

## **Chapter 3.45 CANNABIS BUSINESS TAX**

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**3.45.010 Title.**

This chapter shall be known as the Cannabis Business Tax Ordinance. (Ord. C-2018-08 §1(part), 2018).

**3.45.020 Authority and purpose.**

The purpose of this chapter is to adopt a tax, for revenue purposes, pursuant to Sections 37100.5 and 37101 of the California Government Code, upon cannabis businesses that engage in business in the city. The cannabis business tax is levied based upon business gross receipts and square footage of plant canopy. It is not a sales and use tax, a tax upon income, or a tax upon real property.

The cannabis business tax is a general tax enacted solely for general governmental purposes of the city and not for specific purposes. All of the proceeds from the tax imposed by this chapter shall be available for any lawful municipal purpose. (Ord. C-2018-08 §1(part), 2018).

**3.45.030 Intent.**

The intent of this chapter is to levy a tax on all cannabis businesses that operate in the city, regardless of whether such business would have been legal at the time the ordinance codified in this chapter was adopted. Nothing in this chapter shall be interpreted to authorize or permit any business activity that would not otherwise be legal or permissible under laws applicable to the activity at the time the activity is undertaken. (Ord. C-2018-08 §1(part), 2018).

**3.45.040 Definitions.**

The following words and phrases shall have the meanings set forth below when used in this chapter. The singular shall include the plural and the plural shall include the singular. Any words not defined below shall have that meaning ascribed to them by the Medicinal and Adult Use Cannabis Regulation and Safety Act, or, if not defined by that Act, their ordinary meaning.

A. "Business" shall include all activities engaged in or caused to be engaged in within the

city, including any commercial or industrial enterprise, trade, profession, occupation, vocation, calling, or livelihood, whether or not carried on for gain or profit, but shall not include the services rendered by an employee to his or her employer.

B. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" does not include (1) the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination; or (2) "industrial hemp" as defined by Section 11018.5 of the Health and Safety Code. As defined, "cannabis" includes marijuana and both medical/medicinal cannabis and nonmedical/adult-use cannabis.

C. "Cannabis product" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

D. "Canopy" means all areas occupied by any portion of a cannabis plant whether contiguous or noncontiguous on any one site. When plants occupy multiple horizontal planes (as when plants are placed on shelving above other plants) each plane shall be counted as a separate canopy area.

E. "Cannabis business" means any business activity involving cannabis, including but not limited to cultivating, transporting, distributing, manufacturing, compounding, converting, processing, preparing, storing, packaging, delivering, testing, dispensing, retailing and wholesaling of cannabis, of cannabis products or of ancillary products and accessories, whether or not carried on for gain or profit.

F. "Cannabis business tax" or "business tax" means the tax due pursuant to this chapter for engaging in cannabis business in the city.

G. "Commercial cannabis cultivation" means cultivation in the course of conducting a cannabis business.

H. "City cannabis license" means a license issued by the city to a person to regulate the establishment and operation of a cannabis business.

I. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis and includes, but is not limited to, the operation of a nursery.

J. "Employee" means each and every person engaged in the operation or conduct of any business, whether as owner, member of the owner's family, partner, associate, agent, manager or solicitor, and each and every other person employed or working in such business

for a wage, salary, commission, barter or any other form of compensation.

K. "Engaged in business as a cannabis business" means the commencing, conducting, operating, managing or carrying on of a cannabis business, whether done as owner, or by means of an officer, agent, manager, employee, or otherwise, whether operating from a fixed location in the city or coming into the city from an outside location to engage in such activities. A person shall be deemed engaged in business within the city if:

1. Such person or person's employee maintains a fixed place of business within the city for the benefit or partial benefit of such person;
2. Such person or person's employee owns or leases real property within the city for business purposes;
3. Such person or person's employee regularly maintains a stock of tangible personal property in the city for sale in the ordinary course of business;
4. Such person or person's employee regularly conducts solicitation of business within the city; or
5. Such person or person's employee performs work or renders services in the city.

The foregoing specified activities shall not be a limitation on the meaning of "engaged in business."

L. "Evidence of doing business" means evidence such as, without limitation, use of signs, circulars, cards or any other advertising media, including the use of internet or telephone solicitation, or representation to a government agency or to the public that such person is engaged in a cannabis business in the city.

M. "Calendar year" means January 1st through December 31st of the following calendar year.

N. "Gross receipts," except as otherwise specifically provided, means, whether designated a sales price, royalty, rent, commission, dividend, or other designation, the total amount (including all receipts, cash, credits, services and property of any kind or nature) received or payable for sales of goods, wares or merchandise or for the performance of any act or service of any nature for which a charge is made or credit allowed (whether such service, act or employment is done as part of or in connection with the sale of goods, wares, merchandise or not), without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, losses or any other expense whatsoever. However, the following shall be excluded from the definition of "gross receipts":

1. Cash discounts where allowed and taken on sales;
2. Any tax required by law to be included in or added to the purchase price and

collected from the consumer or purchaser;

3. Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;

4. Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the taxpayer in the regular course of the taxpayer's business;

5. Cash value of sales, trades or transactions between departments or units of the same business;

6. Whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected they shall be included in the amount of gross receipts for the period when they are recovered;

7. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of one dollar;

8. Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the city's finance department with the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees;

9. Retail sales of t-shirts, sweaters, hats, stickers, key chains, bags, books, posters, rolling papers, cannabis accessories such as pipes, pipe screens, vape pen batteries (without cannabis) or other personal tangible property which the tax administrator has excluded in writing by issuing an administrative ruling per Section 3.45.140 shall not be subject to the cannabis business tax under this chapter. However, any business activities not subject to this chapter as a result of the administrative ruling shall be subject to the appropriate business tax provisions of Chapter 3.40 or any other chapter or title as determined by the tax administrator.

O. "Lighting" means a source of light that is primarily used for promoting the biological process of plant growth. Lighting does not include sources of light that primarily exist for the safety or convenience of staff or visitors to the facility, such as emergency lighting, walkway lighting, or light admitted via small skylights, windows or ventilation openings.

P. "Nursery" means a facility or part of a facility that is used only for producing clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis.

- Q. "Person" means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, whether organized as a nonprofit or for-profit entity, and includes the plural as well as the singular number.
- R. "Sale" means and includes any sale, exchange, or barter.
- S. "State" means the state of California.
- T. "State license," "license," or "registration" means a state license issued pursuant to California Business and Professions Code Section 26050 et seq. or other applicable state law.
- U. "Tax administrator" means the city manager of the city of Half Moon Bay or his or her designee.
- V. "Testing laboratory" means a cannabis business that (1) offers or performs tests of cannabis or cannabis products, (2) offers no service other than such tests, (3) sells no products, excepting only testing supplies and materials, (4) is accredited by an accrediting body that is independent from all other persons involved in the cannabis industry in the state and (5) is registered with the Bureau of Cannabis Control. (Ord. C-2018-08 §1(part), 2018).

**3.45.050 Tax imposed.**

- A. Beginning January 1, 2019, there is imposed upon each person who is engaged in business as a cannabis business a cannabis business tax. Such tax is payable regardless of whether the business has been issued a business license, a city cannabis license, or is operating unlawfully. The city's acceptance of a cannabis business tax payment from a cannabis business operating illegally will not constitute the city's approval or consent to such illegal operations.
- B. The city council may, by resolution or ordinance, and without voter approval, set and adjust the rate of the cannabis business tax. However, in no event may the city council set any rate that exceeds the maximum rate calculated pursuant to subsection C of this section for the date on which the rate will commence.
- C. The maximum rate shall be calculated as follows:
1. For every person who is engaged in commercial cannabis cultivation in the city:
    - a. Through January 1, 2021, the maximum rate shall be:
      - i. Ten dollars annually per square foot of canopy space in a facility that uses exclusively artificial lighting.
      - ii. Seven dollars annually per square foot of canopy space in a facility that uses a combination of natural and supplemental artificial lighting.
      - iii. Four dollars annually per square foot of canopy space in a facility that

uses no artificial lighting.

iv. Two dollars annually per square foot of canopy space for any nursery.

b. On January 1, 2022, and on each January 1st thereafter, the maximum annual tax rate per square foot of each type of canopy space shall increase by the percentage change between January of the calendar year prior to such increase and January of the calendar year of the increase in the Consumer Price Index ("CPI") for all urban consumers in the San Francisco-Oakland-Hayward area as published by the United States Government Bureau of Labor Statistics. However, no CPI adjustment resulting in a decrease of any tax imposed by this subsection shall be made.

2. For every person who engages in the operation of a testing laboratory, the maximum tax rate shall not exceed two and one-half percent of gross receipts.

3. For every person who engages in the retail sales of cannabis as a retailer (dispensary) or non-store front retailer (delivery business), or microbusiness (retail sales activity) the maximum tax rate shall not exceed six percent of gross receipts.

4. For every person who engages in a cannabis distribution business, the maximum tax rate shall not exceed three percent of gross receipts.

5. For every person who engages in a cannabis manufacturing, processing, or microbusiness (non-retail activity) or any other type of cannabis business not described in subsection (C)(1), (2), (3) or (4) of this section, the maximum tax rate shall not exceed four percent of gross receipts.

D. For purposes of taxing commercial cannabis cultivation, the square feet of canopy space for a business shall be rebuttably presumed to be the maximum square footage of canopy specified in the city cannabis license, or, in the absence of a city license, the square footage shall be the maximum square footage of canopy for commercial cannabis cultivation allowed by the state license type. Should a city license be issued to a business which cultivates only for certain months of the year, the city shall prorate the tax as to sufficiently reflect the period in which cultivation is occurring at the business. In no case shall canopy square footage which is specified in a city license or state law but not utilized for cultivation be deducted for the purpose of determining the tax for cultivation, unless the tax administrator is informed in writing and authorizes such reduction for the purpose of relief from the tax prior to the period for which the space will not be used, that such space will not be used. (Ord. C-2018-08 §1(part), 2018).

#### **3.45.060 Reporting and remittance of tax.**

A. The cannabis business tax imposed by this chapter shall be paid, in arrears, on a quarterly basis. For commercial cannabis cultivation, the tax due for each calendar quarter shall be based on the square footage of the business's canopy space during the quarter and the rate shall be twenty-five percent of the applicable annual rate. For all other cannabis

business activities, the tax due for each calendar quarter shall be based on the gross receipts for the quarter.

B. Each person owing cannabis business tax for a calendar quarter shall, no later than the last day of the month following the close of the calendar quarter, file with the tax administrator a statement of the tax owed for that calendar quarter and the basis for calculating that tax. The tax administrator may require that the statement be submitted on a form prescribed by the tax administrator. The tax for each calendar quarter shall be due and payable on that same date that the statement for the calendar quarter is due.

C. Upon cessation of a cannabis business, tax statements and payments shall be immediately due for all calendar quarters up to the calendar quarter during which cessation occurred.

D. The tax administrator may, at his or her discretion, establish shorter reporting and payment periods for any taxpayer as the tax administrator deems necessary to ensure collection of the tax. The tax administrator may also require that a deposit, to be applied against the taxes for a calendar quarter, be made by a taxpayer at the beginning of that calendar quarter. In no event shall the deposit required by the tax administrator exceed the tax amount he or she projects will be owed by the taxpayer for the calendar quarter. The tax administrator may require that a taxpayer make payments via a cashier's check, money order, wire transfer, or similar instrument.

E. For purposes of this section, the square feet of canopy space for a business shall be rebuttably presumed to be no less than the maximum square footage of canopy specified in the business's city cannabis license, or, in the absence of a city license, the square footage shall be the maximum square footage of canopy for commercial cannabis cultivation allowed by the state license type. In no case shall canopy square footage which is specified in the city cannabis license or state law but not utilized for cultivation be excluded from taxation unless the tax administrator is informed in writing, prior to the period for which the space will not be used, that such space will not be used, and authorizes such reduction for the purpose of relief from the tax. (Ord. C-2018-08 §1(part), 2018).

#### **3.45.070 Payments and communications--Timely remittance.**

Whenever any payment, statement, report, request or other communication is due, it must be received by the tax administrator on or before the final due date. A postmark will not be accepted as timely remittance. If the due date would fall on a Saturday, Sunday or a holiday observed by the city, the due date shall be the next regular business day on which the city is open to the public. (Ord. C-2018-08 §1(part), 2018).

#### **3.45.080 Payment--When taxes deemed delinquent.**

Unless otherwise specifically provided under other provisions of this chapter, the taxes required to be paid pursuant to this chapter shall be deemed delinquent if not received by the tax administrator on or before the due date as specified in Sections 3.45.060 and 3.45.070. (Ord. C-2018-08 §1(part), 2018).

**3.45.090 Notice not required by the city.**

The city may as a courtesy send a tax notice to the business. However, the tax administrator is not required to send a delinquency or other notice or bill to any person subject to the provisions of this chapter. Failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this chapter. (Ord. C-2018-08 §1(part), 2018).

**3.45.100 Penalties and interest.**

A. Any person who fails or refuses to pay any cannabis business tax required to be paid pursuant to this chapter on or before the due date shall pay penalties and interest as follows:

1. A penalty equal to ten percent of the amount of the tax, in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax at the rate of one percent per month.
2. If the tax remains unpaid for a period exceeding one calendar month beyond the due date, an additional penalty equal to twenty-five percent of the amount of the tax, plus interest at the rate of one percent per month on the unpaid tax and on the unpaid penalties.
3. Interest shall be applied at the rate of one percent per month on the first day of the month for the full month and will continue to accrue monthly on the tax and penalty until the balance is paid in full.

B. Whenever a check or electronic payment is submitted in payment of a cannabis business tax and the payment is subsequently returned unpaid by the bank for any reason, the taxpayer will be liable for the tax amount due plus any fees, penalties and interest as provided for in this section, and any other amount allowed under state law. (Ord. C-2018-08 §1(part), 2018).

**3.45.110 Refunds and credits.**

A. No refund shall be made of any tax collected pursuant to this chapter, except as provided in Section 3.45.120.

B. No refund of any tax collected pursuant to this chapter shall be made because of the discontinuation, dissolution, or other termination of a business. (Ord. C-2018-08 §1(part), 2018).

**3.45.120 Refunds and procedures.**

A. Whenever the amount of any cannabis business tax, penalty or interest has been overpaid, paid more than once, or has been erroneously collected or received by the city under this chapter, it may be refunded to the claimant who paid the tax provided that a written claim for refund is filed with the tax administrator within one year of the date the tax was originally paid.

B. The tax administrator, his or her designee or any other city officer charged with the administration of this chapter shall have the right to examine and audit all the books and

business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of claimant's books and business records after request by the tax administrator to do so.

C. In the event that the cannabis business tax was erroneously paid, and the error is attributable to the city, the city shall refund the amount of tax erroneously paid within one year from the date that the tax was paid. (Ord. C-2018-08 §1(part), 2018).

**3.45.130 Personal cultivation not taxed.**

The provisions of this chapter shall not apply to personal cannabis cultivation or use as those activities are authorized in the "Medicinal and Adult Use Cannabis Regulation and Safety Act," Health and Safety Code Sections 11362.1 through 11362.3 (and as those sections may be amended from time to time); provided, that the individual receives no compensation whatsoever related to that personal cultivation or use. (Ord. C-2018-08 §1(part), 2018).

**3.45.140 Administration of the tax.**

A. It shall be the duty of the tax administrator to collect the taxes, penalties, fees, and perform the duties required by this chapter.

B. For purposes of administration and enforcement of this chapter generally, the tax administrator may from time to time promulgate such administrative interpretations, rules, and procedures consistent with the purpose, intent, and express terms of this chapter as he or she deems necessary to implement or clarify such provisions or aid in enforcement.

C. The tax administrator may take such administrative actions as needed to administer the tax, including but not limited to:

1. Provide to all cannabis business taxpayers forms for the reporting of the tax;
2. Provide information to any taxpayer concerning the provisions of this chapter;
3. Receive and record all taxes remitted to the city as provided in this chapter;
4. Maintain records of taxpayer reports and taxes collected pursuant to this chapter;
5. Assess penalties and interest to taxpayers pursuant to this chapter;
6. Determine amounts owed and enforce collection pursuant to this chapter. (Ord. C-2018-08 §1(part), 2018).

**3.45.150 Appeal procedure.**

Any taxpayer aggrieved by any decision of the tax administrator with respect to the amount of tax, interest, penalties and fees, if any, due under this chapter may appeal to the city council by filing a notice of appeal with the city clerk within thirty calendar days of the serving or mailing of the determination of tax due. The city clerk, or his or her designee, shall fix a time and place for hearing such appeal, and the city clerk, or his or her designee, shall give notice

in writing to such operator at the last known place of address. The finding of the city council shall be final and conclusive and shall be served upon the appellant in the manner prescribed by this chapter for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of the notice. (Ord. C-2018-08 §1(part), 2018).

**3.45.160 Enforcement--Action to collect.**

Any taxes, penalties and/or fees required to be paid under the provisions of this chapter shall be deemed a debt owed to the city. Any person owing money to the city under the provisions of this chapter shall be liable in an action brought in the name of the city for the recovery of such debt. The provisions of this section shall not be deemed a limitation upon the right of the city to bring any other action including criminal, civil and equitable actions, based upon the failure to pay the tax, penalties and/or fees imposed by this chapter or the failure to comply with any of the provisions of this chapter. (Ord. C-2018-08 §1(part), 2018).

**3.45.170 Apportionment.**

If a business subject to the tax is operating both within and outside the city, it is the intent of the city to apply the cannabis business tax so that the measure of the tax fairly reflects the proportion of the taxed activity actually carried on in the city. To the extent federal or state law requires that any tax due from any taxpayer be apportioned, the taxpayer may indicate said apportionment on his or her tax return. The tax administrator may promulgate administrative procedures for apportionment as he or she finds useful or necessary. (Ord. C-2018-08 §1(part), 2018).

**3.45.180 Constitutionality and legality.**

This tax is intended to be applied in a manner consistent with the United States and California Constitutions and state law. None of the tax provided for by this chapter shall be applied in a manner that causes an undue burden upon interstate commerce, a violation of the equal protection or due process clauses of the Constitutions of the United States or the state of California or a violation of any other provision of the California Constitution or state law. If a person believes that the tax, as applied to him or her, is impermissible under applicable law, he or she may request that the tax administrator release him or her from the obligation to pay the impermissible portion of the tax. (Ord. C-2018-08 §1(part), 2018).

**3.45.190 Audit and examination of premises and records.**

A. For the purpose of ascertaining the amount of cannabis business tax owed or verifying any representations made by any taxpayer to the city in support of his or her tax calculation, the tax administrator shall have the power to inspect any location where commercial cannabis cultivation occurs and to audit and examine all books and records (including, but not limited to, bookkeeping records, state and federal income tax returns, and other records relating to the gross receipts of the business) of persons engaged in cannabis businesses. In conducting such investigation, the tax administrator shall have the power to inspect any equipment, such as computers or point of sale machines, that may contain such records.

B. It shall be the duty of every person liable for the collection and payment to the city of any

tax imposed by this chapter to keep and preserve, for a period of at least three years, all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and payment to the city, which records the tax administrator or his/her designee shall have the right to inspect at all reasonable times. (Ord. C-2018-08 §1(part), 2018).

**3.45.200 Other licenses, permits, taxes, fees or charges.**

A. Nothing contained in this chapter shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any city cannabis license, permit, or other license required under any provision of any other chapter of this code or any other ordinance or resolution of the city, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee, or other charge imposed, assessed or required under any other chapter of this code or any other ordinance or resolution of the city. Any references made or contained in any other chapter of this code to any licenses, license taxes, fees, or charges, or to any schedule of license fees, shall be deemed to refer to the licenses, license taxes, fees or charges, or schedule of license fees, provided for in other chapter of this code.

B. Notwithstanding subsection A of this section or Chapter 3.40, a cannabis business shall not be required to pay the business license tax required by Chapter 3.40 so long as all of business's activities within the city that would require payment of a business license tax are activities subject to the cannabis business tax under this chapter.

C. The tax administrator may revoke or refuse to renew the license required by Chapter 3.40 for any business that is delinquent in the payment of any tax due pursuant to this chapter or that fails to make a deposit required by the tax administrator pursuant to Section 3.45.060. (Ord. C-2018-08 §1(part), 2018).

**3.45.210 Payment of tax does not authorize unlawful business.**

A. The payment of a cannabis business tax required by this chapter, and its acceptance by the city, shall not entitle any person to carry on any cannabis business unless the person has complied with all of the requirements of this code and all other applicable state laws.

B. No tax paid under the provisions of this chapter shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any business in violation of any local or state law. (Ord. C-2018-08 §1(part), 2018).

**3.45.220 Deficiency determinations.**

If the tax administrator is not satisfied that any statement filed as required under the provisions of this chapter is correct, or that the amount of tax is correctly computed, he or she may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in his or her possession or that may come into his or her possession within three years of the date the tax was originally due and payable. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When a person discontinues engaging in a business, a deficiency determination may be made at any time within three

years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued prior to the date the tax would otherwise be due. Whenever a deficiency determination is made, a notice shall be given to the person concerned in the same manner as notices of assessment are given under Section 3.45.240. (Ord. C-2018-08 §1(part), 2018).

**3.45.230 Failure to report—Nonpayment, fraud.**

A. Under any of the following circumstances, the tax administrator may make and give notice of an assessment of the amount of tax owed by a person under this chapter at any time:

1. If the person has not filed a complete statement required under the provisions of this chapter;
2. If the person has not paid the tax due under the provisions of this chapter;
3. If the person has not, after demand by the tax administrator, filed a corrected statement, or furnished to the tax administrator adequate substantiation of the information contained in a statement already filed, or paid any additional amount of tax due under the provisions of this chapter; or
4. If the tax administrator determines that the nonpayment of any business tax due under this chapter is due to fraud, a penalty of twenty-five percent of the amount of the tax shall be added thereto in addition to penalties and interest otherwise stated in this chapter and any other penalties allowed by law.

B. The notice of assessment shall separately set forth the amount of any tax known by the tax administrator to be due or estimated by the tax administrator, after consideration of all information within the tax administrator's knowledge concerning the business and activities of the person assessed, to be due under each applicable section of this chapter and shall include the amount of any penalties or interest accrued on each amount to the date of the notice of assessment. (Ord. C-2018-08 §1(part), 2018).

**3.45.240 Tax assessment--Notice requirements.**

The notice of assessment shall be served upon the person either by personal delivery, by overnight delivery by a nationally recognized courier service, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the business or to such other address as he or she shall register with the tax administrator for the purpose of receiving notices provided under this chapter; or, should the person have no address registered with the tax administrator for such purpose, then to such person's last known address. For the purposes of this section, a service by overnight delivery shall be deemed to have occurred one calendar day following deposit with a courier and service by mail shall be deemed to have occurred three days following deposit in the United States mail. (Ord. C-2018-08 §1(part), 2018).

**3.45.250 Tax assessment--Hearing, application and determination.**

Within thirty calendar days after the date of service the person may apply in writing to the tax administrator for a hearing on the assessment. If application for a hearing before the city is not made within the time herein prescribed, the tax assessed by the tax administrator shall become final and conclusive. Within thirty calendar days of the receipt of any such application for hearing, the tax administrator shall cause the matter to be set for hearing before him or her no later than thirty calendar days after the receipt of the application, unless a later date is agreed to by the tax administrator and the person requesting the hearing. Notice of such hearing shall be given by the tax administrator to the person requesting such hearing not later than five calendar days prior to such hearing. At such hearing said applicant may appear and offer evidence why the assessment as made by the tax administrator should not be confirmed and fixed as the tax due. After such hearing the tax administrator shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in Section 3.45.240 for giving notice of assessment. (Ord. C-2018-08 §1(part), 2018).

**3.45.260 Relief from taxes--Disaster relief.**

A. If a business is unable to comply with any tax requirement due to a disaster, the business may notify the tax administrator of this inability to comply and request relief from the tax requirement.

1. A request for relief must clearly indicate why relief is requested, the time period for which the relief is requested, and the reason relief is needed for the specific amount of time;

B. The cannabis business agrees to grant the tax collector or his/her designee access to the location where the cannabis business has been impacted due to a disaster;

C. The tax administrator, in his/her sole discretion, may provide relief from the cannabis business tax requirement for businesses whose operations have been impacted by a disaster if such tax liability does not exceed five thousand dollars. If such tax liability is five thousand one dollars or more than such relief shall only be approved by the city council;

D. Temporary relief from the cannabis tax may be granted for a reasonable amount of time as determined by the tax administrator or the city council, as applicable, in order to allow the cannabis business time to recover from the disaster;

E. The tax administrator or city council, as applicable, may require that certain conditions be followed in order for a cannabis business to receive temporary relief from the cannabis business tax requirement;

F. For purposes of this section, "disaster" means fire, flood, storm, tidal wave, earthquake, or similar public calamity, whether or not resulting from natural causes. (Ord. C-2018-08 §1(part), 2018).

**3.45.270 Conviction for violation--Taxes not waived.**

The conviction and punishment of any person for failure to pay the required tax shall not

excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction. No civil action shall prevent a criminal prosecution for any violation of the provisions of this chapter or of any state law requiring the payment of all taxes. (Ord. C-2018-08 §1(part), 2018).

**3.45.280 Violation deemed misdemeanor.**

Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor. (Ord. C-2018-08 §1(part), 2018).

**3.45.290 Severability.**

If any provision of this chapter, or its application to any person or circumstance, is determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this chapter or the application of this chapter to any other person or circumstance and, to that end, the provisions hereof are severable. (Ord. C-2018-08 §1(part), 2018).

**3.45.300 Remedies cumulative.**

All remedies and penalties prescribed by this chapter or which are available under any other provision of the Half Moon Bay Municipal Code and any other provision of law or equity are cumulative. The use of one or more remedies by the city shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter. (Ord. C-2018-08 §1(part), 2018).

**3.45.310 Amendment or repeal.**

This chapter may be repealed or amended by the city council without a vote of the people to the extent allowed by law. As required by Article XIIC of the California Constitution, voter approval is required for any amendment that would increase any tax imposed pursuant to this chapter. The people of the city of Half Moon Bay affirm that an increase of a tax imposed pursuant to this chapter does not include (but such exclusion shall not be limited to) the following activities:

- A. The restoration or adjustment of the rate of the tax to a rate that is no higher than the maximum rate set by this chapter and approved by the voters;
- B. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this chapter; or
- C. The collection of the tax imposed by this chapter even if the city had, for some period of time, failed to collect the tax. (Ord. C-2018-08 §1(part), 2018).

**Chapter 18.42  
RESIDENTIAL DENSITY BONUS**

Sections:

**18.42.010 Purpose.**

- 18.42.020 Definitions.**
- 18.42.030 Eligibility for density bonus and incentives.**
- 18.42.040 Amount and calculation of density bonus.**
- 18.42.050 Incentives and concessions.**
- 18.42.060 Parking requirements.**
- 18.42.070 Density bonus and incentives for child care facilities.**
- 18.42.080 Approvals.**
- 18.42.090 Design, distribution and timing of development of affordable housing units.**
- 18.42.100 Density bonus request.**
- 18.42.110 Affordable housing unit plan.**
- 18.42.120 Affordable housing agreement.**
- 18.42.140 Child care facility agreement.**
- 18.42.150 Administrative fee.**
- 18.42.160 Compliance.**

**18.42.010 Purpose.**

The purpose of this density bonus ordinance is to provide a means for granting density bonuses and incentives in compliance with Government Code Sections 65915 through 65917, as it now exists or may hereafter be amended. This chapter provides density bonuses and incentives for projects that are affordable to very low, low, and moderate income households and projects restricted to occupancy by senior citizens. (Ord. C-15-10 §1(Exh. A(part)), 2010).

**18.42.020 Definitions.**

Unless otherwise specified in this chapter or unless the context plainly requires otherwise, the words and phrases used in this chapter shall have the meanings defined in Chapter 18.02 and the meanings attributed to them in Government Code Section 65915 et seq.

“Affordable housing unit” means any extremely low, very low, low, or moderate income unit created pursuant to this chapter.

“Density bonus” means a density increase over the otherwise maximum allowable residential density as of the date of application by the applicant to the city, county or city and county. If a residential development qualifies for a density bonus under both the California Government Code and this section, then the applicant may use either the state or local density bonus

benefits, but not both. The granting of density bonus benefits shall not, in and of itself, require a general plan amendment, zoning change or other separate discretionary approval.

“Project” or “development” as used in this section means a residential or mixed-use (e.g., mixture of residential uses with commercial, office, or other uses) project for five or more residential units. For the purposes of this section, “project” also includes a subdivision or common interest development, as defined in Section 1351 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Government Code Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units.

“Senior housing unit” means any housing unit restricted to occupancy by a senior citizen household pursuant to this chapter. (Ord. C-2014-10 §8(A), 2014; Ord. C-15-10 §1(Exh. A(part)), 2010).

#### **18.42.030 Eligibility for density bonus and incentives.**

For purposes of calculating base density, any area of land on a given site that is not potentially developable due to hazards or other environmental and resource factors (including but not limited to areas of sensitive habitat or buffers to that sensitive habitat, steep slopes, significant views, public access ways, or geologic instability) shall not be considered potentially developable lot area and shall be excluded from the base density calculations (i.e., base density shall be determined based only on the potentially developable portion of a given site).

In order to be eligible for a density bonus and other incentives as provided by this chapter, a proposed project shall comply with the following requirements and satisfy: (1) all applicable provisions of the certified LUP and (2) except as otherwise provided by this chapter, all applicable provisions of this zoning code.

A. Types of Projects. The provisions of this chapter shall apply to:

1. New residential projects of five or more dwelling units, regardless of the type of dwelling units proposed;
2. New mixed-use developments which include at least five dwelling units;
3. Renovation of one or more multifamily residential structures containing at least five units so as to result in a net increase of the number of residential units;
4. Development that will change the use of an existing building from nonresidential to residential and that will provide at least five residential units;
5. Developments that include the conversion of at least five residential rental units to ownership housing.

B. **Affordability and Age Requirements.** Projects receiving a density bonus, incentives, and/or concessions under this chapter shall include at least one of the following:

1. A minimum of ten percent of the proposed dwelling units are for low income households; or
2. A minimum of five percent of the proposed dwelling units are for very low or extremely low income households; or
3. A minimum of ten percent of the total dwelling units in a common interest development, as defined in Civil Code Section 1351, are for persons and families of moderate income; provided, that all units in the development are offered to the public for purchase.
4. A senior citizen project or a mobile home park that limits residency based on age requirements for housing older persons in compliance with Civil Code Sections 51.2, 51.3, 798.76, or 799.5.
5. **Length of Affordability.** Projects that provide extremely low, very low, and low income units shall provide the units at affordable rents to eligible households for a minimum period of thirty years, beginning at the initial occupancy of each affordable housing unit, or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Projects that provide moderate income units in a common interest development shall ensure the initial occupancy of the unit by a moderate income household and the occupancy and resale of the unit shall be governed by an affordable housing agreement. Senior citizen projects shall be restricted to occupancy by senior citizens in perpetuity.

C. Any housing development approved pursuant to this chapter shall be consistent with the certified local LUP policies and with all applicable development standards. Further, all development approved pursuant to a density bonus or other incentive shall be developed in a manner most protective of coastal resources (including but not limited to areas of sensitive habitat, agriculture, steep slopes, significant views, public access ways, or geologic instability). If the city approves development with a density bonus or other incentive, the city must find that the development, with and without the density bonus or other incentive, would have been fully consistent with the policies of the certified LUP. If the city determines that the means of accommodating the density bonus or other incentive proposed by the applicant will have an adverse effect on coastal resources inconsistent with the LUP or the Chapter 3 policies of the Coastal Act, the density bonus or incentive shall not be approved.

D. For development approved within the coastal zone pursuant to this chapter, the required density bonus and any requested incentive(s), concession(s) and/or waiver(s) or reduction(s) of development standards shall be consistent with the Chapter 3 policies of the Coastal Act and all applicable requirements of the certified Half Moon Bay LUP. (Ord. C-2014-10 §8(B),

2014; Ord. C-15-10 §1(Exh. A(part)), 2010).

**18.42.040 Amount and calculation of density bonus.**

A project that complies with the eligibility requirements of Section 18.42.030 shall be entitled to a density bonus. The applicant shall elect whether the density bonus shall be awarded on the basis of subsection (A), (B), (C), (D), (E), or (F) of this section. The applicant may request a smaller density bonus.

A. Bonus for Units for Very Low Income Households. For developments that include five percent of the total dwelling units for very low income households, the density bonus shall be calculated as follows:

**Table 18.42-1 — Very Low Income**

Percentage of Base Units Proposed	Density Bonus Percentage
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

B. Bonus for Units for Low Income Households. For developments that include ten percent of the total dwelling units for low income households, the density bonus shall be calculated as follows:

**Table 18.42-2 — Low Income**

Percentage of Base Units Proposed	Density Bonus Percentage
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
16	29
17	30.5
18	32

Percentage of Base Units Proposed	Density Bonus Percentage
19	33.5
20	35

C. Bonus for Units for Moderate Income Households. For developments that include ten percent of the total dwelling units in a common interest development for persons and families of moderate income, the density bonus shall be calculated as follows:

**Table 18.42-3 — Moderate Income**

Percentage of Base Units Proposed	Density Bonus Percentage
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

Percentage of Base Units Proposed	Density Bonus Percentage
35	30
36	31
37	32
38	33
39	34
40	35

D. Bonus for Senior Citizen Housing. For an eligible senior citizen project, the density bonus shall be twenty percent of senior citizen housing units.

E. Bonus for Land Donation. When an applicant for a residential development agrees to donate land to the city for very low income households, the applicant shall be entitled to a density bonus for the entire market rate development; provided, that nothing in this subsection shall be construed to affect the authority of the city to require a developer to donate land as a condition of development.

1. Density Bonus. The applicant shall be entitled to an increase above the maximum allowed residential density for the entire market-rate residential development which shall be calculated as follows:

**Table 18.42-4 — Very Low Income Units**

Percentage of Very Low Income Units Accommodated	Density Bonus Percentage
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

<b>Percentage of Very Low Income Units Accommodated</b>	<b>Density Bonus Percentage</b>
23	28
24	29
25	30
26	31
27	32
28	33
29	34
30	35

The density bonus for land dedication shall be in addition to any other density bonus allowed by this chapter, up to a maximum total density bonus of thirty-five percent.

2. Eligibility for Land Donation Bonus. An applicant shall be eligible for the increased density bonus described in this section if all of the following conditions are met:

- a. The applicant donates and transfers the land to the city no later than date of approval by the city of the final subdivision map, parcel map, or residential development seeking the density bonus.
- b. The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than ten percent of the number of market-rate residential units of the proposed development.
- c. The transferred land: (i) is at least one acre in size or of sufficient size to permit development of at least forty units; (ii) has the appropriate general plan designation and is appropriately zoned for development of very low income housing; (iii) is or will be served by adequate public facilities and infrastructure for the development of very low income housing; (iv) has appropriate zoning and development standards to make the development of the very low income housing units feasible; and (v) has all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units, except that the city may subject the proposed development to subsequent design review, if the design is not reviewed by the city prior to the transfer.
- d. The transferred land and very low income housing units shall be subject to a deed restriction, which shall be recorded on the property upon dedication, ensuring continued affordability of the units for a thirty-year period.
- e. The land is transferred to the city or to a housing developer approved by the city.

- f. The transferred land is within the proposed development or, if approved by the city, within one-quarter mile of the boundary of the proposed development.
- g. A proposed source of funding for the development of 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.

F. **Bonus for Condominium Conversions.** When a development is the conversion of an existing apartment complex to a condominium complex and the applicant agrees to make at least thirty-three percent of the total units of the development affordable to moderate income households for thirty years, or fifteen percent of the total units of the proposed development affordable to lower income households for thirty years, and agrees to pay for the administrative costs incurred by the city to process the application and to monitor the continued affordability and habitability of the affordable housing units, the city shall either:

1. Grant a density bonus of twenty-five percent, or
2. Provide other incentives of equivalent financial value as determined by the city.

An applicant shall be ineligible for a density bonus or other incentives under this section if the apartments proposed for conversion are part of a project for which a density bonus or other incentives were previously provided under this chapter or Government Code Section 65819 et seq.

G. **Calculation of Density Bonus.**

1. All density calculations resulting in fractional units shall be rounded up to the next whole number.
2. For the purposes of this chapter “total dwelling units” does not include units added by a density bonus awarded pursuant to this section or any other density bonus allowed by the city of Half Moon Bay or state law.
3. If the site of a development proposal that requests a density bonus is located in two or more general plan designations or zoning districts, the number of dwelling units permitted in the development is the sum of the dwelling units permitted in each of the zones. The permitted number of dwelling units may be distributed within the development without regard to the zone boundaries.
4. If the applicant desires to develop a density bonus project available to a mix of income levels or age groups, the project may combine its allowed density bonus, based on calculations approved by the community development director, to a maximum density bonus of thirty-five percent.
5. The density bonus shall be based on “maximum allowable residential density” which means the density allowed under the zoning ordinance and land use element of the general plan, or if a range of density is permitted, means the maximum allowable

density for the specific zoning range and land use element of the general plan applicable to the project. Where the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

6. For the purposes of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the project other than the areas where the units for the lower income houses are located. Any areas deemed undevelopable due to hazards or other environmental and resource factors (including but not limited to areas of sensitive habitat, steep slopes, significant views, public access ways, or geologic instability), shall be excluded from the developable portions of the lot suitable for density increases over the maximum allowable residential units.

H. Accessory Dwelling Units. If desired by the applicant, the density bonus may be used to construct one accessory dwelling unit per lot. The unit must comply with Chapter 18.33, except that the accessory dwelling unit may be constructed on a lot that does not contain an existing or proposed single-family dwelling. (Ord. C-2018-04 §2(Att. A)(part), 2018; Ord. C-2015-04 §1(part), 2015; Ord. C-2014-10 §8(C), 2014; Ord. C-15-10 §1(Exh. A(part)), 2010).

#### **18.42.050 Incentives and concessions.**

When an applicant seeks a density bonus or seeks to donate land for housing, the city shall provide the applicant with incentives or concessions for the production on housing units and child care facilities. The applicant must submit a density bonus application, as described in Section 18.42.100, identifying the specific incentives or concessions that the applicant requests.

A. Granting of Incentive. When an applicant seeks a density bonus or seeks to donate land for housing, the city shall provide the applicant with incentives or concessions for the production of housing units and, if applicable, child care facilities. The city shall grant the incentive or concession requested by the applicant unless the city makes any of the following written findings, based upon substantial evidence:

1. The incentive or concession is not required to provide for affordable housing costs as defined in Health and Safety Code Section 50052.5, or for rents for the targeted units set as specified in Sections 18.42.030 and 18.42.040; or
2. The incentive or concession would have a specific adverse impact, as defined in Government Code Section 65589.5(d)(2), upon public health and safety, the physical environment, or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low and moderate income households; or

3. The incentive or concession would be contrary to state or federal law; or
4. The incentive or concession cannot be accommodated in a manner consistent with the local coastal program land use plan or the Chapter 3 policies of the Coastal Act.

B. Number of Incentives. The city shall grant the following number of incentives, except as provided in subsection A of this section:

1. A total of one incentive or concession for a project that includes: at least ten percent of the total units affordable to low income households, at least five percent of the total units affordable to very low income households, or at least ten percent of the total units affordable to persons and families of moderate income in a common interest development.
2. A total of two incentives or concessions for a project that includes: at least twenty percent of the total units affordable to low income households, at least ten percent of the total units affordable to very low income households, at least twenty percent of the total units affordable to persons and families of moderate income in a common interest development, at least fifty percent of the total units providing housing for disabled persons, or at least fifty percent of the total units providing housing for farmworkers.
3. A total of three incentives or concessions for a development that makes: at least thirty percent of the total units affordable to low income households, at least fifteen percent of the total units affordable to very low income households, or at least thirty percent of the total units affordable to persons and families of moderate income in a common interest development.

C. Types of Incentives or Concessions. For the purposes of this chapter, "incentive" or "concession" means any of the following:

1. A reduction in the site development standards that results in identifiable, financially sufficient, and actual cost reductions. The reduction may include, but is not limited to:
  - a. Reduced minimum lot sizes and/or dimensions,
  - b. Reduced minimum setbacks,
  - c. Increased maximum building height,
  - d. Reduced on-site open-space requirements,
  - e. increased maximum lot coverage,
  - f. Increased floor area ratio, or
  - g. Reduced parking requirements.
2. A reduction in architectural design requirements that exceeds the minimum building

standards approved by the California Building Standards Commission in compliance with Health and Safety Code Section 18901 et seq., that would otherwise be required, that results in identifiable, financially sufficient, and actual cost reductions.

3. Approval of mixed use development in conjunction with the proposed development if nonresidential uses will reduce the development cost of the residential portion of the proposed development, and if the nonresidential uses are compatible with the proposed development and with existing or planned development in the area.

4. Expedited Project Processing. The project will receive expedited project processing, which will include:

Mandatory Preliminary Review Meeting. An applicant requesting expedited project processing must participate in a mandatory preliminary review meeting prior to submittal of the project application.

a. Ten-Business-Day Review for Completeness. The review period to determine completeness of the project application will be reduced from thirty calendar days to ten business days.

b. First Review Cycle. The project application will be provided to all appropriate agencies for a review period of twenty business days.

c. Project Review Meeting. Within ten business days after the first review cycle, a project review meeting will be held with the city and applicant.

d. Subsequent Review Cycles (if needed). Fifteen business days.

e. Project Consideration. Upon completion of the third review cycle and completion of the environmental document, at the applicant's request the city will schedule the project for a public hearing if required and for project consideration by the decision-making body.

f. Carrying Capacity. No more than two residential projects may receive expedited project processing during any given period. Expedited review of residential projects shall not result in increased review times for priority coastal uses, as defined by the local coastal program.

5. Other regulatory incentives or concessions proposed by the applicant or the city that result in identifiable, financially sufficient, and actual cost reductions.

6. A direct financial contribution, waiver of fees, or reduction of fees, when financially feasible, at the sole discretion of the city council. Nothing in this chapter shall be construed to require the provision of direct financial incentives for the development, including the provision of publicly owned land by the city or other waiver of fees or dedication requirements. (Ord. C-2014-10 §8(D), 2014; Ord. C-15-10 §1(Exh. A(part)), 2010).

**18.42.060 Parking requirements.**

A. Maximum Parking Standards. Upon the request of the applicant, the city shall not require a parking standard, inclusive of handicapped and guest parking, of a project that exceeds the following ratios:

1. Zero to one bedroom: one on-site parking space.
2. Two to three bedrooms: two on-site parking spaces.
3. Four and more bedrooms: two and one-half parking spaces.

B. If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number.

C. For purposes of this section, a development may provide "on-site parking" through tandem parking or uncovered parking, but not through on-street parking.

D. This section shall only apply at the specific written request of the applicant to a development that meets the requirements and the criteria of Section 18.42.030. An applicant may request parking incentives or concessions beyond those provided in this section pursuant to Section 18.42.050. (Ord. C-15-10 §1(Exh. A(part)), 2010).

**18.42.070 Density bonus and incentives for child care facilities.**

For the purposes of this chapter, "child care facility" is defined as a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and school-age child care centers.

A. Allowable Density Bonus and Incentives. When an applicant proposes to construct a development that conforms to the requirements of Section 18.42.030 and includes a child care facility located on the premises, or as part of, or adjacent to, the development, the city shall grant either of the following:

1. An additional density bonus of five percent; provided, that the total density bonus for the project does not exceed thirty-five percent. The density bonus is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility and shall not exceed a maximum of five square feet of floor area of new structures for each one square foot of floor area contained in the child care facility; or
2. An additional incentive or concession designated by the city that contributes significantly to the economic feasibility of the construction of the child care facility.

B. Conditions of Approval. The city shall require as conditions of approving the development that:

1. The child care facility shall remain in operation as long as or longer than the time period during which the affordable housing units are required to remain affordable

pursuant to the affordable housing agreement; and

2. Of the children who attend the child care facility, the children of very low income households, low income households, and moderate income households shall equal a percentage that is equal to or greater than the percentage of dwelling units that are made affordable to very low income households, low income households, and moderate income households pursuant to Sections 18.42.030 and 18.42.040.

C. Notwithstanding any requirement of this chapter, the city need not provide a density bonus, incentive, or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities. (Ord. C-15-10 §1(Exh. A(part)), 2010).

#### **18.42.080 Approvals.**

A. The granting of a density bonus, incentive, and/or concession shall not be interpreted, in and of itself, to require a general plan amendment, zoning change, local coastal plan amendment, or other discretionary approval.

B. The density bonus, incentive, and concessions requested shall be granted unless the city denies specific incentives and/or concessions based on the findings set forth at Section 18.42.050. The entity with approval authority for the coastal development permit, subdivision map, parcel map, site plan approval, or other primary entitlement requested by the applicant shall consider the requested incentives and concessions based on the findings set forth at Section 18.42.050.

C. The density bonus or incentive shall be granted unless the approving authority finds that it cannot be accommodated in a manner consistent with the local coastal program land use plan or the Chapter 3 policies of the Coastal Act. (Ord. C-2014-10 §8(E), 2014; Ord. C-15-10 §1(Exh. A(part)), 2010).

#### **18.42.090 Design, distribution and timing of development of affordable housing units.**

A. Affordable housing units must be constructed concurrently with market-rate units. Affordable housing units shall be integrated into the project and be comparable in infrastructure (including sewer, water and other utilities), construction quality, and exterior design to the market-rate units. The affordable housing units must also comply with the following criteria:

1. Rental Developments. Rental units shall be integrated within and reasonably dispersed throughout the project. All affordable housing units shall reflect the range and numbers of bedrooms provided in the project as a whole, and shall not be distinguished by design, construction or materials.

2. Owner-Occupied Developments. Owner-occupied units shall be integrated within the project. Affordable housing units may be smaller in size and have different interior finishes and features than market-rate units so long as the interior features are durable, of good quality and consistent with contemporary standards for new housing as

determined by the community development director. All affordable housing units shall reflect the range and numbers of bedrooms provided in the project as a whole, except that affordable housing units need not provide more than four bedrooms.

B. No building permits will be issued for market-rate units until permits for all affordable housing units have been obtained, unless affordable housing units are to be constructed in phases pursuant to a plan approved by the city.

C. Market-rate units will not be inspected for occupancy until all affordable housing units have been constructed, unless affordable housing units are to be constructed in phases pursuant to a plan approved by the city. (Ord. C-2015-04 §1(part), 2015; Ord. C-15-10 §1(Exh. A(part)), 2010).

**18.42.100 Density bonus request.**

In order to receive a density bonus, concessions, and/or incentives pursuant to this chapter, an applicant must submit to the city a density bonus request which will be treated as part of the development application. At any time during the review process, the community development director may require from the applicant additional information reasonably necessary to clarify and supplement the application or to determine the development's consistency with the requirements of this chapter. The density bonus request shall include the following:

A. A description of the project, including the total number of proposed market rate units, affordable housing units, and/or senior housing units;

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

C. A vicinity map and preliminary site plan, drawn to scale, including building footprints, driveways and parking layout;

D. A description of the concessions or incentives requested;

E. If an additional incentive(s) is requested, the application shall describe why the additional incentive(s) is necessary to provide the affordable housing units;

F. The draft affordable housing unit plan meeting the requirements described in Section 18.42.110; and

G. Any other information reasonably requested by the city to aid in the implementation of this chapter. (Ord. C-2015-04 §1(part), 2015; Ord. C-15-10 §1(Exh. A(part)), 2010).

**18.42.110 Affordable housing unit plan.**

An applicant shall submit an affordable housing unit plan as part of the density bonus request.

The affordable housing unit plan shall include the following:

- A. The location, structure (attached, semi-attached, or detached), proposed tenure (sale or rental), and size of proposed market rate and affordable housing units and the proposed tenure and size of nonresidential uses included in the development;
- B. A floor or site plan depicting the location of the affordable housing units and a floor plan describing the size of the affordable housing units in square feet;
- C. The income level to which each affordable housing unit will be made affordable;
- D. Draft of the documents to be used to assure that the units remain affordable for the desired term, such as resale and rental restrictions, deed of trust, and rights of first refusal and other documents;
- E. For phased developments, a phasing plan that provides for the timely development of affordable housing units in proportion to other housing units in each proposed phase of development as required by this article;
- F. A marketing plan that describes how the applicant will inform the public and those within the appropriate income groups of the availability of affordable housing units;
- G. A financial report (pro forma) to evaluate: (1) whether the concessions or incentives sought would result in identifiable, financially sufficient, and actual cost reductions and (2) whether the concessions or incentives sought would reduce the cost of the project; and
- H. Any other information reasonably requested by the community development director to assist with evaluation of the affordable housing unit plan. (Ord. C-2015-04 §1(part), 2015; Ord. C-15-10 §1(Exh. A(part)), 2010).

**18.42.120 Affordable housing agreement.**

Applicants, including the property owner, receiving a density bonus, incentives, and/or concessions pursuant to this chapter shall enter into an affordable housing agreement with the city.

- A. **Condition of Approval.** An affordable housing agreement shall be a condition of approval for all residential developments subject to this chapter and shall be recorded as a restriction on any residential development on which the affordable and/or senior housing units will be constructed.
- B. **Timing.** The affordable housing agreement shall be recorded prior to or concurrently with final parcel map or final subdivision map approval, or, where the residential development does not include a map, prior to issuance of a building permit for any structure in the residential development. The affordable housing agreement shall run with the land and bind all future owners and successors in interest.
- C. **Duration.** The affordable housing agreement shall be binding on all future owners and successors in interest for the applicable affordability period, which shall begin at the initial occupancy, of each affordable housing unit. Senior projects shall be restricted to occupancy

by senior citizens in perpetuity.

D. Contents. The affordable housing agreement shall address the occupancy, affordability, resale, and other restrictions identified at Government Code Section 65915(c) and shall include the following, at a minimum without limitation:

1. The total number of units approved for the residential development and the number, location, and level of affordability of the affordable and senior units.
2. Standards for determining affordable rent or affordable ownership cost for the affordable units.
3. The location, unit size in square feet, and number of bedrooms of the affordable and senior units.
4. Provisions to ensure initial and continuing affordability, including the execution and recordation of subsequent agreements.
5. A schedule for completion and occupancy of affordable and senior units in relation to construction of market rate units.
6. A description of remedies for breach of the agreement by either party. The city may identify tenants or qualified purchasers as third party beneficiaries under the agreement.
7. Procedures for qualifying tenants and prospective purchasers of affordable and senior units.
8. Provisions requiring maintenance of records to demonstrate compliance with this chapter.
9. Provisions requiring fair housing practices, as defined by the California Fair Employment and Housing Act (Government Code Section 12900 et seq.) in the marketing, rental, or sale of any affordable housing unit.
10. Other provisions to ensure implementation and compliance with this chapter. (Ord. C-15-10 §1(Exh. A(part)), 2010).

**18.42.140 Child care facility agreement.**

In addition to addressing the requirements of Section 18.42.070, a child care facility agreement for a project shall provide the following conditions governing the use and operation of the child care facility during the use restriction period:

A. If the developer uses space allocated for child care facility purposes, in accordance with this chapter, for purposes other than for a child care facility, an assessment based on the square footage of the project shall be levied and collected by the city. The assessment shall be consistent with the market value of the space. If the developer fails to have the space allocated for the child care facility within three years from the date upon which the first temporary certificate of occupancy is granted, an assessment based on the square footage

of the project shall be levied and collected by the city. The assessment shall be consistent with the market value of the space. If the assessment is levied against a consortium of developers, the assessment shall be charged to each developer in an amount equal to the developer's percentage square feet participation. Funds collected pursuant to this requirement shall be deposited by the city into a special account to be used for child care services or child care facilities.

B. Once the child care facility has been established, the facility shall not be closed, undergo change in use or be reduced in physical size unless the city makes a finding that the need for child care is no longer present, or is not present to the same degree as it was at the time the facility was established. (Ord. C-15-10 §1(Exh. A(part)), 2010).

**18.42.150 Administrative fee.**

The city shall charge an administrative fee to applicants to cover the city's cost of ongoing enforcement of this section. The amount of the administrative fee shall be established from time to time by city council resolution. Fees will be charged for, inter alia, staff time and materials associated with: review and approval of applications for the project; project marketing and lease-up materials associated with the affordable housing units; and long-term compliance with the applicable provisions of this chapter. (Ord. C-15-10 §1(Exh. A(part)), 2010).

**18.42.160 Compliance.**

A. The provisions of this chapter shall apply to all agents, successors and assignees of an applicant receiving a density bonus, incentive, and/or concession pursuant to this chapter. No tentative map, use permit, special development permit or occupancy permit shall be issued for any project that has been granted a density bonus under this section unless that map or permit is exempt from or in compliance with the requirements of this chapter.

1. In addition to any other powers or duties prescribed by law, the community development director shall have the following powers and duties in relation to this chapter:

- a. To monitor compliance with the provisions of this part and to refer to the city attorney for appropriate action any person violating the provisions of this chapter; and
- b. To administer this chapter.

B. The city attorney shall be authorized to enforce the provisions of this chapter, all agreements entered into pursuant to this chapter, and all other requirements of this chapter, by civil action and any other proceeding or method permitted by law.

C. The city may, at its discretion, take such enforcement action as is authorized under any provision of the Municipal Code and/or any other action authorized by law or by any agreement executed pursuant to this chapter.

D. The city may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including but not limited to actions to revoke, deny, or suspend any permit or project approval.

E. If the community development director determines that rents in excess of those allowed by the affordable housing agreement have been charged to a tenant residing in a rental affordable housing unit, the city may take the appropriate legal action to recover, and the rental unit owner shall be obligated to pay to the tenant (or to the city in the event the tenant cannot be located), any excess rent paid.

F. If the community development director determines that a sales price in excess of that allowed by the affordable housing agreement has been charged for an ownership affordable housing, the city may take the appropriate legal action to recover, and the seller of the affordable housing unit shall be obligated to pay to the purchaser (or to the city in the event the purchaser cannot be located), any excess sales costs.

G. Failure of any official or agency to enforce the requirements of this chapter shall not constitute a waiver or excuse any applicant or owner from the requirements of this chapter. No permit, license, map, or other approval or entitlement for a residential development shall be issued, including without limitation a final inspection or certificate of occupancy, until all applicable requirements of this chapter have been satisfied.

H. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the city from any other remedy or relief to which it otherwise would be entitled under law or equity. (Ord. C-2015-04 §1(part), 2015; Ord. C-15-10 §1(Exh. A(part)), 2010).