

ORDINANCE NO. 2023-1224

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, AMENDING TITLE 19 (ZONING) OF THE IMPERIAL BEACH MUNICIPAL CODE TO UPDATE THE CITY'S DENSITY BONUS ORDINANCE TO REFLECT CHANGES IN STATE LAW.

WHEREAS, Sections 65915 et seq. of the California Government Code, known as State Density Bonus Law, require a city to provide a developer that proposes a housing development containing affordable and other types of housing with a density bonus and other incentives; and

WHEREAS, California Government Code Section 65915(a) requires that all cities adopt an ordinance that specifies how compliance with State Density Bonus Law will be implemented; and

WHEREAS, since adoption of the City's density bonus ordinance, the State Legislature has passed, and the Governor has signed into law numerous changes to State Density Bonus Law; and

WHEREAS, Program 11 of Section 5.2.4 (Removal of Governmental Constraints) of the City's Housing Element, which was adopted on June 16, 2021 and subsequently approved by the California Department of Housing and Community Development, provides that the City will "[r]evise the Zoning Ordinance to update density bonus provisions consistent with State law"; and

WHEREAS, a Public Notice of Availability of Proposed General Plan/Local Coastal Program Amendments was issued, which opened a six-week public review period that ran from February 9, 2023 to March 27, 2023; and

WHEREAS, the City Council conducted a public hearing on April 5, 2023 to consider the proposed amendments to the density bonus ordinance, Imperial Beach Municipal Code Chapter 19.65, and considered all evidence, including but not limited to public testimony and the evaluations and recommendations of staff; and

WHEREAS, notices of said public hearings were made at the time and in the manner required by law.

NOW, THEREFORE, the City Council of the City of Imperial Beach hereby ordains as follows:

Section 1. All of the statements set forth in the recitals above are true and correct and are incorporated herein as substantive findings.

Section 2. Chapter 19.65, Title 19 (Zoning) of the Imperial Beach Municipal Code is hereby amended to read as shown in Exhibit "A" attached hereto and incorporated herein by reference.

Section 3. The City Council finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) (the common sense exemption) because it can be seen with certainty that there is no possibility that the adoption of this ordinance may have a significant effect on the environment, in that the ordinance merely implements the provisions of state law and includes no provisions beyond those included in State Density Bonus Law that that may result in a direct or indirect impact on the physical environment.

Section 4. The Community Development Director or designee is hereby authorized to submit this Ordinance as part of the General Plan/Local Coastal Program Amendment to the California Coastal Commission for their review and adoption.

Section 5. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of the Ordinance, or its application to any person or circumstance, is for any reason held to be invalid and unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof,

EXHIBIT "A"

Chapter 19.65

AFFORDABLE HOUSING DENSITY BONUS

Sections:

- 19.65.010 Purpose.**
- 19.65.020 Definitions.**
- 19.65.030 Application requirements.**
- 19.65.040 Local coastal program consistency.**
- 19.65.050 Review process.**
- 19.65.060 Density bonus agreement.**
- 19.65.070 Density bonus calculations.**
- 19.65.080 Incentives; parking reductions.**
- 19.65.090 Development standards.**
- 19.65.100 Interpretation**

19.65.010. Purpose.

The purpose of this chapter is to specify how compliance with State Density Bonus Law (Government Code Sections 65915 et seq.) will be implemented, as required by Government Code Section 65915(a).

19.65.020. Definitions.

The definitions found in State Density Bonus Law shall apply to the terms contained in this Chapter. "Incentives" includes "concessions" as defined in State Density Bonus Law.

19.65.030. Application requirements.

- A. An applicant for a "housing development" as defined in State Density Bonus Law shall be eligible for a density bonus and other regulatory benefits that are provided by State Density Bonus law when the applicant seeks and agrees to provide housing as specified in Government Code Section 65915(b), (c), (f), (g) and (h), or in Government Code Section 65915.5.
- B. All requests for density bonuses, incentives, parking reductions, and waivers for a housing development shall be filed with and on a form provided by the Community Development Director or designee concurrently with the filing of the planning application for the first discretionary permit required for the housing development. The applicant shall be informed whether the application is complete consistent with Government Code Section 65943. The granting of a density bonus, incentive or concession, pursuant to this chapter, shall not be interpreted, in and of itself, to require a general plan amendment, development code amendment, zone change, other discretionary approval, or the waiver of a city ordinance or provisions of a city ordinance unrelated to development standards.
- C. The application shall include the required fee and the following minimum information:
 - 1. Requested density bonus.
 - a. Summary table showing the maximum number of dwelling units permitted by the zoning and general plan excluding any density bonus units, proposed affordable units by income level, proposed bonus percentage, number of density bonus units proposed, total number of dwelling units proposed on the site, and resulting density in units per acre.

- b. A tentative map or preliminary site plan, drawn to scale, showing the number and location of all proposed units, designating the location of proposed affordable units and density bonus units.
 - c. The zoning and general plan designations and assessor's parcel number(s) of the housing development site.
 - d. A description of all dwelling units existing on the site in the five-year period preceding the date of submittal of the application and identification of any units rented in the five-year period. If dwelling units on the site are currently rented, income and household size of all residents of currently occupied units, if known. If any dwelling units on the site were rented in the five-year period but are not currently rented, the income and household size of residents occupying the dwelling units when the site contained the maximum number of dwelling units, if known.
 - e. Description of any recorded covenant, ordinance, or law applicable to the site that restricted rents to levels affordable to very-low or lower income households in the five-year period preceding the date of submittal of the application.
 - f. If a density bonus is requested for a land donation, the location of the land to be dedicated, proof of site control, and reasonable documentation that each of the requirements included in Government Code Section 65915 (g) can be met.
2. Requested incentives. The application shall include the following minimum information for each incentive requested, shown on a site plan (if appropriate):
- a. The City's usual development standard and the requested development standard or regulatory incentive.
 - b. Except where mixed-use zoning is proposed as a concession or incentive, reasonable documentation to show that any requested incentive will result in identifiable and actual cost reductions to provide for affordable housing costs or rents.
 - c. If approval of mixed-use zoning is proposed, reasonable documentation that nonresidential land uses will reduce the costs of the housing development, that the nonresidential land uses are compatible with the housing development and the existing or planned development in the area where the proposed housing development will be located, and that mixed-use zoning will provide for affordable housing costs and rents.
3. Requested waivers. The application shall include the following minimum information for each waiver requested on each lot, shown on a site plan (if applicable):
- a. The City's usual development standard and the requested development standard.
 - b. Reasonable documentation that the development standards for which waivers are requested will have the effect of physically precluding the construction of the development at the densities or with the concessions or incentives permitted by Government Code Section 65915.
4. Parking reductions. The application shall include a table showing parking required by the zoning regulations, parking proposed under State Density Bonus Law, and reasonable documentation that the project is eligible for the requested parking reduction.

5. Density bonus or incentive for a child care facility in a housing development. The application shall include reasonable documentation that all of the requirements included in Government Code Section 65915(h) can be met.
6. Density bonus or incentive for a condominium conversion. The application shall include reasonable documentation that all of the requirements included in Government Code Section 65915.5 can be met.

19.65.040. Local coastal program consistency.

- A. State Density Bonus Law provides that it shall not be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Cal. Public Resources Code § 30000 et seq.), and further provides that the granting of a density bonus or an incentive shall not be interpreted, in and of itself, to require a local coastal plan amendment.
- B. For development within the coastal zone, any requested density bonus, incentive, waiver, or parking reduction shall be consistent with all applicable requirements of the certified Imperial Beach Local Coastal Program, with the exception of density.

19.65.050. Review process.

- A. The requests contained in the application shall be considered and acted upon concurrently with the planning application by the approval body with authority to approve the development within the timelines prescribed by California Government Code Section 65950 et seq., with right of appeal to the City Council.
- B. To ensure that an application for a housing development conforms with the provisions of State Density Bonus Law and the Coastal Act, the staff report presented to the decision-making body shall state whether the application conforms to the following requirements of state law as applicable:
 1. The housing development provides the housing required by State Density Bonus Law to be eligible for the density bonus and any incentives, parking reduction, or waivers requested, including the replacement of units rented or formerly rented to very-low and low income households as required by California Government Code Section 65915(c)(3).
 2. If an incentive is requested, any requested incentive will result in identifiable and actual cost reductions to provide for affordable housing or costs or rents; except that, if a mixed-use development is requested, the application must instead meet all of the requirements of Government Code Section 65915(k)(2).
 3. If a waiver is requested, the housing development project is eligible for a waiver, and the development standards for which a waiver is requested would have the effect of physically precluding the construction of the housing development at the densities or with the incentives permitted.
 4. The housing development is eligible for any requested parking reductions under Government Code Section 65915(p).
 5. If the density bonus is based all or in part on donation of land, the requirements of Government Code Section 65915(g) have been met.
 6. If the density bonus or incentive is based all or in part on the inclusion of a child care facility or condominium conversion, the requirements included in Government Code Section 65915(h) or 65915.5, as appropriate, have been met.

7. If the housing development is in the coastal zone, the requested density bonus and any requested incentive, waiver or parking reduction is consistent with all applicable requirements of the certified Imperial Beach Local Coastal Program, with the exception of density.
- C. The decision-making body shall grant an incentive requested by the applicant unless it makes a written finding, based upon substantial evidence, of any of the following:
1. The proposed incentive does 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 affordable rents, as defined in Health and Safety Code Section 50053; or
 2. The proposed incentive would be contrary to state or federal law; or
 3. The proposed incentive would have a specific, adverse impact upon the public health or safety or on any real property that is listed in the California Register of Historic Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the housing development unaffordable to low- and moderate-income households. For the purpose of this subsection, "specific, adverse impact" means a significant, quantifiable, direct and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application for the housing development was deemed complete as defined in Government Code Section 65589.5.
- D. The decision-making body shall grant the waiver of development standards requested by the applicant unless it makes a written finding, based upon substantial evidence, of any of the following:
1. The proposed waiver would be contrary to state or federal law; or
 2. The proposed waiver would have an adverse impact on any real property listed in the California Register of Historic Resources; or
 3. The proposed incentive would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the housing development unaffordable to low- and moderate-income households. For the purpose of this subsection, "specific, adverse impact" means a significant, quantifiable, direct and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application for the housing development was deemed complete as defined in Government Code Section 65589.5.
- F. If a child care center complies with the requirements of Government Code Section 65915(h), the decision-making body may deny a density bonus or incentive that is based on the provision of child care facilities only if it makes a written finding, based on substantial evidence, that the City already has adequate child care facilities.

19.65.060 Density bonus agreement.

- A. If a density bonus, incentive, parking reduction, or waiver is approved pursuant to this chapter, the applicant shall enter into a binding affordable housing agreement or senior housing agreement with the City which sets forth the conditions and guidelines to be met in the implementation of State Density Bonus Law and that ensures compliance with all of the provisions of this chapter. The agreement will also establish specific compliance standards and remedies available to the City upon failure by the applicant to make units accessible to intended residents.

- B. For rental projects, the affordable housing agreement shall require the continued affordability of all rental units that qualified the applicant for the receipt of the density bonus, incentive, waiver, or parking reduction for a minimum of fifty-five (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; shall identify the type, size and location of each affordable unit; shall specify the eligible occupants; and shall specify phasing of the affordable units in relocation to the market-rate units. Rents for the lower income density bonus units shall be set at an affordable rent as defined in State Density Bonus Law.
- C. For for-sale projects, the affordable housing agreement shall require that, the initial purchasers of those for-sale units that qualified the applicant for the receipt of the density bonus, incentive, waiver, or parking reduction are persons and families of lower or moderate income, as applicable, or the units are purchased by a qualified non-profit housing corporation as defined in State Density Bonus Law; and that the units are offered at an affordable housing cost, as that cost is defined in Health and Safety Code Section 50052.5. The City shall enforce an equity sharing agreement consistent with State Density Bonus Law unless it is in conflict with the requirements of another public funding source or law.
- D. Where a density bonus, waiver or parking reduction is provided for a market-rate senior housing development, the applicant shall enter into a restrictive covenant with the City, running with the land, in a form approved by the City Attorney, to be executed by the City Manager or City Manager's designee, to require the housing development to be operated as "housing for older persons" consistent with state and federal fair housing laws.
- E. The executed affordable housing agreement or senior housing agreement shall be recorded against the housing development prior to final or parcel map approval, or, where a map is not being processed, prior to issuance of building permits for the housing development. The affordable housing agreement or senior housing agreement shall be binding on all future owners and successors in interest.

19.65.070. Density bonus calculations.

- A. In determining the total number of units to be granted, each component of any density calculation, including base density and bonus density, resulting in fractional units shall be separately rounded up to the next whole number.
- B. When calculating the number of affordable units needed for a given density bonus, any fractions of affordable dwelling units shall be rounded up to the next whole number.
- C. Each housing development is entitled to only one density bonus. If a housing development qualifies for a density bonus under more than one category, the applicant shall identify the category under which the density bonus is requested to be granted. Each housing development is entitled to only one density bonus.
- D. The density bonus units shall not be included in determining whether the number of affordable units required to qualify a housing development for a density bonus pursuant to State Density Bonus Law.
- E. The applicant may elect to accept a lesser percentage of density bonus than the housing development is entitled to, or no density bonus, but no reduction will be permitted in the percentages of required affordable units contained in Government Code Sections 65915(b), (c), and (f). Regardless of the number of affordable units, no housing development shall be entitled to a density bonus than what is authorized under State Density Bonus Law.

19.65.080. Incentives; parking reductions.

- A. Incentives are those defined by State Density Bonus Law. The number of incentives that may be requested shall be based upon the number the applicant is entitled to pursuant to State Density Bonus Law.
- B. If a housing development is eligible for a density bonus pursuant to State Density Bonus Law, the applicant may request an on-site vehicular parking ratio specified in Government Code Section 65915(p). An applicant may request this parking reduction in addition to the incentives permitted by subsection (A) of this section.
- C. Nothing in this chapter requires the provision of direct financial incentives for the housing development, including, but not limited to, the provision of financial subsidies, publicly owned land, fee waivers, or waiver of dedication requirements. The City, at its sole discretion, may choose to provide such direct financial incentives.

19.65.090. Development standards.

- A. Building permits and final inspections or certificates of occupancy shall be issued concurrently for the market rate units and for any affordable units that qualified the project for a density bonus, incentive, waiver or parking reduction, so that the affordable units comprise the required percentage of total units.
- B. Affordable units shall be comparable in exterior appearance and overall quality of construction to market rate units in the same housing development. Interior finishes and amenities may differ from those provided in the market rate units, but neither the workmanship nor the products may be of substandard or inferior quality as determined by the City.
- C. To comply with fair housing laws, the affordable units shall contain the same proportional mix of bedroom sizes as the market-rate units. In mixed-income buildings, the occupants of the affordable units shall have the same access to the common entrances and to the common areas, parking, and amenities of the project as the occupants of the market-rate housing units, and the affordable units shall be located throughout the building and not isolated on one floor or to an area on a specific floor.

19.65.100 Interpretation.

If any portion of this chapter conflicts with State Density Bonus Law or other applicable state law, state law shall supersede this chapter. Any ambiguities in this chapter shall be interpreted to be consistent with State Density Bonus Law.

irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 6: This Ordinance shall take effect upon approval by the California Coastal Commission.

Section 7. The City Clerk is directed to prepare and have published a summary of this Ordinance no less than five (5) days prior to the consideration of its adoption and again within fifteen (15) days after adoption indicating votes cast.

INTRODUCED AND FIRST READ at a regular meeting of the City Council of the City of Imperial Beach held on the on the 5th day of April 2023; and thereafter

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Imperial Beach, California, on the 19th day of April 2023, by the following vote:

AYES:	COUNCILMEMBERS:	FISHER, MCKAY, LEYBA-GONZALEZ, AGUIRRE
NOES:	COUNCILMEMBERS:	NONE
ABSENT:	COUNCILMEMBERS:	SEABURY



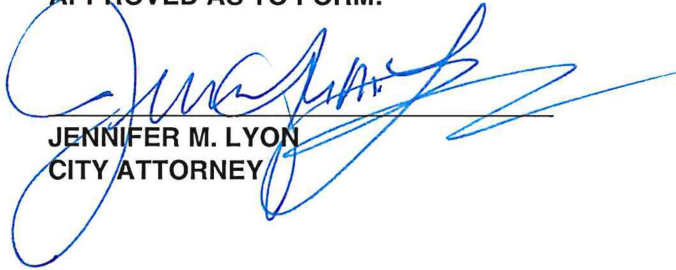
PALOMA AGUIRRE, MAYOR

ATTEST:



AUDREY MALONE
ASSISTANT CITY CLERK

APPROVED AS TO FORM:



JENNIFER M. LYON
CITY ATTORNEY