

Title 8 - ZONING
Division 822 - AFFORDABLE HOUSING

Chapter 822-2 RESIDENTIAL DENSITY BONUS

Chapter 822-2 RESIDENTIAL DENSITY BONUS

Sections:

Article 822-2.2. General

[822-2.202 Title.](#)

[822-2.204 Purposes.](#)

[822-2.206 Definitions.](#)

[822-2.208 State law.](#)

[822-2.402 Inclusionary unit density bonus.](#)

[822-2.404 Affordable unit density bonus.](#)

[822-2.406 Land donation density bonus.](#)

[822-2.408 Incentives and concessions.](#)

[822-2.410 Time periods of affordability.](#)

[822-2.412 Determining affordability.](#)

[822-2.414 Child care facilities.](#)

[822-2.602 Applications.](#)

[822-2.604 Processing.](#)

[822-2.606 Preliminary application.](#)

[822-2.802 Time of construction.](#)

[822-2.804 Availability.](#)

[822-2.806 Design.](#)

[822-2.808 Alternate location.](#)

[822-2.810 Compliance.](#)

[822-2.1002 Execution of agreement.](#)

[822-2.1004 Condition of approval.](#)

[822-2.1006 Terms in agreement.](#)

[822-2.1008 For sale housing development terms.](#)

[822-2.1010 Rental housing development terms.](#)

822-2.202 Title.

This chapter is known and may be cited as the residential density bonus ordinance.

(Ords. 2004-45 § 3, 2001-06 § 2).

Title 8 - ZONING
Division 822 - AFFORDABLE HOUSING

Chapter 822-2 RESIDENTIAL DENSITY BONUS

822-2.204 Purposes.

The purposes of this chapter are to provide incentives for the production of housing for very low income, lower income, moderate income, or senior households; to facilitate the development of affordable housing; to implement the goals, objectives, and policies of the county general plan's housing element; and to establish procedures for complying with Government Code Section 65915.

(Ords. 2004-45 § 3, 2001-06 § 2).

822-2.206 Definitions.

As used in this chapter, the following terms have the following meanings:

- (a) "Affordable rent" means a rent, including a reasonable utility allowance as determined by the director, for rental target units that does not exceed the following calculations pursuant to Health and Safety Code Section 50053:
 - (1) Very low income: fifty percent of the area median income (AMI) for Contra Costa County, adjusted for household size, multiplied by thirty percent and divided by twelve.
 - (2) Lower income: sixty percent of the AMI for Contra Costa County, adjusted for household size, multiplied by thirty percent and divided by twelve.
- (b) "Affordable sales price" means a sales price at which lower, very low, or moderate income households can qualify for the purchase of target units, taking into account available financing, number of bedrooms and therefore, assumed household size, reasonable down payment, and affordable housing costs as defined in Health and Safety Code Section 50052.5. The affordable sales price for lower income households must not exceed a price affordable to households whose income is at or below seventy percent AMI. The affordable sales price for very low income households must not exceed a price affordable to households whose income is at or below fifty percent AMI. The affordable sales price for moderate income households must not exceed a price affordable to persons and families whose income is at or below one hundred ten percent AMI.
- (c) "Child care facility" has the meaning set forth in Government Code Section 65915(i)(4).
- (d) "Common interest development" has the meaning set forth in Civil Code Section 1351.
- (e) "Concession or incentive" has the meaning set forth in Government Code Section 65915(l).
- (f) "Density bonus" has the meaning set forth in Government Code Section 65915(g).
- (g) "Density bonus housing agreement" means a legally binding agreement between a developer and the county to ensure that the requirements of this chapter are satisfied and that establishes, among other things, the number, size, location, terms and conditions of affordability, and production schedule of target units.
- (h) "Density bonus units" means those residential units granted pursuant to the provisions of this chapter that exceed the otherwise maximum residential density for the development site.
- (i) "Development standard" has the meaning set forth in Government Code Section 65915(o)(1).
- (j) "Director" means the community development director.
- (k) "Housing cost" means the sum of actual or projected monthly payments for all of the following associated with for-sale target units: principal and interest on a mortgage loan, property taxes and assessments, fire and casualty insurance, and homeowner association fees.

Title 8 - ZONING
Division 822 - AFFORDABLE HOUSING

Chapter 822-2 RESIDENTIAL DENSITY BONUS

- (l) "Housing development" means, pursuant to Government Code Section 65915(j), new construction, rehabilitation or conversion projects consisting of five or more residential units, including single-family, and multifamily homes for sale or rent.
- (m) "Lower income household" means a household whose income does not exceed the lower income limits applicable to Contra Costa County, adjusted for household size, as published and periodically updated by the State Department of Housing and Community Development pursuant to Health and Safety Code Section 50079.5.
- (n) "Maximum allowable residential density" means, pursuant to Government Code Section 65915(o)(2), the maximum number of residential units permitted by the county's general plan land use element and applicable zoning district at the time of application, apart from the provisions of this chapter.
- (o) "Moderate income household" means persons and families whose income does not exceed the moderate income limits applicable to Contra Costa County, adjusted for household size, as published and periodically updated by the State Department of Housing and Community Development pursuant to Health and Safety Code Section 50093. The income limit for moderate income households in Contra Costa County is one hundred twenty percent of the area median income.
- (p) "Non-restricted unit" means any unit within a housing development that is not a target unit.
- (q) "Qualifying resident" means a senior citizen or other person eligible to reside in senior citizen housing as defined in Civil Code Section 51.3.
- (r) "Senior citizen housing development" has the meaning set forth in Civil Code Section 51.3.
- (s) "Target unit" means a dwelling unit within a housing development that is affordable to and will be reserved for sale or rent to very low income households, lower income households, moderate income households, or qualifying residents.
- (t) "Very low income household" means a household whose income does not exceed the very low income limits applicable to Contra Costa County adjusted for household size, as published and periodically updated by the State Department of Housing and Community Development pursuant to Health and Safety Code Section 50105.

(Ords. 2007-28 § 2, 2004-45 § 3, 2001-06 § 2).

822-2.208 State law.

If any provisions of this chapter are inconsistent with any provisions of Government Code Section 65915, then the provisions of Government Code Section 65915 shall prevail. All statutory references apply to the statute as now or hereafter amended.

(Ords. 2007-28 § 3).

Article 822-2.4. Density Bonuses

822-2.402 Inclusionary unit density bonus.

For any project where inclusionary units are required under Chapter 822-4, a developer may request a density bonus for providing the required inclusionary units. The developer may request a density bonus in an amount equal to or less than fifteen percent of the total units in the development, including the inclusionary units provided in the development. A developer who requests a density bonus for providing inclusionary units is entitled to a density bonus in the requested amount, up to the maximum fifteen

Title 8 - ZONING
Division 822 - AFFORDABLE HOUSING

Chapter 822-2 RESIDENTIAL DENSITY BONUS

percent. A developer is not entitled to any incentives or concessions under Section 822-2.408, except for incentives that may otherwise be granted pursuant to subsection (c) of Section 822-4.418.

(Ords. 2007-28 § 4, 2004-45 § 3, 2001-06 § 2).

822-2.404 Affordable unit density bonus.

- (a) If a project includes moderate income, lower income, very low income, or senior housing units at levels beyond those required by Chapter 822-4, a developer may request a density bonus under this section and may request incentives or concessions pursuant to Section 822-2.408
- (b) A project for which a density bonus is eligible under this section must meet at least one of the following criteria:
 - (1) Ten percent of the total units of a housing development must be reserved for lower income households.
 - (2) Five percent of the total units of a housing development must be reserved for very low income households.
 - (3) The housing development must be a senior citizen housing development, or a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Civil Code Section 798.76 or 799.5.
 - (4) Ten percent of the total dwelling units in a common interest development must be reserved for persons and families of moderate income, provided that all units in the development are offered to the public for purchase.

The percentages specified above exclude any inclusionary units, exclude any density bonus awarded under this section, and exclude any density bonus awarded under Section 822-2.402.

- (c) The county will grant a requested density bonus to a developer who agrees to construct a housing development that meets at least one of the criteria specified in subsection (b). The density bonus to which an applicant is entitled under this section will be calculated in accordance with Government Code Section 65915(g), unless an applicant elects to accept a lesser percentage of density bonus. For purposes of calculating the amount of the density bonus under this section, the applicant who requests a density bonus must elect whether the bonus will be awarded on the basis of subparagraph (1), (2), (3), or (4) of subsection (b) of this section.

(Ords. 2007-28 § 5, 2004-45 § 3, 2001-06 § 2).

822-2.406 Land donation density bonus.

When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land as provided for in Government Code Section 65915(h), the applicant shall be entitled to a density bonus in accordance with Government Code Section 65915(h).

(Ords. 2007-28 § 6, 2004-45 § 3, 2001-06 § 2).

822-2.408 Incentives and concessions.

The incentives or concessions to which an applicant is entitled shall be determined in accordance with Government Code Section 65915(d)(2).

(Ords. 2007-28 § 7, 2004-45 § 3, 2001-06 § 2).

Title 8 - ZONING
Division 822 - AFFORDABLE HOUSING

Chapter 822-2 RESIDENTIAL DENSITY BONUS

822-2.410 Time periods of affordability.

- (a) Low-income and very-low-income target units shall remain restricted and affordable to the designated group for thirty years, or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program, in accordance with Government Code Section 65915(c)(1).
- (b) The moderate-income units that are directly related to the receipt of the density bonus in a common interest development shall comply with the requirements of Government Code Section 65915(c)(2).
(Ords. 2007-28 § 8, 2004-45 § 3, 2001-06 § 2).

822-2.412 Determining affordability.

In determining the maximum affordable rent or affordable sales price of target units, the following household and unit size assumptions shall be used, unless the housing development is subject to different conditions imposed by other governmental regulations:

Single-room occupancy unit (residential hotel)	75% of 1 person
0 bedroom (studio)	1 person
1 bedroom	2 persons
2 bedroom	3 persons
3 bedroom	4 persons
4 bedroom	6 persons

(Ords. 2004-45 § 3, 2001-06 § 2).

822-2.414 Child care facilities.

- (a) When an applicant proposes to construct a housing development and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, the county shall grant either of the following:
 - (1) 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;
 - (2) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.
- (b) The county will require, as a condition of approving the development with a child care facility, that the following occur:

Title 8 - ZONING
Division 822 - AFFORDABLE HOUSING

Chapter 822-2 RESIDENTIAL DENSITY BONUS

- (1) The child care facility shall remain in operation for a period of time that is as long as or longer than the longest period of time during which the density bonus units are required to remain affordable pursuant to Section 822-2.410
- (2) Of the children who attend the child care facility, the children of very low income households, lower income households, or moderate income households 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 moderate income households pursuant to Section 822-2.402

(Ords. 2004-45 § 3, 2001-06 § 2).

Article 822-2.6. Review

822-2.602 Applications.

- (a) An applicant may submit a written proposal for the specific concessions or incentives that the applicant requests. The county will grant the concession or incentive requested by the applicant unless the county makes a written finding pursuant to Government Code Section 65915(d).
- (b) If existing development or zoning standards, including but not limited to such items as minimum lot size, side yard setbacks, and placement of public works improvements, would otherwise inhibit the utilization of a density bonus on a specific site, an applicant may submit a written proposal for the waiver or reduction of those standards. A written proposal under this subsection must show that the waiver or modification is necessary to make the housing development economically feasible as provided in subsections (e) and (f) of Government Code Section 65915. For purposes of this chapter, any waiver or modification to the requirements of the involved zoning district shall not be considered a variance. The county is not required to waive or reduce development standards if, pursuant to Government Code Section 65915(e), the waiver or reduction would have a specific adverse impact upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

(Ords. 2007-28 § 9, 2004-45 § 3, 2001-06 § 2).

822-2.604 Processing.

- (a) An application made pursuant to this chapter is considered to be a component of a housing development application and will be processed pursuant to Section 26-2 of this code.
- (b) A housing development application that contains a request for concessions or incentives must include the specific concessions or incentives requested.
- (c) A housing development application that contains a request for the waiver or reduction of existing development or zoning standards must include the specific standards requested to be waived or reduced.
- (d) Appeals from a decision to deny a written proposal for concessions or incentives, or from a decision to deny a written proposal for the waiver or reduction of existing development or zoning standards, are governed by Article 26-2.24 of this code. A decision by the county to deny a requested density bonus, incentive, or concession, or a decision by the county to deny a requested waiver or reduction of existing development or zoning standards, may be appealed under Article 26-2.24 separately from an appeal on a housing development application. Judicial review of a final decision to deny a requested density bonus, incentive, or concession may be had in accordance with Government Code Section 65915(d)(3). Judicial review of a final decision to deny a requested waiver or reduction of

Title 8 - ZONING
Division 822 - AFFORDABLE HOUSING

Chapter 822-2 RESIDENTIAL DENSITY BONUS

existing development or zoning standards may be had in accordance with Government Code Section 65915(e).

(Ords. 2007-28 § 9, 2004-45 § 3, 2001-06 § 2).

822-2.606 Preliminary application.

- (a) An applicant proposing a housing development pursuant to this chapter may submit a preliminary application prior to the submittal of any formal request for approval of a housing development. A preliminary application should include the following information:
- (1) A brief description of the proposed housing development, including the total number of units, target units, and density bonus units proposed.
 - (2) The zoning and general plan designations and assessors parcel number(s) of the project site.
 - (3) A vicinity map and preliminary site plan, drawn to scale, including building footprints, preliminary elevations, driveway and parking layout.
- (b) Applicants are encouraged to schedule a pre-application meeting with the director to discuss and identify potential application issues, including prospective concessions or incentives, or prospective waivers or reductions of existing development and zoning standards.

(Ords. 2007-28 § 9, 2004-45 § 3, 2001-06 § 2).

Article 822-2.8. Development Standards

822-2.802 Time of construction.

Target units must be constructed concurrently with nonrestricted units unless the county and developer agree within the density bonus housing agreement to an alternative schedule for development.

(Ords. 2004-45 § 3, 2001-06 § 2).

822-2.804 Availability.

The first target unit shall be made available for occupancy not later than the time at which the first nontargeted dwelling unit of the housing development is available for occupancy.

(Ords. 2004-45 § 3, 2001-06 § 2).

822-2.806 Design.

Except as provided in Section 822-2.808, target units shall be built on-site and dispersed throughout the housing development wherever feasible. In addition, the number of bedrooms of the target units shall be equivalent to the bedroom mix of the nontarget units of the housing development, except that the developer may include a higher proportion of target units with more bedrooms. The design and appearance of the target units shall be compatible with the design of the total housing development.

(Ords. 2004-45 § 3, 2001-06 § 2).

Title 8 - ZONING
Division 822 - AFFORDABLE HOUSING

Chapter 822-2 RESIDENTIAL DENSITY BONUS

822-2.808 Alternate location.

Circumstances may arise in which the public interest would be served by allowing some or all of the target units associated with one housing development to be constructed and operated at an alternative development site. In appropriate cases, the developer and the county may enter into a written agreement to permit target units to be constructed and operated at a designated alternative development site. The resulting developments shall be considered a single housing development for purposes of this chapter. Under these circumstances, when the target units are to be provided on the alternative site, the developer is subject to the same requirements of this chapter.

(Ords. 2004-45 § 3, 2001-06 § 2).

822-2.810 Compliance.

Housing developments shall comply with all applicable development standards, except those that may be modified as provided by this chapter.

(Ords. 2004-45 § 3, 2001-06 § 2).

Article 822-2.10. Density Bonus Housing Agreement

822-2.1002 Execution of agreement.

- (a) Applicants or developers requesting a density bonus shall sign a density bonus housing agreement. The agreement shall be in a form provided by the director. The director shall submit the proposed agreement to the board of supervisors for approval on behalf of the county.
- (b) Following execution of the agreement, the completed density bonus housing agreement will be recorded. The conditions from the agreement shall be filed and recorded on the parcel or parcels designated for the construction of target units. The approval and recordation shall take place before final map approval, or, where a map is not being processed, before the issuance of building permits for parcels with target units. The density bonus housing agreement shall be binding on all future owners and successors in interest and shall so provide in its terms.

(Ords. 2004-45 § 3, 2001-06 § 2).

822-2.1004 Condition of approval.

A density bonus housing agreement shall be made a condition of approval for all housing development projects that receive a density bonus.

(Ords. 2004-45 § 3, 2001-06 § 2).

822-2.1006 Terms in agreement.

The density bonus housing agreement shall include the following information:

- (a) The total number of units approved for the housing development, including the number of target units.
- (b) A description of the affordability and occupancy restrictions for the target units (i.e., very low-income households, lower-income households, moderate income households, or qualifying

Title 8 - ZONING
Division 822 - AFFORDABLE HOUSING

Chapter 822-2 RESIDENTIAL DENSITY BONUS

residents), including the standards for determining the corresponding affordable rent or affordable sales price and housing cost.

- (c) The location, unit sizes (in square feet), and number of bedrooms of all units in the development, including the target units.
- (d) Term of use restrictions specified in Section 822-2.410
- (e) A schedule of completion and occupancy of all units in the development, including the target units.
- (f) A description of all concessions or incentives.
- (g) If applicable, tenure of use restrictions and attendance restrictions for child care facilities, in accordance with Section 822-2.414(b).
- (h) A description of remedies for breach of the agreement by either party.
- (i) Other provisions to ensure implementation and compliance with this chapter.

(Ords. 2007-28 § 10, 2004-45 § 3, 2001-06 § 2).

822-2.1008 For sale housing development terms.

In the case of for-sale housing developments, the density bonus housing agreement shall provide for the following terms governing the initial sale and use of target units during the applicable tenure of use restriction period:

- (a) Target units shall, upon initial sale, be sold at an affordable sales price and housing cost to eligible very low income households, lower income households, moderate income households, or qualified residents (i.e., maintained as senior citizen housing) as defined by this chapter.
- (b) Target units shall be owner-occupied initially by eligible very low or lower income households, or by moderate income households in the case of common interest developments, or by qualified residents in the case of senior citizen housing.
- (c) The initial purchaser of each target unit shall execute an instrument or agreement in the form of a deed restriction approved by the director restricting the sale of the target unit in accordance with the provisions of this chapter during the applicable tenure of use restriction period. This deed restriction shall be recorded against the parcel containing the target unit and shall contain those provisions that the director may require to ensure continued compliance with this chapter and statutory requirements and to put subsequent purchasers on notice of the conditions and terms during the applicable use restriction period.
- (d) In the case of common interest developments, the density bonus housing agreement shall include an equity-sharing agreement that complies with Government Code Section 65915(c)(2).

(Ords. 2007-28 § 11, 2004-45 § 3, 2001-06 § 2).

822-2.1010 Rental housing development terms.

In the case of rental housing developments, the density bonus housing agreement shall include the following terms and conditions governing the use of target units during the use restriction period:

- (a) The methodology and procedures for qualifying tenants as very low income households, lower income households, moderate income households, or qualified resident households; for establishing affordable rent; for filling vacancies; and for maintaining target units for qualified tenants.

Title 8 - ZONING
Division 822 - AFFORDABLE HOUSING

Chapter 822-2 RESIDENTIAL DENSITY BONUS

- (b) Provisions requiring owners of the rental housing developments to verify tenant incomes and rents, and maintain books and records in a form approved by the director, to demonstrate compliance with this chapter.
- (c) Provisions requiring owners of the rental housing developments to submit an annual report to the director. The report must include the name, address, household size, and income of each person occupying target units identify the number of bedrooms and monthly rent or cost (including utility allowance) of each target unit. Tenants in rental housing developments shall provide consent to the owners to allow these disclosures.

(Ords. 2004-45 § 3, 2001-06 § 2).