

DRAFT Ordinance No. 2021-392

[Date of this Draft: 2/9/21]

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALABASAS, CALIFORNIA AMENDING CHAPTER 17.22 OF THE CALABASAS MUNICIPAL CODE, "AFFORDABLE HOUSING", TO BRING INTO CONSISTENCY WITH NEW CALIFORNIA LAW THE STANDARDS AND REQUIREMENTS FOR PROVIDING AND INCENTIVIZING AFFORDABLE HOUSING WITH DENSITY BONUSES AND OTHER STATE-MANDATED CONCESSIONS AS PART OF EITHER A RESIDENTIAL HOUSING PROJECT OR A COMMERCIAL MIXED-USE PROJECT.

WHEREAS, the City Council of the City of Calabasas, California ("the City Council") has considered all of the evidence including, but not limited to, the Planning Commission Resolution No. 2021-707, Planning Division staff report and attachments, and public testimony at its meeting; and,

WHEREAS, the City Council finds that the proposed amendment to Chapter 17.22 will update the City's affordable housing requirements as they pertain to density bonus, so that the affordability thresholds, density bonus amounts, and requisite concessions, incentives, and waivers align with newly enacted State law; and,

WHEREAS, the City Council finds that the proposed Development Code Amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City; and,

WHEREAS, the proposed Development Code Amendment is in compliance with the provisions of the California Environmental Quality Act (CEQA) because the project is exempt from environmental review in accordance with Section 21084 of the California Environmental Quality Act (CEQA), and pursuant to Sections 15002(j)(1) and 15061(B)(3) of the CEQA Guidelines; and,

WHEREAS, the proposed Development Code Amendment is consistent with newly effective amendments to California Government Code section 65915 and is consistent with the Housing Element of the Calabasas 2030 General Plan, which encourages the development of affordable housing, is adopted in the public interest, and is otherwise consistent with federal and state law; and,

WHEREAS, the City Council has considered the entirety of the record, which includes, without limitation, the Calabasas 2030 General Plan, the staff report, public comments, Planning Commission Resolution No. 2021-707, and the record of the public hearing conducted by the Planning Commission on February 18, 2021; and all other associated reports and testimony;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CALABASAS DOES ORDAIN AS FOLLOWS:

SECTION 1. Based upon the foregoing the City Council finds:

1. Notice of the [date] City Council public hearing was posted at Juan Bautista de Anza Park, the Calabasas Tennis and Swim Center, Gelson's Market, the Agoura Calabasas Recreation Center, and at Calabasas City Hall.
2. Notice of the [date] City Council public hearing was published in the *Las Virgenes Enterprise* ten (10) days prior to the hearing.
3. Notice of the [date] City Council public hearing complied with the public notice requirements set forth in Government Code Section 65009 (b)(2).
4. Following a public hearing held on February 18, 2021, the Planning Commission adopted Resolution No. 2021-707 recommending to the City Council adoption of this ordinance.

SECTION 2. Section 17.76.050(B) Calabasas Municipal Code allows the City Council to approve the Development Code Amendment, which follows in Section 3 of this ordinance, provided that the following findings are made:

1. *The proposed amendment is consistent with the goals, policies, and actions of the General Plan;*

The proposed amendment to Chapter 17.22 will update the City's affordable housing requirements as they pertain to density bonus, so that the affordability thresholds, density bonus amounts, and requisite concessions, incentives, and waivers align with newly enacted State law. The Calabasas 2030 General Plan, as updated on September 11, 2013 through the adoption of the 2014-2021 Housing Element Update, includes the following objective statements: 1) Assist in the provision of a variety of housing types to address the needs of all economic segments of the Calabasas community; and, 2) Address and remove governmental constraints that may hinder or discourage housing development in Calabasas. The proposed amendment will assist in the provision of a variety of housing types to address the needs of all economic segments of the Calabasas community by increasing the number of potential new and new affordable housing units on residentially zoned and mixed-use zoned properties in the city and decreasing the per-unit development costs for new housing production. The proposed amendment will also remove governmental constraints by allowing qualified housing development projects to more easily secure development standard concessions and waivers as

necessary to accomplish affordable housing production. In addition to being consistent with these General Plan objectives, the proposed amendment specifically implements the following General Plan policies, as articulated in the 2014-2021 Housing Element:

Policy V-12: Continue to require new housing development to set aside a portion of units for lower and moderate income households through the Inclusionary Housing Ordinance.

Policy V-14: Provide financial and/or regulatory incentives to facilitate the development of affordable housing.

Policy V-15: Encourage affordable housing units to be dispersed throughout a project and not grouped together in a single area.

Policy V-17: Offer regulatory incentives and concessions, including density bonuses, to offset or reduce the costs of developing affordable housing.

Accordingly, the proposed amendment is consistent with the goals, policies, and actions of the General Plan.

2. *The proposed amendment would not be detrimental to the public interest, health, safety, convenience or welfare of the city;*

The proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the City because it updates the City's affordable housing requirements to comply with new state law, and any future residential development project that would take advantage of the updated density bonus provisions still must comply fully with all other applicable standards for site development, including but not limited to: Hillside Grading Ordinance, Scenic Corridor Overlay Ordinance and Design Guidelines, Dark Skies Ordinance, Landscaping Ordinance, Oak Tree Ordinance, Green Buildings Ordinance, and other health and safety requirements of applicable laws. Any such future project must comply fully with the provisions of the Building and Fire Codes, and would be subject to environmental review in accordance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines, and must mitigate all identified significant environmental impacts. Government Code section 65915, subdivision (d)(1)(B) also recognizes the City's ability to prevent specific, adverse impacts on public health or safety from granting requested incentives or concessions and to impose mitigation measures as needed to protect against specific, adverse impacts to public health and safety.

3. *The proposed amendment is in compliance with the provisions of the California Environmental Quality Act (CEQA).*

The proposed amendment is exempt from the requirement for environmental review under CEQA because: 1) the density bonus provisions promulgated through the updated Code already took effect on January 1, 2017 with preemptive authority under the new State statutes; thus,

the City's action is not creating a new land use regulation and it can be seen with certainty that no environmental impacts will result from the City's action. Consequently, and in accordance with CEQA Section 21084 and both Section 15002(i)(1) -- Lack of Local Jurisdictional Discretion -- and Section 15061(b)(3) -- General Rule of Exemption -- of the CEQA Guidelines, a Notice of Exemption has been prepared for this proposed amendment.

4. *The proposed amendment is internally consistent with other applicable provisions of this development code.*

The proposed amendment is internally consistent with other applicable provisions of the Development Code because it updates only Chapter 17.22, Affordable Housing, and all other chapters remain unaffected.

SECTION 3. Development Code Amendment: Section 17.22.020 of the Land Use and Development Code is hereby amended to read as follows, with additions denoted as underlined and deletions denoted in ~~strike-out~~:

17.22.020 - Affordable housing requirements; eligibility for bonus and incentives.

A. Affordable Housing Requirement. All residential or mixed use development projects proposing five or more housing units shall include housing that is affordable to low, very low and/or moderate income households, in compliance with this section. Housing units provided in compliance with this section that meet the requirements of both this Section 17.22.020(A) and Section 17.22.020(B) shall be eligible for density bonuses and incentives in compliance with Section 17.22.030. At a minimum, a proposed residential development project shall include the following number of affordable housing units at the stated rental rates or sales prices, or shall provide off-site alternatives in compliance with the provisions of this chapter:

1. Twenty (20) percent of the total number of units shall be rented or sold at prices affordable to households with an income of up to one hundred ten (110) percent of the county median income; or
2. Fifteen (15) percent of the total number of units shall be rented or sold at prices affordable to households with an income of up to ninety (90) percent of the county median income; or
3. Ten (10) percent of the total number of units shall be rented or sold at prices affordable to households with an income of up to seventy-five (75) percent of the county median income; or
4. Five percent of the total number of units shall be rented or sold at prices affordable to households with an income of up to fifty (50) percent of the county median income.

B. In order to be eligible for a density bonus and other incentives as provided by this chapter, a proposed residential development project shall:

1. Consist of five or more dwelling units; and
2. Provide for the construction of one or more of the following within the development, one of which the permit applicant shall elect as the basis for its request for a density bonus:
 - a. Ten (10) percent of the total units of a housing development for low income households, as defined in Health and Safety Code section 50079.5; or
 - b. Five percent of the total units of a housing development for very low income households, as defined in Health and Safety Code section 50105; or
 - c. A senior citizen housing development as defined in Civil Code sections 51.3 and 51.12, or mobile home park that limits residency based on age requirements for housing for older persons pursuant to Civil Code section 798.76 or 799.5; or
 - d. Ten (10) percent of the total dwelling units in a common interest development as defined in Civil Code section 1351, for persons and families of moderate income, as defined in Health and Safety Code section 50093, provided that all units in the development are offered to the public for purchase; or
 - e. Ten percent of the total units of a housing development for transitional foster youth, as defined in Section 66025.9 of the Education Code, disabled veterans, as defined in Section 18541, or homeless persons, as defined in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.). The units described in this subparagraph shall be subject to a recorded affordability restriction of 55 years and shall be provided at the same affordability level as very low income units.
3. Satisfy all other applicable provisions of this development code.

17.22.030 - Types of bonus and incentives allowed.

As required by Government Code Section 65915, this section offers density bonuses, incentives, concessions, and waivers, as applicable, to permit applicants for providing housing that is affordable to the types of households and qualifying residents identified in subsection (A) of this section. A housing or mixed-use development that satisfies all applicable provisions of this section shall be entitled to one density bonus and one or more incentives or concessions, described below. If the density bonus, incentives, or concessions cannot be accommodated on a site due to strict compliance with the provisions of this development code, the council shall waive or modify development standards, to the extent required by state law, to accommodate the bonus units, incentives, or concessions to which the development would be entitled, unless such waiver or modification does not result in identifiable and actual cost reductions to provide

for affordable housing costs or would have a specific, adverse impact, as defined in Government Code Section 65589.5(d)(2), upon public health, safety, or the physical environment, and for which there is no feasible method to mitigate or avoid the specific adverse impact. In offering these incentives, this section carries out the requirements of Government Code Sections 65302, 65913, and 65915, et seq.

A. Density Bonus. The density bonus granted to a residential development project shall consist of an 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. The applicant may elect to accept a lesser percentage of a density bonus. The amount of density bonus to which the applicant is entitled shall vary according to the amount and type of affordable housing units provided, and shall be set at the amount specified in Government Code section 65915. The City will also grant a density bonus for qualifying projects containing affordable housing provided by partnership between a commercial developer and an affordable housing developer, as required by Government Code section 65915.7.

B. Additional Density Bonus. When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates developable land to the city as provided for in Government Code Section 65915, the applicant shall be entitled to an increase above the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the General Plan for the entire development, as required and at the amounts set by Government Code section 65915. This increase is in addition to any density bonus provided by subsection (A)(2) of this section, up to a maximum combined density increase of thirty-five (35) percent.

C. Incentives and Concessions, Number. In addition to reduced off-street parking requirements, as provided in Government Code 65915, a ~~An~~ eligible project shall receive at least one and as many as four ~~one, two or three~~ incentives or concessions, as follows:

1. One incentive or concession for a project that includes at least ten (10) percent of the total units for lower income households, at least five percent for very low income households, or at least ten (10) percent for persons and families of moderate income in a common interest development;
2. Two incentives or concessions for a project that includes at least ~~seventeen (17)~~ ~~twenty (20)~~ seventeen (17) percent of the total units for lower income households, at least ten (10) percent for very low income households, or at least ~~twenty (20)~~ twenty (20) percent for persons and families of moderate income in a common interest development; ~~and~~
3. Three incentives or concessions for a project that includes at least ~~twenty-four (24)~~ ~~thirty (30)~~ twenty-four (24) percent of the total units for lower income households, at least fifteen (15) percent for very low income households, or at least ~~thirty (30)~~ thirty (30) percent for persons and families of moderate income in a common interest development. ~~and~~ and.

4. Four incentives or concessions for a project that includes at least eighty (80) percent of the total units for very low income or low income households.

D. Incentives and Concessions, Description. A project that is eligible to receive incentives pursuant to subsection (C) above shall be entitled to at least one of the following incentives identified in Government Code Section 65915(l):

1. A reduction in the site development standards (as defined by Government Code Section 65915 Subsection (o)(1)) or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission.
2. Approval of mixed-use zoning in conjunction with the housing project if nonresidential land uses would reduce the cost of the housing project, and the nonresidential land uses would be compatible with the housing project and adjoining development.
3. Other regulatory incentives or concessions proposed by the permit applicant or the city that would result in identifiable and actual cost reductions to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set at the applicable affordability levels.

Nothing in this section shall be construed to require the city to provide, or limit the city's ability to provide, direct financial incentives for housing development, including the provision of publicly owned land by the city or the waiver of fees and dedication requirements.

E. Limitations and Exceptions.

1. In order to receive incentives or concessions as described in subsections (C) and (D), an applicant must submit a proposal to the city requesting the specific incentives or concessions that the applicant desires. The applicant must file an application for a density bonus, on the form provided by the Community Development Director and with the attachments required by that form, which is part of and must be filed with the application for the development project itself. The applicant must provide reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, and/or waivers or reductions of development standards and parking ratios, including information demonstrating that the requested incentives, concessions, or waivers will result in identifiable and actual cost reductions to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set at the applicable affordability levels. The application for a density bonus is part of the application for the development project itself, as such the application for a density bonus may not be deemed complete until the application for the housing or mixed use development is deemed complete.

2. The city shall grant the incentives or concessions requested by the permit applicant pursuant to subsection (E)(1) and required pursuant to subsection (C), unless the city makes a written finding, based upon substantial evidence, of either of the following:

a. The incentive or concession will not result in identifiable and actual cost reductions to provide for affordable housing costs, as defined in Health and Safety Code Section 50052.5 or for rents for the targeted units to be set at the applicable affordability levels; or

b. The incentive or concession would have a specific adverse impact, as defined in Government Code Section 65589.5(d)(2), 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-income and moderate income households.

3. The city's granting of an incentive, concession, or density bonus shall not require or be interpreted, in and of itself, to require a General Plan amendment, zoning change, or other discretionary approval.

4. Nothing in this section shall be interpreted to require the city to waive or reduce development standards or to grant an incentive or concession that would violate applicable state or federal law or have a specific, adverse impact upon public health, safety or the physical environment for which there is no feasible method of mitigating or avoiding the specific adverse impact; nor shall this subsection require the city to waive or reduce development standards or to grant an incentive that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

F. Continued Availability and Affordability. Before the issuance of a building permit for any dwelling unit in a development for which density bonus units have been awarded or incentives or concessions have been received, the land use permit application for the residential project shall include the procedures proposed by the permit applicant to maintain the continued affordability of all lower income and restricted occupancy density bonus units, and the permit applicant shall identify the restricted units and enter into a written covenant with the city to guarantee the continued affordability of all lower income and restricted occupancy density bonus units as required by Government Code section 65915.

G. Recordation of Agreement. The terms and conditions of the covenant set forth in subsection (F) shall run with the land which is to be developed, shall be binding upon the successor(s)-in-interest of the permit applicant, shall be recorded in the county recorder's office, and shall be approved as to form by the City Attorney as compliance with applicable state law.

H. Processing of Bonus Request.

1. Permit Required. Requests for affordable units shall require approval of a building permit, together with all other permits required by this code, in compliance with the requirements of this development code which shall be reviewed and recommended by the commission, and approved by the council.
2. Criteria to Be Considered. Criteria to be considered in analyzing a requested density bonus shall include whether the applicant has agreed to construct a development that meets the requirements of this section. Criteria to be considered in analyzing a requested incentive or concession shall include whether the applicant has provided information demonstrating that the requested incentives, concessions, or waivers will result in identifiable and actual cost reductions to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set at the applicable affordability levels and whether an incentive or concession has a specific adverse impact upon health, safety or the physical environment, and whether there is no feasible method to eliminate or mitigate such specific adverse impact.
3. Findings for Approval. In addition to the findings required for the approval of a building permit in compliance with the requirements of this development code, the approval of a density bonus shall require the following additional findings to be made:
 - a. The development project would not be a hazard or public nuisance or establish a use or development inconsistent with the goals and policies of the General Plan;
 - b. Adequate evidence exists to ensure that the development of the property would result in the provision of affordable housing in a manner consistent with the purpose and intent of this chapter, including information demonstrating that the requested incentives, concessions, or waivers will result in identifiable and actual cost reductions to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set at the applicable affordability levels and that the provision of any requested incentives, concessions, or waivers will not violate applicable state or federal law, not have a specific, adverse impact upon public health, safety or the physical environment for which there is no feasible method of mitigating or avoiding the specific adverse impact, and will not have an adverse impact on any real property that is listed in the California Register of Historical Resources;
 - c. In the event that the city does not grant at least one financial concession or incentive as defined in Government Code Section 65915 in addition to the density bonus, that additional concessions or incentives will not result in identifiable and actual cost reductions to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set at the applicable affordability levels; and

d. There are sufficient provisions to guarantee that the units will remain affordable in the future.

4. Development Standards. In no case may the city apply any development standard that would have the effect of precluding the construction of a development meeting the criteria of Section 17.22.020(B) at the densities or with the incentives or concessions permitted by this chapter. An applicant may submit to the city a proposal for the waiver or reduction of development standards. The applicant must show that the waiver or modification is necessary to not physically preclude the construction of a development meeting the criteria of subdivision 3 (b) at the densities or with the concessions or incentives permitted under this chapter.

I. Appeal. [In accordance with Chapter 17.74, a](#) Appeals of commission actions on the granting of density bonuses in compliance with [this chapter](#) ~~Chapter 17.74~~ will be heard by the council. Additionally, an applicant may initiate judicial proceedings if the city refuses to grant a requested density bonus, incentive, or modification or waiver of a development standard. If a court finds that the refusal to grant a requested density bonus, incentive, or modification or waiver of a development standard is in violation of this chapter or Government Code Section 65915, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this section shall be interpreted to require the city to waive or reduce development standards or to grant an incentive that would have a specific, adverse impact upon public health, safety or the physical environment for which there is no feasible method of mitigating or avoiding the specific adverse impact; nor shall this subsection require the city to waive or reduce development standards or to grant an incentive that would have a specific adverse impact on any real property that is listed in the California Register of Historical Resources.

SECTION 4. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Calabasas hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

SECTION 5. Effective Date:
This Ordinance shall take effect 30 days after its passage and adoption pursuant to California Government Code Section 36937 and shall supersede any conflicting provision of any City of Calabasas ordinance.

SECTION 6. Certification:

The City Clerk shall certify to the passage and adoption of this ordinance and shall cause the same to be published or posted according to law.

PASSED, APPROVED AND ADOPTED this _____ day of March, 2021.

James R. Bozajian, Mayor

ATTEST:

Maricela Hernandez, MMC
City Clerk

APPROVED AS TO FORM:

Scott Howard, City Attorney