

ORDINANCE NO. 1259**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BREA
AMENDING THE BREA CITY CODE BY ADOPTING ZONING
ORDINANCE TEXT AMENDMENT NO. 2025-01 AND APPROVING A
CEQA EXEMPTION DETERMINATION****THE CITY COUNCIL OF THE CITY OF BREA DOES ORDAIN AS FOLLOWS:****A. RECITALS:**

(i) Pursuant to the City's police power, as granted broadly under Article XI, Section 7 of the California Constitution, the City Council has the authority to enact and enforce ordinances for the public peace, health, safety, and welfare of the City and its residents.

(ii) Pursuant to the California Environmental Quality Act ("CEQA") (Public Resources Code § 21000 et seq.) and the State of California Guidelines for Implementation of the California Environmental Quality Act ("CEQA Guidelines") (14 C.C.R. § 15000 et seq.), the City is the "lead agency" for the preparation and consideration of environmental documents for this Ordinance.

(iii) On March 25, 2025, the Planning Commission conducted a duly noticed public hearing concerning Zoning Ordinance Text Amendment ("ZOTA") No. 2025-01 and adopted its Resolution No. 2025-06 recommending approval by the City Council.

(iv) On May 6, 2025, the City Council conducted a duly noticed public hearing concerning ZOTA No. 2025-01, as set forth in this Ordinance. It is the intent of the City Council in adopting this Ordinance to add a new chapter (Chapter 20.42) to the Title 20 of the Brea City Code to codify and implement the State Density Bonus law (Government Code § 65915).

(v) Adoption of this Ordinance is consistent with the General Plan as it is consistent with General Plan Goals CD-1.5, Housing Element Policy 4.1, and Housing

Element Program 6, because it establishes density bonus regulations and standards that are compliant with the State Density Bonus law, and that are clear to property owners, developers, and the general public. In addition, the City is required to adopt its local density bonus ordinance by Spring of 2025 as a condition of receiving the State Prohousing Designation from the State Department of Housing and Community Development.

(vi) This Ordinance is a matter of citywide importance and necessary for the preservation and protection of the public peace, health, safety and welfare of the community and is a valid exercise of the local police power and in accord with State law.

(vii) All legal prerequisites to the adoption of this Ordinance have occurred.

B. ORDINANCE:

SECTION 1. The City Council finds that the facts set forth in the Recitals, Part A, of this Ordinance are true and correct.

SECTION 2. Division I (General Regulations) of Title 20 (Zoning Code) of Part II (Development Code) of the Brea City Code is amended by adding a new Chapter 20.42 to read as follows:

20.42 DENSITY BONUS

20.42.010 PURPOSE AND APPLICABILITY.

A. Purpose.

The purpose of this chapter is to comply with and establish procedures for implementing the state Density Bonus Law (Cal. Gov. Code § 65915), and to facilitate the development of affordable housing consistent with the City of Brea Housing Element goals, objectives, and policies. In the event of a conflict between this chapter and the Density Bonus Law, the provisions of the Density Bonus Law shall prevail.

B. Applicability.

1. This chapter shall apply citywide.

2. The City shall grant a density bonus, incentives, waivers, and/or a reduced parking ratio requests when the applicant for a housing development with five or more units meets the requirements of this chapter, unless written findings are made in accordance with the provisions of this chapter.

3. All requests pursuant to this chapter shall be processed pursuant to Section 20.42.090 of this chapter.

20.42.020 DEFINITIONS.

For purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. To the extent these terms are defined in the Density Bonus Law or in other state law, the definitions provided therein shall govern:

AFFORDABLE RENT. Monthly rent, including a reasonable allowance for utilities and all fees for housing services, for rental of affordable units, as further defined in Cal. Health and Safety Code § 50053.

AFFORDABLE SALES PRICE. The maximum sales price at which lower and moderate income households can qualify for the purchase of affordable units as set forth in the City's Affordable Housing Guidelines.

APPLICANT. Any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities that seeks development permits or approvals from the City.

APPROVAL AUTHORITY. The person or body that is authorized to approve a development as specified by this title.

CHILDCARE FACILITY. A childcare facility as defined in Cal. Gov't. Code § 65915(h)(4).

DENSITY BONUS. A density increase, granted pursuant to Cal. Gov't. Code § 65915 and this chapter, over the otherwise maximum allowable gross residential density as of the date of application, or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density.

DENSITY BONUS UNITS. Those dwelling units granted pursuant to the provisions of this chapter which exceed the otherwise maximum allowable gross residential density for the housing development site.

DEVELOPMENT STANDARD. A site or construction condition as defined in in Cal. Gov't. Code § 65915(o)(2).

DISABLED VETERANS. Persons as defined in Cal. Gov't. Code § 18541.

DISCRETIONARY PERMIT. Any permit issued for the development which requires the exercise of judgment or deliberation from the approval authority, including conditional use permits, variances, precise developments, residential planned unit development permits, a new specific plan or amendments, General Plan amendments, zone changes, and tentative and final maps.

HOMELESS PERSONS. Persons as defined in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.).

HOUSING DEVELOPMENT. A development project as defined in Cal. Gov't Code § 65915(i).

INCENTIVE. Used interchangeably, means such regulatory concessions or incentives as specified in Cal. Gov't. Code § 65915(k).

LOWER INCOME HOUSEHOLDS. Households of lower income as defined in Cal. Health and Safety Code § 50079.5.

LOW INCOME HOUSEHOLDS. Households of low income as defined in Cal. Health and Safety Code § 50093.

LOWER INCOME STUDENT. A student who has a household income and asset level that is defined in Cal. Gov't. Code § 65915(o)(4).

MAJOR TRANSIT STOP. Has the same meaning as defined Cal. Pub. Res. Code § 21155(b).

MAXIMUM ALLOWABLE RESIDENTIAL DENSITY OR BASE DENSITY. Density as defined in Cal. Gov't. Code § 65915(o)(6).

MODERATE INCOME HOUSEHOLDS. Households of moderate income as defined in Cal. Health and Safety Code § 50093.

QUALIFYING MOBILEHOME PARK. A mobilehome park that limits residency based on age requirements for housing older persons pursuant to Cal. Civil Code §§ 798.76 and 799.5.

REGULATORY AGREEMENT. A recorded and legally binding agreement between an Applicant and the City to ensure that the requirements of this chapter are satisfied. The Regulatory Agreement, among other things, shall establish: the number of affordable units, their size, location, terms and conditions of affordability, and production schedule.

SENIOR CITIZEN HOUSING DEVELOPMENT. A housing development as defined in Cal. Civ. Code §§ 51.3 and 51.12. This types of housing development also includes a shared housing building development and a residential care facility for the elderly, as defined in the Cal. Health and Safety Code § 1569.2.

SHARED HOUSING BUILDING/UNIT. A residential or mixed-use structure as defined in Cal. Gov't Code § 65915(o)(7)(A) and (B).

SPECIALIZED HOUSING DEVELOPMENT. A housing development for transitional foster youth, disabled veterans, or homeless persons.

STUDENT HOUSING DEVELOPMENT. A housing development for students that contains bedrooms containing two or more bed spaces that have a shared or private bathroom, access to a shared or private living room and laundry facilities, and access to a shared or private kitchen.

TOTAL UNITS OR TOTAL DWELLING UNITS. A calculation of the number of units as defined in Cal. Gov't. Code § 65915(o)(8).

TRANSITIONAL FOSTER YOUTH. Persons defined in Cal. Ed. Code §66025.9.

VERY LOW INCOME HOUSEHOLDS. Households of very low income as defined in Cal. Health and Safety Code § 50105.

VERY LOW VEHICLE TRAVEL AREA. An urbanized area as defined in Cal. Gov't. Code § 65915(o)(9).

20.42.030 DENSITY BONUSES

A. General.

1. Each housing development application is entitled to only one density bonus category listed in section, except as provided for in Section 20.42.040 for additional density bonus.

2. Each component of any density calculation, including base density, bonus density, and required number of affordable units, resulting in fractional units shall be separately rounded up to the next whole number.

3. An applicant may elect to receive a density bonus that is less than the amount permitted by this section.

4. The number of density bonus units shall not be included when determining the number of affordable units required to qualify for a density bonus.

5. Any affordable unit provided pursuant to the City's affordable unit requirements set forth in Chapter 20.40 of this title may be used to qualify for a density bonus or other provisions under this chapter. However, the payment of in-lieu fees shall not qualify for a density bonus or other provisions of this chapter.

6. Notwithstanding any provision of this chapter, all developments must satisfy all applicable requirements of the City's affordable unit requirements in Chapter 20.40 of this title, which sets forth affordable unit requirements for developments, separate from those required to receive a density bonus or incentives pursuant to this chapter.

B. Density Bonus Categories. The City shall grant a density bonus when an applicant for a housing development with five or more dwelling units seeks and agrees to construct a housing development with at least any one of the following:

1. Very Low Income. A rental or for-sale development, including a shared housing building, that provides at least 5% of the total dwelling units of the development as affordable units affordable to very low income households, shall be eligible for a density bonus as shown in Table 20.42.030.A.1 below:

TABLE 20.42.030.A.1 VERY LOW INCOME DENSITY BONUS	
Percentage Very Low Income Units	Percentage Density Bonus
5	20

6	22.5
7	25
8	27.5
9	30
10	32.5
11	35
12	38.75
13	42.5
14	46.25
15	50

2. Low Income. A rental or for-sale development, including a shared housing building, that provides at least 10% of the total dwelling units as affordable units affordable to low income households, shall be eligible for a density bonus as shown in Table 20.42.030.A.2 below:

TABLE 20.42.030.A.2 LOW INCOME DENSITY BONUS	
Percentage Low Income Units	Percentage 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
21	38.75
22	42.5
23	46.25
24	50

3. Moderate Income. A for-sale development that provides at least 10% of the total dwelling units as affordable units affordable to moderate income households, provided that all dwelling units in the development are offered to the public for purchase, shall be eligible for a density bonus as shown in Table 20.42.030.A.3 below:

TABLE 20.42.030.A.3 MODERATE INCOME DENSITY BONUS
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Percentage Moderate Income Units	Percentage 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	33
39	34
40	35
41	38.75
42	42.5
43	46.25
44	50

4. Senior Citizen Housing Development. A Senior Citizen Housing Development, including Shared Housing Building developments, shall be eligible for a 20% density bonus, unless otherwise prohibited by state and/or federal law.

5. Qualifying Mobilehome Park. A Qualifying Mobilehome Park shall be eligible for a 20% density bonus, including shared housing building developments, unless otherwise prohibited by state and/or federal law.

6. Specialized Housing Developments. A specialized housing development for transitional foster youth, disabled veterans, or homeless persons, in which at least 10% of the total units are provided at the same affordability level as very low income units shall be eligible for a 20% density bonus. The units described in this subsection shall be subject to a recorded affordability restriction of 55 years and shall be provided at the same affordability level as very low income units.

7. Student Housing Developments.

a. A student housing development shall be eligible for a density bonus as shown in Table 20.42.030.A.4, only if all of the following requirements are met:

TABLE 20.42.030.A.4	
STUDENT HOUSING DEVELOPMENT DENSITY BONUS	
Percentage Low Income Units	Percentage Density Bonus
20	35
21	38.75
22	42.5
23	46.25
24	50

b. At least 20% of the total dwelling units will be used for lower income students. Such units must be use and occupied by lower income students.

c. For purposes of calculating a density bonus granted pursuant to this subparagraph, the term "unit" as used in this subparagraph means one rental bed and its pro rata share of the associated common area facilities. The units described in this subsection shall be subject to an affordability restriction of 55 years, which shall not tie any rental bed reserved for lower income students to a specific bedroom. In addition, lower income students shall be allowed to share a room or unit with a non-lower income student.

d. All units will be used exclusively for undergraduate, graduate, or professional students enrolled full time at an institution of higher education accredited by the Western Association of Schools and Colleges or the Accrediting Commission for Community and Junior Colleges. Prior to issuance of a certificate of occupancy, the applicant shall provide evidence that the developer has done one of the following:

i. Entered into an operating agreement or master lease with one or more institutions of higher education for the institution(s) to occupy all units of the student housing development with students from that institution(s).

ii. Established a system for confirming its renters' status as students to ensure that all units of the student housing development are occupied with students from an institution of higher education.

e. The rent provided in the applicable units of the development for lower income students shall be calculated at 30% of 65% of the area median income for a single-room occupancy unit type.

f. The applicant shall provide priority for the applicable affordable units for lower income students experiencing homelessness. A homeless service provider, as defined in Cal. Health and Safety Code § 103577(e)(3), or institution of higher education that has knowledge of a person's homeless status may verify a person's status as homeless for purposes of this subclause.

8. One Hundred Percent Affordable Housing Development.

a. A 100% rental or for-sale development, including total units and density bonus units, but exclusive of manager's unit or units, for lower income households, except that 20% of the units in the development, including total units and density bonus units, may be for moderate income households, shall be eligible for an 80% density bonus. For rental units, rents shall be restricted as set forth in Cal. Gov't. Code § 65915(c)(1)(B)(ii).

b. No maximum density controls shall be imposed if any of the following apply:

i. The housing development is located in a very low vehicle travel area within a designated county.

ii. The development is located within one-half mile of a major transit stop.

9. Land donations. A tentative subdivision map, parcel map, or other residential development applicant that donates land to the City for the development of affordable units for very low income households shall be eligible for a density bonus as shown in Table 20.42.030.A.5, only if all of the following requirements are met:

TABLE 20.42.030.A.5 LAND DONATION DENSITY BONUS	
Percentage Very Low Income Units	Percentage 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

a. The land shall be at least one net acre or of sufficient size to permit development of at least 40 units.

b. The zoning and general plan designations that allow development at the density of at least 30 units per acre.

c. Notwithstanding Subsections a and b above, the developable acreage and zoning classification of the land shall be sufficient to permit construction of units affordable to very low income households in an amount not less than 10% of the number of residential units of the proposed development.

d. The land shall or will be served by adequate public facilities and infrastructure.

e. The land shall be within the boundary of the proposed development or within one-quarter mile of the boundary of the proposed development.

f. No later than the date of approval of the final subdivision map, parcel map, or of the residential development, the land donation shall have all of the permits and approvals, other than building permits, necessary for the development of the affordable units for very low income households on the donated land, except that the City may subject the proposed development to subsequent design review, to the extent authorized by subdivision (i) of Cal. Gov't. Code § 65583.2, if the design is not reviewed by the City prior to the time of donation.

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

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

i. A proposed source of funding for the very low income units shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.

j. The affordable units built on the donated land shall remain restricted to an affordable rent for very low income households for a period of at least 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 except as otherwise provided for by Cal. Gov't Code § 65915.

k. The Density Bonus pursuant to this subsection shall be in addition to any increase in density mandated by Subsections 20.42.030.A.1 through 8, up to a maximum combined density increase of 35% if an applicant seeks both the increase required pursuant to this subsection and Subsections 20.42.030.A.1 through 8.

10. Condominium Conversion. An applicant requesting an approval of a condominium conversion pursuant to Chapter 20.12 of this title may request a density bonus of up to 25% over the number of apartments otherwise permitted by this title, to be provided within the existing structure or structures proposed for conversion, if it meets all of the following:

a. Affordable units shall be provided in accordance with one of the following two options:

i. Low or moderate Income. At least 33% of the total units of the proposed condominium project, including any units that are granted by a density bonus, shall be affordable units to low or moderate income households, or

ii. Lower Income. At least 15% of the total units of the proposed condominium project, including any units that are granted by a density bonus, shall be affordable units to lower income households.

b. An applicant for condominium conversion shall comply with and submit all required application material specified in Chapter 20.12 of this title. Nothing in this section shall be construed to require the City to approve a proposal to convert apartments to a condominium project.

c. An Applicant shall be ineligible for a density bonus or other Incentives under this section if it meets any of the following criteria:

i. The apartments proposed for conversion constitute a housing development for which a density bonus or other incentives were already provided under this chapter.

ii. The condominium conversion project is located on any property specified in Section 20.42.030.C.

d. The City may place such reasonable conditions on the granting of the density bonus or other incentives pursuant to this section, as it finds appropriate, including, but not limited to, conditions which assure continued affordability of units to subsequent purchasers of lower, low and moderate income households.

e. In lieu of receiving a density bonus as specified in this section, the applicant for qualifying condominium conversion may request and the City shall provide other incentives of equivalent financial value.

i. For purposes of this subsection, "other incentives of equivalent financial value" shall not be construed to require the City to provide cash transfer payments or other monetary compensation, but may include the reduction or waiver of requirements which the City might otherwise apply as conditions of conversion approval.

C. Ineligibility.

1. A housing development shall be ineligible for a density bonus or any other provisions of this chapter if the development is proposed on any property that includes a parcel or parcels on which rental dwelling units are located or, if the dwelling units have been vacated or demolished in the five-year period preceding the density bonus application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower and very low income; subject to any other form of rent or price control through the City's valid exercise of its police power; or occupied by lower or very low income households, unless the proposed housing development replaces those units, and either of the following applies:

i. The proposed housing development, inclusive of the units replaced pursuant to this paragraph, contains affordable units at the percentages set forth in Section 20.42.030.

ii. 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.

2. For the purposes of this subsection, "replace" shall mean as defined in Cal. Gov't. Code § 65915(c)(3)(B)(i) and (ii).

20.42.040 ADDITIONAL DENSITY BONUSES

A. Additional Affordable Units.

1. Provided that the housing development would not restrict more than 50% of the total units to very low income, lower income, or moderate income households, the City shall grant an additional density bonus as specified in this subsection if the housing development conforms to the requirements of Section 20.42.030, and meets any of the following requirements:

a. The housing development provides at least 15% of the total units for very low income households.

b. The housing development provides at least 24% of the total units for lower income households.

c. The housing development provides at least 44% of the total units for moderate income households.

2. To qualify for the additional density bonus under this subsection, the applicant shall agree to include additional rental or for-sale units affordable to very low income households or moderate income households. The additional density bonus granted under this subsection shall be calculated as shown in Table 20.42.040.A below.

Table 20.42.040.A ADDITIONAL DENSITY BONUS		
Affordability Level	Additional Percentage of Affordable Housing Unit	Additional Density Bonus Percentage
	5	20

Very Low Income or Moderate Income	6	22.5
	7	25
	8	27.5
	9	30
	10	32.5
Moderate Income	11	35
	12	38.75
	13	42.5
	14	46.25
	15	50
Notes: 1) The increase in density bonus specified in this table shall be in addition to any increase in density granted by Section 20.42.030. 2) The additional density bonus specified in this table shall be calculated using the number of units excluding any density bonus awarded by Section 20.42.030.		

B. Childcare Facilities. The City shall grant an additional density bonus for a housing development that is eligible for a density bonus under Section 20.42.030 and includes a childcare facility that will be located on the premises of, as part of, or adjacent to, the development.

1. The additional density bonus shall be in an amount of square feet of residential space that is equal to or greater than the square footage of the childcare facility.

2. The childcare facility shall meet the following requirements:

a. The childcare 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 provided affordable units are required to remain affordable pursuant to Section 20.42.050.

b. Of the children who attend the childcare facility, the children of very low, lower, and moderate income households shall equal a percentage that is equal to or greater than the percentage of affordable units in the development that are required for very low, lower, and moderate income households pursuant to Section 20.42.030.

20.42.050 GENERAL STANDARDS FOR AFFORDABLE UNITS

A. Affordable units shall be constructed concurrently with market-rate units within a Housing Development.

B. Rental Units.

1. Very low and low income rental units shall remain restricted to an affordable rent for a period of 55 years or a longer period of time if required by a construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

2. For housing developments meeting the criteria of Section 20.42.030.B.8 of this chapter, affordable rents for all units, including both base density and density bonus units, shall be as follows:

a. The rent for at least 20% of the units shall be set at an affordable rent, as defined in Cal. Health and Safety Code § 50053.

b. The rent for remaining units in the development shall be set at an amount consistent with the maximum rent levels for lower income households, as those rents and incomes are determined by the California Tax Credit Allocation Committee.

C. For Sale Units.

1. An Applicant for a for-sale housing development that utilizes the density bonus provisions of this chapter shall ensure that the affordable unit is initially sold to and occupied by persons and families of very low, low, or moderate income, as required, and that the affordable units are offered at an affordable sales price.

a. If the affordable unit is not purchased by an income-qualified person or family within 180 days after the issuance of the certificate of occupancy, the unit may be purchased by a qualified nonprofit housing corporation that meets all of the following requirements pursuant to a recorded contract that satisfies all of the requirements specified in paragraph (10) of subdivision (a) of Cal. Rev. and Tax. Code § 402.1:

i. The nonprofit corporation has a determination letter from the Internal Revenue Service affirming its tax-exempt status pursuant to the Internal Revenue Code § 501(c)(3) of and is not a private foundation as that term is defined in the Internal Revenue Code §509.

ii. The primary activity of the nonprofit corporation is the development and preservation of affordable home ownership housing in California that incorporates within their contracts for initial purchase a repurchase option that requires a subsequent purchaser of the property that desires to resell or convey the property to offer the qualified nonprofit corporation the right to repurchase the property prior to selling or conveying that property to any other purchaser pursuant to an equity sharing agreement or affordability restrictions on the sale and conveyance of the property that ensure that the property will be preserved for Lower Income housing for at least 45 years for owner-occupied housing units and will be sold or resold only to persons or families of very low, low, or moderate Income, as defined in Cal. Health and Safety Code §50052.5.

2. The City shall enforce an equity-sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following shall apply to the equity sharing agreement:

a. 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.

b. The City shall recapture any initial subsidy, if applicable, and its proportionate share of appreciation, which shall then be used within five years

for any of the purposes described in Cal. Health and Safety Code § 33334.2(e) that promote homeownership.

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

ii. The City's initial subsidy, if applicable, shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price of the affordable unit, 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.

d. If the unit is purchased or developed by a qualified nonprofit housing corporation pursuant to Subsection 20.42.050.C.1.a of this chapter, the City may enter into a contract with the qualified nonprofit housing corporation under which the qualified nonprofit housing corporation would recapture any initial subsidy and its proportionate share of appreciation, if the qualified nonprofit housing corporation is required to use 100% of the proceeds to promote homeownership for lower income households as defined by Cal. Health and Safety Code § 50079.5 within the jurisdiction of the City.

D. In determining the maximum affordable rent or affordable sales price of affordable units, the presumed household size as set forth in the City's Affordable Housing Guidelines shall be used, unless the development is subject to different assumptions imposed by other governmental regulations.

E. Affordable units shall be built on-site and be dispersed throughout the project site. The number of bedrooms of the affordable units shall be equivalent to the bedroom mix of the market-rate units in the development; except that the applicant may include a higher proportion of affordable units with more bedrooms. The design, square footage, appearance and general quality of the affordable units shall be compatible with the design of the market-rate units in the development. The development shall comply with all applicable development standards, except those which may be modified as provided by this chapter.

F. When an applicant proposes to construct a housing development that conforms to the requirements of Subsections 20.42.030.B.1 and 2 that is a shared housing building, such development is not subject to any minimum unit size requirements or minimum bedroom requirements that are in conflict with the definition of shared housing building or unit.

G. A Regulatory Agreement, as described in Section 20.42.110, shall be required of all developments proposed pursuant to this chapter. The Regulatory Agreement shall be recorded as a restriction on the development. The Regulatory Agreement shall be consistent with the City's Affordable Housing Guidelines.

20.42.060 DEVELOPMENT INCENTIVES

A. An applicant that meets the requirements for a density bonus as specified in this chapter shall be granted the number of incentives identified in Table 20.42.060.A, unless otherwise noted.

TABLE 20.42.060.A NUMBER OF INCENTIVES BY LEVEL OF AFFORDABILITY¹		
Level of Affordability	Minimum Percentage of Affordable Units	Number of Incentive^{2 3}
Lower Income	10%	1
	17%	2
	24%	3
	100% (up to 20% can be moderate income) ²	5
Very Low Income	5%	1
	10%	2
	15%	3
	16%	4
	100% (up to 20% can be moderate income) ²	5
Moderate Income (for-sale units only)	10%	1
	20%	2
	30%	3
	45%	4
Student Housing Development	20% lower income	1
	23% lower income	2
Notes: 1. The City shall grant the request for incentives, unless the City makes a written finding, based on substantial evidence, as set forth in Cal. Gov't. Code § 65915(d)(1)(A) through (C) and (d)(4). 2. If the housing development is located within one-half mile of a major transit stop or in a very low vehicle travel area in a designated county, the project shall also receive a height increase of up to three additional stories, or 33 feet. The allowed height increase under this section shall not be counted towards the allowed number of Incentives.		

B. One additional Incentive shall be granted if the housing development is eligible for a density bonus under Section 20.42.030 and includes a childcare facility that meets the requirements of Subsection 20.42.040.B.

20.42.070 PARKING RATIOS.

A. General. Upon request by the applicant, a development that is eligible for a density bonus pursuant to this chapter may utilize the related parking ratios shown in Table 20.42.070.A, inclusive of parking for persons with a disability, guests and EVs.

TABLE 20.42.070.A REDUCED PARKING RATIOS	
Total Number of Bedrooms	Minimum Number of Required Parking Spaces per Unit
Studio unit	1
1-bedroom	1
2-bedrooms	1.5
3-bedrooms	1.5
4 or more bedrooms	2.5

B. Additional Reduction. Upon request by the applicant, the following housing developments may utilize related additionally reduced parking ratios shown in Table 20.42.070.B, inclusive of parking for persons with a disability, guests, and EVs.

TABLE 20.42.070.B ADDITIONALLY REDUCED PARKING RATIOS¹		
Type of Density Bonus Housing Development	Minimum Number of Required Parking Spaces	Special Provisions²
Rental and for-sale housing development with minimum 11% very low income or 20% lower income units	0.5 per unit	Must be located within one-half mile of a major transit stop and have an unobstructed access to that major transit stop
For-sale housing development with minimum 40% moderate income units	0.5 per bedroom	Must be located within one-half mile of a major transit stop and have an unobstructed access to that major transit stop
Rental and for-sale housing development with 100% of units for lower income household (except 20% can be for moderate income household), exclusive of a manager's unit(s)	No minimum number of parking space required	Must be located within one-half mile of a major transit stop and have an unobstructed access to that major transit stop
Rental housing development with	No minimum number of parking space required	Must have either a paratransit service or an

100% of units for lower income individuals who are 55 years of age or older that complies with Cal. Civil Code §§ 51.2 and 51.3 (except 20% can be for moderate income household), exclusive of a manager's unit(s)		unobstructed access to a fixed bus route service that operates at least eight times a day within one-half mile from the development
Special Needs Housing Development with 100% of units for lower income household, as defined in Cal. Health and Safety Code § 51312 or supportive housing developments, as defined in Cal. Health and Safety Code § 50675.14, (except 20% can be for moderate income household), exclusive of a manager's unit(s)	No minimum number of parking space required	Must have either a paratransit service or an unobstructed access to a fixed bus route service that operates at least eight times a day within one-half mile of the development
<p>Notes:</p> <ol style="list-style-type: none"> 1. The City may require an increase in the minimum number of required parking spaces, not to exceed that established by Table 20.42.070.A, if supported by a qualified parking study pursuant to Cal. Gov't. Code § 65915(p)(7). 2. "An unobstructed access" to a major transit stop or a fixed bus route means a resident is able to access the major transit stop or a fixed bus route without encountering natural or constructed impediments. "Natural or constructed impediments" includes freeways, rivers, mountains, and bodies of water, but does not include residential structures, shopping centers, parking lots, or rails used for transit. 		

C. If the total number of spaces required results in a fractional number, it shall be rounded up to the next whole number. For purposes of this subsection, the housing development may provide on-site parking through tandem parking or uncovered parking, but not through on-street parking.

D. The parking ratios offered in this section shall not count as one of the incentives applicants are entitled to under Section 20.42.060.

20.42.080 WAIVER OR MODIFICATION OF DEVELOPMENT STANDARDS

A. At the Applicant's request, a housing development is eligible for the waiver or modification of development standards, if such standards will have the effect of physically precluding the construction of a housing development that meets the eligibility criteria for density bonus established by this chapter at the densities or with the incentives permitted by this chapter.

1. Exception. A housing development consistent with Subsection 20.42.030.B.8.b.ii that receives a waiver from any maximum controls on density shall not be eligible for waivers or modifications to development standards pursuant to this section.

2. The City may deny a request for a waiver or modification of development standards under this section if the City makes a written finding, with substantial evidence, that such request would have a specific, adverse impact, as defined in Cal. Gov't. § 65589.5(d)(2), upon health and safety, upon any real property that is listed in the California Register of Historical Resources, or contrary to state or federal law, where there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

B. The waiver or modification of development standards requested under this section shall neither reduce nor increase the number of Incentives permitted by this chapter.

20.42.090 APPLICATION REQUIREMENTS

An application for a density bonus, incentive, waiver or modification of development standards, or revised parking standard shall be made as follows:

A. Any request pursuant to this chapter shall be processed concurrently with any other application(s) required for the housing development, including but not limited to those including discretionary land use decisions. The granting of a density bonus, incentive, waiver or modification of development standards, or revised parking standard pursuant to this chapter is a ministerial review, and shall not be interpreted, in and of itself, to require a General Plan amendment, zoning reclassification, or other discretionary approval.

1. The Director is the review authority for all requests pursuant to this chapter, except for requests for direct financial assistance.

2. Any requests for direct financial assistance requires the City Council review at a public hearing held in accordance with the procedures set forth for public hearing in this title.

B. All applications shall be submitted on a form prescribed by the City and shall include the following information:

1. The name of the proposed development, including the total number of proposed base units, affordable units, and density bonus units proposed.

2. A description of any density bonus, incentive, waiver or modification, or reduction in parking standard being requested.

3. Level of affordability of the affordable units and proposed method.

4. Documentation demonstrating the housing development's eligibility for a requested density bonus, incentive, and/or reduction in parking standard, which may include, not limited to, how the requested Incentive would result in the actual cost reduction.

5. If a waiver or modification of development standards is requested, a brief explanation of how such development standards would physically preclude the construction of the housing development at the densities or with the incentives permitted by this chapter.

6. If a density bonus is requested by providing a land donation, the application shall show the location of the land to be dedicated, provide proof of site control, and provide evidence that all of the requirements of Subsection 20.42.030.B.9 of this chapter and Cal. Gov't. Code § 65915(g) can be met;

7. If a density bonus or incentive is requested for a childcare facility, the application shall show the location and square footage of the childcare facilities and provide evidence that all of the requirements of Subsection 20.42.040.B.2 of this chapter and Cal. Gov't. Code § 65915(h) can be met.

8. If a density bonus or Incentive is requested for a condominium conversion, the Applicant shall provide evidence that all of the requirements of Subsection 20.42.030.B.9 of this chapter and Cal. Gov't. Code § 65915.5 can be met.

20.42.100 REVIEW PROCEDURES

A. An application for a density bonus, Incentive, or waiver or modification of development standards shall be acted upon by the approval authority concurrently with the application for a housing development. The granting of a density bonus shall not be deemed approval of the entire housing development.

B. The City shall grant the requested density bonus, incentive, waiver or modification of development standards, or revised parking standard, unless it makes a written finding, based on substantial evidence, of one of the following:

1. The incentive does not result in identifiable and actual cost reductions required to provide for affordable rents or affordable sales prices.

2. The Incentive would have a specific, adverse impact upon public health or safety, 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 lower and moderate income households. For the purpose of this section, "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.

3. The waiver or modification of development standards would not physically preclude the construction of the housing development at the densities or with the incentives permitted by this chapter.

4. The incentive, or waiver or modification of development standards is contrary to state or federal law.

C. Any decision denying a density bonus, incentive, waiver, modification or revised parking standard is subject to appeal pursuant to Chapter 20.424 within 10 days of the date of the decision.

20.42.110 REGULATORY AGREEMENT

A. Applicants for a density bonus, Incentive, waiver or modification of development standards, or revised parking standard shall enter into an affordable housing agreement with the City in a form acceptable to the City Attorney, and executed by the City Manager or their designee, to ensure that all the requirements of this chapter are satisfied.

B. The affordable housing agreement for projects utilizing provisions of this chapter shall include, but not limited to, the following:

1. A description of any density bonus, incentive, waiver or modification of development standards, or revised parking standard included in the housing development.

2. The total number of dwelling units approved for the housing development, including the number of affordable units.

3. Level of affordability for affordable units and the standards for determining the corresponding affordable rent or affordable sales price.

4. The location, dwelling unit sizes (square feet), and number of bedrooms of the affordable units.

5. Minimum affordability term required for affordable units as required by this chapter.

6. A construction schedule for completion and occupancy of affordable units.

7. A description of remedies for breach of the agreement.

8. Provisions for sale and resale restrictions for for-sale affordable units as specified in Subsection 20.42.050.C of this chapter.

9. Other provisions to ensure implementation and compliance with this section.

20.42.120 ENFORCEMENT

A. The Director, or their designee, may suspend, revoke, or deny any building permit or other approval upon finding a violation of any provision of this chapter. The provisions of this chapter shall apply to all owners, agents, and successors of an applicant proposing a project. No entitlement approval, grading permit, building permit or certificate of occupancy shall be issued if it is found in noncompliance with the provisions of this chapter.

B. Any individual or entity who sells or rents an affordable unit in violation of the provisions of this chapter shall be required to forfeit all monetary gains obtained through noncompliance. Recovered funds shall be deposited into the Affordable Housing Trust Fund.

C. Selling or renting an affordable unit in violation of the provisions of this chapter is a violation of the City Code. The City may use any appropriate legal actions or proceedings necessary to ensure compliance with this chapter, including:

1. Actions to revoke, suspend, or deny any grading permit, building permit, certificate of occupancy, or discretionary approval.

2. Any other action, civil or criminal, authorized by law or by any regulatory document, restriction, or agreement in this chapter.

D. The City shall be entitled to recover its reasonable attorney's fees and costs.

SECTION 3. CEQA. The City Council finds that it can be seen with certainty that there is no possibility the adoption of this Ordinance may have a significant effect on the environment because it enacts zoning code amendment that will not have a significant effect on the environment. It is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Section 15061(b)(3) of the California Code of Regulations.

SECTION 4. SEVERABILITY.

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall become effective thirty (30) days after its adoption in accordance with the provisions of California law.

SECTION 6. CERTIFICATION.

The City Clerk shall certify to the passage of this Ordinance.

PASSED, APPROVED, AND ADOPTED, this __ day of __, 2025.

Blair Stewart
Mayor

ATTEST:

Lillian Harris-Neal
City Clerk

I, Lillian Harris-Neal, City Clerk of the City of Brea, do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Brea,

held on the 6th day of May, 2025, and was finally passed at a regular meeting of the City Council of the City of Brea on the __ day of ____, 2025, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAINED: COUNCIL MEMBERS:

Dated: _____

City Clerk

DRAFT