

AN ORDINANCE OF THE CITY OF SAN BRUNO ADDING CHAPTER 12.250 (DENSITY BONUS) TO TITLE 12 (LAND USE) OF THE SAN BRUNO MUNICIPAL CODE TO IMPLEMENT ADOPTED POLICIES IN THE 2007-2014 HOUSING ELEMENT

The City Council of the City of San Bruno ordains as follows:

Section 1. The City Council finds and declares as follows.

1. California State law requires that all local governments adopt a comprehensive General Plan and the Housing Element is one of the seven mandated elements of the General Plan. State law sets forth many content and schedule requirements for the Housing Element.
2. The City Council adopted the 2007-2014 Housing Element on March 23, 2010 and it was certified by the State Department of Housing and Community Development on June 15, 2010. The Housing Element includes programs and implementation actions that must be completed during the 2007-2014 Housing Element period in order to be in compliance with State law.
3. In 2004, the State legislature passed Senate Bill 1818, which significantly changed State Density Bonus Law including requiring local jurisdictions to adopt the law into their municipal codes.
4. The implementation actions required by Housing Element Program 5-B and Senate Bill 1818 require amendments to Title 12 of the San Bruno Municipal Code (the San Bruno Zoning Code) related to density bonus.
5. On May 6, 2014 the Planning Commission conducted a duly noticed public hearing and passed a resolution recommending that the City Council adopt said ordinance.
6. On August 26, 2014 the City Council conducted a duly noticed public hearing and the City Council introduced said Ordinance.

Section 2. New Chapter 12.250 (Density Bonuses) is added to Title 12 of the San Bruno Municipal Code (the San Bruno Zoning Code) as follows:

Sections:

- 12.250.010 Purpose
- 12.250.020 Definitions
- 12.250.030 Eligibility
- 12.250.040 Amount of Density Bonus
- 12.250.050 Standards for Affordable Units
- 12.250.060 Donations of Land
- 12.250.070 Incentives
- 12.250.080 Waivers or Reductions of Development Standards
- 12.250.090 Reduced Parking Requirement
- 12.250.0100 Housing with Child Care Facilities
- 12.250.0110 Application and Review
- 12.250.0120 Continued Affordability
- 12.250.0130 Density Bonus Housing Agreement

12.250.010 Purpose

This article implements Government Code Section 65915, which requires the City to provide incentives for affordable housing, senior housing, and child care facilities. In the event of any conflict between this article and Section 65915 of the Government Code, the provisions of the Government Code shall apply.

12.250.020 Definitions

- A. "Affordable Housing Project" means a Housing Project which will be made available to and reserved for very low-income households, low-income households, or moderate-income households at a monthly rent or payment not to exceed 30 percent of the total combined monthly income of the targeted income group.
- B. "Density Bonus" means a density increase over the otherwise maximum allowable residential density as permitted by the applicable zoning district in the Zoning Ordinance.
- C. "Common-Interest Development" means a community apartment project, a condominium project, a planned development, or a stock cooperative.
- D. "Child Care Facility," means an establishment providing child day care services, other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and school-age child care centers.
- E. "Development Standard" means any adopted City standard or regulation related to the physical location or type of construction, including but not limited to, setbacks, parking, floor area ratio, and the placement of public works improvements. As defined in this section, development standards do not include land use regulations, permitting procedures, inclusionary housing requirements, or development impact fees.
- F. "Housing Project" means a development project for five or more residential units, a subdivision or common interest development of five or more unimproved residential parcels, a development project to substantially rehabilitate and convert an existing commercial building to contain five or more residential units, or the substantial rehabilitation of an existing multifamily dwelling where the result of the rehabilitation would be a net increase in five or more residential units.
- G. "Concessions or incentives" means the reduction or waiver of a City standard, regulation, or requirement as necessary to render an Affordable Housing Project financially feasible.
- H. "Low-Income Households" means a household with a total combined income not exceeding 80 percent of the Area Median Income, adjusted for household size, as established by the U.S. Department of Housing and Urban Development.
- I. "Maximum Allowable Residential Density" means the maximum residential density permitted by the applicable zoning district as established in the Zoning Ordinance.
- J. "Moderate Income Household" means a household with a total combined income not exceeding 120 percent of the Area Median Income, adjusted for household size, as established by the U.S. Department of Housing and Urban Development.
- K. "Senior Housing" means a development project of at least 35 dwelling units reserved for households headed by a person 62 years of age or older.
- L. "Very Low Income Household" means a household with a total combined income not exceeding 50 percent of the Area Median Income, adjusted for household size, as established by the U.S. Department of Housing and Urban Development.

12.250.030 Eligibility

The following types of development projects are eligible for a density bonus and incentives as identified in this section.

- A. Affordable Housing Projects. Affordable housing projects include one or more of the following:
1. At least 10 percent of the units affordable for low-income households.
 2. At least 5 percent of the units affordable for very low-income households.
 3. At least 10 percent of the total dwelling units in a common-interest development affordable to moderate-income households, provided that all units are offered to the public for purchase.
- A. Senior Housing. A senior housing development or a mobile home park that limits residency based on age requirements for housing for older persons, in compliance with Civil Code Section 798.76 or 799.5.
- B. Donation of Land. A donation of land for the purpose of constructing housing for very low income households.
- C. Condominium Conversions. The conversion of apartments to condominiums that provides either of the following:
1. At least 33 percent of the units affordable to low- or moderate-income households.
 2. At least 15 percent of the units affordable to very low-income households.

12.250.040 Amount of Density Bonus

If requested by the applicant, the City shall grant density bonuses in the amounts identified below.

A. **Very Low-Income Projects.** Housing projects with at least 5 percent of units affordable to very low-income households are entitled to a density bonus as shown in Table 12.250-1.

TABLE 12.250-1 AMOUNT OF DENSITY BONUS FOR VERY LOW-INCOME PROJECTS

Percent of Very Low-Income Units	Amount of Density Bonus
5%	20%
6%	22.5%
7%	25%
8%	27.5%
9%	30%
10%	32.5%
11%	35%

B. **Low-Income Projects.** Housing projects with at least 10 percent of units affordable to low income households are entitled to a density bonus as shown in Table 12.250-2.

TABLE 12.250-2 AMOUNT OF DENSITY BONUS FOR LOW-INCOME PROJECTS

Percent of Low-Income Units	Amount of Density Bonus
10%	20%
11%	21.5%
12%	23%
13%	24.5%
14%	26%
15%	27.5%
16%	29%
17%	30.5%
18%	32%
19%	33.5%
20%	35%

C. **Moderate-Income Projects.** Common interest development projects with at least 10 percent of units affordable to moderate-income households are entitled to a density bonus as shown in Table 12.250-3.

TABLE 12.250-3 AMOUNT OF DENSITY BONUS FOR MODERATE-INCOME PROJECTS

Percent of Moderate-Income Units	Amount of Density Bonus
10%	5%
11%	6%
12%	7%
13%	8%
14%	9%
15%	10%
16%	11%
17%	12%
18%	13%
19%	14%
20%	15%
21%	16%
22%	17%
23%	18%
24%	19%
25%	20%
26%	21%
27%	22%
28%	23%
29%	24%
30%	25%
31%	26%
32%	27%
33%	28%
34%	29%
35%	30%
36%	31%
37%	32%
38%	32%
39%	34%
40%	35%

D. Senior Housing. Senior housing projects are entitled to a density bonus of 20 percent of the number of senior housing units.

E. Donations of Land. Projects that donate land for very low-income housing consistent with Section 12-250.060 (Donations of Land) are entitled to a density bonus as shown in Table 12.250-4.

TABLE 12.250-4 AMOUNT OF DENSITY BONUS FOR DONATIONS OF LAND

Percent of Very Low-Income Units	Amount of Density Bonus
10%	15%
11%	16%
12%	17%
13%	18%
14%	19%
15%	20%
16%	21%
17%	22%
18%	23%
19%	24%
20%	25%
21%	26%
22%	27%
23%	28%
24%	29%
25%	30%
26%	31%
27%	32%
28%	33%
29%	34%
30%	35%

F. Condominium Conversions

1. Condominium conversion projects meeting affordability requirements identified in Section 12.250.030 (Eligibility) are entitled to a density bonus of 25 percent of the number of apartments within the structure to be converted.

2. As an alternative to the 25 percent density bonus, the City may provide an incentive of equivalent value.

3. Condominium conversions are ineligible for a density bonus if the rental units to be converted received a density bonus when they were originally constructed.

G. Calculation of Density Bonus

1. All density calculations resulting in fractional units shall be rounded up to the next whole number.

2. Affordable housing projects shall choose a density bonus from only one affordability category (e.g. very low-income) and may not combine categories.

3. A density bonus for a senior housing project may not be combined with a density bonus for an affordable housing project.

4. A density bonus for the donation of land may be combined with density bonuses for affordable and senior housing. However, in no case may a total density bonus exceed 35 percent.

12.250.050 Standards for Affordable Units

All affordable units built under the provisions of this section shall meet the following requirements:

A. **Concurrency.** Affordable units shall be built concurrently with market rate units unless the City and the applicant agree within the density bonus housing agreement to an alternative schedule for development.

B. **Location.** Affordable units shall be built on-site wherever possible and, where practical, shall be dispersed within the housing development.

C. **Unit Size.** The average number of bedrooms of the affordable units shall be equivalent or greater to the bedroom mix of the housing development's other units.

D. **Design.** The design and appearance of the affordable units shall be compatible with the design of the housing development as a whole.

E. **Development Standards.** Housing developments shall comply with all applicable development standards, except those that may be modified as permitted by this section.

F. **Linked Sites.** Circumstances may arise in which the public interest would be served by allowing some or all of the affordable units associated with one housing development to be produced and operated at an alternative development site. If the developer and the City agree to allow the production and operation of affordable units at an alternative site, the resulting linked development(s) shall be considered a single housing development for the purposes of this section.

12.250.060 Donations of Land

All land donated for the purpose of constructing affordable housing shall meet the following requirements:

A. **Date of Transfer.** The applicant shall donate and transfer the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

B. **Developable Acreage.** The developable acreage of the land being transferred shall be sufficient to permit construction of units affordable to very low-income households in an amount not less than 10 percent of the number of residential units in the proposed development.

C. **Minimum Size.** The transferred land shall have an area sufficient to permit development of at least 40 units.

D. **Appropriate Regulations and Infrastructure.** The transferred land shall have the appropriate General Plan land use designation, zoning and development standards to make the development of affordable units feasible. It shall have existing or planned public facilities and infrastructure that are adequate to support the development.

E. **Entitlements.** No later than the date of approval of the final subdivision map, parcel map, or residential development application, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low-income housing units on the transferred land.

F. **Deed Restriction.** The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with the requirements of this section. The restriction shall be recorded on the property at the time of dedication.

G. **Recipient.** The land shall be transferred to the City or to a housing developer approved by the City. The City may require the applicant to identify and transfer the land to the developer.

H. **Location.** The transferred land shall be within the boundary of the proposed development or, if the City agrees, within ¼-mile of the boundary of the proposed development.

12.250.070 Concessions or Incentives

A. **Eligibility.** An applicant who applies for a density bonus may also request one to three concessions or incentives, as described in Subsection B (Number of Incentives) and in Subsection D (Available Incentives), as needed to contribute to a development project's financial feasibility.

B. **Number of Incentives.** An applicant may request the following number of incentives:

1. One concession or incentive for projects that include at least 10 percent of the total units for low-income households, at least 5 percent for very low-income households, or at least 10 percent for persons and families of moderate income in a common-interest development.

2. Two concessions or incentives for projects that include at least 20 percent of the total units for low income households, at least 10 percent for very low-income households, or at least 20 percent for persons and families of moderate income in a common-interest development.

3. Three concessions or incentives for projects that include at least 30 percent of the total units for low income households, at least 15 percent for very low-income households, or at least 30 percent for persons and families of moderate income in a common-interest development.

C. City Concessions or Incentives for Below Market Rate Units. The City may, at its discretion, grant additional concessions and incentives to increase the number of affordable units provided or to increase the affordability of the affordable units, described below:

1. Flexible Parking Standards. Residential developments with one or more on-site below market rate units shall be allowed limited reductions in the parking requirements related to any dwelling units or allowed limited use of tandem and/or shared parking arrangements on-site within a mixed-use project, or allowed a combination of these modified parking standards.

2. Flexible Setback Allowance. Residential developments with one or more on-site below market rate units may be allowed limited reductions in the minimum setback requirements if the following findings are made through the design review process:

a. That the proposed alternative design at the proposed location will not be detrimental or injurious to improvements in the vicinity and will not be detrimental to the public health, peace, safety, comfort, general welfare or convenience;

b. The proposed alternative design shall not significantly reduce the privacy of the adjoining property owners or significantly reduce sunlight into adjoining properties; and

c. The proposed alternative design shall be significantly consistent with the development standards and design guidelines of any applicable specific plan.

D. Concessions or Incentives Not Requiring Financial Pro Forma from Applicant. The following concessions or incentives, in accordance with 12.250.70.B (Number of Incentives), shall be available to the builder without any requirement that the builder submit a pro forma to the City demonstrating that the requested concession or incentive results in identifiable, financially sufficient, and actual cost reductions:

1. Reduced minimum parcel sizes or dimensions.

2. Reduced minimum building separation requirements.

3. Reduced minimum usable open space.

4. Increased maximum floor area ratio so long as the design is consistent with any applicable design guidelines.

5. Increased maximum coverage by structures.

6. Deferral until occupancy of development impact fees.

7. Approval of mixed-use zoning for the project site in conjunction with the housing development, 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 development and the existing or planned development in the area where the proposed development will be located.

8. Any of the City incentives listed in Section 12.250.70.C.

E. Concessions or Incentives Requiring Financial Pro Forma from Applicant.

1. All other concessions or incentives shall require the builder to demonstrate to the City Council through the provision of a pro forma that the requested concession or incentive results in identifiable, financially sufficient, and actual cost reductions to the residential development. The pro forma shall include:

a. The actual cost reduction achieved through the concession or incentive;

d. Evidence that the cost reduction allows the builder to provide affordable rents or affordable sales prices; and

e. All other information as may be requested by the Administrator to ensure that the required findings can be made.

2. Financial Assistance. To the extent budgeted by the City Council and otherwise available, financial assistance from the City or from sources as may be available to the City may be available to the builder in the form of loans or grants for the below market rate housing component of the residential development. The builder shall be responsible for complying with all requirements associated with the particular funding source(s), including any requirements imposed by the State for payment of prevailing wages. Rental residential developments that offer the deepest affordability and which lack alternative funding sources shall be given the highest priority for financial assistance, in particular, rental residential developments affordable to very low- and low-income households.

12.250.080 Waivers or Reductions of Development Standards

- A. Eligibility. An applicant who applies for a density bonus may also request a waiver or reduction of any development standard that would physically prevent the construction of the development project.
- B. Number of Waivers or Reductions.
 - 1. There shall be no limit to the number of waivers or reductions available to an applicant.
 - 2. The approval of waivers or reductions shall neither reduce nor increase the number of incentives available to a project pursuant to Section 12.250.070 (Incentives).
- C. Justification for Approval. The City shall approve the requested waiver or reduction if the applicant can demonstrate that it is physically impossible to construct the project without the waiver or reduction.
- D. Provision of Waivers or Reductions. The City shall approve the requested waiver or reduction, unless the City makes a written finding, based upon substantial evidence, of either of the following:
 - 1. The waiver or reduction 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 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.
 - 2. The waiver or reduction is contrary to State or federal law.

12.250.090 Reduced Parking Requirement

Development projects entitled to a density bonus and incentives are also entitled to a reduced on-site parking requirement as described below.

- A. Number of Spaces. Upon the request of the applicant, the City shall reduce the required on-site parking requirement to one parking space for every 0 to 1 bedroom dwelling unit.
- B. Calculation of Required Parking. If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number.
- C. Configuration and Location of Parking. A development project may provide on site parking through tandem parking, but not through on-street parking.
- D. Additional Parking Incentives. An applicant may request parking incentives beyond those provided in this section pursuant to Section 12.250.070 (Incentives).

12.250.100 Housing with Child Care Facilities

- A. Additional Bonus or Incentive. A development project eligible for a density bonus or incentive that includes a child care facility as part of the project is entitled to one of the following:
 - 1. An additional density bonus equal to the amount of square footage of the facility; or
 - 2. One additional incentive that contributes significantly to the economic feasibility of the child care facility.
- B. Conditions. The City shall require, as a condition of approving a housing development with a child care facility, that the following occur:
 - 1. The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable.
 - 2. Of the children who attend the child care facility, the percentage of children who reside in affordable units shall equal or exceed the percentage of dwelling units that are available for very low-income, low-income, or moderate-income households.
- C. Basis for Denial. The City is not required to provide a density bonus or incentive for a child care facility if it finds, based upon substantial evidence, that the vicinity of the proposed project is adequately served by existing child care facilities.

12.250.110 Application and Review

- A. Application. A developer seeking approval of a density bonus and one or more concessions or incentives shall file an application with the Community Development Department, which includes a Density Bonus Housing Plan, described in subsection B, below of this section. The Department shall process the application concurrently with any other application required for the development project. The form and content of the application shall be as specified by the Department and subject to a fee established by resolution of the City Council.
- B. Density Bonus Housing Plan. All requests for density bonuses, concessions or incentives, City incentives, parking reductions, and waivers provided pursuant to Sections 12.250.40, 12.250.70 and 12.250.80 shall be submitted with a Density Bonus Housing Plan, which shall include the following information:

1. A site plan depicting the number and location of all market rate units, below market rate units, density bonus BMR units, and bonus units.
 2. A calculation of the maximum number of dwelling units permitted by the City's Zoning Ordinance, General Plan and applicable Specific Plan for the residential development, excluding any density bonus.
 3. The targeted income level of the proposed density bonus BMR units.
 4. Description of any requested concessions, incentives, waivers of development standards, or parking reductions requested pursuant to Section 12.250.70.
 5. For all concessions or incentives except those listed in Section 12.250.70(D), a pro forma demonstrating that the requested concessions or incentives result in identifiable, financially sufficient, and actual cost reductions. The pro forma shall include the information pursuant to 12.250.70(E).
 6. For waivers of development standards: evidence that the development standards for which the waivers are requested will have the effect of physically precluding the construction of the residential development with the density bonus, concessions, or incentives requested.
 7. The Administrator may require that any pro forma submitted pursuant to subsection (B)(5) of this section include information regarding capital costs, equity investment, debt service, projected revenues, operating expenses, and such other information as is required to evaluate the pro forma. The cost of reviewing any required pro forma data, including but not limited to the cost to the City of hiring a consultant to review the pro forma, shall be borne by the builder.
 8. If a mixed-use building or development is proposed, the builder shall provide evidence that nonresidential land uses will reduce the cost of the residential development, and the nonresidential land uses are compatible with the residential development and existing or planned surrounding development.
 9. If a density bonus is requested for a land donation, the Density Bonus Housing Plan shall show the location of the land to be dedicated, provide proof of site control, and provide evidence that each of the findings included in Government Code Section 65915(g) can be made.
 10. If a density bonus, concession or incentive is requested for a child care facility or condominium conversion, the below market rate housing plan shall provide evidence that the findings in Government Code Section 65915(h) or 65915.5, as appropriate, can be made.
- C. City Review of Application for Density Bonus, Concessions, or Incentives.
1. Any request for a density bonus shall be heard and decided by the Planning Commission. The procedure for giving notice of the application shall be as specified in Chapter 12.132 (Public Hearing), except that the notice shall also identify the density bonus and additional incentive or incentives requested for the project.
 2. Any request for concessions or incentives shall be heard and decided by the City Council with a recommendation from the Planning Commission. The procedure for giving notice of the application shall be as specified in Chapter 12.132 (Public Hearing), except that the notice shall also identify the density bonus and additional incentive or incentives requested for the project.
 3. In accordance with State law, neither the granting of a concession or incentive, nor the granting of a density bonus, shall be interpreted, in and of itself, to require a General Plan amendment, zoning change, or other discretionary approval.
- D. Findings for Approval of Density Bonus, Concessions, or Incentives. Before approving an application that includes a request for a density bonus, incentive, concession, waiver, or parking reduction provided pursuant to Sections 12.250.40, 12.250.70 and 12.250.80, the decision-making body shall make the following findings, as applicable:
1. The residential development is eligible for a density bonus and any concessions, incentives, waivers, or parking reductions requested.
 2. Any requested incentive or concession will result in identifiable, financially sufficient, and actual cost reductions based upon appropriate financial analysis and documentation if required.
 3. If the density bonus is based all or in part on donation of land, the findings included in Government Code Section 65915(g).
 4. If the density bonus, incentive, or concession is based all or in part on the inclusion of a child care facility, the findings included in Government Code Section 65915(h).
 5. If the incentive or concession includes mixed-use development, the findings included in Government Code Section 65915(k)(2).
 6. If a waiver is requested, the development standards for which a waiver is requested would have the effect of physically precluding the construction of the residential development with the density bonus, concessions, or incentives permitted.

E. Findings for Denial of Incentives, Concessions or Waivers.

1. Denial of Concessions or Incentives. If the findings required by subsection D of this section can be made, the decision-making body may deny a concession or incentive only if it makes a written finding, supported by substantial evidence, of either of the following:

a. The concession or incentive is not required to provide for affordable rents or affordable ownership costs.

b. The concession or incentive would have a specific adverse impact upon public health or safety or the physical environment or on any real property that is listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the 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 residential development was deemed complete.

c. The concession or incentive would be contrary to State or Federal law.

2. Denial of Waivers. If the findings required by subsection D of this section can be made, the decision-making body may deny a waiver only if it makes a written finding, supported by substantial evidence, of either of the following:

a. The waiver would have a specific adverse impact upon health, safety, or the physical environment, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the 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, and identified, written public health or safety standards, policies, or conditions as they existed on the date that the application was deemed complete.

b. The waiver would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

c. The waiver would be contrary to State or Federal law.

3. Denial of Incentive or Bonus for Child Care Center. If the findings required by subsection D of this section can be made, the decision-making body may deny a density bonus, incentive, or concession 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.

12.250.120 Continued Affordability

The following requirements apply to all affordable units that qualify for a density bonus or other incentive.

A. Duration of Affordability.

1. All units shall remain affordable for 30 years, or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

2. Rents shall be set at affordable levels as defined in Health and Safety Code Section 50053.3. Owner-occupied units shall be available at an affordable cost as defined in Health and Safety Code Section 50052.5.

B. Equity Sharing Agreement. The City shall enforce an equity sharing agreement for the resale of all common interest moderate-income units. The following apply to the equity sharing agreement:

1. Upon resale, the seller of the unit shall retain the value of any improvements, the down payment, and the seller's proportionate share of appreciation.

2. The City shall recapture any initial subsidy, and its proportionate share of appreciation, which shall be used by the City within five years as described in Health and Safety Code Section 33334.2(e).

3. The City's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any down-payment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

4. The City's proportionate share of appreciation shall be equal to the ratio of the City's initial subsidy to the fair market value of the home at the time of initial sale.

12.250.130 Density Bonus Housing Agreement

A. Agreement Required. As a condition for the approval of a density bonus and additional incentives, the applicant shall agree to enter into a density bonus housing agreement with the City. The executed density bonus housing agreement shall be recorded on the parcel or parcels designated for the construction of affordable units, or donated for the purpose of constructing housing units as specified in this section. The approval and recordation shall occur prior to final map approval or, where a map is not being processed, prior to the issuance of building permits for the parcels or units. The density bonus housing agreement shall be binding upon all future owners and successors in interest.

B. Content of Agreement. The density bonus housing agreement shall, at a minimum, include all of the following:

1. The total number of units approved for the housing development, including the number of affordable units.
2. A description of the household income groups to be accommodated by the housing development, and the standards for determining the corresponding affordable rent or affordable sales price and housing cost.
3. The location, unit size in square feet, and number of bedrooms of each affordable unit.
4. The location and square footage of any land being donated for the purpose of constructing housing units that are affordable to very low-income households.
5. The location and square footage of any child care facility for which a density bonus or additional incentive is being granted.
6. Tenure of use restrictions for affordable units and units built on donated land.
7. A schedule for the completion and occupancy of affordable units.
8. Description of any requested concessions, incentives, waivers of development standards, or parking reductions
9. A description of remedies for breach of the agreement, by either party, including the provision that tenants or qualified purchasers are third-party beneficiaries under the agreement.
10. Other provisions as appropriate to ensure implementation and compliance with this section's requirements for density bonuses and additional incentives.

C. For-Sale Requirements. In the case of for-sale housing developments, excluding affordable units for moderate-income households, the density bonus housing agreement shall provide for the following requirements during the use restriction period:

1. The initial sale of each affordable unit shall be to a household that meets the income requirement for the affordable unit or, for senior citizen housing, to a senior citizen.
2. The initial occupant of each affordable unit shall be a household that meets the income requirement for the affordable unit or, for senior citizen housing, a senior citizen.
3. The initial purchaser of each affordable unit shall execute an instrument or agreement approved by the City restricting the sale of the affordable unit during the duration of affordability period as set forth in Section 12.250.0120 (Continued Affordability). The instrument or agreement shall be recorded against the parcel containing the affordable unit and shall contain provisions, as required by the City, to ensure continued compliance with this chapter and with State law.

D. Moderate-Income Requirements. In the case of affordable units for moderate-income households, the density bonus housing agreement shall provide for the following requirements:

1. The initial sale of each affordable unit shall be to a household that meets the income requirement for the affordable unit.
2. When the initial purchaser sells the unit, the initial purchaser shall retain the value of any improvements, the down payment and the value of the unit's appreciation, less the City's share of the appreciation.
3. When the initial purchaser sells the unit, the City shall receive a share of the unit's appreciation equal to the percentage by which the initial sale price to the moderate income household was less than the fair market value of the home at the time of initial sale. The City shall use this share of appreciation for any of the purposes described in subdivision of Health and Safety Code Section 33334.2(e).

E. Rental Requirements. In the case of rental housing developments, the density bonus housing agreement shall provide for the following requirements during the use restriction period:

1. Rules and procedures for qualifying each tenant, determining affordable rents, filling vacancies and retaining affordable units for qualified tenants.
2. Provisions requiring owners to verify tenant incomes and maintain books and records to demonstrate compliance with this section.

3. Provisions requiring owners to submit an annual report to the City, including the name, address and income of each person occupying an affordable unit and the bedroom size and monthly rent or cost of each affordable unit.

F. Child Care Facility Requirements. In the case of child care facilities for which a density bonus or additional incentive is being granted, the density bonus housing agreement shall provide for the following requirements:

1. Operating duration requirements for the child care facility, such that the child day care facility shall remain in operation for as long as or longer than the period of time during which the density bonus units are required to remain affordable.

2. Provisions requiring that for children who attend the child care facility, the percentage of children from the income group associated with the development's affordable units shall be equal to or greater than the minimum percentage of affordable units that shall be provided for that income group in order to receive a density to the requirements of this section.

Section 3. Validity. The City Council of the City hereby declares that should any section, paragraph, sentence or work of this code as adopted and amended herein be declared for any reason to be invalid, it is the intent of the City Council of the City that it would have passed all other portions or provisions of this Ordinance independent of the elimination here from any such portion or provision as may be declared invalid.

Section 4. This Ordinance has been reviewed with respect to applicability of the California Environmental Quality Act (CEQA). The proposed Zoning Ordinance Amendment is an Implementation Action contained in the current Housing Element to carry out housing programs. The potential environmental impacts of implementation of the Housing Element programs were reviewed as a part of the Negative Declaration prepared for the Housing Element. This document determined that no adverse environmental impacts would result from implementation of the policies and programs outlined in the Housing Element, and the Negative Declaration and Housing Element were approved by the City Council on March 23, 2010.

Section 5. This Ordinance shall be published as required by law and shall be in force 30 days after its adoption.

ATTEST:

Carol Bonner
Carol Bonner, City Clerk

Jim Ruane
Jim Ruane, Mayor

APPROVED AS TO FORM:

Marc Zafferano
Marc Zafferano, City Attorney

--oOo--

I hereby certify that foregoing **Ordinance No. 1826** was introduced at a regular meeting of the San Bruno City Council on August 26, 2014, and adopted by the San Bruno City Council at a regular meeting on September 9, 2014, by the following vote:

AYES: Councilmembers: Ibarra, Medina, O'Connell, Salazar, Mayor Ruane

NOES: Councilmembers: None

ABSENT: Councilmembers: None

I hereby certify this to be a full, true and correct copy of the document it reports to be, the original of which is on file in my office.

Dated: April 11, 2018

Carol Bonner
Carol Bonner, City Clerk

