesto’s density bonuses are awarded in relation to the percentage of affordable units provided. If a developer shows economic necessity, an additional incentive may be provided by the city (reduction in site development standards, modification of zoning requirements, financial incentives, and donation of land). A 25% density bonus may be awarded for condominium conversions if 33% of the total units are for moderate income, or 15% are reserved for low-income. A ten-year restriction is placed on the deed if a density bonus is awarded, and a thirty-year restriction is imposed if a bonus and incentive are awarded.

### ***Resource***

#### **Article 1 Density Bonus: General Provisions**

##### **10-3.101 Purpose and Intent.**

The intent of the density bonus is to contribute significantly to the economic feasibility of lower income housing in proposed developments, in compliance with Government Code Sections 65915 and 65917. (Added by Ord. 2758-C.S., § 1, effective 5-16-91)

##### **10-3.102 Statement of Authorization.**

Density bonuses may be granted as part of the normal approval process for plot plans, rezonings, or subdivision maps. Any additional incentives, as defined in Section 10-3.109, or waiver or modification of development standards, as defined in Section 10-3.110, shall be approved by the City Council. Density bonuses for senior housing projects shall be granted only with a rezoning to P-D, Planned Development zone. The density bonus agreements shall be approved by the City Council. (Added by Ord. 2758-C.S., § 1, effective 5-16-91)

**10-3.103 Developer Obligations.**

A developer requesting a density bonus shall agree to construct a housing development with one of the following types of affordable housing:

(a) Ten (10) percent of its units for very-low-income households, as defined in Section 10-3.401.

(b) Twenty (20) percent of its units for low-income households, as defined in Section 10-3.402.

(c) Fifty (50) percent of its units for senior citizens, and at least ten (10) percent of its units for very-low-income senior citizens, or at least twenty (20) percent of its units for low-income senior citizens, as defined in Section 10-3.404. (Added by Ord. 2758-C.S., § 1, effective 5-16-91)

**10-3.104 City Obligations.**

If a developer agrees to one of the provisions outlined in Section 10-3.103, then the developer may request, and the City of Modesto will grant, the following:

(a) A twenty-five (25) percent density bonus over the housing unit density allowed on the site by the existing zoning and General Plan designation.

(b) A housing development with one hundred (100) percent of its units provided for senior citizens, as defined in Section 10-3.404(a), will be allowed at a density equal to that allowed in the R-3 zone, with a rezoning to P-D. A density bonus in excess of R-3 density will be granted if the developer agrees to the provisions of Section 10-3.103(c). The amount of the density bonus will vary with the amount of low-income senior citizen or very-low-income senior citizen housing that is provided in the housing development, in accordance with the following chart:

<b>% of Low-Income Senior Housing</b>	<b>OR</b>	<b>% of Very-Low-Income Senior Housing</b>	<b>Density Bonus Range</b>
20%		10%	0 to 25%
40%		20%	>25% to 50%
60%		30%	>50% to 75%
80%		40%	>75% to 100%

100%		50%	> 100%
------	--	-----	--------

The density bonus applies only to those portions of a senior housing project designated for independent living units.

(c) An additional incentive, as defined in Section 10-3.109, unless the City Council finds that the additional incentive is not necessary to make the proposed development economically feasible, as defined in Section 10-3.203. (Added by Ord. 2758-C.S., § 1, effective 5-16-91, and amended during 11-98 supplement)

**10-3.105 Findings for Denial of Project.**

Notwithstanding Section 10-3.104, the City shall deny the proposed development if either of the following findings is made:

(a) The proposed development does not conform to the General Plan or applicable zoning and development policies.

(b) The proposed development would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the adverse impact identified.

The above findings shall be made in addition to findings made under other sections of the Municipal Code. (Added by Ord. 2758-C.S., § 1, effective 5-16-91)

**10-3.106 Minimum Development Size.**

The density bonus provisions of this chapter only apply to proposed developments of five (5) or more dwelling units. (Added by Ord. 2758-C.S., § 1, effective 5-16-91)

**10-3.107 Affordable Housing Unit Characteristics.**

All affordable housing units shall have an appearance, bedroom mix, and amenities representative of the entire housing development. (Added by Ord. 2758-C.S., § 1, effective 5-16-91)

**10-3.108 Distribution of Density Bonus Units.**

A developer of a proposed development containing more than one (1) parcel shall be allowed to build the density bonus units in one (1) section of the proposed development while building the affordable units in another section of the development, provided that:

(a) Development proposals for the two (2) sections of the proposed development are approved concurrently.

(b) The housing units in both sections are developed concurrently. (Added by Ord. 2758-C.S., § 1, effective 5-16-91)

### **10-3.109 Additional Incentives.**

If the developer has shown economic necessity, as defined in Section 10-3.203, then the City shall grant an additional incentive. The additional incentive may be any of the following:

(a) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements which exceed minimum building standards approved by the State Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code.

(b) Approval of mixed use zoning in conjunction with the housing development 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 development and the existing or planned development in the area where the housing development will be located.

(c) Other regulatory incentives or concessions which result in identifiable cost reductions.

This subdivision does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land or the waiver of fees or dedication requirements. All incentives are to be negotiated between the developer and the City. The City Council may substitute another incentive for the one requested if it finds that the requested incentive is infeasible or undesirable. (Added by Ord. 2758-C.S., § 1, effective 5-16-91)

### **10-3.110 Waiver or Modification of Development Standards.**

The City may waive or modify zoning and development standards that would otherwise physically inhibit the use of the density bonus on a specific site, if the following finding is made:

(a) The waiver or modification is necessary to make the proposed development economically feasible, as defined in Section 10-3.203. (Added by Ord. 2758-C.S., § 1, effective 5-16-91)

### **10-3.111 Density Bonus for Condominium Conversions.**

(a) In accordance with Section 65915.5 of the Government Code, when an applicant proposing to convert apartments to a condominium project agrees to provide thirty-three (33) per cent of the total units in the proposed condominium project for moderate-income households, as defined in Section 10-3.403, or fifteen (15) per cent of the total units for low-income households, as defined in Section 10-3.402, then the City shall grant a twenty-five (25) per cent density bonus.

(b) For purposes of this section, “density bonus” means an increase of twenty-five (25) per cent over the number of apartments, to be provided within the existing structure or structures proposed for conversion.

(c) An applicant may submit a preliminary proposal for a condominium conversion under the provisions of Section 10-3.201.

(d) Notwithstanding Section 10-3.111(a), the City may deny the condominium conversion under the provisions of Section 10-3.105.

(e) An applicant shall be ineligible for a density bonus under the provisions of this section if the apartments proposed for conversion were previously granted a density bonus under the provisions of Section 10-3.104. (Added by Ord. 2758-C.S., § 1, effective 5-16-91)

## **Article 2 Density Bonus: Procedures**

### **10-3.201 Preliminary Proposal.**

A developer may submit a preliminary proposal for a density bonus prior to a formal application. The City shall respond within ninety (90) days of receipt of a written proposal, notifying the developer in writing of the procedures which will be followed in processing the application. (Added by Ord. 2758-C.S., § 1, effective 5-16-91)

### **10-3.202 Density Bonus Agreements.**

Any developer requesting a density bonus shall submit a density bonus agreement in a form approved by the City Attorney. The density bonus agreement shall be approved by the City Council and shall run with the land. It may include, but not be limited to, the following provisions:

(a) The number of requested housing units above the amount allowed by the existing zoning, and the additional incentives requested.

(b) The number of affordable units by number of bedrooms and income group to be provided in the project.

(c) The term of affordability for affordable units, as defined in Section 10-3.301.

- (d) The standards for maximum qualifying incomes for affordable units.
- (e) The standards for maximum rents or sales prices for affordable units.
- (f) The process to be used to certify tenant/homeowner incomes.
- (g) The arrangements with the Stanislaus County Housing Authority for monitoring of the affordable units.
- (h) How vacancies will be marketed and filled.
- (i) Restrictions and enforcement mechanisms binding on property upon sale or transfer.
- (j) Penalties and enforcement mechanisms in event of failure to maintain affordability provisions.
- (k) Any other provisions deemed necessary by the City of Modesto. (Added by Ord. 2758-C.S., § 1, effective 5-16-91)

#### **10-3.203 Economic Feasibility.**

Any developer requesting an additional incentive, or a waiver or modification of zoning and development standards, shall be required to show that the additional incentive is necessary to make the project economically feasible. The developer shall submit supporting financial documents with the application. Said documents shall be in a format as approved by resolution by the City Council from time to time. The documents shall be evaluated by the Finance Director for proof of economic necessity. (Added by Ord. 2758-C.S., § 1, effective 5-16-91)

#### **10-3.204 Calculating Affordable and Density Bonus Units.**

In calculating the additional density bonus units to be allowed over what is currently allowed by the existing zoning, or the amount of affordable housing units to be required, any resulting fraction of a unit shall be rounded up to the next whole number. In calculating the amount of affordable units required under Section 10-3.103(a) or (b), the twenty-five (25) per cent density bonus units shall not be included. In the case of Section 10-3.104(b), the density bonus units shall be included in calculating the amount of affordable units when the density bonus exceeds twenty-five (25) per cent. (Added by Ord. 2758-C.S., § 1, effective 5-16-91)

### **Article 3 Density Bonus: Affordability Provisions**

#### **10-3.301 Term of Affordability.**

(a) If a density bonus and an additional incentive is granted, then affordability of the approved low-income or very-low-income bonus units shall be maintained for a period of thirty (30) years, beginning when the units are first available for occupancy.

(b) If only a density bonus is granted, then affordability of the approved low-income or very-low-income bonus units shall be maintained for a period of ten (10) years, beginning when the units are first available for occupancy. (Added by Ord. 2758-C.S., § 1, effective 5-16-91)

**10-3.302 Rental Housing Units.**

(a) Rents for those units in a rental housing development designated for very-low-income households or very-low-income senior citizens shall not exceed thirty (30) per cent of fifty (50) per cent of the monthly area median income, as published annually by the California Department of Housing and Community Development in Title 25 of the California Code of Regulations, and adjusted for household size. If the units are rented to Section 8 certificate holders, then the maximum rents for those units shall be as determined by the Stanislaus County Housing Authority.

(b) Rents for units designated for low-income households or low-income senior citizens shall not exceed thirty (30) per cent of sixty (60) per cent of the monthly area median income, as published annually by the California Department of Housing and Community Development in Title 25 of the California Code of Regulations, and adjusted for household size. If the units are rented to Section 8 certificate holders, then the maximum rents for those units shall be as determined by the Stanislaus County Housing Authority.

(c) In calculating rents for senior citizen housing units, any services, such as meals or individual medical care, offered above those normally provided for independent living units, shall be optional, and shall not be included in calculating maximum rents.

(d) The following table shall be used in determining the household size for setting the maximum rents, and in determining the maximum occupancy for units:

<b>Unit Size</b>	<b>Household Size for Maximum Rents</b>		<b>Occupancy Limit</b>	
<b>(number of bedrooms)</b>	<b>of (number of persons)</b>	<b>of (number of persons)</b>	<b>of (number of persons)</b>	<b>of (number of persons)</b>
Studio	1		2	
1	2		3	

2	3	5
3	4	7
4	6	9

An exception to the above table shall be made for units designated for senior citizens. The exception is that a household size of one (1) for the purpose of setting maximum rents shall be assumed for a single bedroom unit. The occupancy limit shall remain at three (3).

(e) Total move-in costs for affordable units shall be limited to the last month's rent plus a cleaning deposit not to exceed one (1) month's rent. (Added by Ord. 2758-C.S., § 1, effective 5-16-91)

**10-3.303 Ownership Housing Units.**

(a) The total mortgage payments for those units in a home ownership housing development designated for very-low-income households or low-income households shall not exceed the criteria specified for maximum rents in Section 10-3.302. Total mortgage payments include principal, interest, taxes, insurance, assessment district fees, and homeowner association fees, if applicable.

(b) The total down payment, excluding closing costs, for the affordable units, shall not exceed ten (10) per cent of the purchase price.

(c) The provisions of this section shall be included in the density bonus agreement, and shall run with the land for the term of affordability. (Added by Ord. 2758-C.S., § 1, effective 5-16-91)

**Article 4 Density Bonus: Definitions**

**10-3.401 Very-Low-Income Households.**

Very-low-income households are households whose income does not exceed fifty (50) per cent of area median income, as defined in Section 50105 of the Health and Safety Code. (Added by Ord. 2758-C.S., § 1, effective 5-16-91)

**10-3.402 Low-Income Households.**

Low-income households are households whose income does not exceed eighty (80) per cent of area median income, as defined in Section 50079.5 of the Health and Safety Code. (Added by Ord. 2758-C.S., § 1, effective 5-16-91)

**10-3.403 Moderate-Income Households.**

Moderate-income households are households whose income does not exceed one hundred twenty (120) per cent of area median income, as defined in Section 50093 of the Health and Safety Code. (Added by Ord. 2758-C.S., § 1, effective 5-16-91)

**10-3.404 Senior Citizens, Low-Income Senior Citizens, and Very-Low-Income Senior Citizens.**

(a) Senior citizens are persons at least sixty-two (62) years of age (or fifty-five (55) years of age if the project is at least one hundred fifty (150) dwelling units), as defined in Section 51.2 of the Civil Code.

(b) Low-income senior citizens are senior citizens whose income does not exceed eighty (80) per cent of area median income, as defined in Section 50079.5 of the Health and Safety Code.

(c) Very-low-income senior citizens are senior citizens whose household income does not exceed fifty (50) per cent of area median income, as defined in Section 50105 of the Health and Safety Code. (Added by Ord. 2758-C.S., § 1, effective 5-16-91)