

SUBJECT: Brentwood Municipal Code Amendments to repeal and replace Local Density Bonus Regulations and Reference State Density Bonus Law, as well as modify the definition of Low-income household.

DEPARTMENT: Community Development Department

STAFF: Alexis Morris, Director of Community Development
Erik Nolthenius, Planning Manager
Jennifer Hagen, Senior Planner

TITLE/RECOMMENDATION

Staff recommends that the City Council waive the first reading and introduce an ordinance approving an amendment (Rezone No. 23-005) to the Brentwood Municipal Code by repealing and replacing Chapter 17.720 (Density Bonus Program) to implement State Density Bonus Law and adopt Government Code Sections 65915–65918 by reference, as well as modifying Section 17.725.002 (Definitions) of the City’s Affordable Housing Ordinance to modify the definition of Low-income household.

These text amendments are exempt from the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines, as it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment.

FISCAL IMPACT

Adoption of the ordinance will not result in a fiscal impact, as staff will continue to process housing developments that include affordable units consistent with the State Density Bonus Law and the City’s Affordable Housing Ordinance through appropriate planning application review processes, which include the collection of fees for the cost of these processes, in accordance with the City’s Cost Allocation Plan.

BACKGROUND

STATE OF CALIFORNIA DENSITY BONUS LAW



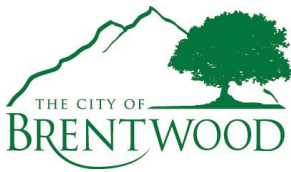
CITY COUNCIL AGENDA ITEM NO. G.2
02/27/2024

Brentwood Municipal Code (BMC) Chapter 17.720 (Density Bonus Program) regulates and implements the State of California Density Bonus Law (SDBL), as outlined in California Government Code Sections 65915–65918. The SDBL was adopted in 1976 to help address California’s affordable housing needs. The City’s local Density Bonus Ordinance was originally adopted in 1989 and amended in 2015 as part of the last Housing Element update. Since 2015, there have been numerous updates to the SDBL that have resulted in the City’s current Ordinance being inconsistent with State law.

The SDBL was originally adopted in large part to require local agencies to allow increased density, reduced or modified standards, and development incentives based on the number and type of affordable housing units proposed. Over time, the law has been expanded to, among other things, include housing for households at a wider range of income levels and with specialized needs (e.g., seniors, students, foster youth, formerly homeless persons, and disabled veterans).

The SDBL applies to housing projects, including mixed-use developments, new subdivisions, or common-interest developments. Density bonuses and associated incentives and concessions are based on the amount and type of affordable units provided and are intended to offset the cost of constructing affordable units. The SDBL allows eligible projects to apply for the following:

- Density Bonus: An increase above the maximum allowed density permitted in the General Plan Land Use Element or Zoning Code. The amount of the bonus is set on a sliding scale based on the percentage of affordable units at each income level.
- Incentives/Concessions: Modifications to City regulatory or development standards that result in actual and identifiable cost reductions to provide for affordable housing costs or rents. The number of incentives allowed is based on the percentage of affordable or otherwise eligible units provided in the qualifying project. For example, developers may ask for increased building height above that allowed by the zoning regulations.
- Reductions/Waivers: Modifications to City development standards that, if imposed, would physically prevent the construction of a housing development at the density permitted with a bonus and any concessions, except where the waiver would cause a public health or safety concern, harm historical property, or would be contrary to state or federal law. There is no limit to the number of reductions/waivers that may be requested. For example, applicants may request decreased setbacks and/or increased floor area ratio.



- Reduced Parking Ratios: Parking ratios are defined based on bedroom count:
 - Zero to one bedroom: one on-site parking space per unit
 - Two to three bedrooms: one and one-half on-site parking spaces per unit
 - Four or more bedrooms: two and one-half parking spaces per unit

As is the case in many jurisdictions, the reduced parking ratios required by the SDBL are lower than the BMC parking requirements.

A few areas of the City's existing ordinance are not consistent with State law. For example, the parking standards in the City's ordinance require more parking than the City is allowed to require under the current SDBL. In addition, there have been recent updates to the SDBL that allow for additional types of projects to be eligible, including student housing and supportive housing projects.

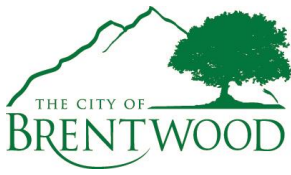
It is a significant challenge to regularly update the BMC to keep pace with ever-changing State laws. For example, between 2018 and 2023, the State amended the SDBL ten times. This also leads to difficulty in terms of communicating to applicants and the public what regulations apply to density bonus projects.

AFFORDABLE HOUSING ORDINANCE

BMC Chapter 17.725 (Affordable Housing) is the City's mechanism to require affordable housing within all new residential projects. Based on recent changes to State law, and as explained in greater detail below, staff recommends making a change to the current definition of "Low-income household" to provide clarity that housing meeting this definition is different than and exceeds the qualifying limits set for very low-income households, consistent with City Council direction.

PLANNING COMMISSION ACTION

The Planning Commission considered this item at a public hearing at its regular meeting of January 16, 2024, and was supportive of the requested text amendments. The Planning Commission agreed that the amendments would help to provide greater clarity while processing applications and communicating relevant regulations to applicants consistent with State law. The Planning Commission unanimously adopted Resolution No. 24-003, recommending that the City Council approve the amendments (Rezone No. 23-005), repealing and replacing Chapter 17.720 (Density Bonus Program), as well as modifying Section 17.725.002 (Definitions) of the City's Affordable Housing Ordinance.



PROJECT DESCRIPTION AND ANALYSIS

DENSITY BONUS ORDINANCE

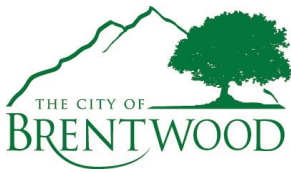
Staff proposes to repeal and replace the existing density bonus regulations with the attached draft ordinance (Exhibit A1 to Attachment 2). Since the proposed Ordinance is entirely new and is replacing the existing Ordinance, there is no redline version of the Density Bonus Ordinance. The new regulations would adopt the SDBL by reference and identify when the regulations apply. Since the City has no discretion to override the SDBL and since it has changed numerous time over the past few years, staff does not believe it necessary to include the specific language within the City Code and that adopting it by reference is sufficient. The SDBL, however, allows the City to govern implementation and submittal requirements (although limited in certain circumstances). The draft ordinance therefore contains requirements outlining application requirements and specifies the approval process for projects. The draft ordinance also acknowledges that future State law amendments may occur.

In future years, as the legislature continues to amend and/or refine the SDBL, the proposed ordinance ensures that the BMC would remain consistent with State law, meaning that additional updates to the City’s density bonus ordinance would not be necessary. In addition, by referencing State law, it will be easier for staff to process applications and communicate relevant regulations to applicants, the public, and appointed/elected officials.

AFFORDABLE HOUSING ORDINANCE DEFINITION

Staff recommends modifying the existing BMC definition for “Low-income household.” Although the terms “very low income,” “low income,” and “lower income” appear similar, they are not used interchangeably and each have a very specific income limit. Below is a summary of the income levels set through the California Health and Safety Code:

Income Level	Income Ranges
Very Low Income Households	< 50% Median Income
Low Income Households	> 50% and < 80% Median Income
Lower Income Households	< 80% Median Income (inclusive of both very-low and low income households)
Moderate Income Households	> 80% and < 120% Median Income



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As the Code is currently written, the definition for “low-income” sets an upper limit on household income that “does not exceed the qualifying limits set for lower income households in Section 50079.5 of the California Health and Safety Code.” Since “lower income households” includes both very low and low income households, the upper limit to be set at 80 percent of area median income. The current definition does not, however, set a lower income limit. This unintentionally allows for units designated for very low-income households (households making less than 50 percent of the median income) to also qualify for low-income household calculations under the ordinance. The intent of the Affordable Housing Ordinance is to require the construction of housing affordable to specified income ranges, as shown in the table below, thereby increasing the variety of housing available within the city. It is important to provide housing available at each of the specified income levels in order to have the greatest variety of housing and by not having a lower limit for low-income housing, the City may lose out on needed low income household units.

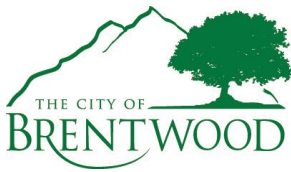
The table below shows the income levels identified in the City’s Affordable Housing Ordinance, and the percentage of units that must be constructed for each income level.

Income Level	Median Income Range	AHO %
Very Low Income Households	< 50% Median Income	3%
Low Income Households	> 50% and < 80% Median Income	4%
Moderate Income Households	> 80% and < 120% Median Income	6%

The proposed revised definition is included below and is reflected in Exhibit A1 to Attachment 2 to this report.

“Low-income household” means a household whose annual income exceeds the qualifying limits set for “very low-income households” in Sections 50093 and 50105 of the California Health & Safety Code but does not exceed the qualifying limits set for “lower income households” in Section 50079.5 of the California Health and Safety Code.

This revision changes the definition to no longer be inclusive of both very-low and low income households, but rather just low income households.



GENERAL PLAN CONFORMANCE

Repealing and replacing the density bonus regulations to reference State law, as well as modifying the current definition of “low-income household,” would be consistent with the General Plan and newly adopted Housing Element, including the following policies:

- Housing Element Action H.2i: Density Bonus Ordinance
 - Update the Density Bonus Ordinance in compliance with State law requirements by December 2024.
- Housing Element Policy H.2-1: Encourage housing affordable and appropriate for a variety of Brentwood households at all economic levels throughout the City.

In conclusion, the proposed ordinance amendments, if adopted, will provide greater clarity while processing applications and communicating relevant regulations to applicants, the public, and appointed/elected officials, which in turn will help to provide additional housing at various income levels and improve the livability and housing options throughout the city. The amendments will also ensure consistency with State law now and in the future as additional updates are made by the Legislature.

CITY COUNCIL STRATEGIC INITIATIVE

City of Brentwood Strategic Plan FY 2022/23 – FY 2023/24 Focus Area 4: Land Use Planning, Goal 1: Implement Zoning Ordinance update to maintain compliance with State law, including developing objective design standards (SB 330 compliance).

PREVIOUS ACTION(S)

Previous Action by the City Council is included in Attachment 1.

DATE OF NOTICE

The City of Brentwood published a public hearing notice in the [Brentwood Press](#) on February 16, 2024.



ENVIRONMENTAL DETERMINATION

The proposed ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) – Common Sense Exemption in that the proposed ordinance would only establish and clarify administrative processes and would not facilitate new construction or other groundbreaking activities. There is no potential to result in either a direct physical change to the environment or a reasonably foreseeable indirect physical change to the environment. None of the circumstances described in CEQA Guidelines Section 15300.2 applies.

ALTERNATIVE OPTION(S)

1. Do not approve staff's recommendation.
2. Modify staff's recommendation based on legally defensible findings.
3. Continue the item with direction for staff to return with additional information.

ATTACHMENT(S)

1. Previous Actions
2. Draft Ordinance
 - Exhibit A1 - Chapter 17.720 (Density Bonus Program)
 - Exhibit A2 - Section 17.725.002 (Definitions) of the City's Affordable Housing Ordinance - Redline