

ATTACHMENT “ C “

**DECISION AGENDA
ALBANY CITY COUNCIL**

***CITY OF ALBANY ZONING REVISION:
SECTION 20.40, HOUSING PROVISIONS
and SECTION 20.08, DEFINITIONS (HOUSING)***

#	Subsection / Description	Page Ref. (Attachment to PZ Reso 05-02)	ZCRC Recom- mendation	P&Z Commission Recom- mendation	City Attorney or Special Counsel Notes	Staff Notes	Council Action
1.	20.40.010, Purpose and Intent <i>Reflects Housing Element and provides for implementation of housing policies and State statutory requirements.</i> <i>Do you support purpose and intent?</i>	P.1	Yes	Yes, with minor updates of ZCRC text.			
2.	20.40.020, Definitions <i>Notes that specialized terms are defined in Definitions Section 20.08 (see Item 8 on page 7 of Decision Agenda)</i> <i>Do you approve of additional definitions?</i>	Pp. 2 and 20-21	Yes, except for subsequent changes to conform with State law	Yes			

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3.	20.40.030, Inclusionary Housing						
	<i>A. Applicability, General: Requires that all new residential development of five or more units allocate 15% of units for very-low- or low-income households, or payment of a fee in-lieu of units. Do you support threshold of five units and ratio of 15%?</i>	P.1	Recommended threshold of 10 units; supported in-lieu only if State required.	Lowered threshold to 5 units. Supported in-lieu for small projects and fractions of units.			
	<i>B. Applicability, Density Bonus Development: Inclusionary percentage applies to base number of units, before bonus. Qualifying units must be permanently restricted to lower income. Do you support limitations regarding density bonus?</i>	P.2	N/A: this provision is based on SB 1818	Yes		See Note 1	
	<i>C. Allocation by income group: Units are generally split equally between low- and very-low-income groups. Do you support split?</i>	P.2	Yes	Yes			
	<i>D. Affordable Housing Agreement: Requires permanent affordability, with agreement to be approved by Council and recorded. Do you support permanent affordability and other agreement requirements?</i>	P.3	Affordability term of 30 years minimum	Recommended permanent affordability			

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3.	20.40.030, Inclusionary Housing, cont.						
	<i>E. Incentives: Incentives may be granted for exceeding minimum inclusionary number. Potential incentives include modifications of regulations, fee waivers or other concessions. Do you support incentives?</i>	Pp.4-5	Same incentives as were applicable to density bonus as of 2002	At City discretion, separate from incentives applicable to density bonus under SB 1818. See Note 2			
	<i>F. Alternatives to On-site Provision: Allows Council to approve alternatives including off-site location, land dedication, conversion from market to affordable, or in-lieu payments. Do you support alternatives to on-site units?</i>	Pp.5-7	Recommended allowing for off-site location if developed as part of same project	Expanded alternatives to include land dedication, conversion of existing housing and in-lieu payments See Note 3			

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4.	20.40.040, Density Bonus						
	<i>A. and B. Qualification for Density Bonus and required numbers of units: An applicant who agrees to designate certain proportions of a development to lower-income households or seniors qualifies for an increase in the maximum allowed density. Basic requirements are set by State law. Do you affirm the State requirements?</i>	Pp. 7-8	Supported compliance with State law in effect in 2002	Recommended based on compliance with SB 1818			
	<i>C. Calculation of Bonus: Increases vary by the target income group, type of development and number of units dedicated. (See Table H-1) Do you affirm the calculation method?</i>	Pp. 8-9	Same as above	Same as above			
	<i>D. Incentives or Concessions: An applicant who qualifies for a density bonus also is entitled to one or more incentives. (See Table H-2). State law specifies the types of incentives. Regarding zoning modifications, the ordinance recognizes some modifications that result in actual cost reductions, and requires more detailed justification for others. The City is required to grant incentives as requested, unless specific findings are made. Do you accept the incentive system, specifically item 2) on pages 10-11?</i>	Pp. 10-12	Same as above	Same as above		See Note 4	

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4.	20.40.040, Density Bonus, cont.						
	<i><u>E. Other waivers or reductions:</u> An applicant may request a waiver of any development standard that would preclude construction of a density bonus project. The City may approve or make specified findings for denial. Do you support the waiver provision?</i>	P.13	N/A : this provision is based on SB 1818	Recommended based on compliance with SB 1818		See Note 5	
	<i><u>F. Off-street Parking:</u> An applicant is entitled by law to request a reduction of parking requirement to one space for a zero- or one-bedroom unit Do you affirm the State parking standard?</i>	P.13	Same as above	Same as above			

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4.	20.40.040, Density Bonus, cont.						
	<i>G. Affordable Housing Agreement – Density Bonus: Basically the same agreement as required for inclusionary program (Item 3.D. above) except that continued affordability is subject to terms set by State law. Do you accept the agreement requirements?</i>	Pp. 13-14	Affordability term of 30 years minimum (Rec. prior to SB 1818)	Similar to agreement for inclusionary, except continued affordability complies with SB 1818	See Note 6		
	<i>H. Application Procedures: Requires pre-application review and a detailed description of request. City Council is decision-maker on density bonus projects. Do you support procedures?</i>	Pp. 14-15	Recommended preliminary application (Rec. prior to SB 1818)	Yes, as supported by attorney	See Note 7		
5.	20.40.050, Development Standards <i>Standards for timing of construction, duration of restriction, location, and design of affordable units. Do you support standards?</i>	Pp. 15-16	Similar to final P&Z rec.	Yes			
6.	20.40.060, Disabled Persons Housing <i>Requires accessible and adaptable units, per all applicable codes. Also establishes a detailed procedure to assure “reasonable accommodation” of disabled persons in housing. Do you support disabled provisions?</i>	Pp. 16-18	Similar to final P&Z rec.	Yes			

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7.	20.40.070, Emergency and Transitional Housing <i>Guidelines for locating such housing in SPC district by use permit. Describes physical and programmatic characteristics.</i> Do you support emergency and transitional guidelines?	Pp. 18-19	Similar to Final P&Z rec.	Yes, added provision for temporary permit			
8.	20.08, Definitions <i>Definitions of housing-related terms, not previously included in adoption of Section 20.08.</i> Do you support housing definitions?	Pp. 20-21	Recommended based on terms in use in 2002	Includes revisions based on SB 1818 terminology			

NOTES TO DECISION AGENDA:

1. Distinguishing Inclusionary provisions from density bonus provisions: It is necessary to separate the inclusionary program (which is proposed at the City’s initiative) from the density bonus program (which is mandated by State law) for three purposes: 1) to make clear that any “bonus units” are not subject to the inclusionary requirement; 2) to assure that any units credited to the inclusionary requirement are permanently affordable (the density bonus law sets a limited term for affordable units); and 3) to assure that any incentives the City chooses to offer for inclusionary units are not in added to incentives that the developer may claim under the density bonus law.

2. Incentives to encourage Inclusionary projects: A minority of two Commissioners favored applying the same concessions that are permitted by SB 1818 to inclusionary projects that do not require a density bonus, with particular reference to allowing parking reductions to encourage the development of small units.

3. In-lieu fee alternatives: The draft ordinance that the Commission was working with in 2004 did not specify a method of calculating an in-lieu fee. The City Council had requested that a method be stipulated in the ordinance. The Commission preferred a high fee that would give the City the full value of any required affordable unit that was waived, and so recommended to the Council. The City’s special legal counsel felt that a fee at that level would not be defensible, and recommended establishing a fee based on the gap between the cost of producing a unit and the ability of the targeted household group to pay (“affordability gap”). This is consistent with the approach of other communities, and has been recommended by the by the Institute for Local Self Government, an arm of the League of California Cities. On June 14, 2005, the Commission supported the affordability gap approach by a 3-2 vote. Two Commissioners favored requiring a payment based on the full value of the unit.

4. Modifications of development standards alternatives: At the 3/21/05 Council-Commission work session, interest was expressed in some way of establishing a list of development standards that the City would be more willing to waive, and those for which the City would be more protective. Accordingly, staff drafted a list of possible waivers in a progressive order, indicating that the City might modify such requirements as setbacks and commercial parking, but would be more reluctant on items toward the bottom of the list, such as height limits and further parking reductions. The special legal counsel did not see a problem with this approach, but suggested that the City also consider establishing two classes of standards: 1) those that the City agrees in advance will reduce housing production costs, and 2) those that might reduce costs if so-demonstrated by the applicant. The Commission recommendation follows the suggestion of the special legal council.

5. Other waivers: This subsection responds to Section e. of Gov. Code 65915 (SB 1818). This provides for, in addition to the concessions granted according to the density bonus formula, a waiver of any other standard that may be an obstacle to the proposed development.

6. Affordability agreement, density bonus: This subsection is included to express that an affordable housing agreement is required under both the inclusionary program and the density bonus program, but that density bonuses are subject to different durations of affordability, as spelled out in Gov. Code 65915 (SB 1818). (This assumes that the City still intends to require permanent affordability for units meeting City inclusionary requirements.)

7. Application procedures: As drafted by staff in 2004, prior to passage of SB 1818, and accepted by the Commission in its original recommendation to Council, the application procedure provided for an early determination of the City Council’s intent to grant a density bonus and incentives, subsequently followed by any other necessary reviews, including CEQA. The approach was an attempt to deal with the non-discretionary granting of a density bonus and the limited discretion in granting concessions, separately from the discretionary aspects of project approval including use permits and design review. However, other cities whose ordinances staff has reviewed (Fremont, San Diego, San Rafael) simply incorporate the density bonus approval into their regular review process. The special legal counsel advised that the latter approach avoids a possibility of vesting the applicant prematurely. It also allows the CEQA process to provide relevant information that would help test the impacts of incentives and concessions before commitments are made. Accordingly, the Commission’s final recommendation follows regular procedure, with the exception that the City Council would automatically be the decision-making body on density bonus projects, because of concessions and waivers that might involve modifications of regular ordinance requirements.