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**ORDINANCE #05-06**

**AN ORDINANCE OF THE ALBANY CITY COUNCIL  
AMENDING CHAPTER XX, PLANNING AND ZONING,  
OF THE ALBANY MUNICIPAL CODE  
TO ADD PROVISIONS ON HOUSING**

**WHEREAS**, Chapter XX of the Albany Municipal Code, Planning and Zoning, also known as the Zoning Ordinance, was adopted its current form in December 2004, as a result of a comprehensive process of updating; and

**WHEREAS**, the comprehensive update process included a recommendation by the Planning and Zoning Commission that the City adopt provisions for the encouragement and regulation of affordable housing; and

**WHEREAS**, in considering proposals for the updated Zoning Ordinance the City Council deferred action on provisions for affordable housing in order to allow for additional research and revisions of proposed text in order to comply with amendments to State law made by Senate Bill 1818, which became effective on January 1, 2005; and

**WHEREAS**, City staff drafted revisions to the proposed text on affordable housing in response to said amendments to State law, and prepared an Initial Study of potential environmental effects of the revised housing provisions, pursuant to the California Environmental Quality Act, and as a result a notice of intent to adopt a Mitigated Negative Declaration was circulated on April 6, 2005 for public review and comment; and

**WHEREAS**, the Planning and Zoning Commission held a duly-noticed public hearing and heard public testimony on revised proposals for housing provisions and considered all comments on the draft Mitigated Negative Declaration on April 26, 2005 and subsequently on May 10, May 31, and June 14, 2005; and

**WHEREAS**, on June 14, 2005 the Planning and Zoning Commission adopted Resolution PZ 05-02, which recommended that the City Council adopt proposed revisions to the Zoning Ordinance, and included findings in support of adoption of a Negative Declaration, attesting that the potential environmental impacts of the proposed zoning amendments had been addressed in an Initial Study in conformance with the California Environmental Quality Act; that the Community Development Director had determined that the proposed project could not have a significant effect on the environment; that the Commission had reviewed and considered the information contained in the Initial Study and had reviewed and considered all comments, testimony and other evidence introduced at the public hearing and in the record of the review of the proposed regulations; and that the proposed regulations are consistent with the Albany General Plan, specifically the Land Use Element and the Housing Element; and

1 **WHEREAS**, the Albany City Council, at a regular meeting on November 7, 2005, after  
2 due public notice, opened a public hearing on the proposed revisions to the Zoning  
3 Ordinance, as recommended by the Planning and Zoning Commission; and heard public  
4 testimony; and

5  
6 **WHEREAS**, at said meeting on November 7, 2005 the City Council adopted Resolution  
7 05-48, adopting a Negative Declaration in compliance with the California Environmental  
8 Quality Act (CEQA), regarding potential environmental effects of the proposed  
9 amendments.

10  
11 **NOW, THEREFORE, THE ALBANY CITY COUNCIL ORDAINS**

- 12  
13 1) THAT CHAPTER XX OF THE ALBANY MUNICIPAL CODE IS HEREBY  
14 AMENDED TO INCLUDE SECTION 20.40, HOUSING PROVISIONS; AND  
15  
16 2) THAT CHAPTER XX OF THE ALBANY MUNICIPAL CODE IS HEREBY  
17 AMENDED TO ADD TO SECTION 20.08, DEFINITIONS, CERTAIN  
18 DEFINITIONS RELATING TO HOUSING;  
19  
20 3) THAT THE TEXT OF SECTION 20.40 AND THE ADDITIONS TO  
21 SECTION 20.08 SHALL READ AS FOLLOWS:  
22

23 **SECTION 20.40 HOUSING PROVISIONS**

24  
25 **20.40.010 Purpose and Intent.**

26  
27 The purpose of this section is to advance the goals of the Housing Element of the Albany  
28 General Plan, specifically, to provide a variety of housing to meet the needs of all  
29 economic segments of the community, and to expand housing opportunities of those with  
30 special needs, including elderly, disabled and homeless persons. This section provides  
31 for the implementation of Housing Element policies and programs intended to: promote  
32 new housing that is affordable to very-low-income and low-income households and  
33 senior citizens; encourage innovative housing concepts; permit emergency and  
34 transitional housing; and assure accessibility to housing by disabled persons. This section  
35 establishes implementing procedures for the provision of density bonuses and other  
36 incentives, pursuant to California Government Code Sections 65915 through 65918.  
37

38 **20.40.020 Definitions.**

39  
40 Specialized terms used in this section are defined in Section 20.08, Definitions. Those  
41 terms include Affordable Dwelling Unit, for Rent; Affordable Dwelling Unit, for Sale;  
42 Affordable Housing Agreement; Bonus, Density; Density Bonus Units; Development  
43 Standard; Common Interest Development; Emergency and Transitional Housing;  
44 Household, Low-income; Household, Lower-income; Household, Moderate-income;  
45 Household, Very Low-income; Inclusionary Housing, and Senior Citizen Housing  
46 Development.

1  
2 **20.40.030**      **Inclusionary Housing.**  
3

4 The city encourages the production of new dwelling units that will be committed to very  
5 low and low-income households. To that end, all new residential development of five (5)  
6 or more units is required to include dwelling units that will be available and affordable to  
7 very-low- and low-income households, unless the City accepts other means of meeting  
8 the intent of this subsection.  
9

10 **A. Applicability, General.** For all residential development projects of five (5) or more  
11 units in the city, including conversions of five or more existing rental units to  
12 ownership units, a proportion of the units shall be made affordable to very-low- and  
13 low-income households. Such units shall be termed “Inclusionary Housing Units”,  
14 and shall be reserved for rent or purchase by eligible very-low-income and low-  
15 income households. The Inclusionary Housing Unit requirement shall be determined  
16 based on the total unit count of a housing development project, as follows:  
17

- 18 1. Five (5) or six (6) total units: A payment to the “Inclusionary Housing In-lieu  
19 Fees Fund”, as provided in paragraph F.4.a of this subsection. Payment shall be  
20 calculated based on the fraction of a unit that results from multiplying the total unit  
21 count by fifteen (15%) percent. If the project sponsor elects to provide one  
22 inclusionary housing unit to meet the requirement, the in-lieu fee shall not be  
23 applicable.  
24
- 25 2. Seven (7) through thirteen (13) total units: At least one (1) Inclusionary Housing  
26 Unit.  
27
- 28 3. Fourteen (14) or more total units: The number of Inclusionary Housing Units shall  
29 equal at least the result of fifteen (15) percent of the total number of units in the  
30 development project.  
31

32 In calculating the numbers of Inclusionary Housing Units to be designated for any  
33 applicable housing development project, any fraction of a housing unit of 0.50 or  
34 greater shall be construed as a whole unit. In the case of any fraction of a unit of less  
35 than 0.50, the applicant shall be subject to payment of a fee in-lieu of construction of  
36 the fractional unit. Such fee shall be calculated as provide in paragraph F.4.a of this  
37 section, prorated by the applicable fraction.  
38

39 Housing development projects that incorporate Inclusionary Housing Units shall be  
40 required to meet the development criteria listed in Subsection 20.40.050 below.  
41

42 **B. Applicability, Density Bonus Development.** In the case of a housing development  
43 project for which a density bonus is sought pursuant to California Government Code  
44 Section 65915 and Subsection 20.40.040 of this Chapter, the requirement of  
45 paragraph A. above shall apply to the base number of units proposed, exclusive of the  
46 units that would be added by the density bonus. Units designated for very-low-  
47 income and low-income households may be counted toward satisfaction of the

1 requirement for inclusionary housing, to the extent that such units meet all  
2 requirements of this subsection, including the requirement of paragraph D.1.f. below,  
3 which states that units shall remain permanently restricted and affordable to the  
4 designated group.

5  
6 **C. Allocation by Income group.**  
7

8 1. In housing development projects of ten (10) units or more, the number of  
9 Inclusionary Housing Units shall be divided evenly between very-low-income  
10 households and low-income households. Where the number of Inclusionary  
11 Housing Units is an odd number, the majority of the units may be provided at the  
12 low-income level with the remainder of units to be allocated to the very-low-  
13 income level.

14  
15 2. In housing development projects of seven (7) through nine (9) units, all  
16 Inclusionary Housing Units may be provided at the low-income level.  
17

18 **D. Affordable Housing Agreement - Inclusionary:** Project Sponsors who produce  
19 inclusionary housing units that meet the requirements of this subsection shall enter  
20 into an Affordable Housing Agreement with the City, for the purpose of assuring  
21 continuing affordability of such units. Such Agreement shall be subject to approval  
22 by the City Attorney and the City Council, upon recommendation of the Planning and  
23 Zoning Commission. Where project approval includes a subdivision of land,  
24 execution of an Affordable Housing Agreement shall be made a condition of approval  
25 of a Tentative Map.  
26

27 **1. Contents:** An Affordable Housing Agreement shall include at least the following:  
28

29 a. The total number of units approved for the housing development project.  
30

31 b. A description of any incentive, concession, waiver or reduction that the City  
32 agrees to provide.  
33

34 c. The number of affordable dwelling units included in the development project.  
35

36 d. A description of the household income group(s) to be accommodated by the  
37 housing development project and the standards for determining affordable rent  
38 or affordable sales price and housing cost, including reference to any periodic  
39 or other adjustments that are incorporated in the standards. (Refer to income  
40 definitions under “Household” in Section 20.08, Definitions.)  
41

42 e. Specific identification of each affordable dwelling unit, including specific  
43 location within the development, unit sizes in square feet, and the number of  
44 bedrooms.  
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- f. A statement that affordable dwelling units shall remain permanently restricted and affordable to the designated group.
- g. A time schedule for completion and occupancy of affordable dwelling units.
- h. Identification of the parties to the Agreement. The City may identify tenants or qualified purchasers as third party beneficiaries under the Agreement.
- i. description of remedies for breach of the Agreement.
- j. In the case of for-sale housing developments, the Agreement shall provide that:
  - 1) Affordable dwelling units initially shall be sold to and occupied by eligible very-low-income or low-income households at an affordable sales price and housing cost.
  - 2) The initial purchaser of each affordable dwelling unit shall execute an instrument or agreement approved by the City restricting the sale of such unit in accordance with this chapter during the applicable use restriction period. Such instrument or agreement shall be recorded against the parcel containing the affordable dwelling unit and shall contain such provisions as the City may require to ensure continued compliance with this chapter and any applicable State law.
- k. In the case of rental housing development projects, the Agreement shall provide that:
  - 1) Affordable dwelling units shall be occupied by eligible very-low- or low-income households at affordable rents. The Agreement shall specify rules and procedures for qualifying tenants, establishing Affordable rent, filling vacancies and maintaining such units for qualified tenants on a continuing basis.
  - 2) Provisions requiring owners to verify tenant incomes and maintain books and records to demonstrate compliance with this chapter.
  - 3) Provisions requiring owners to submit an annual report to the City which includes the name, address, and income of each person occupying affordable dwelling units, and which identifies the size, number of bedrooms and monthly rent of each such unit.
- l. All conditions attached to planning and zoning approval of the development project.
  - m. Other provisions to assure implementation and compliance with this chapter.

1  
2 **2. Recordation:** The executed Agreement, or memorandum thereof, shall be recorded  
3 following approval and execution of the Agreement by all parties, and prior to  
4 final map approval, or, where a map is not being processed, prior to issuance of  
5 building permits for parcels or units that are subject to the Agreement. The  
6 conditions therein shall be filed and recorded on the parcel or parcels designated  
7 for construction of affordable dwelling units. The Agreement shall be binding to  
8 all future owners and successors in interest.  
9

10 **E. Incentives.** In the interest of promoting the creation of housing units that are  
11 affordable to lower-income households, the City may grant certain incentives for  
12 projects that exceed the minimum required number of Inclusionary Housing Units,  
13 where it is demonstrated that the granting of such incentives is necessary to assure the  
14 economic feasibility of a project. Incentives shall not be applicable to Secondary  
15 Residential Units or single-family dwellings in R-1 Single-family Residential  
16 districts. This paragraph shall not apply to projects for which a density bonus is  
17 proposed pursuant to Government Code Section 65915 and Subsection 20.40.040 of  
18 this Chapter, which provide separate regulations on incentives. In order to encourage  
19 the on-site inclusion of affordable units in housing development projects proposed  
20 under this subsection, the City, at its discretion, may grant incentives including but  
21 not limited to the types listed below. In granting any such incentive the City shall  
22 make *findings* that:  
23

24 a) *Exceptional circumstances have been demonstrated that require City*  
25 *assistance, and*

26  
27 b) *Acceptable documentation has been provided as to how such incentives*  
28 *will increase the feasibility of inclusion of affordable units in the*  
29 *development project, and*

30  
31 c) *The project exceeds the minimum requirement for provision of*  
32 *Inclusionary Housing Units.*  
33

34 1. Modification of development regulations: The City recognizes that modification to  
35 the following requirements (not listed in any order of priority) could result in  
36 financially sufficient, and actual, cost reductions that would facilitate additional  
37 Inclusionary Housing Units. Such modifications may be made without a variance,  
38 subject to the making of findings a) through c) in this paragraph E.:  
39

40 a. Setback from a street or non-residential property line.

41  
42 b. Off-street parking requirement for commercial space in a mixed-use  
43 development.

44  
45 c. Maximum lot coverage.  
46

- 1           d. Setback from a residential property line, except where a daylight plane is
- 2           required.
- 3
- 4       2. Examples of Other Potential Incentives that the city may consider on a case-by-
- 5       case basis, subject to making findings a) through c) in this paragraph E.:
- 6
- 7           a. Reduction of any architectural design standards or guidelines that exceed
- 8           minimum building standards established by local or state building standard
- 9           codes.
- 10
- 11          b. Assistance in design and/or construction of project-related public
- 12          improvements, such as fronting curbs, sidewalks and tree planting.
- 13
- 14          c. Deferral, reduction or waiver of City fees, to be determined on a project-by-
- 15          project basis, with the requirement that the project comply with legal
- 16          requirements regarding prevailing wage.
- 17
- 18          d. Alternatives to on-site provision of Inclusionary Housing Units, as described
- 19          in Paragraph F., below.
- 20

21 **F. Alternatives to On-site Provision of Inclusionary Housing Units.** Upon *finding* by  
 22 the City Council that production of inclusionary housing units on a project site is not  
 23 feasible due to the size of the project, the physical conditions of the site, or a  
 24 demonstrated inability of the sponsor to secure financing of the Inclusionary Housing  
 25 Units, the City may approve one or a combination of the alternative means of meeting  
 26 the inclusionary housing unit requirement as stated in the following paragraphs 1  
 27 through 5. (See Subsection 20.40.040 for specific provisions pertaining to density  
 28 bonus projects.)

- 29
- 30   1. **Off-site Location.** Circumstances may arise in which the public interest would be
- 31   served by allowing some or all of the Inclusionary Housing Units associated with
- 32   a housing development to be produced and operated at a separate, detached
- 33   development site. Such a site shall be considered as part of a single housing
- 34   development for purposes of this chapter, and the project sponsor shall be subject
- 35   to the same requirements as if the Inclusionary Housing Units were provided on
- 36   the principle development site. This paragraph shall apply only where the
- 37   principal and detached sites are located within zoning districts in which multi-
- 38   family housing is a permitted or conditionally permitted use.
- 39
- 40   2. **Land Dedication.** Upon approval of the City Council, an applicant may dedicate
- 41   land to the City or to a non-profit housing developer in lieu of actual construction
- 42   of required Inclusionary Housing Units, for the purpose of development of an
- 43   equivalent number of affordable units.
- 44
- 45   3. **Conversion.** Conversion of existing market-rate housing to affordable units. Such
- 46   units may be located off of the site of the project seeking approval. Where this

1 alternative is employed, the value of the conversion project shall be equal to the  
2 cost of construction of the number of Inclusionary Housing Units that are not  
3 constructed as part of the housing development that generates the inclusionary  
4 requirement.

5  
6 **4. In-lieu Payment.**

7  
8 a. An in-lieu fee shall be equal to the difference between the fair market value of  
9 an inclusionary unit and the ability of a household in the target income group  
10 to afford the rental or purchase price, as determined by the City at the time of  
11 issuance of a building permit for the housing development project. Procedures  
12 for the assessment, collection and adjustment of in-lieu fees shall be  
13 established by resolution of the City Council.

14  
15 b. The City may allow payment of a fee by the sponsor of a housing development  
16 project, in-lieu of providing some or all of the required fifteen (15%) percent  
17 affordable Inclusionary Housing Units, upon finding by the City Council that  
18 production of the units on the particular site is not feasible due to the size of  
19 the project, or the physical conditions of the site, or a demonstrated inability  
20 of the sponsor to secure financing, from private or public sources, of the  
21 Inclusionary Housing Units.

22  
23 c. If a housing development project is approved for payment of an in-lieu fee, the  
24 fee must be paid for each dwelling unit approved for such payment, at the  
25 time of issuance of a building permit for the housing development.

26  
27 d. Fees collected by the City in lieu of Inclusionary Housing Units shall be  
28 deposited into a fund known as the “Inclusionary Housing In-lieu Fees Fund”,  
29 the use of which shall be committed to the purpose of assisting the provision  
30 of housing for very-low- and low-income households. The use of the funds  
31 may include, but shall not be limited to land write downs, contributions to  
32 nonprofit organizations for housing construction, mortgage assistance for  
33 very-low- and low-income households, and the operation of transitional  
34 housing.

35  
36 5. **Other.** The City Council may approve alternative methods of compliance with the  
37 inclusionary housing requirement if the applicant demonstrates that the intent of  
38 this subsection will be met by any such method. Any alternative to construction of  
39 the required number of Inclusionary Housing Units, or any combination of  
40 alternative methods of meeting the requirement, shall provide a value equal to the  
41 amount that would be calculated for an in-lieu fee according to 4.a. above.

42  
43 **20.40.040 Density Bonus.**

44  
45 The City will provide incentives for the production of housing units for eligible  
46 households in accordance with California Government Code Sections 65915 through



1 65918, as described in this subsection. For purposes of this subsection, “Housing  
2 Development” shall have the meaning stated in Government Code Section 65915 (j).  
3 Incentives will be in the form of a density bonus plus other incentives or concessions, as  
4 described below.

5  
6 As provided by Government Code Section 65915 (g) and (k), neither the density bonus  
7 nor the incentives or concessions shall be interpreted, in and of themselves, to require a  
8 general plan amendment, zoning change or other discretionary approval.

9  
10 **A. Qualification for Density Bonus.**

- 11  
12 1. To qualify for a density bonus, an applicant shall seek and agree to construct a  
13 housing development that includes a proportion of dwelling units designated for  
14 very-low-income households, low-income households, or persons and families of  
15 moderate-income, or a senior citizen housing development or mobilehome park,  
16 all as specified in Government Code Section 65915 (b).  
17  
18 2. California Civil Code Sections 51.3 and 51.12 provide, among other qualifications,  
19 that a senior citizen housing development contain at least 35 dwelling units.  
20  
21 3. Any housing development for which a density bonus and related incentives or  
22 concessions is proposed shall be planned to achieve the maximum density  
23 permitted for the zoning district in which the project would be located, exclusive  
24 of the additional density that would result from the bonus.  
25

26 **B. Determination of Designated Units.** The numbers of units to be designated for  
27 eligible households shall be determined as specified in Government Code Section  
28 65915 (b).  
29

30 **C. Calculation of Density Bonus.**

- 31  
32 1. The density bonus shall be a density increase of at least twenty (20%) percent,  
33 unless a lesser percentage is elected by the applicant, and no more than thirty-five  
34 (35%) percent over the maximum residential density, expressed in units per acre  
35 of site area, assigned to a site by the Zoning Ordinance as of the date of  
36 application for approval of the housing development project. The amount of  
37 density bonus to which the applicant is entitled shall be calculated according to  
38 Government Code Section 65915 (g)(1) through (3). See Table H-1 below.  
39  
40 2. For common interest development projects for moderate-income households,  
41 where all units in the development are offered to the public for purchase, the  
42 density bonus shall be a density increase of at least five (5%) percent, unless a  
43 lesser percentage is elected by the applicant, and no more than thirty-five (35%)  
44 percent over the maximum residential density, expressed in units per acre of site  
45 area, assigned to a site by the Zoning Ordinance as of the date of application for  
46 approval of the housing development project. The amount of density bonus to

1 which the applicant is entitled shall be calculated according to Government Code  
2 Section 65915 (g)(4). See Table H-1 below.  
3

- 4 3. When an applicant for a residential development approval, including a tentative  
5 subdivision map or a parcel map, agrees to donate land to the city under terms  
6 specified in Government Code Section 65915 (h)(1) and (2), the density bonus  
7 shall be a density increase of at least fifteen (15%) percent, unless a lesser  
8 percentage is elected by the applicant, and no more than thirty-five (35%) percent  
9 over the maximum residential density, expressed in units per acre of site area,  
10 assigned to a site the Zoning Ordinance as of the date of application for approval  
11 of the housing development project. A density bonus for land may be in addition  
12 to a density bonus calculated in paragraphs 1. or 2. above, but in no case shall the  
13 combined density increase exceed thirty-five (35%) percent. See Table H-1  
14 below.  
15
- 16 4. When an applicant proposes to construct a housing development project that  
17 qualifies for a density bonus under paragraph A of this subsection, and includes a  
18 child care facility that will be located on the premises of, as part of, or adjacent to  
19 the development project, the City will grant either an additional density bonus or  
20 an additional concession or incentive, subject to the terms and to conditions stated  
21 in Government Code Section 65915 (i). See Table H-1 below.  
22
- 23 5. The applicant for a density bonus shall elect whether the bonus shall be awarded  
24 on the basis of which of subparagraph (A), (B), (C), or (D) of Government Code  
25 Section 95915 (b)(1).  
26

27 Any density bonus shall be granted only for dedication of the minimum required  
28 proportion of units for the particular class of bonus, e.g., five (5%) percent of  
29 units for very-low-income, ten (10%) percent of units for lower-income.  
30 Fractional proportions of units shall not qualify for a density bonus.  
31  
32  
33

**Table H-1 Calculation of Density Bonus.**

Housing Target Group or Development	% of units dedicated to target group	Density Bonus (basic)	Increase in Density Bonus	
			Additional Dedicated units	Additional bonus
Lower-income (up to 80% median income)	10% of pre-bonus total	20% above maximum allowed units per acre	Each 1% increase	1.5%, up to 35% maximum bonus
Very-low-income (up to 50% median income)	5% of pre-bonus total	20% above maximum allowed units per acre	Each 1% increase	2.5%, up to 35% maximum bonus
Senior Citizen Housing Development	All units in a development having at least 35 units	20% above maximum allowed units per acre	Not applicable	
Moderate-income (80% to 120% median income)	10% of pre-bonus total (condominium or planned unit development)	5% above maximum allowed units per acre	Each 1% increase	1.0%, up to 35% maximum bonus
Land donation for units for very low income	Land area of at least one acre or sufficient to permit development of at least 40 units, and sufficient to support 10% of pre-bonus unit total	15% above maximum allowed units per acre	Each 1% Increase in area of land donation	1.0%, up to 35% maximum bonus including any other bonus
Child care facility	Based on area of facility	One square foot additional floor area for each one square foot of child care	Not applicable	
All density calculations resulting in fractional units shall be rounded up to the next whole number.				

**D. Incentives or Concessions.** In addition to granting a density bonus to an applicant who qualifies under the terms of paragraph A. above, the City will also provide as many as three incentives or concessions, as defined by Government Code Section 65915 (l).

**1. Types of Incentives or Concessions:**

a. Concessions that result in identifiable, financially sufficient, and actual cost reductions:

- 1) Reduction in site development standards, i.e., site or construction conditions that apply to a residential development pursuant to any ordinance, general plan element, specific plan, charter amendment or other City condition, law, policy, resolution or regulation.

- 1                   2) Modification of zoning code requirements set forth in Section 20.24,  
2                   Development Standards. The City hereby establishes two classes of  
3                   potential modifications:  
4
- 5                   i. The City recognizes that modification to the following requirements  
6                   (not listed in any order of priority) could result in financially  
7                   sufficient, and actual cost reductions:  
8
- 9                   a) Setback from a street or non-residential property line.  
10                  b) Off-street parking requirement for commercial space in a mixed-use  
11                  development.  
12                  c) Maximum lot coverage.  
13                  d) Setback from a residential property line, except where a daylight  
14                  plane is required.  
15
- 16                  ii. Where an applicant desires to seek modifications of the following  
17                  requirements as concessions, the applicant shall be responsible for  
18                  presenting detailed financial information to demonstrate that such  
19                  concession would result in necessary, identifiable, financially  
20                  sufficient, and actual cost reductions that could not be achieved  
21                  without the concession:  
22
- 23                  a) Floor-area ratio for commercial space in a mixed-use development.  
24                  b) Floor-area ratio for residential space.  
25                  c) Combined floor area ratio of a mixed-use development.  
26                  d) Height limit within a commercial district, except within 15 feet of a  
27                  street right-of-way line.  
28                  e) Height limit within a commercial district, abutting a street right-of-  
29                  way line.  
30                  f) Setback requirement or height limit where a daylight plane is  
31                  required.  
32                  g) Minimum usable open space.  
33                  h) Height limit in a residential district.  
34                  i) Reduction of off-street parking ratios below those that may be  
35                  approved pursuant to Government Code Section 65915 (p).  
36
- 37                  3) Modification of architectural design requirements that exceed the minimum  
38                  building standards approved by the California Building Standards  
39                  Commission as provided in Part 2.5 (commencing with Section 18901) of  
40                  Division 13 of the California Health and Safety Code.  
41
- 42                  b. Approval of mixed-use zoning in conjunction with the housing project if  
43                  commercial, office, industrial, or other land uses will reduce the cost of the  
44                  housing development and if the commercial, office, industrial or other land  
45                  uses are compatible with the housing project and with the existing or planned  
46                  development in the area where the proposed housing project will be located.

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- c. Other regulatory incentives or concessions proposed by the applicant or the City that result in identifiable, financially sufficient and actual cost reductions.
- d. At the city’s sole discretion, direct financial incentives including the provision of publicly owned land, or the waiver of fees or dedication requirements. Any such incentives would require that the project comply with legal requirements regarding prevailing wage.

2. **Number of incentives or concessions to be provided:** The number of incentives or concessions will depend upon the proportion of units proposed to be dedicated and how those units are allocated among qualifying groups, according to the formulas stated in Government Code Section 65915 (d)(2), and shall not exceed a total of three concessions or incentives for any development project. See Table H-2 below.

<b>Table H-2 Calculation of Incentives and Concessions</b>		
Housing Target Group	Number of Incentives or Concessions, with basic density bonus	Additional incentives or concessions with increase in % of dedication of pre-bonus units
Lower-income (up to 80% median income)	1 with dedication of 10% of units	1 additional with 20% 2 additional with 30%
Very-low-income (up to 50% median income)	1 with dedication of 5% of units	1 additional with 10% 2 additional with 15%
Senior (over age 55)	Not applicable	
Moderate-income (80% to 120% median income)	1 with dedication of 10% of units	1 additional with 20% 2 additional with 30%
Land donation for units for very low-income	Not applicable	
Child care facility	1 incentive or concession may be granted in lieu of square foot bonus, if it contributes to economic feasibility of construction of child care facility	

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3. **Findings for denial of incentives or concessions:** The City shall provide incentives or concessions as requested unless the City makes a written finding, based upon substantial evidence, of either of the following:

- a. The concession or incentive is not required in order to provide for affordable housing costs, as defined in California Health and Safety Code Section 50052.5, or the rents for the targeted units to be set as specified Government Code Section 65915 (c).
- b. The concession or incentive would have a specific adverse impact, as defined in Government Code Section 65589.5 (d)(2) upon public health and safety or

1 the physical environment or on any real property that is listed in the California  
2 Register of Historical Resources and for which there is no feasible method to  
3 satisfactorily mitigate or avoid the specific adverse impact without rendering  
4 the development unaffordable to low- and moderate-income households.  
5

- 6 4. **Project-specific Action.** City approval of any incentive or concession in  
7 conjunction with a density bonus shall be applicable only to the project or  
8 development for which an application is submitted, and shall not have the effect  
9 of amending the General Plan, the zoning ordinance, any development standard or  
10 other regulation or policy, as such may apply generally in the City or to other  
11 developments that exist or may exist in the future.  
12

13 **E. Other Waivers or Reductions.**  
14

- 15 1. An applicant may submit to the City a proposal for waiver or reduction of any  
16 development standard that will have the effect of precluding the construction of a  
17 housing development project that qualifies, under paragraph A of this subsection,  
18 for a density bonus and concessions(s) or incentives(s). A development standard  
19 shall be defined as in paragraph D.1.a.1) above  
20
- 21 2. The applicant shall submit evidence, including relevant financial data, to  
22 demonstrate that the waiver or reduction is necessary to make the development of  
23 affordable housing units economically feasible.  
24
- 25 3. The City may approve such waiver or reduction, without requirement of a  
26 variance, upon the finding that, without such waiver or reduction, the  
27 development standard will have the effect of precluding the construction of the  
28 affordable housing units that would qualify the development project for a density  
29 bonus.  
30
- 31 4. The City is not required to approve such a proposal if the City finds that the  
32 waiver or reduction would have a specific, adverse impact, as defined in  
33 Government Code Section 65589.5 (d) (2), upon health, safety, or the physical  
34 environment or on any real property that is listed in the California Register of  
35 Historical Resources and for which there is no feasible method to satisfactorily  
36 mitigate or avoid the specific adverse impact.  
37

38 **F. Off-street Parking.**  
39

- 40 1. Notwithstanding the provisions of Section 20.28 of this Chapter, the City will  
41 permit, if specifically requested by an applicant for approval of a housing  
42 development project that qualifies for a density bonus under paragraph A of this  
43 subsection, an off-street parking ratio, inclusive of handicapped and guest  
44 parking, to be limited, without requirement of a variance, to the ratios mandated  
45 by Government Code Section 65915(p), as follows:  
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- a. Zero to one bedroom: one (1) onsite parking space
  - b. Two to three bedrooms: two (2) onsite parking spaces
  - c. Four and more bedrooms: two and one-half (2-1/2) onsite parking spaces
2. Off-street parking spaces provided pursuant to this paragraph may be arranged in tandem and may be uncovered.

**G. Affordable Housing Agreement - Density Bonus:** Applicants for density bonuses shall enter into an Affordable Housing Agreement with the City, for the purpose of assuring continuing compliance with applicable provisions of Government Code Section 65915 and all applicable regulations and conditions of the City. Such Agreement shall be subject to approval by the City Council, upon recommendation of the Planning and Zoning Commission. Where project approval includes a subdivision of land, execution of an Affordable Housing Agreement shall be made a condition of approval of a Tentative Map. The contents of the Agreement shall be as specified in Subsection 20.40.030.D.1 above, except that the requirements of paragraphs f., j., and k. thereof shall be replaced by the requirements of paragraphs 1. and 2. below:

- 1. An applicant who seeks a density bonus for rental units targeted for lower-income and very low-income households shall agree to continued affordability under the terms specified in Government Code Section 65915(c)(1).
- 2. An applicant who seeks a density bonus for moderate-income units in a common interest development project shall agree that:
  - a) The initial occupants of the moderate-income units that are directly related to the receipt of the density bonus are persons and families of moderate-income, as defined in Section 50093 of the Health and Safety Code, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code.
  - b) An equity-sharing agreement, to be enforced by the City, shall apply to resale of the units, which shall be subject to the terms specified in Government Code Section 65915(c)(2)(A) through (C).

**H. Application Procedures for Density Bonus.**

**1. General.**

- a. The granting of a density bonus is exempted, by Government Code Section 65915, from discretionary approvals. However, elements of housing development proposals may be subject to discretionary approvals or other procedures set forth in Section 20.100.

1 b. All incentives or concessions that may be proposed pursuant to the  
2 requirements of Government Code Section 65915 shall be subject to final  
3 action by the City Council.  
4

5 **2. Pre-application Review.** Prior to filing an application for a density bonus and  
6 concessions pursuant to Government Code Section 65915 and this subsection, an  
7 applicant shall participate with City staff in a preliminary review of project plans  
8 and the justifications for any concessions requested. The Community  
9 Development Director may determine that such review be held with the Planning  
10 and Zoning Commission, in a publicly noticed meeting.  
11

12 **3. Application Requirements.** An applicant for a density bonus pursuant to  
13 Government Code Section 65915 and this subsection shall submit an application  
14 for any discretionary approval required by this Chapter for the proposed  
15 development project. If no discretionary action is required, the applicant shall  
16 submit a Zoning Clearance application for City review of the proposed density  
17 bonus. All applications for development projects that propose a density bonus  
18 shall include the following items, in addition to other materials that may be  
19 required by the City:  
20

- 21 a. The desired density increase;
- 22
- 23 b. Additional incentive(s) or concession(s) requested;
- 24
- 25 c. Any waivers or reductions in development standards that are requested in  
26 addition to proposed incentives or concessions;
- 27
- 28 d. The number, type, location, size and construction scheduling of all units;
- 29
- 30 e. A project financial report to allow the City to evaluate the financial need for  
31 the specific incentive(s) or concession(s) requested, and to demonstrate that  
32 any requested waiver or reduction of zoning, development or building  
33 standards is necessary to make the development of affordable housing units  
34 economically feasible.  
35
- 36 f. Any other relevant information that the Community Development Director may  
37 determine to be necessary in the evaluation of the proposal.  
38

39 **4. Review of Application.** An application for a development project that includes a  
40 density bonus and incentives shall be reviewed and acted upon according to  
41 procedures described in Section 20.100, except that, following the rendering of a  
42 recommendation by the Planning and Zoning Commission, the City Council shall  
43 be the decision-making body on all applications involving a density bonus. The  
44 City Council shall have the final authority to deny requested incentives or  
45 concessions with the findings required by Government Code Section 65915.  
46



1 **5. Waiver or Reduction of Conditions of Project Approval:** If the applicant can  
2 demonstrate, based on verifiable financial information, that any development  
3 standard that is applied as a condition of a City action on a housing development  
4 project that qualifies for a density bonus would preclude construction of the  
5 development project by making the housing units economically infeasible, the  
6 applicant may request that the City Council waive or reduce such condition. City  
7 actions that might contain conditions include: approvals of a use permit, a  
8 tentative subdivision map or design review. The City Council shall either grant  
9 such a request or make a finding pursuant to paragraph E.4. above.

10  
11 **20.40.050 Development Criteria.**

12  
13 The following criteria shall apply to housing development projects that contain affordable  
14 dwelling units created pursuant to Subsections 20.40.030 and/or 20.40.040 above.

- 15  
16 **A.** Affordable dwelling units shall be constructed concurrently with or prior to non-  
17 restricted units, unless the City and the project sponsor agree, within the required  
18 Affordable Housing Agreement, to an alternative schedule for development.  
19  
20 **B.** Affordable dwelling units shall be dispersed throughout the project site.  
21  
22 **C.** Affordable dwelling units shall have, to the extent feasible, the same bedroom mix as  
23 the market-rate units in the same development, except that the project sponsor may  
24 include a higher number of bedrooms in the affordable dwelling units.  
25  
26 **D.** The design and appearance of affordable dwelling units shall be compatible with the  
27 design of the total housing development, and with the context of the surrounding  
28 neighborhood.  
29  
30 **E.** Other development criteria and requirements may be established as conditions of  
31 project approval, and all such conditions shall be incorporated into the Affordable  
32 Housing Agreement.  
33

34 **20.40.060 Disabled Persons Housing.**

35  
36 **A. General.** The City will require that housing developments include units that are  
37 accessible and adaptable to the needs of disabled residents, as required under  
38 applicable Federal, State and City laws and all regulations and codes that are in  
39 current effect.  
40

41 **B. Reasonable Accommodation.**

- 42  
43 1. **Purpose.** It is the policy of the City of Albany, pursuant to the Federal Fair  
44 Housing Amendments Act of 1988 and the California Fair Employment and  
45 Housing Act, to provide people with disabilities reasonable accommodation in  
46 rules, policies, practices and procedures that may be necessary to insure equal

1 access to housing. The purpose of this section is to provide a process by which  
2 individuals with disabilities may request reasonable accommodation in regard to  
3 relief from the various land use, zoning or building laws, rules, policies, practices  
4 and/or procedures of the City.  
5

6 **2. Public Notice of Availability of Accommodation Process.** The Community  
7 Development Department shall display in a prominent location a notice advising  
8 that disabled individuals may request reasonable accommodation in accordance  
9 with procedures established by this section.  
10

11 **3. Application.**

12  
13 a. A request for reasonable accommodation in laws, rules, policies, practices  
14 and/or procedures may be filed on an application form provided by the  
15 Community Development Department, at any time that the accommodation  
16 may be necessary to insure equal access to housing. Such application shall  
17 include the following information.  
18

- 19 1) Applicant's name, address and telephone number.
- 20 2) Address of the property for which the request is made.
- 21 3) The current use of the property.
- 22 4) The regulation for which accommodation is requested.
- 23 5) The basis for the claim that the applicant is considered disabled under the  
24 Fair Housing Act of 1988 as amended, and why the accommodation is  
25 necessary to make the specific housing available to the individual.  
26

27 b. If such request is related to a project that also requires another permit or  
28 approval under the zoning regulations, the applicant shall file the  
29 accommodation request together with an application for the project permit or  
30 approval.  
31

32 **4. Approval Authority.** The Community Development Director shall have authority  
33 to approve, approve with conditions, or deny requests for reasonable  
34 accommodations.  
35

36 **5. Required Findings.** Reasonable accommodation may be granted only if the  
37 Community Development Director makes all of the following *findings*:  
38

39 a. *The housing that is the subject of the request for reasonable accommodation*  
40 *will be used by an individual protected under the Fair Housing Amendments*  
41 *Act of 1988.*  
42

43 b. *The requested reasonable accommodation is necessary to make housing*  
44 *available to an individual protected under the Act.*  
45

1 c. *The requested reasonable accommodation will not impose an undue financial*  
2 *or administrative burden on the City.*

3  
4 d. *The requested reasonable accommodation will not require a fundamental*  
5 *alteration of the zoning or building laws, policies, and/or procedures of the*  
6 *City.*

7  
8 6. **Action.** The Community Development Director shall issue a written determination  
9 within thirty (30) days of receipt of an application. If the Community  
10 Development Director advises the applicant that specific additional information is  
11 required in order to reach a determination, the thirty- (30) day period shall be  
12 stayed until the applicant has provided such additional information. The written  
13 determination on the request for reasonable accommodation shall be sent to the  
14 applicant by certified mail, return receipt requested.

15  
16 7. **Design Review.** The Community Development Director shall have the discretion  
17 either to waive or to require a design review procedure according to Section  
18 20.100.050. The Community Development Director may extend the thirty- (30)  
19 day period provided above by paragraph 6 as necessary to complete the design  
20 review procedure.

21  
22 8. **Appeals.** Any action of the Community Development Director may be appealed  
23 according to procedures established by Section 20.100.080.

24  
25 **20.40.070 Emergency and Transitional Housing.**

26  
27 The purpose of this section is to provide guidelines to be used in the implementation of  
28 the Housing Element policies regarding the siting and permitting of emergency and  
29 transitional housing facilities, including facilities that meet the description of “Homeless  
30 Shelter” in Subsection 20.16.050.E.

31  
32 **A. Applicability.**

33  
34 1. **General.** An emergency or transitional housing facility may be located in the  
35 zoning district or districts where such use is listed in Section 20.12.040, Table 1,  
36 with the approval of a major use permit by the Planning and Zoning Commission  
37 under procedures stated in Subsection 20.100.030.B.2.

38  
39 **B. Physical Characteristics.** Applicants for approval of a use permit for emergency or  
40 transitional housing facilities shall demonstrate the following:

- 41  
42 1. The facility provides adequate living space, shower and toilet facilities and secure  
43 storage areas for its intended residents.  
44  
45 2. The facility conforms to standards for sleeping rooms, as stated in codes adopted  
46 by the City and in current effect.

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3. The facility is a minimum of three hundred (300') feet from any other emergency or transitional housing facility, as measured between the closest points of the property boundaries involved.
4. The facility has exclusive use of a minimum of one (1) off-street parking space plus one (1) space for each two (2) employees.

**C. Programmatic Characteristics.** Applicants for approval of emergency or transitional housing facilities shall submit detailed program information, demonstrating at a minimum that:

1. The program establishes a maximum number of days of residency per client, and accommodations are appropriate to the number of days.
2. The program identifies a transportation system that provides its clients with a reasonable level of mobility, including but not limited to, access to social services and employment opportunities.
3. The program provides an identified administrator, a liaison to the City and support agencies, and an on-site supervisor, all of who have demonstrated experience in similar programs.
4. If the program includes drug or alcohol abuse counseling, appropriate State licensing is secured.
5. The program specifies standards, rules and operational arrangements covering on-site meal preparation or other means of providing food; expulsion procedures; and curfew times.
6. If applicable, child care is provided on site or arrangements are in place for child care service elsewhere, along with assurance that children will be enrolled in school during their stay in the facility.
7. Identification of funding mechanisms sufficient to ensure compliance with required siting and programmatic criteria.

1 **20.08 DEFINITIONS**

2  
3 **Affordable Dwelling Unit, for Rent.** A unit for which the total monthly rent plus  
4 utilities does not exceed 30 percent of the monthly income for low- or very-low-income  
5 households, respectively, as defined in this Chapter. (See definitions under “Household”,  
6 below.)

7  
8 **Affordable Dwelling Unit, for Sale.** A unit for which the total monthly payment,  
9 including interest, taxes, insurance, and utilities does not exceed 30 percent of the  
10 monthly income for low- or very-low-income households, respectively, as defined in this  
11 Chapter. (See definitions under “Household”, below.)

12  
13 **Affordable Housing Agreement.** An agreement between the City and the sponsor of a  
14 housing development project that includes Affordable Dwelling Units, for the purpose of  
15 assuring continued affordability of such units for a period specified by this Chapter or for  
16 such longer period as may be stated in such agreement.

17  
18 **Bonus, Density.** An increase over the maximum residential density allowed by this  
19 Chapter for a given site, as may be permitted, pursuant to California Government Code  
20 Section 65915, for the purpose of creating Affordable Dwelling Units.

21  
22 **Common Interest Development:** Any of a community apartment project, a  
23 condominium project, a planned development, or a stock cooperative, as defined by  
24 California Civil Code Section 1351.

25  
26 **Condominium.** An undivided interest in common in a portion of real property coupled  
27 with a separate interest in space called a unit, the boundaries of which are described on a  
28 recorded final map, parcel map, or condominium plan in sufficient  
29 detail to locate all boundaries thereof.

30  
31 **Density Bonus Unit.** A dwelling unit that results from the application of a density bonus  
32 to a housing development, and thus is counted in excess of the number of dwelling units  
33 that would otherwise be permitted on a site.

34  
35 **Development Standard.** As used with respect to a density bonus in Subsection  
36 20.40.040, includes site or construction conditions that apply to a residential  
37 development pursuant to any ordinance, general plan element, specific plan, charter  
38 amendment, or other local condition, law policy, resolution, or regulation.

39  
40 **Emergency Housing.** Any facility that provides sleeping accommodations on a  
41 temporary basis, generally less than six (6) months, to persons who lack shelter due to  
42 such problems as illness, disability, lack of income, family violence or displacement  
43 resulting from a disaster. Food and other support services may be provided. See also  
44 “Transitional Housing.”

1  
2 **Household, Low-income.** A household whose gross income is greater than fifty (50%)  
3 percent but no greater than eighty (80%) percent of the median income as established for  
4 Alameda County by the U.S. Department of Housing and Community Development.

5  
6 **Household, Lower-income.** A household whose gross income is no greater than eighty  
7 (80%) percent of the median income as established for Alameda County by the U.S.  
8 Department of Housing and Community Development; includes classifications of low-  
9 income and very-low-income. For purposes of Density Bonus projects, units targeted for  
10 lower-income households shall be affordable at a rent that does not exceed thirty (30%)  
11 percent of sixty (60%) percent of the median income established for the County.

12  
13 **Household, Moderate-income.** A household whose gross income is greater than eighty  
14 (80%) percent and no greater than one hundred twenty (120%) percent of the median  
15 income as established for Alameda County by the U.S. Department of Housing and  
16 Community Development.

17  
18 **Household, Very-Low-income.** A household whose gross income is no greater than fifty  
19 (50%) percent of the median income as established for Alameda County by the U.S.  
20 Department of Housing and Community Development. For purposes of Density Bonus  
21 projects, units targeted for very-low-income households shall be affordable at a rent that  
22 does not exceed thirty (30%) percent of fifty (50%) percent of the median income  
23 established for the County.

24  
25 **Inclusionary Housing.** One (1) or more dwelling units that are included in a housing  
26 development project and made available for occupancy by Lower-income Households as  
27 a proportion of the total number of dwelling units in the project, wherein the majority of  
28 dwelling units are available without restriction as to the incomes of residents.

29  
30 **Planned Unit Development.** A development adhering to a comprehensive plan and  
31 located on a single tract of land, or on two (2) or more contiguous tracts of land which  
32 may be separated only by a street or other public right-of-way. (See Subsection  
33 20.100.060)

34  
35 **Senior Citizen Housing Development.** A housing development which has been  
36 designed to meet the physical and social needs of senior citizens and which otherwise  
37 qualifies as “housing for older persons”, as that phrase is used in California Civil Code  
38 Sections 51.3 and 51.12. and federal statutes.

39  
40 **Transitional Housing.** Any sleeping facility or dwelling unit serves as a transition from  
41 emergency housing to permanent housing, for a period generally of six (6) months to  
42 twenty-four (24) months, usually supported by social services to help prepare residents  
43 for independent living. See also “Emergency Housing”.

1 **SEVERABILITY:** If any section, subsection, sentence, clause, or phrase of this  
2 ordinance is for any reason held to be invalid, such decision shall not affect the validity  
3 of the remaining portions of the ordinance, and each section, subsection, sentence, clause,  
4 or phrase thereof, irrespective of the fact that any one or more sections, subsections,  
5 sentences, clauses or phrases be declared invalid.

6  
7 **PUBLICATION:** This ordinance shall be published in a newspaper of general  
8 circulation in the city of Albany, which said newspaper is designated for that purpose, or  
9 it shall be posted in three locations.

10  
11 **EFFECTIVE DATE:** This ordinance shall become effective 30 days on or after its final  
12 passage and adoption and publication.

13  
14 **SIGNED:**

15 \_\_\_\_\_

16  
17 ROBERT GOOD  
18 MAYOR

19  
20  
21 Date: \_\_\_\_\_