

**PLANNING COMMISSION RESOLUTION NO. 24-003**

**A RESOLUTION OF THE PLANNING COMMISSION RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE APPROVING A ZONING TEXT AMENDMENT TO THE BRENTWOOD MUNICIPAL CODE (RZ 23-005), WHICH WOULD REPEAL AND REPLACE CHAPTER 17.720 (DENSITY BONUS PROGRAM) TO IMPLEMENT THE STATE DENSITY BONUS LAW AND AMEND SECTION 17.725.002 (DEFINITIONS) OF THE AFFORDABLE HOUSING ORDINANCE**

**WHEREAS**, City staff prepared a zoning text amendment that would repeal and replace Brentwood Municipal Code Chapter 17.720 (Density Bonus Program) and amend Section 17.725.002 (Definitions) of the Affordable Housing Ordinance (the "Ordinance"); and

**WHEREAS**, the Ordinance would amend Title 17 (Zoning) of the Brentwood Municipal Code, and the Planning Commission is charged with reviewing amendments to said title prior to their consideration by the City Council; and

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

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

**WHEREAS**, since adoption of the City of Brentwood'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**, the City's Housing Element, which was adopted March 14, 2023, provides Housing Element Action H.2i requiring the City to update the Density Bonus Ordinance in compliance with State law requirements by December 2024; and

**WHEREAS**, the Planning Commission has reviewed the proposed amendments to the Brentwood Municipal Code, has found that the proposed amendments are consistent with the goals and policies of the General Plan, and recommends adoption of the proposed amendments to the City Council ("City Council"); and

**WHEREAS**, the City published a notice of public hearing in the Brentwood Press on January 5, 2024, in accordance with City policies and Government Code Section 65090; and

**WHEREAS**, the Planning Commission held a duly noticed public hearing on January 16, 2024, to consider a recommendation that the City Council adopt the proposed Ordinance, which amends Brentwood Municipal Code Chapter 17.720 (Density Bonus Program) and Chapter 17.725 (Affordable Housing), attached hereto as Exhibits A1 and A2; and

**WHEREAS**, this amendment is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that CEQA applies only to projects which have the potential for causing a significant effect on the environment, and it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment.

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission of the City of Brentwood:

A. Hereby finds that with respect to Brentwood Municipal Code Section 17.870.008:

1. *No rezoning of property or text amendment shall occur which is inconsistent with the city's community development plan. In making a decision, the planning commission and council shall consider the consistency of the proposed action to the community development plan and other applicable city plans, and shall consider whether the proposed action is inappropriate or otherwise contrary to the public interest.*

The zoning text amendments set forth in Exhibit A1 and A2 are consistent with the General Plan, as amended from time to time, inasmuch as they are responsive to the changing needs of the residents and community. In addition consistent with Brentwood General Plan Land Use Policy LU 2-8 to provide for a variety of residential products through the Zoning Ordinance in order to accommodate the housing needs of all segments of the city's population, the Ordinance will help to provide incentives to construct housing affordable to specified income ranges, thereby increasing the variety of households for which housing will be available within the city. In addition, the zoning text amendments will facilitate implementation of the 2023 Housing Element, as well as comply with recent State legislation and requirements for the 2023 Housing Element update.

B. The Planning Commission likewise finds that the Ordinance is appropriate and is not contrary to the public interest in that it will add clarity to and update the provisions of the Density Bonus Law and update a related definition in the Zoning Ordinance.

- C. Hereby recommends that the City Council adopt the Ordinance, approving Rezone No. 23-005, as shown on Exhibit A1 and A2, attached hereto and incorporated herein.

**ADOPTED** by the Planning Commission of the City of Brentwood at its regular meeting of January 16, 2024, by the following vote:

**AYES:**  
**NOES:**  
**ABSENT:**  
**RECUSE:**

APPROVED:

\_\_\_\_\_  
Planning Commission Chairperson

ATTEST:

\_\_\_\_\_  
Erik Nolthenius  
Planning Manager

**EXHIBIT "A1"****Chapter 17.720****DENSITY BONUS PROGRAM****Sections****17.720.010 Purpose.****17.720.020 Applicability.****17.720.030 Definitions.****17.720.040 Application requirements.****17.720.050 Review process.****17.720.060 Density bonus agreement.****17.720.070 Density bonus calculations.****17.720.080 Development standards.****17.720.090 Density bonus for commercial development.****17.720.100 Interpretation****17.720.010. Purpose.**

In accordance with California Government Code Sections 65915, et seq. (as it may be amended from time to time), which is referred to as the "State Density Bonus Law", this Chapter specifies how compliance with State Density Bonus Law will be implemented. Specifically, the purpose of this Chapter is to provide housing developments with density bonuses, incentives, waivers of development standards, and reductions in parking ratios in exchange for the production of housing for very low-, low-, and moderate-income households, senior households, provision of daycare facilities, student housing, donations of land, and for other housing types as required by state law. In enacting this Chapter, it is also the intent of the City to implement the goals, objectives, and policies of the City's Housing Element of the General Plan.

**17.720.020. Applicability.**

- A. General. Housing developments that develop a specified number of affordable housing units, donate land, or include other benefits as provided under the State Density Bonus Law may qualify for a density increase and other regulatory benefits under the State Density Bonus Law.
- B. Replacement Housing Requirement. An applicant for a housing development on one or more parcels that are or have been developed with certain types of rental housing, as more particularly described in California Government Code Section 65915(c)(3), will be ineligible for a density bonus or other regulatory benefits unless the applicant complies with the replacement housing requirements therein.

**17.720.030. Definitions.**

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

**17.720.040. 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 State Density Bonus Law. The density bonus that the project is eligible for shall be calculated in accordance with State Density Bonus Law.
- B. The granting of a density bonus or incentive, 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 Brentwood ordinance or provisions of a Brentwood ordinance unrelated to development standards.
- C. 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 or ministerial permit required for the housing development, whichever permit is earliest. The applicant shall be informed whether the application is complete consistent with Government Code Section 65943.
- D. The application shall include the following minimum information:
  - 1. For a requested density bonus or to show eligibility for a 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, bedroom allocation of market-rate units, bedroom allocation of affordable units, total number of dwelling units proposed on the site, and resulting density in units per acre.
    - b. The specific provision of State Density Bonus Law under which the housing development qualifies for a density bonus and reasonable documentation demonstrating that the housing development is eligible for a bonus under each of the requirements of that provision.
    - c. 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.
- d. The zoning and general plan designations and assessor's parcel number(s) of the housing development site.
  - e. A description of all dwelling units existing on the site in the five-year period preceding the date of submittal of the application; identification of any dwelling units rented in the five-year period; and identification of whether the dwelling units on the site were subject to any form of rent control through a public entity's valid exercise of its police power, subject to a recorded covenant ordinance, or subject to a law restricting rents to levels affordable to households of lower or very low income.
  - f. 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.
  - g. The phasing of the construction of the affordable housing units in relation to the non-restricted units in the housing development.
  - h. A marketing plan for the affordable housing units, as well as an explanation of the methods to be used to verify tenant and/or buyer incomes and to maintain affordability of the affordable housing units.
  - i. Requested incentives. Incentives are those defined by the 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 the State Density Bonus Law. The application shall include the following minimum information for each incentive requested, shown on a site plan (if appropriate):
    2. The City's otherwise applicable regulation and the requested regulatory incentive.
    3. Requested waivers. For each waiver requested, the application shall include (at a minimum), the City's required development standard and the requested development standard, shown on a site plan, and shown for each existing or proposed parcel, if applicable.

4. Parking reductions. If a housing development is eligible for a density bonus pursuant to the 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 and waivers permitted by paragraphs (2) and (3) of this subsection. The application shall include a table showing parking required by the zoning regulations, parking proposed under the State Density Bonus Law, the provision under Government Code Section 65915(p) (or other statute) under which the project qualifies for the parking reduction, 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.

**17.720.050. Application review process.**

- A. All requests under the State Density Bonus Law shall be part of the planning application and shall be applied for, reviewed, 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 65920, et seq., or other applicable statute. Appeals of the planning application in accordance with the requirements of Brentwood Municipal Code Chapter 17.880 shall include all requests under the State Density Bonus Law, if appeals are authorized for the discretionary or ministerial permit applied for.
- B. To ensure that an application for a housing development conforms with the provisions of the State Density Bonus Law, the staff report presented to the decision-making body shall state whether the application conforms to the following requirements of the State Density Bonus Law, as applicable:
  1. The housing development provides the housing required by the State Density Bonus Law to be eligible for a density bonus and any incentives, parking reduction, or waivers requested, including housing required to replace units rented or formerly rented to very-low and low income households as required by California Government Code Section 65915(c)(3).
  2. The housing development is eligible for any requested parking reductions under Government Code Section 65915(p) or other statute.

3. 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.
  4. 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.
  5. If the density bonus is based on another provision of the State Density Bonus Law, the requirements included in the applicable section of the State Density Bonus Law have been met.
- 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 waiver 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.

- E. 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.
- F. A request for minor modification of an approved density bonus housing plan may be granted by the City Manager, or their designee, if the modification substantially complies with the original density bonus housing plan and conditions of approval. Other modifications to the density bonus housing plan shall be processed in the same manner as the original plan.

**17.720.060. Density bonus housing 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 restrictive covenant, as described below, with the City, which sets forth the conditions and guidelines to be met in the implementation of the 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 comply with the State Density Bonus Law, this Chapter, or the affordable housing agreement.
- B. For rental projects, the applicant shall enter into an affordable housing agreement with the City, running with the land, in a form approved by the City Attorney, to be executed by the City Manager, or designee. The 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; shall specify phasing of the affordable units in relation to the market-rate units; and shall contain other relevant provisions approved by the City Attorney. Rents for the lower income density bonus units shall be set at an affordable rent as defined in the State Density Bonus Law.
- C. For for-sale projects, the applicant shall enter into an affordable housing agreement with the City, running with the land, in a form approved by the City Attorney, to be executed by the City Manager, or their designee. 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 very low, lower, or moderate income, as applicable, or if any such unit is not purchased by an income-qualified household within 180 days after the issuance of the certificate of occupancy, those units are purchased by a qualified non-profit housing corporation as defined in the State Density Bonus Law. The affordable housing agreement shall further require that the units are offered at an affordable housing cost, as that cost is defined in Health and Safety Code Section 50052.5 and shall contain other relevant provisions approved by the City Attorney. The affordable housing agreement shall require the continued affordability of the for-sale units for 45 years and require purchasers of the affordable for-sale units to enter into a refinance and resale limitation agreement with the City in a form approved by the City Attorney.

- 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 their designee, to require the housing development to be operated as "housing for older persons" consistent with state and federal fair housing laws.
- E. Agreements involving rental units shall require the owner of the affordable rental units provided under this Chapter to submit an annual monitoring report to the housing division, in a format approved by the City Manager. For each affordable rental unit provided hereunder, the current owner may be required to pay an annual monitoring fee to the City for the term of required affordability in the amount set forth in the affordable housing agreement. For each owner-occupied affordable unit provided under this Chapter, the current owner may be required to pay a transfer fee to the City for any change of ownership as adopted from time to time by the city council during the term of required affordability in the amount set forth in the refinance and resale limitation agreement.
- F. The executed affordable 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, whichever is earliest. The affordable housing agreement shall be binding on all future owners and successors in interest.

**17.720.070. 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 to qualify 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.
- D. In determining the number of affordable units required to qualify a housing development for a density bonus pursuant to the State Density Bonus Law, units added by a density bonus are not included in the calculations. Any on-site units that satisfy the City's affordable housing requirements in Chapter 17.725 of the Code and are required to be constructed concurrently with the housing development may qualify the housing development for a density bonus if those units also meet the requirements of the State Density Bonus Law. Payment of fees in lieu of providing affordable units under Chapter 17.725 of the Code does not qualify a housing development for a density bonus.
- 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 affordable units required by the State Density Bonus law. Regardless of the number of affordable units, no housing development shall be entitled to a density bonus greater than what is authorized under the State Density Bonus Law.
- F. Nothing in this chapter requires the provision of direct financial incentives from the City 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.

**17.720.080. 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. The affordable units shall be located in buildings throughout the development unless designated for senior housing or financed with tax credits or other public financing.

**17.720.090. Density bonus for commercial development.**

A Commercial Development may request and receive a Development Bonus pursuant to the provisions of Government Code Section 65915.7.

**17.720.100. Interpretation.**

If any portion of this Chapter conflicts with the 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 the State Density Bonus Law. Statutory references in this ordinance include successor provisions.

**EXHIBIT "A2"****Chapter 17.725****AFFORDABLE HOUSING****Sections****17.725.002 Definitions.**

As used in this chapter, each of the following terms shall be defined as follows:

"Affordable housing agreement" means a recorded agreement between the city and a residential developer setting forth the residential developer's compliance with the requirements of this chapter.

"Affordable housing cost" means the cost defined in the California Health and Safety Code Sections 50052.5 and 50053 (as may be amended from time to time) for owner-occupied and tenant-occupied units, respectively, and adjusted for assumed household size. The housing manager, on or about July 1st of each calendar year shall publish the maximum affordable housing costs for sales prices and rents as calculated in accordance with the applicable provisions of the California Health and Safety Code.

"Affordable unit" means an ownership or rental-housing unit, including senior housing, occupied by and available to households of very low, low and moderate incomes at an affordable housing cost, adjusted for assumed household size as defined in this chapter, with deed restrictions as defined in this chapter in favor of the city.

"Assumed household size" means the assumed number of persons residing within a dwelling unit. For the purposes of this chapter, assumed household sizes for affordable units for a given number of bedrooms are as follows, or as may be amended by the California Health and Safety Code.

<b>Assumed Household Size</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6 or more</b>
Unit Size	Studio	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom	5 Bedroom

"Custom home development" means any residential development being subdivided by one party and sold as individual lots or parcels to separate owners for construction and development of dwelling units.

"Divided in-lieu fee" means the total amount of the in-lieu fees due for the residential development at the time of first building permit issuance divided by the total number of market-rate units in the residential development. The divided in-lieu

fee shall be adjusted annually in accordance with appropriate factors or indexes as adopted by the cost allocation plan.

“Dwelling unit” means a dwelling designed and intended for occupancy by one household.

“First time homebuyer” means a household which has not owned its principal place of residence within the last three years.

“In-lieu fee” means a fee paid to the city by an applicant in lieu of providing the required affordable units.

“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.

“Market-rate unit” is defined as a residential unit that is not an affordable unit.

“Moderate-income household” means a household whose annual income does not exceed the qualifying limits set for “moderate-income households” in Section 50093 of the California Health and Safety Code and does not include a very low- or low-income household.

“Ownership development” means any residential development that includes the creation of one or more additional dwelling units that may be sold individually. An ownership development also includes the conversion of a residential rental development to a residential ownership development.

“Refinance and resale limitation agreement and option to purchase” means a recorded agreement between the city and an individual homebuyer of an ownership affordable unit documenting resale controls and/or rent restrictions.

“Rental development” means any residential development that creates one or more additional dwelling units that cannot be lawfully sold individually in conformance with the Subdivision Map Act.

“Resale controls and/or rent restrictions” means legal restrictions by which affordable units shall be restricted to ensure that the unit remains affordable to very low-, low- or moderate-income households, as applicable, for a period of not less than forty-five years for ownership units and not less than fifty-five years for rental units, or longer periods if required by state housing or federal law or a financing assistance program. Resale controls for owner-occupied units shall be in the form of resale restrictions, deeds of trust, and/or other similar documents recorded against the subject property. Rent restrictions for rental units shall be in the form of a regulatory agreement recorded against the subject property.

“Residential development” means and includes, without limitation, for-sale single-family dwellings, multiple-family dwellings, groups of dwellings, condominium

or townhouse developments, condominium conversions, cooperative developments, mixed use developments that include housing units, manufactured housing, mobilehomes, and residential land subdivisions intended to be sold, leased or rented to the general public.

“Very low-income household” means a household whose annual income does not exceed the qualifying limits set for “very low-income households” in Sections 50093 and 50105 of the California Health and Safety Code. “Very low-income households” include “extremely low-income households” as defined in Sections 50093 and 50106 of the California Health and Safety Code. (Ord. 1041 § 2, 2022)