

CITY OF HERCULES ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HERCULES AMENDING PROVISIONS OF HERCULES MUNICIPAL CODE SECTIONS 13-6.100, 13-6.300 AND 13-30.420, AMENDING AND RENUMBERING SECTIONS 13-30.460 AND 13-30.470, REPEALING SECTIONS 13-30.430, 13-30.440 AND 13-30.450 AND AMENDING SECTION 13-60.200 TO COMPLY WITH THE STATE DENSITY BONUS LAW AND FINDING THE ACTION EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).

WHEREAS, California's State Density Bonus Law (Government Code §§ 65915 et seq.; "SDBL") encourages developers to build affordable housing (e.g., very low-, low- and moderate-income units) by requiring cities to grant a density bonus, concessions, incentives, and waivers of developments standards for projects that commit certain percentages of their units to affordable housing; and

WHEREAS, California Government Code § 65915(a) requires that local governments adopt an ordinance that specifies how compliance with SDBL will be implemented; and

WHEREAS, Sections 13-6.100, 13-6.300, 13-30.420, 13-30.430, 13-30.440, 13-30.450, 13-30.460 and 13-30.470 of the Hercules Municipal Code contain regulations implementing the SDBL; and

WHEREAS, Hercules Municipal Code Sections 13-6.100, 13-6.300, 13-30.420, 13-30.430, 13-30.440, 13-30.450, 13-30.460 and 13-30.470 were last amended to comply with the SDBL via Ordinance No. 484, adopted on February 10, 2015; and

WHEREAS, this ordinance ("Ordinance") amends Hercules Municipal Code Sections 13-6.100, 13-6.300 and 13-30.420, amends and renumbers Sections 13-30.460 and 13-30.470 and repeals Sections 13-30.430, 13-30.440 and 13-30.450 to adopt the State Density Bonus Law by reference. As amended and renumbered by this Ordinance, Hercules Municipal Code Sections 13-30.420, 13-30.430 and 13-30.440 will provide density bonuses and other affordable housing incentives required by SDBL (including but not limited to Government Code § 65915 et seq.); and

WHEREAS, adopting the SDBL by reference will ensure the Municipal Code remains current whenever the State Legislature amends the SDBL; and

WHEREAS, the Planning Commission did hold a properly noticed public hearing on March 4, 2024 to consider the proposed Text Amendment and did hear and use its independent judgement to consider all said reports, recommendations and testimony hereinabove set forth; and

WHEREAS, the Planning Commission at its March 4, 2024 meeting passed Resolution #24-02 recommending City Council adoption of an ordinance to modify the Hercules Zoning Ordinance as proposed in order to comply with SDBL; and

WHEREAS, on March 26, 2024, the City Council held a duly noticed public hearing to consider the proposed Ordinance related to density bonus, received the staff report and staff presentation, received comments from the public and interested parties and discussed the matter; and

WHEREAS, all legal prerequisites to the adoption of the Ordinance have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HERCULES DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The City Council hereby incorporates the above recitals into this Ordinance by this reference.

SECTION 2. Amendment. Deletions to the Hercules Municipal Code are shown in strikethrough. Additions are shown in bold/underline. The City Council of the City of Hercules does hereby amend Hercules Municipal Code Sections 13-6.100, 13-6.300, 13-30.420 and 13-60.200, amends and renumbers Hercules Municipal Code Sections 13-30.460 and 13-30.470 and repeals Hercules Municipal Code Sections 13-30.430, 13-30.440 and 13-30.450 to read as follows:

Hercules Municipal Code

TITLE 13. ZONING ORDINANCE

Chapter 13-6. Residential Districts

Sec. 13-6.100 Specific Purposes.

1. In addition to the general purposes listed in Section 13-5.100, the specific purposes of the residential districts are to:

A. Reserve appropriately located areas for family living at a reasonable range of population densities consistent with the General Plan and sound standards of public health and safety.

B. Ensure adequate light, air, privacy, and yard/open space for each dwelling unit and protect residents from public safety hazards and other harmful environmental effects.

C. Preserve as many of the desirable characteristics of single-family residential districts as possible while allowing for associated residential uses such as daycare, rooming and boarding, home occupations, second residential units to the extent that substantial adverse impacts are not caused to adjacent residences.

D. Promote safe and well-designed neighborhoods and encourage new residential development to have an internal circulation system, including pedestrian walkways, bikeways, and access to transit facilities. Ensure provision of public services and facilities to support existing and planned residential densities.

E. Reserve appropriate areas for multifamily dwellings that may be located and designed to be compatible with adjacent land uses and residences.

F. Encourage development of innovative types of housing, including co-housing, congregate care facilities, and other types of housing that may provide low cost alternatives to typical market-rate housing.

G. Encourage provision of affordable housing units, especially for single persons, single parents, elderly and young families. Provide well-designed, well-built housing units for low- and moderate-income households in mixed-density developments, including planned developments (PDs), avoiding a concentration in any limited area.

H. Provide additional affordable senior citizen housing. Encourage provision of senior housing by considering density bonuses up to ~~General Plan maximum~~ where senior projects are desirable and compatible with special senior needs.

I. Allow for public and quasi-public land uses to complement residential development within close access such as schools, churches and daycare facilities; provided, that substantial adverse impacts such as traffic congestion, increased noise (ambient or episodic) or full use of available on-street parking, or other similar impacts are not caused on nearby residences.

2. The additional purposes of each residential zoning district are:

A. RS-E Residential Single-Family Estate. To provide sites for estate homes on larger lots to be developed with custom built and individually designed homes with

a gross density of 1 or 2 units per acre and a minimum parcel size of 0.5 acre. Specific densities are assigned on the Zoning Map.

B. RS-L Residential Single-Family Low Density. To provide areas for single-family housing on smaller lots that will generally be developed as part of a larger planned subdivision where a limited number of models of varied exterior designs are built in a random pattern on individual lots with a gross density of 2 to 7 units per acre and a minimum parcel size of 6,000 square feet unless a smaller lot size is allowed by an approved planned development (PD).

C. RM-L Residential Multifamily Low Density. To provide sites for low density multifamily housing such as townhouses, condominiums and apartments, and medium density single-family housing that incorporate good design and amenities with a gross density up to 12 units per acre (midrange density of 9 units per acre). The minimum parcel size for multifamily housing is 3 acres. The minimum lot size for single-family housing is 4,000 square feet unless a smaller lot size is allowed by an approved planned development (PD).

D. RM-M Residential Multifamily Medium Density. To provide sites for medium density multifamily housing such as townhouses, condominiums and apartments that incorporate good design and amenities with a gross density of 12 to 30 units per acre (midrange density of 20 units per acre) and a minimum parcel size of 5 acres.

E. RM-H Residential Multifamily High Density. To provide sites for high density multifamily housing, typically located near public transit centers, adequate streets, shopping centers or other high activity areas and that incorporate good design and amenities with a gross density of 30 to 55 units per acre (midrange density of 42 units per acre) and a minimum parcel size of 15 acres. [Ord. 544 § 3, 2023; Ord. 543 § 3, 2023; Ord. 515 § 2, 2018; ZO § 6.100.]

Sec. 13-6.300 Performance Standards.

The standard performance standards for development specified in Chapter 13-31 shall be met. In addition, the following specific performance standards shall be met:

1. Residential streets shall be designed in relation to the needed capacity and the adjoining housing patterns while discouraging through traffic on local streets.

2. Existing residential structures of architectural or historic significance are to be restored and maintained.
3. New residential areas shall be designed to avoid conflict with major streets or thoroughfares, and should provide access to transit facilities to encourage safe and convenient alternatives to private auto.
4. Multifamily residential land shall be developed with a balance of open space, landscaping, and recreational amenities and should be easily accessible to commercial and recreational areas and public transportation.
5. Upon reinstitution of the inclusionary housing ordinance, new residential development shall include a minimum 10 percent of the total number of units for affordable housing. No in-lieu fees will be accepted by the City unless the developer can establish extraordinary circumstances for not providing affordable housing or unless an agreement predating the adoption of the 1996 General Plan Amendment provides otherwise.

~~A density bonus up to 35 percent over the maximum General Plan designation may be provided, along with the waiver of fees and the relaxation of development standards, in exchange for low income or senior housing provided, as per Section 65915 of the California Government Code, **as may be amended.** and Sections ~~13-30.420 through 13-30.470~~ (Residential Density Bonuses). In order to encourage the development of lower income housing units, the waiver of fees and the relaxation of development standards may be considered by the City in return for commitments to provide lower income housing.~~

~~6. Affordable senior housing projects with density bonuses up to General Plan maximum are allowed where desirable and compatible with special senior needs. Such projects shall only be allowed where the size of the structure and style of architecture are compatible with the surrounding neighborhood.~~

~~7~~ **6.** The use of solar systems, both active and passive designs, is encouraged in new residential development. [Ord. 544 § 3, 2023; Ord. 543 § 3, 2023; Ord. 515 § 2, 2018; Ord. 484 § 13, 2015; ZO § 6.300.]

TITLE 13. ZONING ORDINANCE

Chapter 30. Property Development Standards

Sec. 13-30.420 Residential Density Bonuses—Purpose and Applicability.

1. This Section through Section 13-30.440 and the requirements of California Government Code Sections 65915 through 65918, as may be amended, are intended to implement the housing element of the General Plan ~~and the requirements of California Government Code Sections 65915 through 65918~~, offering incentives for the development of affordable housing. Where regulations are not specifically addressed in these sections or where there are conflicts between these provisions and the provisions of California Government Code Sections 65915 through 65918, the provisions of the California Government Code, as they may be amended over time, shall apply.

~~2. Housing developments are eligible for a density bonus as provided in California Government Code Section 65915 and these provisions, when the applicant for the housing development agrees or proposes at least 1 of the following:~~

~~A. Construct:~~

- ~~1) Ten percent of the total units affordable to lower-income households at affordable rent or affordable housing cost; or~~
- ~~2) Five percent of the total units affordable to very low-income households at affordable rent or affordable housing cost; or~~
- ~~3) Ten percent of the total units proposed in a common interest development for sale to moderate-income households; provided, that all units in the development are offered to the public for purchase; or~~
- ~~4) A senior citizen housing development.~~

~~B. Donate land in accordance with California Government Code Section 65915.~~

~~3. In addition to meeting the requirements of subsection (1) of this Section, housing developments which include a child care facility in accordance with California Government Code Section 65915 are entitled to an additional density bonus.~~

4. An applicant may also submit a proposal for specific incentives or concessions to be granted in conjunction with the density bonus, as provided in Section 13-30.440.

5. The granting of a density bonus, incentive, or concession, in and of itself, shall not require a General Plan amendment, zone change, or other discretionary approval and shall be reviewed concurrently with the review of the housing development.

6. To qualify for a density bonus, a senior housing development is not required to provide affordable units; however, the entire development must be reserved for qualified senior persons pursuant to Section 51.3 of the California Civil Code. Also, any senior housing development for which a density bonus is requested and approved must have a minimum of 35 units. [Ord. 515 § 2, 2018; Ord. 484 § 12, 2015; ZO § 30.420.

Sec. 13-30.430 Residential Density Bonuses—Calculation.

1. Housing developments that meet the criteria in Section 13-30.420(1) are eligible for a maximum density bonus as set forth in Table 13-30.1.

2. The calculation of a density bonus in compliance with this subsection that results in fractional units shall be rounded up to the next whole number, as required by state law. For purposes of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels.

Table 13-30.1 Maximum Density Bonus Calculations Based on Government Code Section 65915

Unit Type	Minimum % Affordable Units in Category	Base Density Bonus Granted ¹	Additional Bonus for each 1% of Affordable Units Provided	% Affordable Units Required for Maximum 35% Bonus
Very Low-Income Units	5%	20%	2.5%	11%
Low-Income Units	10%	20%	1.5%	20%

**Table 13-30.1 Maximum Density Bonus Calculations Based on Government
Code Section 65915**

Unit Type	Minimum % Affordable Units in Category	Base Density Bonus Granted¹	Additional Bonus for each 1% of Affordable Units Provided	% Affordable Units Required for Maximum 35% Bonus
Moderate-Income Units	10%	5%	1.0%	40%
Senior Housing	See Section <u>13- 30.420(6)</u>	20%	n/a	n/a
Land Donation (for very low income housing) ²	10%	15%	1.0%	30%
Condominium- Conversion (moderate- income) ³	33%	25%	n/a	n/a
Condominium- Conversion (lower- income) ³	15%	25%	n/a	n/a
Child Care Facility ⁴	n/a	Sq. Ft. in Day Care Facility	n/a	n/a

Notes:

1. A density bonus may be selected from only 1 category, except that density bonuses for land donation may be combined with others, up to a maximum of 35 percent, and an additional square foot bonus may be granted for a child care facility as provided in California Government Code Section 65915(h).

2. ~~The donation of land must conform to the requirements of California Government Code Section 65915(g).~~
 3. ~~The conversion of condominiums must conform to the requirements of California Government Code Section 65915.5.~~
 4. ~~The provision of child day care facilities must conform to the requirements of California Government Code Section 65915(h).~~
- [Ord. 515 § 2, 2018; Ord. 484 § 12, 2015; ZO § 30.430.]

Sec. 13-30.440 Residential Density Bonuses—Incentives and Concessions.

1. ~~A housing development is eligible for incentives and concessions as shown in Table 13-30.2. Incentives and concessions must be selected from only 1 category (very low-, low-, or moderate-income). No incentives or concessions are available for land donation or for a senior citizen housing development that is not affordable. Condominium conversions and day care centers may have 1 incentive/concession or a density bonus, at the City's option, but not both.~~

**Table 13-30.2 Incentives and Concessions Calculations
Based on Government Code Section 65915**

Unit Type	Percent of Affordable Units	Number of Concessions/ Incentives
Very Low-Income Units	5% or greater	4
	10% or greater	2
	15% or greater	3
Low-Income Units	10% or greater	4
	20% or greater	2
	30% or greater	3
Moderate-Income Units	10% or greater	4
	20% or greater	2
	30% or greater	3

2. ~~For purposes of this Section, permissible concessions and incentives include but are not limited to:~~

~~A. A modification of development standards or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code that would otherwise be required, including but not limited to a reduction in setback requirements, lot coverage, landscape coverage, or number of parking spaces, such that the reduction or modification results in identifiable, financially sufficient, and actual cost reductions.~~

~~B. 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 or planned development in the area where the proposed housing project will be located;~~

~~C. Other regulatory incentives or concessions proposed by the developer or the City which result in identifiable financially sufficient and actual cost reductions.~~

~~3. A housing development which requests incentives or concessions must show that the requested concessions are required to provide for affordable rents or affordable housing costs, as applicable. The Director shall determine the type and detail of documentation that must be provided.~~

~~4. If the housing development is eligible for a density bonus as provided in Section 13-30.420, upon request of the applicant, the maximum off-street parking standards that can be applied, inclusive of handicapped and guest parking, are indicated in Table 13-30.3. These may include tandem and uncovered parking spaces.~~

**~~Table 13-30.3 Off-Street Parking
Standards for Density Bonus
Projects~~**

Number of Bedrooms	Maximum Number of Off-Street Parking Spaces Required per Unit
0-1	1
2-3	2

**~~Table 13-30.3 Off-Street Parking
Standards for Density Bonus
Projects~~**

Number of Bedrooms	Maximum Number of Off-Street Parking Spaces Required per Unit
4+	2.5

~~5. Nothing in this Section requires the provision of direct financial incentives for the housing development, including but not limited to the provision of financial subsidies, publicly owned land by the City, or the waiver of fees or dedication requirements. The City, at its sole discretion, may choose to provide such direct financial incentives.~~

~~6. An applicant may submit to the City a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria outlined in Section 13-30.420 at the densities or with the concessions or incentives permitted under Section 13-30.440. A proposal for the waiver or reduction of development standards shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled. The applicant shall bear the burden of demonstrating that the development standards that are requested to be waived will have the effect of physically precluding the construction of the housing development with the density bonuses and incentives.~~

~~7. The City Council shall grant the concession or incentive requested by the applicant unless the Council makes a written finding, based upon substantial evidence, of either of the following:~~

~~A. The concession or incentive is not required to provide for affordable housing costs, as defined in California Health and Safety Code Section 50052.5, or for rents for the targeted units to be set in compliance with Government Code Section 65915(c); or~~

~~B. The concession or incentive would have a specific adverse impact, as defined by California Government Code Section 65589.5(d)(2), upon public health and~~

~~safety, or the physical environment, or on any real property listed in the California Register of Historical Resources and for which 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. [Ord. 515 § 2, 2018; Ord. 484 § 12, 2015; ZO § 30.440.]~~

~~Sec. 13-30.450 Residential Density Bonuses—General Requirements.~~

~~1. Affordable for-sale and rental low- and very low-income units must remain affordable to low- or very low-income households, as applicable, for 55 years or for a longer period of time if required by a construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.~~

~~2. The affordable dwelling units and land dedication that qualify a housing development for a density bonus may also be used to meet the inclusionary housing provisions of the City's inclusionary housing requirements (Municipal Code Title 10, Chapter 19), to the extent that the Inclusionary Housing requirements are applicable and/or operable; provided, that the affordable units and land dedication comply with the requirements of both the Density Bonus Ordinance (Sections 13-30.420 through 13-30.470), and the Inclusionary Housing Ordinance (Title 10, Chapter 19) as it may apply regarding the required number of affordable units, required level of affordability, and term of affordability so as to provide the greatest affordability to the most households for the longest term.~~

~~3. The designated units shall be reasonably dispersed throughout the project, shall contain on average the same number of bedrooms as the nondesignated units in the project, and shall be compatible with the design or use of remaining units in terms of appearance, materials, and finished quality.~~

~~4. If a project is to be phased, the density bonus units shall be phased in the same proportion as the nondensity bonus units, or phased in another sequence acceptable to the City.~~

~~5. 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. The regulatory 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 any building permits, and shall be binding on all future owners and successors in interest.

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

7. For rental affordable very low and low income units:

A. 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.

B. 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.

C. The owner shall provide to the City any additional information required by the City to ensure the long-term affordability of the affordable units by eligible households.

8. For any application submitted or processed after January 1, 2015, an applicant shall be ineligible for a density bonus or any other incentives or concessions under this Section if the housing development is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the 5-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low income households, unless the proposed housing development replaces those units (as defined by California Government Code Section [65915\[c\]\[3\]\[B\]](#)), and either of the following applies:

~~A. The proposed housing development, inclusive of the units replaced pursuant to this paragraph, contains affordable units at the percentages set forth in Section 13-30.420(2).~~

~~B. Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household. [Ord. 515 § 2, 2018; Ord. 484 § 12, 2015; ZO § 30.450.]~~

Sec. 13-30.4630 Residential Density Bonuses—Application Requirements.

1. An applicant may submit a preliminary proposal for housing development pursuant to Sections 13-30.420 through 13-30.470 **California's Density Bonus Law, including but not limited to Government Code Section 65915,** prior to the submittal of any formal application.

2. All requests pursuant to Sections 13-30.420 through 13-30.470 **California's Density Bonus Law, including but not limited to Government Code Section 65915,** shall be submitted to the City concurrently with the application for the first discretionary permit or other permit required for the housing development and shall be processed concurrently with the discretionary application following the review process as set forth for permits in Chapters 13-40 and 13-42, design review, (when applicable). The applicant shall provide additional information as specified in ~~Sections 13-30.420 through 13-30.470~~ **California's Density Bonus Law, including but not limited to Government Code Section 65915,** specifically:

A. Provide a written statement specifying the desired density increase, incentives and any waivers requested; proposed rent schedules and/or sales prices; and the type, location, size, and construction scheduling of all dwelling units;

B. Submit **sufficient evidence demonstrating that the requested incentive(s)/concession(s) result in an actual and identifiable cost reductions;**~~a project financial report (pro forma) demonstrating that the requested incentives will result in identifiable, financially sufficient, and actual cost reductions to the housing development and they are required to provide for affordable rents or affordable housing costs, as applicable. The pro forma shall include the capital costs, operating expenses, return on investment, loan-to-value ratio and the debt coverage ratio including the contribution(s) provided by any applicable subsidy program(s), as required;~~

~~C. An appraisal report indicating the value of the density bonus and of the incentive(s)/concession(s);~~

~~D. A use of funds statement identifying the financial gaps for the housing development with the affordable housing units. The analysis shall show how the funding gap relates to the incentive(s)/concession(s);~~

CE. For any requested waiver of a development standard, evidence that the development standard for which the waiver is requested will have the effect of physically precluding the construction of the housing development with the density bonus and incentives requested;

DE. If a mixed-use building or project is proposed as an incentive, evidence that nonresidential land uses will reduce the cost of the housing development and that the nonresidential land uses are compatible with the development and the existing or planned development in the area;

EG. If a density bonus is requested for a land donation, the location of the land to be dedicated, proof of site control, and evidence that each of the requirements included in **California's Density Bonus Law, including but not limited to** Government Code Section **65915(g)** can be met.

FH. If a density bonus or incentive is requested for a child care facility, evidence that all of the requirements in **California's Density Bonus Law, including but not limited to** Government Code Section **65915(h)** can be met.

GI. Any other information requested by the Community Development Director or their designee to determine if the required findings can be made. [Ord. 515 § 2, 2018; Ord. 484 § 12, 2015; ZO § 30.460.]

Sec. 13-30.4740 Residential Density Bonuses—Findings.

1. Before approving an application that includes a request for a density bonus, incentive, parking reduction, and/or waiver pursuant ~~Sections 13-30.420 through this section~~ **to California's Density Bonus Law, including but not limited to** **Government Code Section 65915**, the decision-making body shall make all of the following findings, as applicable:

A. That the residential project is eligible for the density bonus and any incentives, parking reductions, or waivers requested.

B. That any requested incentive will result in identifiable, financially sufficient, and actual cost reductions based upon the financial analysis and documentation provided.

C. That there are sufficient provisions to guarantee that the units will remain affordable for the required time period.

D. If the density bonus is based all or in part on donation of land, a finding that all the requirements included in **California's Density Bonus Law, including but not limited to** Government Code Section **65915(g)** have been met.

E. If the density bonus, concession, or incentive is based all or in part on the inclusion of a child care facility, a finding that all the requirements included in **California's Density Bonus Law, including but not limited to** Government Code Section **65915(h)** have been met.

F. If the concession or incentive includes mixed-use development, a finding that all the requirements included in **California's Density Bonus Law, including but not limited to Government** Code Section **65915(k)(2)** have been met.

G. If a waiver is requested, a finding that the development standards for which the waiver is requested would have the effect of physically precluding the construction of the housing development with the density bonus and incentives permitted.

2. If the findings required by subsection (1) of this Section cannot be made, the City Council may deny an application for a concession, or incentive, ~~or waiver~~ only if it makes 1 of the following written findings, supported by substantial evidence:

A. The concession, or incentive **does not result in identifiable and actual cost reductions, consistent with Government Code Section 65915(k), to provide for affordable housing costs, as defined in Section 50052.5 of the health and Safety Code, or for rents for the targeted units to be set as specified in Government Code Section 65915(c)**, ~~or waiver is not required to provide for affordable housing; or~~

B. The concession or, incentive, ~~or waiver~~ would have a specific, adverse impact, as defined in Government Code paragraph (2) of subdivision (d) of Section 65589.5, upon public health and ~~or safety or the physical environment or on real property 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 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 development was deemed complete; or~~

C. The concession or, incentive, ~~or waiver~~ is contrary to State or Federal law.

3. If the findings required by subsection (1) of this Section cannot be made, the City Council may deny an application for a waiver only if it makes 1 of the following written findings, supported by substantial evidence:

A. The waiver or reduction of development standards has a specific, adverse impact as defined in Government Code Section 65589.5(d.2), upon health and safety and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact; or

B. The waiver or reduced development standards has a specific, adverse impact on any real property that is listed in the California Register of Historical Resources; or

C. The waiver is contrary to State or Federal law.

43. If the findings required by subsection (1) of this Section can be made, the decision-making body may deny an application for a density bonus or incentive that is based on the provision of child care only if it makes a written finding, based on substantial evidence, that adequate child care facilities are already available in the City. [Ord. 515 § 2, 2018; Ord. 484 § 12, 2015; ZO § 30.470.]

TITLE 13. ZONING ORDINANCE

Chapter 60. Definitions

Sec. 13-60.200 Definitions.

~~“Affordable housing cost” means the amount set forth in the Health and Safety Code Section 50052.5, as may be amended.~~

~~“Affordable rent” means the amount set forth in the Health and Safety Code Section 50053, as may be amended.~~

~~“Density bonus” means a density increase over the otherwise maximum allowable residential density in accordance with the provisions of Sections 13-30.420 through 13-30.470 (residential density bonuses)~~ **California’s Density Bonus Law, including but not limited to Government Code Section 65915** as of the date of the project application.

~~“Lower-income household” means a household whose gross income does not exceed that established by Health and Safety Code Section 50079.5, as may be amended. (generally less than 80 percent of County median income and includes very low income category).~~

~~“Moderate-income household” means a household whose gross income does not exceed that established by Section 50093 of the Health and Safety Code, as may be amended. (generally 80 to 120 percent of County median income).~~

~~“Senior citizen housing development” means a housing development with at least 35 dwelling units as defined in Civil Code Section 51.3, or a mobile home park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code, as may be amended.~~

~~“Very low-income household” means a household whose gross income does not exceed that established by Health and Safety Code Section 50105, as may be amended. (generally less than 50 percent of County median income and includes extremely low category).~~

SECTION 3. CEQA. The City Council finds that adoption of this Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines § 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. It can be seen with certainty that there is no

possibility that the ordinance will result in either a direct physical change to the environment or a reasonably foreseeable indirect physical change to the environment. Further, none of the circumstances described in CEQA Guidelines § 15300.2 applies. No unusual circumstances are present. This determination reflects the City of Hercules' independent judgment and analysis.

SECTION 4. The Ordinance would not be detrimental to the public interest, health, safety, convenience, or welfare of the City, as the proposed Ordinance will comply with, implement, and adopt by reference State Density Bonus Law;

SECTION 5. The Hercules City Council has reviewed, considered, and evaluated all of the information prior to acting upon Ordinance.

SECTION 6. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decisions shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have adopted the Ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be deleted.

SECTION 7. Codification. Section 2 of this Ordinance shall be codified in the Hercules Municipal Code. Sections 1 and 3 through 8 shall not be so codified.

SECTION 8. Effective Date and Publication. The City Clerk shall certify the adoption of this Ordinance and shall publish or post the Ordinance as required by law. This Ordinance shall be effective thirty (30) days from date of final adoption.

THE FOREGOING ORDINANCE was first read at a regular meeting of the Hercules City Council on the ____ day of _____, 2024, and was passed and adopted at a regular meeting of the Hercules City Council on the ____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Dan Romero, Mayor

Eibleis Melendez
City Clerk