

**ATTACHMENT TO
ALBANY PLANNING AND ZONING COMMISSION
RESOLUTION NO. PZ 05-02**

The following proposed text of Section 20.40, Housing Provisions, and additions to Section 20.08, Definitions, is attached to and incorporated in Resolution No. PZ 05-02, adopted by the Albany Planning and Zoning Commission on June 14, 2005:

SECTION 20.40 HOUSING PROVISIONS

20.40.010 Purpose and Intent.

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

20.40.020 Definitions.

Specialized terms used in this section are defined in Section 20.08, Definitions. Those terms include Affordable Dwelling Unit, for Rent; Affordable Dwelling Unit, for Sale; Affordable Housing Agreement; Bonus, Density; Density Bonus Units; Development Standard; Condominium; Emergency and Transitional Housing; Household, Low-income; Household, Lower-income; Household, Moderate-income; Household, Very Low-income; Inclusionary Housing, Planned Unit Development and Senior Citizen Housing Development.

20.40.030 Inclusionary Housing.

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

A. Applicability, General. For all residential development projects of five (5) or more units in the city, including conversions of five or more existing rental units to ownership units, a proportion of the units shall be made affordable to very-low- and low-income households. Such units shall be termed “Inclusionary Housing Units”, and shall be reserved for rent or purchase by eligible very-low-income and low-

income households. The Inclusionary Housing Unit requirement shall be determined based on the total unit count of a housing development project, as follows:

1. Five (5) or six (6) total units: A payment to the “Inclusionary Housing In-lieu Fees Fund”, as provided in paragraph F.4.a of this subsection. Payment shall be calculated based on the fraction of a unit that results from multiplying the total unit count by fifteen (15%) percent.
2. Seven (7) through thirteen (13) total units: At least one (1) Inclusionary Housing Unit.
3. Fourteen (14) or more total units: The number of Inclusionary Housing Units shall equal at least the result of fifteen (15) percent of the total number of units in the development project.

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

Housing development projects that incorporate Inclusionary Housing Units shall be required to meet the development standards listed in Subsection 20.40.050 below.

B. Applicability, Density Bonus Development. In the case of a housing development project for which a density bonus is sought pursuant to California Government Code Section 65915 and Subsection 20.40.040 of this Chapter, the requirement of paragraph A. above shall apply to the base number of units proposed, exclusive of the units that would be added by the density bonus. Units designated for very-low-income and low-income households may be counted toward satisfaction of the requirement for inclusionary housing, to the extent that such units meet all requirements of this subsection, including the requirement of paragraph D.1.f. below, which states that units shall remain permanently restricted and affordable to the designated group.

C. Allocation by Income group.

1. In housing development projects of ten (10) units or more, the number of Inclusionary Housing Units shall be divided evenly between very-low-income households and low-income households. Where the number of Inclusionary Housing Units is an odd number, the majority of the units may be provided at the low-income level with the remainder of units to be allocated to the very-low-income level.
2. In housing development projects of seven (7) through nine (9) units, all Inclusionary Housing Units may be provided at the low-income level.

D. Affordable Housing Agreement - Inclusionary: Project Sponsors who produce inclusionary housing units that meet the requirements of this subsection shall enter into an Affordable Housing Agreement with the City, for the purpose of assuring continuing affordability of such units. Such Agreement shall be subject to approval by the City Attorney and 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.

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

- a. The total number of units approved for the housing development project.
- b. A description of any incentive, concession, waiver or reduction that the City agrees to provide.
- c. The number of affordable dwelling units included in the development project.
- d. A description of the household income group(s) to be accommodated by the housing development project and the standards for determining affordable rent or affordable sales price and housing cost, including reference to any periodic or other adjustments that are incorporated in the standards. (Refer to income definitions under “Household” in Section 20.08, Definitions.)
- e. Specific identification of each affordable dwelling unit, including specific location within the development, unit sizes in square feet, and the number of bedrooms.
- 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.

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

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

- a) *Exceptional circumstances have been demonstrated that require City assistance, and*
- b) *Acceptable documentation has been provided as to how such incentives will increase the feasibility of inclusion of affordable units in the development project, and*
- c) *The project exceeds the minimum requirement for provision of Inclusionary Housing Units.*

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

- a. Setback from a street or non-residential property line.
- b. Off-street parking requirement for commercial space in a mixed-use development.
- c. Maximum lot coverage.
- d. Setback from a residential property line, except where a daylight plane is required.

2. Examples of Other Potential Incentives that the city may consider on a case-by-case basis, subject to making findings a) through c) in this paragraph E.:

- a. Reduction of any architectural design standards or guidelines that exceed minimum building standards established by local or state building standard codes.
- b. Assistance in design and/or construction of project-related public improvements, such as fronting curbs, sidewalks and tree planting.
- c. Deferral, reduction or waiver of City fees, to be determined on a project-by-project basis, with the requirement that the project comply with legal requirements regarding prevailing wage.
- d. Alternatives to on-site provision of Inclusionary Housing Units, as described in Paragraph F., below.

F. Alternatives to On-site Provision of Inclusionary Housing Units. Upon *finding* by the City Council that production of inclusionary housing units on a project site is not feasible due to the size of the project, the physical conditions of the site, or a

demonstrated inability of the sponsor to secure financing of the Inclusionary Housing Units, the City may approve one or a combination of the alternative means of meeting the inclusionary housing unit requirement as stated in the following paragraphs 1 through 5. (See Subsection 20.40.040 for specific provisions pertaining to density bonus projects.)

1. **Off-site Location.** Circumstances may arise in which the public interest would be served by allowing some or all of the Inclusionary Housing Units associated with a housing development to be produced and operated at a separate, detached development site. Such a site shall be considered as part of a single housing development for purposes of this chapter, and the project sponsor shall be subject to the same requirements as if the Inclusionary Housing Units were provided on the principle development site. This paragraph shall apply only where the principal and detached sites are located within zoning districts in which multi-family housing is a permitted or conditionally permitted use.
2. **Land Dedication.** Upon approval of the City Council, an applicant may dedicate land to the City or to a non-profit housing developer in lieu of actual construction of required Inclusionary Housing Units, for the purpose of development of an equivalent number of affordable units.
3. **Conversion.** Conversion of existing market-rate housing to affordable units. Such units may be located off of the site of the project seeking approval. Where this alternative is employed, the value of the conversion project shall be equal to the cost of construction of the number of Inclusionary Housing Units that are not constructed as part of the housing development that generates the inclusionary requirement.
4. **In-lieu Payment.**
 - a. An in-lieu fee shall be equal to the difference between the fair market value of an inclusionary unit and the ability of a household in the target income group to afford the rental or purchase price, as determined by the City at the time of issuance of a building permit for the housing development project. Procedures for the assessment, collection and adjustment of in-lieu fees shall be established by resolution of the City Council.
 - b. The City may allow payment of a fee by the sponsor of a housing development project, in-lieu of providing some or all of the required fifteen (15%) percent affordable Inclusionary Housing Units, upon finding by the City Council that production of the units on the particular site is not feasible due to the size of the project, or the physical conditions of the site, or a demonstrated inability of the sponsor to secure financing, from private or public sources, of the Inclusionary Housing Units.

- c. If a housing development project is approved for payment of an in-lieu fee, the fee must be paid for each dwelling unit approved for such payment, at the time of issuance of a building permit for the housing development.
 - d. Fees collected by the City in lieu of Inclusionary Housing Units shall be deposited into a fund known as the “Inclusionary Housing In-lieu Fees Fund”, the use of which shall be committed to the purpose of assisting the provision of housing for very-low- and low-income households. The use of the funds may include, but shall not be limited to land write downs, contributions to nonprofit organizations for housing construction, mortgage assistance for very-low- and low-income households, and the operation of transitional housing.
5. **Other.** The City Council may approve alternative methods of compliance with the inclusionary housing requirement if the applicant demonstrates that the intent of this subsection will be met by any such method. Any alternative to construction of the required number of Inclusionary Housing Units, or any combination of alternative methods of meeting the requirement, shall provide a value equal to the amount that would be calculated for an in-lieu fee according to 4.a. above.

20.40.040 Density Bonus.

The City will provide incentives for the production of housing units for eligible households in accordance with California Government Code Sections 65915 through 65918, as described in this subsection. For purposes of this subsection, “Housing Development” shall have the meaning stated in Government Code Section 65915 (j). Incentives will be in the form of a density bonus plus other incentives or concessions, as described below.

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

Housing development projects that incorporate a density bonus shall be required to meet the development standards listed in Subsection 20.40.050 below, unless the applicant requests, and the City approves specific exceptions as concessions or waivers, as provided in paragraphs D. or E. of this subsection.

A. Qualification for Density Bonus.

- 1. To qualify for a density bonus, an applicant shall seek and agree to construct a housing development of five (5) or more dwelling units that include a proportion of dwelling units designated for very-low-income households, low-income households, or persons and families of moderate-income, or a senior citizen housing development, all as specified in Government Code Section 65915 (b).
- 2. California Civil Code Sections 51.3 and 51.12 provide, among other qualifications, that a senior citizen housing development contain at least 35 dwelling units.

3. Any housing development for which a density bonus and related incentives or concessions is proposed shall be planned to achieve the maximum density permitted for the zoning district in which the project would be located, exclusive of the additional density that would result from the bonus.

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

C. Calculation of Density Bonus.

1. The density bonus shall be a density increase of at least twenty (20%) percent, unless a lesser percentage is elected by the applicant, and no more than thirty-five (35%) percent over the maximum residential density, expressed in units per acre of site area, assigned to a site by the Zoning Ordinance as of the date of application for approval of the housing development project. The amount of density bonus to which the applicant is entitled shall be calculated according to Government Code Section 65915 (g)(1). See Table H-1 below.
2. For condominium or planned unit development projects for moderate-income households, the density bonus shall be a density increase of at least five (5%) percent, unless a lesser percentage is elected by the applicant, and no more than thirty-five (35%) percent over the maximum residential density, expressed in units per acre of site area, assigned to a site by the Zoning Ordinance as of the date of application for approval of the housing development project. The amount of density bonus to which the applicant is entitled shall be calculated according to Government Code Section 65915 (g)(2). See Table H-1 below.
3. When an applicant for a residential development approval, including a tentative subdivision map or a parcel map, agrees to donate land to the city under terms specified in Government Code Section 65915 (h)(1) through (6), the density bonus shall be a density increase of at least ten (10%) percent, unless a lesser percentage is elected by the applicant, and no more than thirty-five (35%) percent over the maximum residential density, expressed in units per acre of site area, assigned to a site the Zoning Ordinance as of the date of application for approval of the housing development project. A density bonus for land may be in addition to a density bonus calculated in paragraphs 1. or 2. above, but in no case shall the combined density increase exceed thirty-five (35%) percent. See Table H-1 below.
4. When an applicant proposes to construct a housing development project that qualifies for a density bonus under paragraph A of this subsection, and includes a child care facility that will be located on the premises of, as part of, or adjacent to the development project, the City will grant either an additional density bonus or an additional concession or incentive, subject to the terms and to conditions stated in Government Code Section 65915 (i). See Table H-1 below.
5. In the event that a housing development project is proposed to qualify for a density

bonus under the criteria of more than one of the preceding paragraphs 1 through 4, the maximum density bonus for the project shall not exceed thirty-five (35%) percent.

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

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.
 - 2) Modification of zoning code requirements set forth in Section 20.24, Development Standards. The City hereby establishes two classes of potential modifications:
 - i. The City recognizes that modification to the following requirements (not listed in any order of priority) could result in financially sufficient, and actual cost reductions:
 - a) Setback from a street or non-residential property line.
 - b) Off-street parking requirement for commercial space in a mixed-use development.
 - c) Maximum lot coverage.
 - d) Setback from a residential property line, except where a daylight plane is required.
 - ii. Where an applicant desires to seek modifications of the following requirements as concessions, the applicant shall be responsible for presenting detailed financial information to demonstrate that such concession would result in necessary, identifiable, financially sufficient, and actual cost reductions that could not be achieved without the concession:
 - a) Floor-area ratio for commercial space in a mixed-use development.
 - b) Floor-area ratio for residential space.
 - c) Combined floor area ratio of a mixed-use development.
 - d) Height limit within a commercial district, except within 15 feet of a street right-of-way line.
 - e) Height limit within a commercial district, abutting a street right-of-way line.
 - f) Setback requirement or height limit where a daylight plane is required.

- g) Minimum usable open space.
- h) Height limit in a residential district.
- i) Reduction of off-street parking ratios below those that may be approved pursuant to Government Code Section 65915 (p).

3) Modification of architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the California Health and Safety Code.

- b. Approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial or other land uses are compatible with the housing project and with the existing or planned development in the area where the proposed housing project will be located.
 - 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.

[See table on next page]

Table H-2 Calculation of Incentives and Concessions		
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	

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

E. Other Waivers or Reductions.

1. An applicant may submit to the City a proposal for waiver or reduction of any development standard that will have the effect of precluding the construction of a housing development project that qualifies, under paragraph A of this subsection, for a density bonus and concessions(s) or incentives(s). A development standard shall be defined as in paragraph D.1.a.1) above
2. The applicant shall submit evidence, including relevant financial data, to demonstrate that the waiver or reduction is necessary to make the development of affordable housing units economically feasible.
3. The City may approve such waiver or reduction, without requirement of a variance, upon the finding that, without such waiver or reduction, the development standard will have the effect of precluding the construction of the affordable housing units that would qualify the development project for a density bonus.
4. The City is not required to approve such a proposal if the City finds that the waiver or reduction would have a specific, adverse impact, as defined in Government Code Section 65589.5 (d) (2), upon health, safety, or 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.

F. Off-street Parking.

1. Notwithstanding the provisions of Section 20.28 of this Chapter, the City will permit, if specifically requested by an applicant for approval of a housing development project that qualifies for a density bonus under paragraph A of this subsection, an off-street parking ratio, inclusive of handicapped and guest parking, to be limited, without requirement of a variance, to the ratios mandated by Government Code Section 65915(p), as follows:
 - 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 condominium or planned unit development project shall agree that:
 - a) the initial occupants of moderate-income units are persons and families of moderate-income, and
 - b) resale of the units shall be subject to the terms specified in Government Code Section 65915(c)(2).

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

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

3. Application Requirements. An applicant for a density bonus pursuant to Government Code Section 65915 and this subsection shall submit an application for any discretionary approval required by this Chapter for the proposed development project. If no discretionary action is required, the applicant shall submit a Zoning Clearance application for City review of the proposed density bonus. All applications for development projects that propose a density bonus

shall include the following items, in addition to other materials that may be required by the City:

- a. The desired density increase;
 - b. Additional incentive(s) or concession(s) requested;
 - c. Any waivers or reductions in development standards that are requested in addition to proposed incentives or concessions;
 - d. The number, type, location, size and construction scheduling of all units;
 - e. A project financial report to allow the City to evaluate the financial need for the specific incentive(s) or concession(s) requested, and to demonstrate that any requested waiver or reduction of zoning, development or building standards is necessary to make the development of affordable housing units economically feasible.
 - f. Any other relevant information that the Community Development Director may determine to be necessary in the evaluation of the proposal.
4. **Review of Application.** An application for a development project that includes a density bonus and incentives shall be reviewed and acted upon according to procedures described in Section 20.100, except that, following the rendering of a recommendation by the Planning and Zoning Commission, the City Council shall be the decision-making body on all applications involving a density bonus. The City Council shall have the final authority to deny requested incentives or concessions with the findings required by Government Code Section 65915.
5. **Waiver or Reduction of Conditions of Project Approval:** If the applicant can demonstrate, based on verifiable financial information, that any development standard that is applied as a condition of a City action on a housing development project that qualifies for a density bonus would preclude construction of the development project by making the housing units economically infeasible, the applicant may request that the City Council waive or reduce such condition. City actions that might contain conditions include: approvals of a use permit, a tentative subdivision map or design review. The City Council shall either grant such a request or make a finding pursuant to paragraph E.4. above.

20.40.050 Development Standards.

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

- A. Affordable dwelling units shall be constructed concurrently with or prior to non-restricted units, unless the City and the project sponsor agree, within the required Affordable Housing Agreement, to an alternative schedule for development.
- B. Affordable dwelling units shall be dispersed throughout the project site.
- C. Affordable dwelling units shall have, to the extent feasible, the same bedroom mix as the market-rate units in the same development, except that the project sponsor may include a higher number of bedrooms in the affordable dwelling units.
- D. The design and appearance of affordable dwelling units shall be compatible with the design of the total housing development, and with the context of the surrounding neighborhood.
- E. Other development standards and requirements may be established as conditions of project approval, and all such conditions shall be incorporated into the Affordable Housing Agreement.

20.40.060 Disabled Persons Housing.

- A. **General.** The City will require that housing developments include units that are accessible and adaptable to the needs of disabled residents, as required under applicable Federal, State and City laws and all regulations and codes that are in current effect.
- B. **Reasonable Accommodation.**
 - 1. **Purpose.** It is the policy of the City of Albany, pursuant to the Federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act, to provide people with disabilities reasonable accommodation in rules, policies, practices and procedures that may be necessary to insure equal access to housing. The purpose of this section is to provide a process by which individuals with disabilities may request reasonable accommodation in regard to relief from the various land use, zoning or building laws, rules, policies, practices and/or procedures of the City.
 - 2. **Public Notice of Availability of Accommodation Process.** The Community Development Department shall display in a prominent location a notice advising that disabled individuals may request reasonable accommodation in accordance with procedures established by this section.
 - 3. **Application.**
 - a. A request for reasonable accommodation in laws, rules, policies, practices and/or procedures may be filed on an application form provided by the Community Development Department, at any time that the accommodation

may be necessary to insure equal access to housing. Such application shall include the following information.

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

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

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

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

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

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

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

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

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

7. **Design Review.** The Community Development Director shall have the discretion either to waive or to require a design review procedure according to Section 20.100.050. The Community Development Director may extend the thirty- (30) day period provided above by paragraph 6 as necessary to complete the design review procedure.
8. **Appeals.** Any action of the Community Development Director may be appealed according to procedures established by Section 20.100.080.

20.40.070 Emergency and Transitional Housing.

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

A. Applicability.

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

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

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

The following entries are proposed to be added to the list of definitions in Section 20.08:

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

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

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

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

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

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

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

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

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

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

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

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

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

Planned Unit Development. A development adhering to a comprehensive plan and located on a single tract of land, or on two (2) or more contiguous tracts of land which may be separated only by a street or other public right-of-way. (See Subsection 20.100.060) As used with respect to a density bonus in Subsection 20.40.040, a development, other than a community apartment project, a condominium project, or a stock cooperative, having either or both of a commonly owned area or an association with power to enforce obligations of individual owners with respect to a common area.

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

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