AGENDA
SPECIAL MEETING OF THE OAKLEY PLANNING COMMISSION

Tuesday, August 15, 2023
6:30 PM
Oakley City Council Chamber, 3231 Main Street, Oakley, California
Unless stated otherwise, every item on the agenda is exempt from CEQA Guidelines Sections 15060(c), 15061(b)(3), 15273, 15378, 15301, 15323 and/or Public Resources Code Section 21065

MISSION STATEMENT: The City of Oakley will create a resilient future that fosters and attracts a vibrant and evolving community that welcomes and values all people.

VISION STATEMENT: The City of Oakley celebrates our unique Delta lifestyle and small-town feel where we ***Live*** in a safe, dynamic community, ***Work*** together to build the future, and ***Play*** in our own backyard.

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A complete packet of information containing staff reports and exhibits related to each item is available for public review prior to an Oakley Planning Commission meeting at Oakley City Hall, 3231 Main Street, Oakley, CA 94561. Any writings or documents provided to a majority of the Oakley Planning Commission regarding any item on this agenda will be made available for public inspection, during regular business hours, at the front counter in the Main Lobby of the Oakley City Hall located at 3231 Main Street, Oakley, CA 94561.

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If you have a physically challenging condition and require special accommodations, please call the City Clerk's office at (925) 625-7013.

Please keep cell phones/electronic devices turned off during the meeting. Please be advised that Oakley Planning Commission meetings are video recorded and attendees may appear on video.

Members of the public may address the Oakley Planning Commission on items of interest that are within the City's jurisdiction. Public comment on items not listed on the agenda will be heard under the Public Comments section of the agenda. In compliance with State law, the Oakley Planning Commission may not take action on an item that is not specifically listed on the agenda. If you would like to speak on any agenda item, please fill out a public speaker card available in the lobby and submit it to the City Clerk prior to the agenda item being called. The Oakley Planning Commission Chair will call you by name to the podium to hear your comments and you have up to 3 minutes to speak.

1.OPENING MATTERS

1.1 Call to Order and Roll Call of the Oakley Planning Commission

1.2 Pledge of Allegiance to the Flag

2.PUBLIC COMMENTS

At this time, the public is permitted to address the Planning Commission on non-agendized items.

3.CONSENT CALENDAR

Consent Calendar items are typically non-controversial in nature and are considered for approval by the Planning Commission with one single action. Members of the audience, Staff or the Planning Commission who would like an item removed from the Consent Calendar for purposes of public input may request the Chair remove the item. The public may request to remove an item(s) to provide input by completing a public speaker card and submitting it to the City Clerk prior to the item(s) being called by the Chair.

3.1 Approve Minutes from the Planning Commission Meeting held July 18, 2023 (Kim Snodgrass, Deputy City Clerk)

Minutes 071823

4.PUBLIC HEARINGS

4.1 Adoption of the State of California Density Bonus Law (SBDL) - Repeal Local Density Bonus Regulations (Oakley Municipal Code 9.1.412) and Replace with Adoption of the State Density Bonus Law by Reference (RZ 03-23) (Ken Strelo, Planning Manager)

Suggested Action: Staff Recommendation: 1) Receive the Staff Report, 2) Receive Questions from the Planning Commission, 3) Open the Public Hearing, 4) Receive

Public Testimony, 5) Close the Public Hearing, 6) Deliberate, 7) Summarize the Deliberation, 8) Introduce the Ordinance, 9) Adopt the Resolution

Staff Report

1. Legislative History Summary (2019-2023)
2. Summary of Pending 2023-2024 Legislation
3. Proposed Resolution
3.a. Draft Ordinance

5.REGULAR CALENDAR

6.REPORTS

6.1 Reports from Staff Members

6.2 OAKLEY PLANNING COMMISSION
(a) Reports from Commission Members
(b) Requests for Future Agendas

7.WORK SESSIONS

8.ADJOURN

Minutes of the Regular Meeting of the City of Oakley Planning Commission held July 18, 2023

1) OPENING MATTERS

1.1 Call to Order and Roll Call of the Oakley Planning Commission

Vice Chair Diego Verduzco called the meeting to order at 6:30 p.m. in the Oakley City Council Chambers located at 3231 Main Street, Oakley, California. Planning Commissioners Leonard Price, Jeanne Krieg and Jimmy Ramirez were also present. Chair Oleksii Chuiko was absent.

1.2 Pledge of Allegiance to the Flag

Vice Chair Verduzco led the Pledge of Allegiance to the Flag.

2) PUBLIC COMMENTS

None

3) CONSENT CALENDAR

3.1 Approve Minutes from the Planning Commission Meeting held May 2, 2023 (Libby Vreonis, City Clerk)

It was moved by Commissioner Price and seconded by Commissioner Krieg to approve the minutes. Motion was unanimous and so ordered. (4-0)

4) PUBLIC HEARINGS

4.1 7-Eleven Sales of Distilled Spirits Conditional Use Permit (CUP 02-23) (Evan Gorman, Associate Planner)

Planning Manager Ken Strelo introduced Associate Planner Evan Gorman to the Planning Commissioners.

Mr. Gorman presented the staff report.

Commissioner Krieg asked if there was a discussion with the Police Department regarding this item, Mr. Gorman responded that the item was routed through the Police Department, and it was stated they had no additional comments.

Commissioner Ramirez thanked Mr. Gorman for presenting his analysis and asked if the location is near any elementary schools or day cares. Mr. Gorman responded there are none within 500 feet, but he did not look past that distance.

Ryan Kroll Attorney for 7-11 along with the Franchisee Surjeet Virk, thanked Evan for making this an easy process. Mr. Kroll stated this is a very small addition of spirits that will be in a locked case. He also stated that they volunteered conditions to appease any concerns and their number one priority is having the convenience of one stop shopping, he also mentioned that in the process of filing an application with the ABC, a mailing went out to everyone within 600 ft of the premises and not a single protest was received.

Richard Whicker, Jennifer Helton, FNU Deetika, Gaurav Kumar, Tamara D. Covington-White, and Zain Mehmood all commented that they approve of this project.

It was moved by Commissioner Price and seconded by Commissioner Krieg to adopt the resolution as conditioned with staff's recommended amendments. Motion was unanimous and so ordered. (4-0)

4.2 4601 Rose Avenue Tentative Parcel Map (TPM 01-23) (Evan Gorman, Associate Planner)

Mr. Gorman presented the staff report.

Applicant, Lynnda Mori stated that this project has been in the works for many years and rather than be forced to have two homes it's time to do something different. She stated in real estate it's always harder to sell a parcel with two homes that are very different from each other, and it makes sense for us to move forward. She thanked Ken, Evan, and the Planning Commissioners for their assistance.

It was moved by Commissioner Price and Seconded by Commissioner Ramirez to adopt the resolution as conditioned. Motion was unanimous and so ordered (4-0)

4.3 Grand Cypress Preserve Development Agreements Master Amendment (DA 01-23) (Ken Strelo, Planning Manager)

Planning Manager Ken Strelo presented the staff report.

Andrew Han, represents the ownership entity ACD-TI Oakley LLC., He mentioned he appreciates all the work that went into the analysis and stated they concur with the analysis.

Commissioner Ramirez asked for context on the request for a ten year extension.

Mr. Han responded that these development Agreements have been in existence for some time with about two years remaining and two years is an insufficient amount of time to carry out the remaining tasks.

It was moved by Commissioner Krieg and Seconded by Commissioner Price to adopt the resolution as conditioned. Motion was unanimous and so ordered (4-0)

5) REGULAR CALENDAR

None

6) REPORTS

6.1 Reports from Staff Members

(a) August Planning Commission Meeting Date

Community Development Director Brent Smith thanked Vice Chair Verduzco for stepping in tonight, he also mentioned that the next scheduled meeting on August 1st would be postponed to August 15th due to National Night Out on August 1st.

6.2 OAKLEY PLANNING COMMISSION

(a) Reports from Commission Members

Commissioner Ramirez reported he attended the Juneteenth celebration; he also attended the last City Council Meeting where he accepted a proclamation for Pride Month.

Commissioner Krieg reported she attended Summerfest.

(b) Requests for Future Agendas

None

Vice Chair Verduzco confirmed with Commissioner Krieg that she will miss the next Planning Commission Meeting on August 15th.

7) WORK SESSIONS

None

8) ADJOURN

There being no further business, the meeting was adjourned at 7:10 p.m.

Respectively Submitted,

Kim Snodgrass
Deputy City Clerk

OAKLEY
CALIFORNIA

Approved and Forwarded to the Planning Commission

DATE: August 15, 2023
TO: Joshua McMurray, City Manager
FROM: Ken Strelo, Planning Manager
SUBJECT: Adoption of the State of California Density Bonus Law (SBDL) - Repeal Local Density Bonus Regulations (Oakley Municipal Code Section 9.1.412) and Replace with Adoption of the State Density Bonus Law by Reference (RZ 03-23)

Summary

This is a City-initiated request for approval of a Zoning Text Amendment (RZ 03-23) to repeal Oakley Municipal Code Section 9.1.412 "Residential Density Bonus and Incentives" which consists of Oakley's local regulations related to residential density bonuses and replace with adoption of the State Density Bonus Law (SDBL) by reference (California Government Code Sections 65915-65918). The purpose of this amendment is to ensure the City's ordinance is always up to date and in compliance with State law, which has been updated 10 times between 2018 and 2023. This amendment will also direct potential applicants to the most up to date State regulations providing them with accurate density bonus tools and regulations. The Planning Commission is considering a proposed resolution that recommends the City Council adopt an ordinance approving the proposed Zoning Text Amendment.

Background

LOCAL ORDINANCE AND STATE LAW

Oakley Municipal Code ("OMC") Section 9.1.412 (Residential Density Bonus and Incentives) regulates and implements the State of California Density Bonus Law ("SDBL"). The local regulations closely mirror the SDBL. Specifically, the code allows for a sliding scale of density bonuses and the granting of one or more concessions based on the amount and type of affordable housing that is provided, an unlimited number of waivers or reductions of local regulations, and parking reductions based on unit size.

OMC Section 9.1.412 was adopted by Ordinance No. 11-10 on September 10, 2010. The last part of the ordinance includes a "No Conflict with State Law" statement which clarifies if any part of Oakley's ordinance conflicts with any density bonus State law that the State law shall supersede. This statement ensures that, in practice, the City implements density bonuses in compliance with State law. As stated in Chapter 6 of the 2023-2031 Housing Element Update, while the Zoning Code language defers to State law, some of the criteria, such as levels of density

bonus allocations and maximum parking requirements, are not up to date. As a result, one of the Housing Element's programs is to review and update the City's Density Bonus Ordinance to ensure consistency with State law.

Between 2018 and 2023, the State amended the SDBL ten times. Staff have found it challenging to regularly update the Municipal Code to keep pace with changing State laws. When it comes to complex regulations, such as density bonus law, it can be confusing to communicate to applicants and the public what regulations apply to density bonus projects, especially when the City's ordinance and State regulations do not match word for word. Oakley's ordinance largely replicates and codifies SDBL requirements; however, since it was adopted in 2010 and has not undergone any amendments, the ordinance does not currently comply with the SDBL.

CONTRA COSTA COUNTY COLLABORATIVE (C4)

Since mid-2021, the City of Oakley has been receiving housing-related technical assistance through the Association of Bay Area Governments (ABAG) as part of the Regional Early Action Planning (REAP) Grant Program from the State Housing and Community Development Department (HCD). The Contra Costa County Collaborative (C4) allows housing staff (represented by the Planning Manager for Oakley) to meet monthly to discuss housing-related issues, including getting the housing elements completed and certified, strategizing housing element implementation, and complying with evolving state laws.

Recently, several Contra Costa County agency staff discussed repealing their local density bonus regulations/ordinances and simply referencing State law. This approach may simplify and clarify local implementation and eliminate the need for future amendments to the zoning ordinance.

STATE DENSITY BONUS LAW (CALIFORNIA GOVERNMENT CODE SECTIONS 65915–65918)

The SDBL was adopted in 1976 to address California's affordable housing needs. The SDBL required local agencies to allow increased density, reduced standards, and development incentives based on the number and type of affordable housing units proposed. Over time, the law has been expanded to include housing for households at a wider range of income levels and with specialized needs (e.g., seniors, students, foster youth, formerly homeless persons, or disabled veterans).

The SDBL applies to housing projects, including mixed-use developments, new subdivisions, or common-interest developments. Density bonuses and associated incentives and concessions are intended to offset the financial burden of constructing affordable units. The density bonus and associated concessions are based on the amount and type of affordable units provided and include the following:

- Density Bonus: An increase above the maximum allowed density permitted in the General Plan Land Use Element or Zoning Code. The amount of the bonus is set on a sliding scale based on the percentage of affordable units at each income level.

- Incentives/Concessions: Modifications to City regulatory or development standards that result in actual and identifiable cost reductions to provide for affordable housing costs or rents. The number of required incentives is based on the percentage of affordable units provided in the qualifying project. For example, developers may ask for increased height above that allowed by the zoning regulations.

- Reductions/Waivers: Modification to City development standards that would physically prevent the construction of a housing development at the density permitted with a bonus and any concessions, except where the waiver would cause a public health or safety concern, harm historical property, or would be contrary to the law. There is no limit to the number of reductions/waivers that may be requested. For example, applicants may request decreased setbacks and/or increased floor area ratio and/or waiver of hillside regulations.

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

  Like many jurisdictions, the reduced parking ratios for Oakley are lower than the Municipal Code parking requirements.

Proposed Ordinance

Staff proposes to repeal and replace the existing density bonus regulations with the ordinance attached to this staff report (Attachment 3.a). The new regulations would adopt the SDBL by reference and identify when the regulations apply. The draft ordinance also contains requirements related to physical constraints and parking reductions, outlines application requirements, and specifies the approval process for projects. The draft ordinance also acknowledges future State law amendments may occur.

With adoption of this ordinance, in future years as the legislature continues to amend and/or refine SDBL, the Oakley Municipal Code would remain consistent with State law; zoning text amendments for density bonuses would not be necessary. In

addition, by referencing State law, City staff will find it easier to process applications and communicate relevant regulations to applicants, the public, and appointed/elected officials.

Analysis

Repealing the existing density bonus regulations and replacing to reference State law would be consistent with the Housing Element of Oakley's General Plan, would result in the removal of government constraints, and eliminate the need to annually review the State law and continually update the Zoning Ordinance when it is amended.

Consistency with the Housing Element is through direct implementation of Action 1.6 titled "Density Bonus Ordinance" found in Chapter 8 (Housing Plan) of the Housing Element. Action 1.6 includes a couple of subitems such as using the Density Bonus Ordinance and associated incentives to encourage affordable housing and revising the Density Bonus Ordinance to comply with State law. It also requires the City to monitor State law and revise the Density Bonus Ordinance when required by any future revisions to SDBL. The main objective of this Action is to "Implement Density Bonus Ordinance in compliance with State law." The timeframe for implementation is January 31, 2024. Adoption of this ordinance will implement the subitems in this Action related to the Objective to implement the Density Bonus Ordinance in compliance o comply with State law.

Findings

Draft findings can be found in the proposed resolution.

Consistency with the Oakley Strategic Plan 27+

Approval of this application would be consistent with the Oakley Strategic Plan 27+ Community and Economic Development Goal. One of the Objectives within the Goal speaks to providing affordable housing sites that meet our legislative Regional Housing Needs Allocation (RHNA). While this ordinance will not directly create or identify specific sites, it will ensure that all sites eligible for affordable housing will be processed under the most up to date State Density Bonus Law.

Environmental Determination

The proposed ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) – Common Sense Exemption in that the proposed ordinance would only establish and clarify administrative processes and would not facilitate new construction or other

groundbreaking activities. There is no potential to result in either a direct physical change to the environment or a reasonably foreseeable indirect physical change to the environment. None of the circumstances described in CEQA Guidelines Section 15300.2 applies.

Fiscal Impact

No fiscal impact is associated with the preparation of this staff report and accompanying attachments. Costs associated with revising the Zoning Code on City-initiated projects, including staff time associated with this zoning text amendment, are funded through the City's General Fund. Adopting State law by reference may reduce future costs associated with monitoring and updating the Ordinance.

Staff Recommendation

Staff recommends the Planning Commission Adopt the Resolution recommending the City Council adopt an Ordinance repealing Oakley Municipal Code Section 9.1.412 and replace with adoption of the State Density Bonus Law by reference, finding the action exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3).

Attachments

1. Legislative History Summary (2019-2023)
2. Summary of Pending 2023-2024 Legislation
3. Proposed Resolution
   a. Draft Ordinance

California State Density Bonus Law

Legislative History Summary (2019 – 2023)

2019

- SB 1227 requires a 35% density bonus for housing developments that include at least 20% of its units for low-income college students.
- AB 2797 requires density bonuses in the Coastal Zone to be consistent with the California Coastal Act.
- AB 2372 allows developers to request a floor-area-ratio bonus rather than a traditional density bonus for projects that meet specific requirements.
- AB 2753 requires local governments to notify applicants of required information for a project to be determined complete and provide information on the project's eligibility for density bonus and reduced parking ratios.

2020

- AB 1763 provides incentives for 100% affordable housing projects, such as an 80% density bonus and an additional concession entitlement. For projects located within ½ mile of a major transit stop, AB 1763 eliminates all local government limits on density and parking and allows a height limit of up to three stories or 33 feet.

2021

- AB 2345 provides for up to 50% density bonus for mixed-income developments, reduces parking requirements for many projects qualifying for a density bonus, lowers some thresholds for obtaining concessions, and adopts density bonus reporting requirements.

2022

- AB 571 prohibits local governments from charging affordable housing impact fees, including inclusionary zoning fees and in-lieu fees, against affordable units in density bonus housing developments.
- AB 634 allows local government to adopt an ordinance requiring an affordability period of more than 55 years in density bonus housing projects, except for developments financed with low-income housing tax credits.
- SB 290 provides additional incentives to student housing development, reconciles text regarding public health and safety between the Housing Accountability Act and Density Bonus Law, defines 'total units' in a density bonus project, reduces parking requirements for moderate-income units, and clarifies

that the Density Bonus Law applies to both rental and for-sale housing developments.
- SB 728 allows developers in for-sale density bonus housing developments to sell affordable units to nonprofit housing corporations instead of selling the units directly to a low- or moderate-income homebuyer.

2023

- AB 682 establishes “shared housing” as a new category of housing eligible for a density bonus and other associated benefits and establishes a method of determining base densities.
- AB 1551 readopts legislation that sunsetted at the end of 2021 requiring that cities and counties provide a “development bonus” to commercial developers if they meet certain requirements.
- AB 2334 provides special benefits to housing developments based on vehicle miles travelled.

California State Density Bonus Law

Summary of Pending 2023-2024 Legislation

Bills Related to Density Bonus Law Introduced in the 2023 – 2024 Legislative Session

AB 440 (passed Assembly May 25) would amend provisions related to the calculation of maximum allowable residential density under the State Density Bonus Law.

AB 1287 (passed Assembly May 31) proposes to require jurisdictions to grant an additional density bonus calculated as specified by the bill, additional concessions for projects that meet the bill's requirements, and amend the Density Bonus Law to supersede the California Coastal Act

SB 713 (passed Senate May 22) would affirm that the Density Bonus Law supersedes an ordinance, regulation or other local law enacted by a voter initiative that conflicts with the Density Bonus Law.

AB 1287 (passed Assembly May 31) would allow stackable moderate-income density bonus. Projects can receive an additional 50% bonus by adding 15% moderate-income units after maxing out the regular density bonus.

AB 1630 (introduced February 17) would classify student, faculty, and staff housing as a permitted use on all real property within 1,000 feet of a university campus, where at least 20% of the units be rented to students, staff, or faculty and at least 20% of the units must be affordable to lower-income households. For ministerial projects, the bill does not allow for jurisdiction to impose parking, floor area ratio, or density requirements.

AB 637 (introduced February 9) would allow jurisdictions to deny the granting of a concession, incentive, or waiver of development standard required by the Density Bonus Law with a written finding based upon substantial evidence that the concession, incentive, or waiver of development standard would alter the requirements of a local inclusionary housing program, policy, or ordinance.

AB 323 (passed Assembly May 31) requires that affordable ownership inclusionary units in a Density Bonus project are first offered to future low-income homeowners, only if there are no takers can a nonprofit buy it to operate as a rental unit for a low-income renter.

RESOLUTION NO. XX-23

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF OAKLEY RECOMMENDING THAT THE OAKLEY CITY COUNCIL ADOPT AN ORDINANCE REPEALING OAKLEY MUNICIPAL CODE SECTION 9.1.412 AND REPLACING WITH ADOPTION OF THE STATE DENSITY BONUS LAW BY REFERENCE (RZ 03-23) AND FINDING THE ACTION EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

WHEREAS, California's Density Bonus Law (Gov. Code, § 65915 et seq.) 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 Section 65915(a) requires that local governments adopt an ordinance that specifies how compliance with State Density Bonus law will be implemented; and

WHEREAS, Section 9.1.412 of the Oakley Municipal Code ("OMC") contains the regulations implementing the State Density Bonus Law; and

WHEREAS, State law has been amended ten times between 2018 through 2022, requiring regular changes and updates to the Municipal Code; and

WHEREAS, OMC Section 9.1.412 was codified through adoption of Ordinance No. 11-10 on September 10, 2010 and has not undergone an amendment since, requiring an amendment to be consistent with State law; and

WHEREAS, adopting the State Density Bonus Law by reference will ensure that the Oakley Municipal Code remains current whenever the State Legislature amends the State Density Bonus Law; and

WHEREAS, on or before August 4, 2023, the Notice of Public Hearing for the Project was duly noticed in the Contra Costa Times, a newspaper of general distribution, was posted at Oakley City Hall located at 3231 Main Street, outside the gym at Delta Vista Middle School located at 4901 Frank Hengel Way, outside the library at Freedom High School located at 1050 Neroly Road, and at the project site, and was mailed out to outside agencies and to parties requesting such notice; and

WHEREAS, on August 15, 2023, the Planning Commission held a duly noticed public hearing to consider the proposed Zoning Code amendments 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, if any term, provision, or portion of these Findings or the application of these Findings to a particular situation is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of these Findings, or their application to other actions related to the Project, shall continue in full force and effect unless amended or modified by the City.

NOW, THEREFORE, BE IT RESOLVED THAT, on the basis of the above findings of fact and the entire Record, the Planning Commission makes the following additional findings in support of the approvals:

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

B. Repealing the existing density bonus regulations and replacing to reference State law would be consistent with the Housing Element of Oakley's General Plan, would result in the removal of government constraints, and eliminate the need to annually review the State law and continually update the Zoning Ordinance when it is amended.

C. Consistency with the Housing Element is through direct implementation of Action 1.6 titled "Density Bonus Ordinance" found in Chapter 8 (Housing Plan) of the Housing Element. Action 1.6 includes a couple of subitems such as using the Density Bonus Ordinance and associated incentives to encourage affordable housing and revising the Density Bonus Ordinance to comply with State law. It also requires the City to monitor State law and revise the Density Bonus Ordinance when required by any future revisions to SDBL. The main objective of this Action is to "Implement Density Bonus Ordinance in compliance with State law." The timeframe for implementation is January 31, 2024. Adoption of this ordinance will implement the subitems in this Action related to the Objective to implement the Density Bonus Ordinance in compliance o comply with State law.

BE IT FURTHER RESOLVED THAT, on the basis of the above Findings and the Record, The Planning Commission hereby recommends that the City Council adopt an ordinance repealing Oakley Municipal Code Section 9.1.412 and replace with adoption of the State Density Bonus Law by reference with revisions as shown in the Exhibit "A" to this Resolution, and finding the action exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3).

PASSED AND ADOPTED by the Planning Commission of the City of Oakley at a meeting held on August 15, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

_____

Oleksii Chuiko, Chair Date

ATTEST:

_____

Libby Vreonis, City Clerk Date

EXHIBIT "A"

DRAFT ORDINANCE NO. -23

AN ORDINANCE OF THE CITY COUNC OF THE CITY OF OAKLEY REPEALING OAKLEY MUNICIPAL CODE SECTION 9.1.412 AND REPLACING WITH ADOPTION OF THE STATE DENSITY BONUS LAW BY REFERENCE (RZ 03-23) AND FINDING THE ACTION EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

WHEREAS, California's Density Bonus Law (Government Code Section 65915 et seq.) 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 Section 65915(a) requires that local governments adopt an ordinance that specifies how compliance with State Density Bonus law will be implemented; and

WHEREAS, Section 9.1.412 of the Oakley Municipal Code ("OMC") contains the regulations implementing the State Density Bonus Law; and

WHEREAS, State law has been amended ten times between 2018 through 2022, requiring regular changes and updates to the Municipal Code; and

WHEREAS, OMC Section 9.1.412 was codified through adoption of Ordinance No. 11-10 on September 10, 2010 and has not undergone an amendment since, requiring an amendment to be consistent with State law; and

WHEREAS, this ordinance ("Ordinance") repeals OMC Section 9.1.412 and replaces the contents thereof to adopt the State Density Bonus Law by reference. As amended by this Ordinance, OMC Section 9.1.412 will provide that density bonuses and other affordable housing incentives required by State law (including but not limited to Government Code Section 65915 et seq.) will be available to applicants on the terms and conditions specified in State law; and

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

WHEREAS, on _____, the Planning Commission 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. Following the public hearing, the Planning

Commission adopted Planning Commission Resolution No. ____ recommending the City Council adopt the proposed Ordinance; and

WHEREAS, on or before _____, the Notice of Public Hearing for the Project was duly noticed in the Contra Costa Times, a newspaper of general distribution, was posted at Oakley City Hall located at 3231 Main Street, outside the gym at Delta Vista Middle School located at 4901 Frank Hengel Way, outside the library at Freedom High School located at 1050 Neroly Road, and at the project site, and was mailed out to outside agencies and to parties requesting such notice; and

WHEREAS, on _____ 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, considered the recommendation of the Planning Commission 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 OAKLEY, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The recitals above are true and correct and are hereby adopted as findings as if fully set forth herein.

SECTION 2. Additional Findings.

A. Repealing the existing density bonus regulations and replacing to reference State law would be consistent with the Housing Element of Oakley's General Plan, would result in the removal of government constraints, and eliminate the need to annually review the State law and continually update the Zoning Ordinance when it is amended.

B. Consistency with the Housing Element is through direct implementation of Action 1.6 titled "Density Bonus Ordinance" found in Chapter 8 (Housing Plan) of the Housing Element. Action 1.6 includes a couple of subitems such as using the Density Bonus Ordinance and associated incentives to encourage affordable housing and revising the Density Bonus Ordinance to comply with State law. It also requires the City to monitor State law and revise the Density Bonus Ordinance when required by any future revisions to SDBL. The main objective of this Action is to "Implement Density Bonus Ordinance in compliance with State law." The timeframe for implementation is January 31, 2024. Adoption of this ordinance will implement the subitems in this Action related to the Objective to implement the Density Bonus Ordinance in compliance o comply with State law.

C. 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 3. Section 9.1.412 of the Oakley Municipal Code titled, "Residential Density Bonus and Incentives" is hereby repealed and amended in its entirety in order to comply with State Density Bonus Law, as follows:

" **9.1.412 Residential Density Bonus and Incentives**

a. Purpose. The purpose of this Section is to establish a program in accordance with California Government Code Section 65915 et seq. to provide both density increases and other incentives to encourage the creation of housing affordable to moderate-, low-, and very low-income households, seniors, and other qualifying households under State law.

b. Applicability.

1) General. All proposed housing developments that qualify under California Government Code Section 65915 for a density increase and other incentives, and any qualified land transfer under California Government Code Section 65915 shall be eligible to apply for a density bonus (including incentives and/or concessions) consistent with the requirements, provisions and obligations set forth in California Government Code Section 65915, as it may be amended from time to time.

2) Compliance. The applicant shall comply with all requirements stated in California Government Code Sections 65915 through 65918. The requirements of California Government Code Sections 65915 through 65918, and any amendments thereto, shall prevail over any conflicting provision of this Code.

3) Excluded development. An applicant shall not receive a density bonus or any other incentive or concession if the housing development would be excluded under California Government Code Section 65915.

4) Interpretation. The provisions of this subdivision shall be interpreted to implement and be consistent with the requirements of California Government Code Section 65915. Any changes to California Government Code Section 65915 shall be deemed to supersede and govern over any conflicting provisions contained herein. If any portion of this Article conflicts with State Density Bonus Law or other applicable State law, State law shall supersede this Section. Any ambiguities in this Section shall be interpreted to be consistent with State Density Bonus Law.

5) Replacement Housing Requirement. Pursuant to subdivision (c)(3) of California Government Code Section 65915, an applicant will be ineligible for a

density bonus or other incentives unless the applicant complies with the replacement housing requirements therein.

c. Density Increase and Other Incentives.

1) General. If a qualifying affordable housing project or land transfer/cash payment meets the criteria of California Government Code Section 65915 et seq., the project shall be granted a density bonus, the amount of which shall be as specified in California Government Code Section 65915 et seq., and incentives or concessions also as described in California Government Code Section 65915 et seq.

2) Density Bonus Units. Except as otherwise required by California Government Code Section 65915, the density bonus units shall not be included when calculating the total number of housing units that qualifies the housing development for a density bonus.

3) Market-rate senior citizen housing developments. Market-rate senior citizen housing developments that qualify for a density bonus shall not receive any other incentives or concessions, unless California Government Code Section 65915 is amended to specifically require that local agencies grant incentives or concessions for senior citizen housing developments.

d. Physical Constraints and Parking Waivers.

1) Physical Constraints. Except as restricted by California Government Code Section 65915, the applicant for a density bonus may submit a proposal for the waiver or reduction of development standards that have the effect of physically precluding the construction of a housing development incorporating the density bonus and any incentives or concessions granted to the applicant. A request for a waiver or reduction of development standards shall be accompanied by documentation demonstrating that the waiver or reduction is physically necessary to construct the housing development with the additional density allowed pursuant to the density bonus and incorporating any incentives or concessions required to be granted. The City shall approve a waiver or reduction of a development standard, unless it finds that:

a) The application of the development standard does not have the effect of physically precluding the construction of a housing development at the density allowed by the density bonus and with the incentives or concessions granted to the applicant;

b) The waiver or reduction of the development standard would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of

Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact;

c) The waiver or reduction of the development standard would have an adverse impact on any real property that is listed in the California Register of Historical Resources; or

d) The waiver or reduction of the development standard would be contrary to state or federal law.

2) Parking. The applicant may request, and the City shall grant, a reduction in parking requirements in accordance with California Government Code Section 65915(p), as that section may be amended from time to time.

e. Retention of Density Bonus Units. Consistent with the provisions of California Government Code Section 65915 et seq., prior to a density increase or other incentives being approved for a project, the City of Oakley and the applicant shall agree to an appropriate method of ensuring the continued availability of the density bonus units.

f. Application Procedure for Density Increase or Other Incentives.

1) Application Requirements. An application for a density increase or other incentives under this Article for a housing development shall be submitted in writing to the Community Development Department to be processed concurrently with all other entitlements of the proposed housing development. The application for a housing development shall contain information sufficient to fully evaluate the request under the requirements of this Article, and in connection with the project for which the request is made, including, but not limited to, the following:

a) A brief description of the proposed housing development;

b) The total number of housing units and/or shared housing units (as defined in California Government Code Section 65915(o)(6)) proposed in the development project, including unit sizes and number of bedrooms;

c) The total number of units proposed to be granted through the density increase and incentive program over and above the otherwise maximum density for the project site;

d) The total number of units to be made affordable to or reserved for sale, or rental to, very low-, low- or moderate-income households, or senior citizens, or other qualifying residents;

e) The zoning, general plan designations, and assessor's parcel number(s) of the project site;

f) A vicinity map and preliminary site plan, drawn to scale, including building footprints, driveway(s) and parking layout;

g) The proposed method of ensuring the continued availability of the density bonus units;

h) Within zones that rely on a form-based code, a base density study that identifies the density feasible on the site without incentives, concessions or density bonuses; and

i) A list of any concession(s) or incentive(s) being requested to facilitate the development of the project, and a description of why the concession(s) or incentive(s) is needed.

g. Application Processing. The application shall be considered by the Planning Commission and/or the City Council at the same time each considers the project for which the request is being made. If the project is not to be otherwise considered by the Planning Commission or the City Council, the request being made under this Article shall be considered by the Community Development Director or designee, separately. The request shall be approved if the applicant complies with the provisions of California Government Code Section 65915 et seq."

SECTION 4. California Environmental Quality Act (CEQA).

This project is exempt from environmental analysis under the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061(b)(3), because it can be seen with certainty that the proposed amendments will not have a significant effect on the environment.

SECTION 5. Effective Date and Posting.

This ordinance shall take effect and be in force thirty (30) days from and after the date of its passage. The City Clerk shall cause the ordinance to be published within fifteen (15) days after its passage in a newspaper of general circulation, or by publishing a summary of the proposed ordinance, posting a certified copy of the proposed ordinance in the City Clerk's Office at least five (5) days prior to the City Council meeting at which the ordinance is to be adopted, and within fifteen (15) days after its adoption, publishing a summary of the ordinance with the names of the Council Members voting for and against the ordinance.

The foregoing ordinance was adopted with the reading waived at a regular meeting of the Oakley City Council on _____, 2023 by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

APPROVED:

_____
Aaron Meadows, Mayor Date

ATTEST:

_____
Libby Vreonis, City Clerk Date