

CITY OF FAIRFIELD

ORDINANCE NO. 2021-02

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAIRFIELD AMENDING SECTION 25.38
(DENSITY BONUS) OF THE FAIRFIELD MUNICIPAL CODE TO ADOPT REGULATIONS TO
CONFORM WITH STATE DENSITY BONUS LAW (CALIFORNIA GOVERNMENT CODE SECTION
65915)**

WHEREAS, the State Legislature has declared that the lack of housing, including providing for a variety of housing types for all income levels and special needs groups, is a critical problem that threatens the economic, environmental, and social quality of life in California; and

WHEREAS, Government Code Section 65583 requires that the City's Housing Element address governmental constraints to the development of housing, including providing for a variety of housing types for all income levels; and

WHEREAS, the City Council of the City of Fairfield adopted the City's 2014-2022 Housing Element on April 21, 2015; and

WHEREAS, Government Code Section 65915 requires that local governments adopt procedures for processing density bonus applications; and

WHEREAS, the City Council last amended the City's density bonus ordinance in 2012 with the adoption of Ordinance No. 2012-04; and

WHEREAS, the City's Housing Element provides that the City will amend the existing density bonus ordinance to bring it into conformance with current State Law, and that the City will continue offering density bonuses and other incentives to developers who include affordable units within residential developments; and

WHEREAS, the Legislature has adopted bills to Government Code Section 65915 several times since 2012, most recently with the enactment of Assembly Bill 2345, and the City wishes to update the Municipal Code to ensure consistency with State law and clarify how to implement its density bonus program.

THE CITY COUNCIL OF THE CITY OF FAIRFIELD DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 25.38, "Density Bonus," of Chapter 25, "Zoning Ordinance," of the Fairfield Municipal Code is hereby amended in its entirety to read as follows:

"Sections:

- 25.38.1 Purpose and Interpretation**
- 25.38.2 Definitions**
- 25.38.3 Application; Review Authority**

- 25.38.4 Eligibility**
- 25.38.5 Density Bonus**
- 25.38.6 Incentives and Concessions**
- 25.38.7 Waivers of Development Standards**
- 25.38.8 Parking Ratios**
- 25.38.9 Additional Requirements**

25.38.1 Purpose and Interpretation

This section is intended to provide incentives to encourage the production of affordable housing in the City of Fairfield and to implement the General Plan Housing Element and State Density Bonus Law (Government Code Section 65915).

The provisions of this section shall be interpreted to fulfill the requirements of Government Code Section 65915. Any changes to that Section 65915 shall be deemed to supersede and govern any conflicting provisions contained herein.

25.38.2 Definitions

For purpose of this Section, the following words and phrases shall have the following meanings. Where the definitions of terms defined herein are inconsistent with definitions provided under State density Bonus Law, the meanings of the terms in State Density Bonus Law shall prevail.

- A. "Area median income" means the median family income for Solano County as determined by the California Department of Housing and Community Development.
- B. "Childcare facility" means a child daycare facility other than a family daycare home, including, but not limited to, infant centers, preschools, extended daycare facilities, and school-age childcare centers.
- C. "Density bonus" means an increase in density over the otherwise maximum allowable residential density as of the date of application by the applicant to the city. Except as otherwise required by Government Code Section 65915, the density bonus units shall not be included when calculating the total number of housing units that qualifies a housing development for a density bonus.
- D. "Development standard" includes a site or construction condition, including, but not limited to, a height limitation, setback requirement, floor area ratio, onsite open-space requirement, or parking ratio that applies to a residential development pursuant to the zoning ordinance, an applicable specific plan, the general plan, or other local ordinance, policy, or regulation.
- E. "Housing development" means a development project for five or more residential units, including mixed-use developments. For purposes of this section, "housing development" also includes a subdivision or common interest development, as defined in Civil Code Section 4100, that has been approved by the City 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 Government Code Section 6585.4(d), where the result of the rehabilitation would be a net increase of available residential units. .

- F. "Incentives or Concessions" include, but are not limited to, a reduction of development standards or zoning ordinance requirements which exceed minimum building standards and which result in identifiable and actual cost reductions to provide for affordable housing costs or affordable rents; the approval of mixed-use zoning in conjunction with the housing development project in order to reduce the cost of housing development where the mixed-use development is compatible with the housing project and the existing or planned development in the area; or other regulatory incentives or concessions proposed by the applicant or the city that result in identifiable and actual cost reductions to provide for affordable housing costs or affordable rents.
- G. "Lower income households" means persons and families whose total household income does not exceed 80 percent of the area median income, as set forth in Health and Safety Code Section 50079.5.
- H. "Major transit stop" means (i) an existing rail or bus rapid transit station; (ii) intersection of two or more bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods; or (iii) any other major transit stops that are included in an applicable regional transportation plan.
- I. "Maximum allowable residential density" means the maximum density allowed under the zoning ordinance and land use element of the general plan, or, if a range of density is permitted, 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 maximum density allowed in the general plan shall prevail.
- J. "Moderate income households" means persons and families who are not "lower income households" and whose total household income does not exceed 120 percent of area median income, as set forth in Government Code Sections 50053 and 50093.
- K. "Senior citizen housing development" means a residential development developed, substantially rehabilitated, or substantially renovated for senior citizens that has at least 35 dwelling units, as set forth in Civil Code Section 51.3.
- L. "Very low-income households" means persons and families whose total household income does not exceed 50 percent of area median income, as set forth in Health and Safety Code Section 50105.

25.38.3 Application; Review Authority

- A. In addition to any other review required for a proposed housing development, applications for a density bonus or other benefit(s) under this Section shall be filed with

the community development department on a form approved by the director. The application shall be filed concurrently with the application for minor development review, development review, or other applicable planning entitlement(s) for the housing development. At the time the application is submitted, the applicant shall pay a density bonus application fee, established by resolution of the City Council.

- B. The applicant shall submit reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, waivers or reductions of developments standards, and parking ratios.
- C. City staff shall process a complete application for a density bonus in the same manner as, and concurrently with, the application for minor development review, development review, or other planning entitlement(s) as required by this Code.
- D. Density bonus applications shall be reviewed and acted on by the same review authority as the housing development's other entitlement(s), as set forth in Section 25.41 of the Zoning Ordinance.

25.38.4 Eligibility

- A. In order to be eligible for a density bonus, incentives or concessions, a waiver of development standards, or parking ratios as provided by this Section, a proposed housing development project must meet at least one of the following requirements as provided in Government Code Section 65915:
 - 1. At least 5 percent of the total units are for very low-income households.
 - 2. At least 10 percent of the total units are for lower income households.
 - 3. A senior citizen housing development, or a mobile home park that limits residency based on age requirements for housing for older persons pursuant to Civil Code Sections 798.76 or 799.5.
 - 4. At least 10 percent of the total units in a common interest development, as defined in Civil Code Section 4100, are for moderate income households, provided that all units in the housing development are offered to the public for purchase.
 - 5. At least 10 percent of the total units are for transitional foster youth, disabled veterans, or homeless persons, and such units are subject to a recorded affordability restriction of 55 years at the same affordability level as very low-income units.
 - 6. At least 20 percent of the total units are for lower income students in a student housing development that meets the requirements under Government Code Section 65915(b)(1)(F).

7. 100 percent of the total units and the density bonus units, but exclusive of a manager's unit(s), are for lower income households; provided, however, that up to 20 percent of the units, including total units and density bonus units, may be for moderate income households.
- B. An applicant for approval to convert apartments to a condominium project shall be considered and approved for a density bonus or any other associated incentives or concessions in accordance with Government Code Section 65915.5. Said conversion shall be consistent with Chapter 25, Article IV (Condominium Conversion Ordinance) and Section 25.32.14
- C. An applicant shall be ineligible for a density bonus or any other benefit provided under this Section if the housing development involves the redevelopment of existing dwelling units, or dwelling units that have been vacated or demolished in the 5-year period preceding the application, that have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to lower income households, or occupied by lower income households, unless the proposed housing development replaces those units in accordance with Government Code Section 65915.
- D. Except as otherwise required by Government Code Section 65915, the density bonus units shall not be included when calculating the total number of units that qualifies a housing development for a density bonus.

25.38.5 Density Bonus

- A. For a housing development qualifying pursuant to Section 25.38.3 and Government Code Section 65915, the City shall grant a density bonus in the amount specified by subsection (f) of Section 65915, as may be amended from time to time. All density calculations resulting in fractional units shall be rounded up to the next whole number.
- B. A housing development that is eligible for a density bonus pursuant to Section 25.38.4 above and includes a childcare facility to be located on the premises of, as a part of, or adjacent to the project, may be entitled to either an additional density bonus or an additional incentive or concession as provided in subsection (h) of Government Code Section 65915.
- C. An applicant may elect to accept a lesser percentage of density bonus than provided in Government Code Section 65915, including no density bonus.
- D. The granting of a density bonus shall not be interpreted, in and of itself, to require a General Plan Amendment, zoning change, or other discretionary approval.

25.38.6 Incentives and Concessions

- A. The City shall grant a qualifying housing development the number of incentives and concessions required by Government Code Section 65915. The City shall grant the specific

concession(s) or incentive(s) requested by the applicant, unless the City finds any of the following:

1. The concession or incentive does not result in identifiable and actual cost reductions to provide for affordable housing costs or for rents for the targeted units.
 2. The concession or incentive would have a specific, adverse impact upon public health, safety, or the physical environment, or on any real property that is listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the housing development unaffordable to lower income and moderate income households.
 3. The concession or incentive would be contrary to state or federal law.
- B. Senior citizen housing developments that qualify for a density bonus shall not receive any incentives or concessions, unless Government Code Section 65915 is amended to specifically require that local agencies grant incentives or concessions for senior citizen housing developments.

25.38.7 Waivers of Development Standards

- A. Except as restricted by Government Code Section 65915, the applicant for a density bonus may submit a proposal for the waiver or reduction of development standards that have the effect of physically precluding the construction of a housing development incorporating the density bonus and any incentives or concessions granted to the applicant.
- B. A request for a waiver or reduction of development standards shall be accompanied by documentation demonstrating that the waiver or reduction is physically necessary to construct the housing development with the additional density allowed pursuant to the density bonus and incorporating any incentives or concessions required to be granted.
- C. The City shall approve a waiver or reduction of a development standard, unless it finds any of the following:
1. The application of the development standard would not physically preclude the construction of a housing development at the density allowed by the density bonus and with the incentives or concessions granted to the applicant.
 2. The waiver or reduction of the development standard would have a specific, adverse impact upon health, safety, or the physical environment, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

3. The waiver or reduction of the development standard would have an adverse impact on any real property that is listed in the California Register of Historical Resources.
4. The waiver or reduction of the development standard would be contrary to state or federal law.

25.38.8 Parking Ratios

- A. Pursuant to Government Code Section 65915(p), upon request by the applicant, the City shall not require a vehicle parking ratio, inclusive of parking for persons with a disability and guests, that exceeds the following:
 1. 0 to 1 bedroom: 1 onsite parking space.
 2. 2 to 3 bedrooms: 1.5 onsite parking spaces.
 3. 4 or more bedrooms: 2.5 parking spaces.
- B. Lower parking ratios shall apply to the following projects, if requested by the applicant, as set forth in Government Code Section 65915(p):
 1. Housing developments with at least 11 percent very low income or at least 20 percent lower income units, and are located within one-half mile of a major transit stop, as defined in Government Code Section 65915(o)(2), to which there is unobstructed access: 0.5 spaces per unit.
 2. Rental housing developments that are 100 percent affordable to lower income households [exclusive of manager's unit(s)], and are located within one-half mile of a major transit stop, as defined in Government Code Section 65915(o)(2), to which there is unobstructed access: No minimum parking requirement.
 3. Rental housing developments that are 100 percent affordable to lower income households [exclusive of manager's unit(s)]; are for individuals who are 62 years of age or older and comply with Civil Code Sections 51.2 and 51.3; and either have paratransit service or are located within one-half mile to a fixed bus route service that operates at least eight times a day and to which there is unobstructed access: No minimum parking requirement.
 4. Rental housing developments that are 100 affordable to lower income households [exclusive of manager's unit(s)]; are special needs housing developments or supportive housing developments; and either have paratransit service or are located within one-half mile to a fixed bus route service that operates at least eight times a day and to which there is unobstructed access: No minimum parking requirement.

- C. If the total number of required parking spaces is not a whole number, the number shall be rounded up to the next whole number.
- D. A housing development may provide onsite parking through tandem parking or uncovered parking, but not through on-street parking.
- E. A request for parking ratios pursuant to this subsection shall not reduce the number of incentives or concessions to which an applicant is entitled pursuant to Section 25.38.5, except where the applicant requests parking incentives or concessions beyond those provided in this subsection.

25.38.9 Additional Requirements

- A. The applicant shall comply with all requirements stated in Government Code Section 65915.
- B. The applicant shall enter into an agreement with the City to ensure the continued affordability of all affordable units or the continued reservation of such units for qualifying senior citizens. Prior to receiving a building permit for any project that receives a density bonus or any incentive, concession, waiver, or reduction of development standards pursuant to this section, such agreement shall be recorded as a covenant against the property.
- C. For any housing development project that is granted a density bonus or other benefit pursuant to this section, the affordable units that qualify the project as eligible under this Section must be constructed concurrently with or prior to the construction of any market rate units. The exterior of the affordable units shall be visually indistinguishable from the market rate units in the housing development in terms of overall design, execution, and use of materials. Affordable units may be smaller than the market rate units but shall be proportionally comparable in bedroom count to the market rate units. In addition, the affordable units must be integrated with the market rate units so that there is a mix of affordable and market rate units, if any, in each building of the housing development.”

SECTION 2. The City Council hereby finds, in the exercise of its independent judgment and analysis, that this Ordinance is exempt from the California Environmental Quality Act (CEQA) as there is no possibility that this Ordinance would have a significant impact on the environment pursuant to State CEQA Guideline Section 15061(b)(3). This Ordinance merely incorporates State law, allowing applicants to seek a density bonus pursuant to Government Code Section 65915.

SECTION 3. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to

whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 4. This Ordinance shall be effective 30 days following its adoption by the City Council. A summary of this Ordinance shall, within fifteen (15) days after passage, be published in accordance with Section 36933 of the Government Code of the State of California with the names of the City Councilmembers voting for and against it.

INTRODUCED at a regular meeting of the City Council of the City of Fairfield on the 2nd day of March, 2021, and

PASSED AND ADOPTED this ____ day of _____, 2021, by the following vote:

AYES: Councilmembers: PRICE / BERTANI / MOY / PANDURO / TIMM / TONNESEN / VACCARO

NOES: Councilmembers: _____

ABSENT: Councilmembers: _____

ABSTAIN: Councilmembers: _____

MAYOR

ATTEST:

CITY CLERK