

*Cupertino, Ca Municipal Code: Affordable and Inclusionary Housing*

[http://www.amlegal.com/cupertino\\_ca/](http://www.amlegal.com/cupertino_ca/)

Title 19 Zoning

Chapter 19.52 Density Bonus

19.52.010 Purpose

19.52.020 Definitions

19.52.030 Applicability

19.52.040 Concessions

19.52.050 General Requirements

19.52.060 Requirements for Projects with Affordable Units

19.52.070 Application Procedure

**Title 19 Zoning**

**Chapter 19.52 Density Bonus**

**19.52.010 Purpose.**

The density bonus ordinance codified in this chapter is intended to comply with the State Density Bonus Law, Government Code Section 65915, which provides that a local government shall grant a density bonus and an additional concession, or financially equivalent incentive(s), to a developer of a housing development agreeing to construct a specified percentage of housing for lower income households, very low income households or senior citizens. (Ord. 1569, § 1 (part), 1991)

**19.52.020 Definitions.**

As used in this chapter, the following terms shall have the following meanings unless otherwise indicated from the context:

“Affordable units” means housing units in which the rent does not exceed thirty percent of the HUD income limits for lower and very low income households for Santa Clara County adjusted for household size.

“Concession” means a benefit offered by the City to facilitate construction of eligible projects as defined by the provisions of this chapter. Benefits may include, but are not limited to, priority processing, fee deferments and waivers, granting of variances, and relaxation of otherwise applicable permit conditions.

“Density bonus” means an increase in the number of dwelling units authorized for a particular parcel of land beyond the maximum allowed by the General Plan range specified on the land use map of the City of Cupertino General Plan as of the date of the project application.

“Economically feasible” means when a housing project can be built with a reasonable rate of return. The housing developer’s financial ability to build the project shall not be a factor.

“Household type” means whether the occupants of the housing units are very low income, lower income or senior citizens.

“Housing development” means one or more groups of projects with residential units constructed in the planned development of the City.

“Lower-income household” means a household whose gross income is as established by Health and Safety Code Section 50079.5.

“Senior citizens” means:

1. Persons at least sixty-two years of age; or
2. Persons at least fifty-five years of age in a senior citizen housing development, in accordance with State and federal law.

“Senior citizen units” means:

1. Government subsidized housing units for senior citizens;
2. Housing intended for, and solely occupied by, persons at least sixty-two years of age; or
3. Housing consisting of at least one hundred fifty units in which eighty percent of the units have at least one person aged fifty-five or older and which provide special facilities and services designed for seniors.

Eligibility for a density bonus or other concession for senior citizen units must be in conformity with State and federal laws governing senior housing projects.

“Very low income household” means a household whose gross income is as established by Health and Safety Code Section 50105. (Ord. 1886, (part), 2001; Ord. 1569, § 1 (part), 1991)

**19.52.030 Applicability.**

A. All housing developments greater than five units (excluding density bonus units) are eligible for one density bonus of at least twenty-five percent, and an additional concession, to developers agreeing to construct at least:

1. Twenty percent of the units for lower income households; or
2. Ten percent of the units for very low income households; or
3. Fifty percent of the units for senior citizens, unless prohibited by State and/or Federal law.

B. If a development agrees to construct both twenty percent of the total units for lower-income households and ten percent of the total units for very low-income households, the developer remains entitled to only one density bonus and an additional concession. However, in such circumstance, the City, at its discretion, may grant more than one density bonus.

C. Projects with affordable units which meet the requirements set forth in this chapter are entitled to a density bonus and additional concession, unless:

1. The City Council adopts a written finding that the additional concession is not required to make the units affordable.

D. Nothing in this chapter limits the City's right to deny an affordable housing project if the City Council finds, based on substantial evidence, any one of the following:

1. The City has adopted an adequate housing element, and the project is not needed for the City to meet its share of the regional housing need of lower income housing.

2. The project as proposed would have a specific, adverse impact upon the public health or safety which cannot be satisfactorily mitigated without rendering it unaffordable to lower-income households.

3. The denial of the project or imposition of conditions is required in order to comply with State or Federal law and there is no feasible method to comply without rendering the development unaffordable to lower- income households.

4. Approval of the development project would increase the concentration of lower-income households in a neighborhood that already has a disproportionately high number of lower-income households.

5. The development project is proposed on land zoned for agriculture or resource preservation which is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, and which does not have adequate water or wastewater facilities to serve the project.

6. The development project is inconsistent with the City's General Plan land use designation as it existed on the date the application was deemed complete, and the City has adopted a housing element pursuant to State law.

E. Nothing in this chapter limits the City's right to deny a senior citizen housing project if the City finds, based on substantial evidence, that the project would have a specific, adverse impact upon the public health or safety; and there is no feasible method to satisfactorily mitigate or avoid the adverse impact identified. (Ord. 1569, § 1 (part), 1991)

#### **19.52.040 Concessions.**

The State-mandated concession will be selected from the following list:

A. A reduction in site development standards or a modification of the requirements of the Zoning Ordinance.

For applications involving the modification of zoning or development standards, the housing developer shall show that the waiver or modification is necessary to make the housing units economically feasible. Permissible incentives include, but are not limited to:

1. Reduction of parking requirements,
2. Reduction of open space requirements,
3. Reduction of setback requirements,
4. Approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial or other land uses will reduce the cost of the housing development, and if the commercial, office, industrial or other land uses are compatible with the housing project and the existing planned development in the area where the proposed housing project will be located;

B. Other regulatory concessions proposed by the developer or the City, which result in identifiable cost reductions. Permissible concessions include, but are not limited to:

1. Reduction of park dedication fees,
2. Reduction of application or construction permit fees,
3. Provision of tax-exempt financing or other financial assistance as approved by the City Council;

C. A housing development which provides affordable units must show that the requested concessions directly affect the economic feasibility of including the affordable units in the project. (Ord. 1569, § 1 (part), 1991)

#### **19.52.050 General Requirements.**

A. Affordable units must remain affordable for thirty years if both a density bonus and an additional concession are granted. These units shall remain affordable for a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. If only a density bonus is granted, the affordable units shall remain affordable for ten years.

B. First priority for the affordable units will be given to individuals who reside, work, go to school, or have family in the City of Cupertino.

C. A master regulatory agreement shall be made between the developer and the City which indicates the household type, number, location, size and construction scheduling of all affordable units and such information as shall be required by the City for the purpose of determining the developer's compliance with this chapter.

D. Affordable units in a project and phases of a project shall be constructed concurrently with or prior to the construction of market-rate units.

E. Affordable units shall be provided as follows:

1. Affordable units shall be dispersed throughout the project;

2. Affordable units shall be identical with the design of any market rate rental units in the project with the following exception:

a. Reduction of interior amenities for affordable units will be permitted upon prior approval by the City Council as necessary to retain project affordability.

F. For purposes of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the affordable units are located.

G. The developer shall submit a project financial report (pro forma) to allow the City to evaluate the financial need for the State-mandated additional incentives. The City may retain a consultant to review the financial report. The cost of the consultant shall be borne by the developer with the following exception:

1. If the applicant is a nonprofit organization, the cost of the consultant may be paid by the City upon prior approval of the City Council. (Ord.1569, § 1 (part), 1991)

#### **19.52.060 Requirements for Projects with Affordable Units.**

A. All affordable units shall be occupied by the household type specified in the written agreement required under Section 19.52.120C. The developer's obligation to maintain these units as affordable housing shall be evidenced by the master regulatory agreement which shall be recorded as deed restriction running with the land.

B. Those units targeted for lower-income households shall be affordable at a rent that does not exceed thirty percent of the HUD income limits for lower-income households for Santa Clara County adjusted for household size.

C. Those units targeted for very low-income households shall be affordable at a rent that does not exceed twenty-five percent of the HUD income limits for very low-income households for Santa Clara County adjusted for household size.

D. Prior to the rental of any affordable unit, the City or its designee, shall verify the eligibility of the prospective tenant. The owner shall obtain and maintain on file certifications by each household. Certification shall be obtained immediately prior to initial occupancy by each household and annually thereafter, in the form provided by the City or its designee. The owner shall obtain updated forms for each household on request by the City, but in no event less frequently than once a year. The owner shall maintain complete, accurate and current records pertaining to the housing development, and will permit any duly authorized representative of the City to inspect the records pertaining to the affordable units and occupants of these units.

E. The City may establish fees associated with the setting up and monitoring of affordable units.

F. The owner shall submit an annual report to the City, on a form provided by the City. The report shall include for each affordable unit the rent, income, and family size of the household occupying the unit.

G. The owner shall provide to the City any additional information required by the City to insure the long-term affordability of the affordable units by eligible households. (Ord. 1886, (part), 2001; Ord. 1731, (part), 1996; Ord. 1569, § 1 (part), 1991)

#### **19.52.070 Application Procedure.**

A. A developer may submit to the Planning Department a preliminary proposal for the development of housing pursuant to this chapter prior to the submittal of any formal application. The City shall, within ninety days of receipt of a written proposal, notify the housing developer in writing of its local density procedures. The City shall establish procedures for waiving or modifying development and zoning standards which would otherwise inhibit the utilization of the density bonus on a particular site. These procedures shall include, but not be limited to, such items as minimum lot size, side-yard setbacks, and placement of public works improvements. The housing developer shall show that the requested waiver or modification is necessary to make the affordable units economically feasible.

B. Formal application shall follow the review process as set forth for conditional use permits in Chapter 19.124 of the Cupertino Municipal Code established by the City and shall provide additional information as specified in this chapter, specifically:

1. Provide a written statement specifying the desired density increase, incentive requested and the type, location, size and construction scheduling of all dwelling units;
2. Submit a project financial report (pro forma), as required;
3. Any other information requested by the Director of Community Development. (Amended during 4/94 supplement; Ord. 1569, § 1 (part), 1991)