PLANNING COMMISSION
REGULAR MEETING AGENDA

Wednesday, September 11, 2024
7 p.m.

City Council Chamber
200 Old Bernal Avenue
Pleasanton, CA 94566

The meeting will be held at the City Council Chambers at 200 Old Bernal Ave and will be broadcast live at https://www.youtube.com/user/TheCityofPleasanton.

Public participation: It is requested that members of the public wishing to address the Planning Commission submit a speaker card. When public comment is opened on an agenda item, individuals may speak once per agenda item.

In Person at the City Council Chambers:

- Submit a physical speaker card to the Recording Secretary at the meeting. When your name is called, please provide comment at the podium.

PUBLIC HEARING PROCEDURE

Each of the items listed will be heard as shown on the agenda unless the Planning Commission chooses to change the order. As each item is called, the hearing will proceed as follows:

- A Planning Division staff member will make a presentation on each case and answer Planning Commission questions, as needed.
- The applicant will be asked to present, if desired, or answer questions. Applicant presentations should be no longer than ten minutes.
- The Chair then calls on anyone desiring to speak on the item. Speakers are requested to state their names for the public record and to keep their testimony to no more than three minutes each, with minimum repetition of points made by previous speakers and by being as brief as possible in making their testimony.
- Following public testimony, the applicant will be given the opportunity to respond to issues raised by the public. The response should be limited to five minutes.

The public hearing will then be closed. The Planning Commissioners then discuss among themselves the application under consideration and act on the item. Planning Commission actions may be appealed to the City Council. Appeals must be filed with the City Clerk's Office within 15 days of the Planning Commission's action.

The Planning Commission Chair may enforce other rules as may further the fair and efficient running of the meeting, such as reducing the amount of testimony time allotted to the applicant and all those who wish to speak when the meeting agenda is lengthy or when there are numerous speakers for any specific item. The audience is requested to respect and extend courtesy to all those wishing to testify on all cases by being quiet while others are speaking.

CALL TO ORDER, PLEDGE OF ALLEGIANCE, AND ROLL CALL

AGENDA AMENDMENTS

CONSENT CALENDAR - *Consent Calendar items are considered routine and will be enacted by one motion unless a request for removal for discussion or explanation is received from the Planning Commission or a member of the public by submitting a speaker card for that item.*

1. Actions of the Zoning Administrator

2. Approve the minutes of June 26, 2024

MEETING OPEN TO THE PUBLIC

3. Public Comment from the audience regarding items not listed on the agenda – *Speakers are encouraged to limit comments to 3 minutes*

PUBLIC HEARINGS AND OTHER MATTERS

4. **P24-0505, City of Pleasanton -** Review, consider, and provide a recommendation for amendments to Chapters 17.40, 17.44, and 18.38 of the Pleasanton Municipal Code regarding inclusionary rates, affordable levels, design and development standards, approval processes, requirements, and administrative procedures for the affordable housing fee; and update to the City's Objective Design Standards for Housing Sites to align with the proposed municipal code amendments

5. **P24-0334, City of Pleasanton -** Review, consider, and provide a recommendation for amendments to Chapters 17.38, 18.08, 18.88, and 18.106 of the Pleasanton Municipal Code regarding density bonus, major transit stop, and separate conveyance of accessory dwelling units as identified in State law

MATTERS FOR COMMISSION'S REVIEW/ACTION/INFORMATION

6. Reports from Meetings Attended (e.g., Committee, Task Force, etc.)

7. Actions of the City Council

8. Future Planning Calendar

MATTERS INITIATED BY COMMISSION MEMBERS

ADJOURNMENT

Planning Commission Agenda Report

September 11, 2024
Item 1

SUBJECT: Actions of the Zoning Administrator

P24-0424, Olga Rico
Application for Administrative Design Review approval to construct an approximately 492-square-foot addition with a maximum height of 15' to an existing detached garage located at 409 Neal Street.

Approved. Appeal period expires September 18, 2024 (*Emily Carroll, 931-5608*)

P24-0504, Diane Catalano Rodriguez
Application for Administrative Design Review approval to replace two windows like-for-like on the east elevation of the historic home located at 541 St. Mary Street.

Approved. Appeal period expires October 2, 2024 (*Natalie Amos, 931-5613*)

P24-0515, Jaime Arafiles
Application for Administrative Design Review approval to construct an approximately 288-square-foot first-story addition to the front of an existing residence located at 7229 Valley Trails Drive.

Approved. Appeal period expires October 2, 2024 (*Diego Mora, 931-5618*)

P24-0519, Laura Cuda
Application for Administrative Design Review approval to construct an approximately 864-square-foot first-story addition to the south of an existing residence located at 6523 Amber Lane.

Approved. Appeal period expires October 2, 2024 (*Diego Mora, 931-5618*)

PLANNING COMMISSION MEETING MINUTES

Wednesday, June 26, 2024

CALL TO ORDER, PLEDGE OF ALLEGIANCE, AND ROLL CALL

Chair Gaidos called the regular meeting of the Planning Commission to order at 7:04 p.m. from the City Council Chambers located at 200 Old Bernal Avenue and from 300 Oxford Drive, Arcadia, CA 91007

Commissioner Pace led the Pledge of Allegiance.

Commissioners Present:	Commissioners Anurag Jain, Brandon Pace, Stephanie Wedge via teleconference, and Chair Matt Gaidos
Commissioners Absent:	Commissioners Vivek Mohan and Ken Morgan

AGENDA AMENDMENTS

None.

CONSENT CALENDAR

1. Actions of the Zoning Administrator

   Recommendation: Receive report.

2. Approve the meeting minutes of June 12, 2024

   Recommendation: Approve the meeting minutes.

MOTION: It was m/s by Pace/Jain to approve the items on the Consent Calendar, as recommended. Motion passed by the following roll call vote:

Ayes:	Commissioners Jain, Pace, Wedge, and Chair Gaidos
Noes:	None
Absent:	Commissioners Mohan and Morgan
Abstain:	None

MEETING OPEN TO THE PUBLIC

3. Public comment regarding items not listed on the agenda.

Chair Gaidos opened the public comment. There being no speakers, Chair Gaidos closed the public comment.

PUBLIC HEARING AND OTHER MATTERS

4. PUD-147, Foothill Boulevard Holding Company LLC, 4141 Foothill Road - Consideration of: (1) Adoption of a CEQA Guidelines Section 15183 Consistency Checklist pursuant to the City of Pleasanton Housing Element Update Final Supplemental Environmental Impact Report (FSEIR); (2) annexation; (3) a Planned Unit Development (PUD) development plan to construct a 111-lot residential subdivision, including an age-qualified community with 92 single-family detached homes, 18 affordable senior court-yard detached and duet homes, one existing single-family residence, and related on- and off-site improvements; (4) a Vesting Tentative Map; (5) a Development Agreement to vest entitlements; and (6) an Affordable Housing Agreement

   Recommendation: Adopt Resolution No. PC-2024-14 recommending City Council (1) adopt a CEQA Guidelines Section 15183 Consistency Checklist, (2) approve annexation, PUD Plan, Vesting Tentative Map, and Pre-Annexation and Development Agreement as conditioned, and (3) direct the City Manager to enter into an Affordable Housing Agreement with Foothill Boulevard Holding Company, LLC. for the proposed projects as filed under case Nos. P22-1089, PUD-147, and Tract 8522.

Senior Planner Eric Luchini presented the item.

Chair Gaidos opened the public comment. Public comments were received from: Jim Summers, applicant; Pam Carlton; John Hall; Gerry Kirata; Doug Marshall; Linda Moniz; Sharon Piekarski; Jeff Reinholdt; James Sandler; Alicia Steren; Akhilesh Verma; Rennie Bowers; and TJ McGrath.

Chair Gaidos closed the public comment.

Chair Gaidos called a brief recess.

Chair Gaidos reconvened the meeting at 9:06 p.m.

Chair Gaidos opened the public comment. A public comment was received from: Jim Summers, applicant.

Chair Gaidos closed the public comment.

MOTION: It was m/s by Jain/Pace to adopt Resolution No. PC-2024-14 recommending City Council action, as recommended. Motion passed by the following roll call vote:

Ayes:	Commissioners Jain, Pace, Wedge, and Chair Gaidos
Noes:	None
Absent:	Commissioners Mohan and Morgan
Abstain:	None

MATTERS FOR COMMISSION'S REVIEW/ACTION/INFORMATION

5. Reports from Meetings Attended (e.g., Committee, Task Force, etc.)

None.

6. Actions of the City Council

Director Ellen Clark provided a brief overview of the items listed in the report.

7. Future Planning Calendar

Planning Manager Melinda Denis provided a brief overview of the items listed in the report.

MATTERS INITIATED BY COMMISSION MEMBERS

None.

ADJOURNMENT

Chair Gaidos adjourned the meeting at 9:44 p.m.

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Estela Ramirez, Recording Secretary

Planning Commission Agenda Report

September 11, 2024
Item 4

SUBJECT:	Recommend City Council approve amendments to Pleasanton Municipal Code (PMC) Chapters 17.44 – Inclusionary Zoning; and related amendments to Chapter 17.40 – Affordable Housing Fee; Chapter 18.38 – Housing Opportunity Zone District; and the Objective Design Standards for Housing Element Sites (Case No. P24-0505)
LOCATION:	Citywide
GENERAL PLAN/ SPECIFIC PLAN/ ZONING:	Various
EXHIBITS:	A. Draft Resolution with Proposed Amendments to the Pleasanton Municipal Code and Objective Design Standards

STAFF RECOMMENDATION

It is recommended that the Planning Commission recommend City Council approval of amendments to PMC Chapters 17.44, Inclusionary Zoning Ordinance and related amendments to Chapter 17.40, Affordable Housing Fee, Chapter 18.38, Housing Opportunity Zone District, and the Objective Design Standards for Housing Element Sites.

EXECUTIVE SUMMARY

Since early 2024, the City has engaged in efforts to update development impact fees and to comprehensively update the Inclusionary Zoning Ordinance (IZO). The IZO, adopted in 2000, requires residential development to build or “include” below-market-rate units as a means to mitigate the effect of new development on the City’s affordable housing needs. Based on analysis and recommendations supported by the work of the City’s professional services firm, Economic and Planning Systems, the City Council considered and provided key policy direction on the updated IZO at workshops held in May and August 2024, including recommended changes to the inclusionary rate, affordability targets, and aspects of the policy related to minimum design standards, alternative compliance, and other elements of the IZO. Those recommendations and additional clarifying revisions have been incorporated into a revised draft IZO which is before the Planning Commission for review and recommendation for adoption to City Council. In addition, the Planning Commission will consider related amendments to the PMC and to the 2023 Objective Design Standards for Housing Sites to align with the proposed IZO amendments.

BACKGROUND

In early 2024, City staff, with professional services firm Economic and Planning Systems (EPS), began work to update the City's Development Impact Fees and Affordable Housing Fees and to update the Inclusionary Zoning Ordinance (IZO). The impact fee study/update and process to amend the IZO are being undertaken concurrently because there is a relationship between components of the IZO, particularly the inclusionary rate (proportion of affordable units that must be included as a component of market-rate residential projects) and required affordability levels of those units, and the amount of the affordable housing fee.

Strategic Plan and Housing Element Alignment

Completion of these updates is consistent with the ONE Pleasanton Strategic Plan and with the 6th Cycle Housing Element:

> **ONE Pleasanton Strategic Plan.** *Goal A – Funding Our Future***:** Strategy 7: Conduct an analysis and update development fees to keep pace with new development costs.
>
> **Housing Element Program 2.1:** Continue to implement the Inclusionary Zoning Ordinance and actively pursue strategies to improve its effectiveness in producing affordable housing units in conjunction with new development. The following actions will be undertaken by the City:
>
> 1. Study the following amendments to the Inclusionary Zoning Ordinance and adopt such amendments provided they are not found to be an undue constraint on the production of housing:
>   - An increase to the proportion of inclusionary units required in multi-family projects to be up to 20 percent, rather than the current 15 percent requirement.
>   - Identification of a target mix of affordable units (including proportions of very low-, low- and moderate-income units), with the potential for an alternative mix of affordability to be proposed and approved if it would better meet other housing policy objectives to do so. For example, if the project provided deeper affordability, and/or resulted in the production of units suitable for special needs groups such as seniors or persons with mental or physical disabilities. Target affordability mix and unit size standards, including a required proportion of larger (three or more bedroom) lower-income units, may be implemented through Objective Design Standards (Program 4.2) or the amended Inclusionary Zoning Ordinance.
>
> **Housing Element Program 2.2:** Require new commercial development to pay the Lower-Income Housing Fee established by City Ordinance and adopted by the City, or to otherwise mitigate demand for new employee housing as allowed by the Pleasanton Municipal Code (e.g., through construction of units or dedication of land). Regularly evaluate the amount of these fees to ensure that they: (1) remain commensurate with the needs generated by the development; (2) are established at a level proportionate with the actual cost to provide new housing; and (3) are in conformance with State law while ensuring that Pleasanton remains locally and regionally competitive in attracting new commercial investment.

Inclusionary Zoning Ordinance–Overview

The IZO, codified as Chapter 17.44 of the Pleasanton Municipal Code, was adopted in 2000 and has not been updated or amended since then. Key elements of the current IZO include:

- For projects of 15 or more units, a requirement to include affordable units at a rate of 15 percent of total units for multi-family projects; and 20 percent of total units for single-family projects. The IZO does not distinguish between rental and for-sale projects.
- Inclusionary units within multi-family must be affordable to very low- or low- income households; within single-family projects, units can be affordable to very low-, low-, and/or moderate-income households. The IZO does not establish proportions of units that must be targeted to each of these affordability levels, nor does it specify a specific income limit within the very low-, low- or moderate-income range.
- Commercial, office, and industrial development is required to either pay the Lower Income Housing Fee (LIHF) (also known as the affordable housing fee) or may provide affordable housing as part of the project.
- Allowance for projects to propose a range of alternatives to building on-site units. These include payment of in-lieu fees, dedication of land, construction of units off-site, and other "creative concepts" deemed consistent with the purposes of the IZO.
- For some alternatives, such as dedication of land and off-site construction, and other developer-proposed approaches, the IZO specifies the City Council must approve such approaches (i.e., it is discretionary as to whether such alternatives are allowed). With respect to payment of fees, the IZO is permissive, stating that applicants may propose payment of fees, with City Council approval not stipulated and no parameters for approval identified.

The IZO includes some limited parameters for the location and design of the inclusionary units, generally prohibiting clustering the units in a single area of the site, requiring units to incorporate identical exterior materials and finishes as the market-rate units, and allowing for units to be smaller than the market-rate units without specifying a minimum unit size.

Since its adoption, the IZO has resulted in the production of hundreds of below-market-rate units and generated millions of dollars in affordable housing funds that have supported valuable programs and unique affordable housing projects including Promenade Apartments, Kottinger Gardens, and the Sunflower Hill residential community.

While flexibility and the ability to negotiate affordable housing agreements as a component of discretionary project approvals made the IZO's structure logical when it was adopted, State laws have shifted to eliminate much of the City's discretion and negotiating authority with respect to residential projects, and to allow enforcement of only objective standards and requirements. The lack of specificity in the current Ordinance does not serve the City well in ensuring market-rate projects contribute to meeting the City's substantial affordable housing needs and its Regional Housing Needs Allocation (RHNA) obligation.

Payment of In-Lieu Fee versus Building On-Site

A particular critique of the existing IZO is that projects too often choose to "fee out" of their affordable housing requirements – i.e., pay the affordable housing fee, rather than build units on site. As noted, the current wording of the IZO's alternative compliance provisions does not give the City discretion to reject a proposal to pay the in-lieu fee. However, an important factor in the choice to pay fees is the calculus made by a developer when choosing between paying the fee or building the affordable units on the project site. According to analysis completed by EPS as part of the current study, the City's in-lieu fees are much lower than the equivalent cost to build on-site for most project types. Modifying fee rates so that there is greater parity between the costs to construct and the amount of the fee would discourage developers from consistently seeking to take advantage of the in-lieu fee option.

Objective Design Standards and Housing Overlay Zone–Supplemental Inclusionary Standards
Understanding that the existing IZO has some deficiencies, the Objective Design Standards for Housing Element Sites adopted in January 2023 (and subsequently amended in May 2023) included more specific parameters with respect to inclusionary units. Those requirements were reflected and further refined as part of the new Housing Opportunity Zone (HOZ) designation, to which each of the Housing Element sites was re-zoned in December 2023.

The ODS and HOZ reflected more strict parameters with respect to affordability mix and bedroom mix, allowances in some circumstances for clustering of required inclusionary units, and more specificity as to the minimum size of inclusionary units compared to market rate units.

While the standards included in Chapter 18.38 and the ODS provided useful "bridging" guidance pending a comprehensive update to the IZO, it is appropriate to revisit and incorporate those new standards, with amendments as needed, into the IZO update.

<u>City Council Workshops</u>
Two workshops have been held with City Council to receive feedback and key policy direction on the Affordable Housing Fee and IZO updates.

May 7, 2024 Workshop
On May 7, 2024, staff held an introductory workshop with City Council to discuss the results of initial analysis completed by EPS, including an evaluation of potential changes to the inclusionary rate, along with other initial findings and recommendations with respect to impact fees more generally. The analysis generally found that new growth and the cost of infrastructure and facilities to serve it could justify significantly higher impact fees. However, the report notes there are tradeoffs to be considered – in particular, setting fees at a very high level could have the negative consequence of discouraging, or making infeasible, new development or investment in the city – which could have longer-term fiscal impacts.[1]

With respect to housing fees, the EPS analysis evaluated various inclusionary scenarios, based on all factors and considerations, including scenarios that would increase the current inclusionary rate. EPS also looked at the resultant equivalent in-lieu fee, if set at a level reflecting the equivalent cost to construct, as well as the overall feasibility of setting fees at those rates.

Based on the analysis, it was staff's initial recommendation to set in-lieu fees for all types of projects at 15 percent (i.e. decrease the current single-family/ownership rate and retain the

[1] Link to May 7, 2024 Agenda Item and Attachments:
https://weblink.cityofpleasantonca.gov/WebLink/0/doc/308907/Page1.aspx

existing multi-family rate). Even under this reduced inclusionary scenario, there is room to increase the in-lieu fees for ownership projects, with specific fee levels to be considered by the City Council at a future date and in light of the overall fee program. The report noted that the current market is extremely challenging for multi-family projects, and so increasing either the rate or the in-lieu fee could further impact the feasibility of multi-family development – thus, an increase in the inclusionary rate is unlikely to be feasible in the near term.

August 20, 2024 Workshop

The City Council held a follow-up workshop on August 20, focused on the Inclusionary Zoning Ordinance.[2] At this meeting, EPS provided additional analysis and refined scenarios for the inclusionary rate and in-lieu affordable housing fee. Staff also provided information and analysis and requested direction on several key policy questions regarding the content of the IZO. A majority of the City Council provided consensus direction on these items, although there was not unanimity on every point.

The outcomes and recommendations made by the City Council are outlined further in the analysis and discussion of the amendments to the IZO, below.

ANALYSIS

Direction provided by City Council at the August 20, 2024 workshop has been incorporated into a more comprehensive set of revisions to the IZO, provided in redline/strikeout format as shown in Exhibit A. In addition to items on which the City Council provided specific direction, the proposed revisions include various other updates, clarifications and improvements to the IZO, principally intended to provide more clear and objective standards, clarify procedures, and align the ordinance with more standard language in definitions and other terms. Substantive changes to the IZO are outlined below.

Inclusionary Rate and Affordability Levels (17.44.040.B. and C.)

The IZO has been amended to reflect the direction of City Council to establish the inclusionary rate and affordability levels for ownership and rental projects as follows:

- For-Sale Projects (attached and detached): 15 percent inclusionary; units affordable to households making up to a maximum of 120 percent Area Median Income (AMI) – i.e. moderate income
- Rental Projects: 15 percent inclusionary; units affordable to households making a maximum of 60 percent Area Median Income (AMI) – i.e. low-income.

Of note, the amended IZO would distinguish between for-sale and rental projects as the basis to apply the inclusionary requirements. As outlined in the May 7, 2024 report, this contrasts to the current structure that uses "single-family" and "multi-family" criteria. Most local inclusionary ordinances reviewed by staff use tenure as a basis to determine the inclusionary rate because there is a strong relationship between tenure and related market-rate and affordable sales or rental price.[3]

[2] Link to August 20, 2024 City Council Agenda Item and Attachments: https://weblink.cityofpleasantonca.gov/WebLink/0/doc/309074/Page1.aspx

[3] City Council also recommended modifying the current fee structure to be assessed on a per square foot basis for residential development (rather than per unit), which helps to scale the fee collected to the size of the home, and potentially encourage

As outlined in the August 20, 2024 City Council Agenda Report, and according to analysis provided by EPS, the proposed 15 percent rate results in a fee that is feasible for both detached single-family and townhome development. With respect to multi-family projects, the August 20 Agenda Report also notes that it is currently an extremely challenging environment to build multi-family residential projects, and very few projects are likely to be feasible under current economic conditions. While the report noted that consideration could be given to lowering the inclusionary rate (from 15 percent to 10 percent) to improve multi-family project feasibility, doing so would have a significant impact on affordable housing production, since multi-family units represent the largest number of units remaining to be built on housing element and other sites. Since the current 15 percent rate has been feasible in the past, and anticipating there will be improvement in the multi-family construction market over time, staff recommended, and City Council supported retaining the multi-family rental inclusionary rate at 15 percent. The August 20 report also suggested the City Council could consider other near-term tools to help stimulate multi-family rental housing production, which comprises the largest share of the remaining units that could be zoned and built under the Housing Element, such as temporarily permitting projects to “fee out” of up to a third of their inclusionary requirement. The City Council will consider this concept with future adoption of the affordable housing fees.

While a majority of the Council supported staff’s recommendation regarding the inclusionary rate and affordability levels, one Councilmember did not support reducing the inclusionary rate, due to concern that it would reduce the City’s ability to meet its RHNA. And, with respect to the affordability levels of multi-family rental units, the Council requested that an option including both 50 percent AMI limit (very low-income) and 60 percent AMI (low-income) units be brought back as an option for consideration, prior to adoption of the Ordinance. These options are identified as alternatives for rental projects in the proposed PMC amendments.

Threshold Project Size

The minimum project size subject to inclusionary requirements (i.e., required to provide units on site) has been reduced from 15 to 10 units. This change was made partly in response to the lowering of the inclusionary rate since it would subject more projects to the Ordinance; it would also bring the ordinance into alignment with recent regional policies with which it would be beneficial for the City to comply to be competitive for grant funding. There was consensus support for this recommendation from the City Council. As stated in the proposed PMC text, residential projects with fewer than 10 dwelling units would be subject to the affordable housing fee.

Inclusionary Unit Standards (Section 17.44.040)

While the basic scope of standards remains consistent with the existing IZO, numerous changes are recommended to this Section 17.44.040, principally to create more objective standards for the evaluation of inclusionary housing proposals, and in some instances providing more flexibility in how the inclusionary requirements can be met. Major changes include:

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the construction of smaller and relatively more affordable units. (This latter change will be reflected in the Master Fee schedule when it is adopted, rather than the IZO, but is noted as a point of information for the Planning Commission).

1. *Clustering and dispersal of units (17.44.050.A)*
The existing IZO requires units to be dispersed, however the proposed revisions set a maximum proportion of units that may be located adjacent to one another or within a single building on the site.

The revisions also provide some additional but limited exceptions to permit clustering of units. For example, within single-family detached developments, the IZO would have provisions to allow attached units such as duets or townhomes; or, where a project is able to use Lower Income Housing Tax Credits (LIHTC) to achieve a multi-family project that would satisfy its inclusionary requirements, for those units to be clustered, as a practical matter.

The purpose of these changes is to provide additional flexibility and improve the likelihood that units will be built on-site. Particularly for single-family residential projects, building and deed-restricting exactly the same unit type as the market-rate units may not be feasible. For example, deed-restricting a large, detached, single-family residence to below-market-rate prices may reflect a subsidy in the sales price, amounting to several hundred thousand dollars per unit. Allowing a developer the ability to deed-restrict, for example, a smaller, attached unit (e.g., a duet or duplex building) greatly increases the financial feasibility of a project and the ability to deliver on-site affordable units. The City has seen and accepted this approach in numerous projects over the years, most recently in the Merritt project.

Other exceptions to the clustering/dispersal requirements may be approved by City Council, through an "alternative compliance" approval (see below) and subject to specific findings.

2. *ADUs and JADUs disallowed from counting towards inclusionary requirements (17.44.050.B)*
The revised IZO explicitly states that ADUs and JADUs may not count towards the IZO. This new requirement is staff's recommendation based on the fact that legally (pursuant to the Ellis Act) the City cannot require a homeowner to rent an ADU (at all), and even if rented, there are significant practical challenges to monitoring and ensuring the unit is rented to an income-qualified household. This provision is not intended to construe that the City does not support or encourage ADUs in general, which could still be used to provide an increment of housing above and beyond the IZO that is "affordable by design."

The Council unanimously supported not allowing JADUs to count towards meeting the IZO, but requested additional analysis regarding ADUs, which will be provided when the City Council considers the draft ordinance. Staff continues to strongly recommend against allowing for ADUs to be used to satisfy the IZO requirements for the above-stated reasons and lack of certainty that the unit will actually provide the affordable housing opportunity intended to be secured by the IZO.

3. Unit Size
As noted, the existing IZO allows for the inclusionary units to be smaller than the market-rate units but provides no minimum size. The proposed amendments allow for:

- For-sale inclusionary units living area to be up to 50 percent of the size of the average of the market-rate units;

- For rental inclusionary units, minimum sizes are specified based on number of bedrooms, (1) a studio shall be at least 450 square feet; (2) a one-bedroom unit shall be at least 600 square feet; (3) a two-bedroom unit shall be at least 750 square feet; (4) a three-bedroom unit shall be at least 1,100 square feet; and (5) for units with more than three bedrooms an additional 200 square feet for each additional bedroom.

While the City Council supported the concept of specifying minimum unit sizes, it did not provide specific feedback on the actual sizes proposed. Staff recommends using the above-noted numbers—they were developed with input from a professional consultant (Van Meter William Pollack) with experience developing affordable and market-rate projects and based on typical standards that would still allow an adequately sized and livable unit while helping to support the financial feasibility of the inclusionary units and overall project.

4. Bedroom Mix (17.44.050.G.)
The IZO has been amended to include new requirements for the bedroom mix (i.e., the number of units that are studios, one-, two-, or three-bedrooms) of the affordable units.

- For-sale projects inclusionary units must reflect a similar average number of bedrooms as the market-rate units
- In rental projects, a mix that includes at least 10 percent three-bedroom units is required, with a limitation set on studio units (no more than 10 percent studio units are allowed), and the remainder one- and two-bedroom units.

The City Council supported the idea of specifying a bedroom mix, but did not weigh in on the particular mix. However, it is noted that the rental bedroom mix is the same as that included and approved in the ODS; the idea of matching average bedroom counts in for-sale projects is a commonly used metric in other inclusionary ordinances reviewed by staff, to retain some equivalence between the market-rate and affordable units. To account for projects with 10 or fewer inclusionary units, the proposed amendments indicate that the Director of Community Development may approve deviations from the specified bedroom mix for projects, except that at least 50 percent of units shall have at least two bedrooms if the market rate project also provides units of that size.

<u>Alternative Means of Compliance (17.44.040.080)</u>
The existing IZO provides several methods by which a project can make alternative proposals to meet the requirements of the ordinance, including off-site construction, dedication of land, transfer of credits if a project produces more units than required by the IZO, and payment of in-lieu fees. Notably, however, the IZO is inconsistent in that not all alternative compliance is subject to City Council approval – in particular, the language of the IZO is permissive with respect to payment of in-lieu fees.

Recommended amendments to the alternative compliance section (17.44.080) include:

- Providing more detailed findings for approval of alternative compliance proposals, and clearly placing the burden of proof to support the basis of requests on the applicant.
- Establishing the City Council as the approving body for <u>all</u> alternative compliance requests.

- Establishing a clear priority among acceptable forms of alternative compliance, with (from most to least preferred) 1) Alternative configurations, unit types or clustering of units on site; 2) Constructing units off-site; 3) Dedicating land for an affordable housing project; and 4) Paying the Affordable Housing fee. As proposed in the text amendments, applicants are required to demonstrate that a higher-priority option is infeasible, before consideration is made of a lower-priority option.
- Criteria for each of the alternative compliance options have been added or strengthened, to ensure that the alternative will continue to meet the purpose of the IZO and policy priorities of the City.

In addition, staff recommends removing the option to allow the transfer of excess units as credits since it will help maximize the production of affordable units and avoid administrative complexities in terms of the timing, coordination, and approvals required between the "sending" and "receiving" sites.

The City Council was supportive of staff's recommendation to require City Council approval of any alternative compliance proposal, and to create improved criteria for evaluating such requests. The City Council was also supportive of allowing payment of in-lieu fees to remain an <u>option</u>, but only subject to City Council review and approval rather than the current permissive language.

<u>Procedures for Review</u>
Among other clarifying provisions, the proposed IZO amendments would allow for affordable housing proposals/agreements in full compliance with the Ordinance (i.e., not requesting alternative compliance or otherwise deviating from the standard) to be approved by the same body responsible for approval of the underlying project. For example, if the project was subject to Planning Commission approval, then a fully compliant affordable housing agreement could also be reviewed and approved by the Planning Commission. Such actions would be subject to the typical appeal or "call-up" procedures allowed by the Municipal Code.

As noted, any affordable housing agreement proposal involving an alternative compliance request, would be subject to City Council review and approval.

In discussion, the City Council supported staff's proposal, with one Councilmember expressing the opinion that all Affordable Housing Agreements be subject to City Council approval, irrespective of whether or not they included an alternative compliance component.

<u>Other Revisions</u>
Other revisions, not described in detail above, are included throughout the Ordinance; they generally aim to improve or clarify the language of the ordinance, reduce ambiguity, and/or create more objectivity. Additional revisions beyond those noted in the prior section include:

- 17.44.020 – Purpose: Revisions to remove reference to regulatory provisions more appropriately stated elsewhere in the Ordinance.
- 17.44.030 – Definitions: Revisions to the definitions section to align and update the definitions to terms used in the Ordinance, current practices, and other related regulatory requirements.
- 17.44.050 – Inclusionary Unit Provisions and Specifications: In addition to the changes described above, other revisions in this section would add more specificity or

measurable standards; modify exterior design standards such that affordable units will be “equivalent in appearance and quality” to the market rate units.

- 17.44.060 – Affordable Housing Agreement: Clarifying that where a project is permitted by City Council to pay affordable housing fees, such project does not require a separate affordable housing agreement, and the requirement would instead be memorialized in a city council resolution for approval.
- 17.44.070 – Incentives to Encourage On-Site Construction of Inclusionary Units: Deletion of the incentive for “priority processing” since this requirement may conflict with State law.
- 17.44.080 – Alternative Means of Compliance. Other minor revisions to be consistent with State law, requiring the City to provide alternative compliance methods for rental projects; and to clarify/strengthen requirements and criteria for approval of alternative compliance requests.
- 17.44.090 – Administration. Addition of a provision regarding amendment of affordable housing agreements; minor, non-substantive design changes and changes that would improve conformance to the IZO, may be approved administratively; other amendments are subject to approval by the same body that approved the original agreement.

<u>Other Amendments to the PMC and Objective Design Standards</u>
In addition to the various amendments to Chapter 17.44, various amendments are proposed to other chapters of the PMC, and to the 2023 Objective Design Standards to align with the IZO amendments, and to make other limited updates to align with State law. In summary, they include the following:

Chapter 17.40 – Affordable Housing Fee
Minor revisions have been made to this chapter, including clarification of the purposes for which affordable housing funds may be used, which include affordable housing programs as well as construction of affordable housing units. Other changes have been made to modernize terminology (e.g. referencing facilities for religious purposes as being exempt from the affordable housing fee); and/or align it to existing regulations (e.g. adding a reference to Junior ADUs, as well as ADUs as being exempt from the affordable housing fee.)

Chapter 17.40 allows for an annual increase to the affordable housing fee – consistent with other impact fees, it is proposed to amend the ordinance so that the fee is indexed to the Construction Cost Index (CCI), rather than the Consumer Price Index (CPI), since provision of affordable/inclusionary housing is a construction-related cost.

Finally, references to annual reporting and other requirements pursuant to AB1600 (Mitigation Fee Act) have been removed since the affordable housing fee is not considered an impact fee or subject to AB1600.

Chapter 18.38 – Housing Opportunity Zone District
As noted, as part of implementation of the 2023-2031 (6th Cycle) Housing Element, the City rezoned sites and created the Housing Opportunity Zone District. Since the IZO was pending update, some more detailed standards for inclusionary housing were included in this chapter.

Because those provisions would be redundant with the updated IZO, this chapter of the PMC would be amended to delete them.

Objective Design Standards for Housing Element Sites
Similar to Chapter 18.38, the ODS were adopted prior to this update of the IZO, and so detailed standards were included in the ODS for required affordable housing units. Similarly, those standards are proposed to be deleted from the ODS since they would be redundant with the updated IZO and instead the ODS would defer to the IZO for affordable housing requirements.

PUBLIC NOTICE

Notice of this Notification of this code amendment has been published in The Valley Times and was noted in the Pleasanton Weekly as an upcoming agenda item for the September 11, 2024, Planning Commission meeting. At the time this report was prepared, staff has not received comments regarding the proposed code amendments.

ENVIRONMENTAL ASSESSMENT

The adoption of this Ordinance is not a project within the meaning of Section 15378 of the California Environmental Quality Act (CEQA) Guidelines because there is no potential for it to result in a physical change in the environment, either directly or indirectly, in that the inclusionary ordinance is related only to the affordability of housing and does not modify the physical characteristics of housing, or change or modify the allowable density of projects. Additionally, the ordinance is also exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility of a significant effect on the environment and contains no provisions that will directly or indirectly result in a physical change in the environment.

SUMMARY/CONCLUSION

The proposed amendments to the IZO would comprehensively update the nearly 25-year-old ordinance, and improve its overall feasibility, and enforceability as well as better aligning it with Housing Element and other policy goals of the City to maximize construction of housing affordable to all segments of the community. It is therefore recommended the Planning Commission recommend approval of the Ordinance, and related amendments to the Pleasanton Municipal Code and ODS, to the City Council.

Primary Author: Ellen Clark, Director of Community Development; eclark@cityofpleasantonca.gov.

Reviewed/Approved By:
Ellen Clark, Director of Community Development

EXHIBIT A

RESOLUTION NO. PC-2024-15

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PLEASANTON RECOMMENDING CITY COUNCIL APPROVE AMENDMENTS TO PLEASANTON MUNICIPAL CODE (PMC) CHAPTERS 17.44 – INCLUSIONARY ZONING; AND RELATED AMENDMENTS TO CHAPTER 17.40 – AFFORDABLE HOUSING FEE; CHAPTER 18.38 – HOUSING OPPORTUNITY ZONE DISTRICT; AND THE OBJECTIVE DESIGN STANDARDS FOR HOUSING ELEMENT SITES (CASE NO. P24-0505)

WHEREAS, on November 7, 2000, the City Council of the City of Pleasanton adopted Ordinance 1818, adding Chapter 17.44 Inclusionary Zoning, to the Pleasanton Municipal Code, in order to enhance the City's ability to mitigate the effect of new market-rate development on the demand for affordable housing; and

WHEREAS, on November 6, 1990, the City Council adopted Ordinance 1488, to establish Chapter 17.40 Lower-Income Housing Fee; and which chapter was amended in 2019 to retitle it to Chapter 17.40 Affordable Housing Fee; and

WHEREAS, on January 26, 2023, and with amendments in May, 2023, the City Council adopted Resolution 23-1360, adopting the Objective Design Standards for Housing Element sites, which included among other standards, provisions with respect to affordable inclusionary units; and on December 19, 2023 adopted Ordinance 2272 to create Chapter 18.38 Housing Opportunity Zone District of the Pleasanton Municipal Code, with this chapter reflecting similar standards to those in the Objective Design Standards for Housing Element Sites; and

WHEREAS, California Government Code Section 65580(d) states that all cities have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community; and

WHEREAS, in 2017, AB 1505 amended California Government Code Section 65850 and added Section 65850.1, to "reaffirm the authority of local jurisdictions to include within these inclusionary housing ordinances requirements related to the provision of rental units" and "does not modify or in any way change or affect the authority of local jurisdictions to require, as a condition of the development of residential units, that the development include a certain percentage of residential for -sale units affordable to, and occupied by, households with incomes that do not exceed the limits for moderate-income, lower-income, very-low income, or extremely-low income households;" and

WHEREAS, Program 2.1 of the 6th Cycle Housing Element calls for the City to continue to implement the Inclusionary Zoning Ordinance, and actively pursue strategies to improve its effectiveness in producing affordable housing in conjunction with new development, including study of potential changes to the proportion of inclusionary units required in multi-family developments, identification of a target mix of affordable units and unit size standards, and monitoring the effectiveness of the ordinance in delivering affordable units; with modifications to be evaluated to better achieve that goal; and

WHEREAS, since its adoption, the Inclusionary Zoning Ordinance has resulted in the production of hundreds of below-market-rate housing units in Pleasanton and contributed a valuable source of funding to support the production of affordable housing and programs that preserve access to and support affordable housing for Pleasanton households; and

WHEREAS, in January 2024, the City retained professional services firm Economic and Planning Systems (EPS) to provide analysis and recommendations with respect to modification to the inclusionary rate and target affordability limits, and in this particular respect to evaluate the feasibility of such changes with respect to the overall production of market-rate residential units; and

WHEREAS, the City Council held public workshops on May 7, 2024 and August 20, 2024, to study potential amendments to the inclusionary rate and required affordability levels as stated in the IZO, and consider and provide direction on various potential amendments to the IZO; and

WHEREAS, on September 11, 2024, the Planning Commission held a duly-noticed public hearing and considered the written agenda report, relevant exhibits, direction from City Council and recommendations from City staff concerning this application, and received testimony from interested parties; and

NOW, THEREFORE BE IT RESOLVED by the Planning Commission of the City of Pleasanton, based on the entire record of proceedings, including the oral and written staff reports and all public comment and testimony:

<u>Section 1:</u> Findings Pursuant to the California Environmental Quality Act (CEQA)
The adoption of this Resolution is not a project within the meaning of Section 15378 of the California Environmental Quality Act (CEQA) Guidelines because there is no potential for it to result in a physical change in the environment, either directly or indirectly, in that the inclusionary ordinance is related only to the affordability of housing and does not modify the physical characteristics of housing, or change or modify the allowable density of projects. Additionally, it is also exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility of a significant effect on the environment and contains no provisions that will directly or indirectly result in a physical change in the environment.

<u>Section 2:</u> The Planning Commission hereby recommends to the City Council approval of Case No. P24-0505 for amendments to Pleasanton Municipal Code (PMC) Chapters 17.44 – Inclusionary Zoning; and related amendments to PMC Chapter 17.40 – Affordable Housing Fee; Chapter 18.38 – Housing Opportunity Zone District; and the Objective Design Standards for Housing Element Sites

<u>Section 3:</u> This resolution shall become effective 15 days following its passage.

PASSED, APPROVED AND ADOPTED by the Planning Commission of the City of Pleasanton at a regular meeting held on September 11, 2024 by the following vote:

Ayes: Commissioners
Noes: Commissioners
Absent: Commissioners
Abstain: Commissioners

ATTEST:

______________________________	______________________________
Melinda Denis Secretary, Planning Commission	Matt Gaidos Chair

APPROVED AS TO FORM:

____
Kimberly Cilley
Assistant City Attorney

EXHIBIT A

TITLE 17
PLANNING AND RELATED MATTERS

Chapter 17.40
AFFORDABLE HOUSING FEES

§ 17.40.010. Purpose.

An affordable housing fee (previously known as the lower-income housing fee) is established as set forth in this chapter in order to assist in meeting the affordable and moderate-income housing goals as established in the general plan.
(Ord. 1488 § 1, 1990; Ord. 2192 § 2, 2019)

§ 17.40.020. Definitions.

As used in this chapter:

"Commercial office or industrial development project" means any construction of a new commercial, office or industrial structure, the addition to any existing commercial, office or industrial structure, or the conversion of an existing commercial, office or industrial structure to a use classification capable of employing additional employees.

"Household of moderate-income" means a household comprised of those individual or families with incomes greater than 80 percent, but less than 120 percent, of the median family income for the Standard Metropolitan Statistical Area, defined as Alameda and Contra Costa Counties for a family of four persons, adjusted up or down for larger or smaller household sizes (PMSA Median).

"Household of lower-income" means a household composed of those individuals or families with incomes no greater than 80 percent of the median family income for the Standard Metropolitan Statistical Area, defined as Alameda and Contra Costa Counties for a family of four persons, adjusted up or down for larger or smaller household sizes (PMSA Median).

"Lower-income housing units" means new or rehabilitated units to be used by households of lower-income for at least 25 years and the total housing cost for each unit shall not exceed 30 percent of household income.

"Moderate-income housing units" means new or rehabilitated units to be used by households of moderate-income for at least 25 years and the total housing cost for each unit shall not exceed 30 percent of household income.

"Rehabilitated unit" means any housing unit not meeting Uniform Building Code requirements for occupancy which is improved so as to meet those requirements.

"Residential development project" means the construction of a new housing unit.
(Ord. 1488 § 1, 1990; Ord. 2192 § 2, 2019)

§ 17.40.030. Affordable housing fee required.

A. All residential and commercial office or industrial development projects not otherwise exempt shall pay an affordable housing fee as established by separate city council resolution and which fee shall be set forth in the city's ~~fees and charges appendix,~~ master fee schedule, as amended.

If additional floor area is constructed for, or converted to, commercial, industrial or office use, the fee shall be applicable only to the square footage of the floor area added or to that portion of the square footage of the floor area converted for which the fee has not been paid.

B. The city council may adjust the fee in consideration of on-site programs promoting lower-income housing such as the dedication of land suitable for lower-income housing, or in conjunction with an alternative compliance proposal made as part of an affordable housing proposal in accordance with Chapter 17.44.

(Ord. 1488 § 1, 1990; Ord. 2192 § 2, 2019)

§ 17.40.040. Exemptions.

A. The following are exempt from the affordable housing fee:
   1. All units within a residential development project when the project has a minimum of 15 percent deed-restricted lower-income housing units;
   2. Those lower-income housing units in a residential development project with less than 15 percent deed-restricted lower-income housing units;
   3. Deed-restricted ~~Moderate~~ moderate-income housing units in residential development projects;
   4. Second units and accessory dwelling units and junior accessory dwelling units as those terms are used in Section 65852.2 of the Government Code and Chapter 18.106;
   5. Reconstruction or other new development on a site when such reconstruction replaces an equal number of square feet of floor area, as defined in the Uniform Building Code, when the use is similar, and when such reconstruction occurs within two years from the time the previous structure on the site was demolished;
   6. ~~Churches~~ Facilities used exclusively for religious purposes as defined in California Revenue and Taxation Code Section 207.

B. The project developer shall enter into a regulatory agreement with the city in order for a project to qualify for an exemption by the inclusion of lower-income or moderate-income housing units.

(Ord. 1488 § 1, 1990; Ord. 2192 § 2, 2019)

§ 17.40.050. Reduction of fee—Commercial, office or industrial project.

A. The city council may reduce the required fee for a commercial, office or industrial development project when the project developer can demonstrate: (1) that the proposed use will generate substantially fewer workers than the uses which have established the fee; and

(2) that the building design is unable to house another use without substantial renovation. Examples of such uses are public utility facilities, exclusive storage buildings, etc.

B. In the event such buildings are renovated to house another use, the fee then applicable shall be due at that time.

§ 17.40.060. Commercial, office or industrial projects—Construction of lower-income housing.

Commercial, office or industrial development projects may construct lower-income housing to fulfill the requirements of this chapter in accordance with this section, and with the applicable provisions of Section 17.44.030.

A. Lower-income housing proposed to offset the requirements of this chapter must be proposed in conjunction with the commercial, office or industrial development project which would give rise to the fee and must be approved by the city council in offsetting otherwise required

affordable housing fees.

B. For lower-income housing constructed on lands designated for other than residential development in the general plan as of the effective date of the ordinance codified in this chapter, the project developer shall be given a credit, for purposes of offsetting the affordable housing fee otherwise required, in an amount established by separate city council resolution and which credit amount shall be set forth in the city's fees and charges appendix.

C. For lower-income housing constructed on lands designated for residential development in the general plan as of the effective date of the ordinance codified in this chapter, for each lower- income housing unit constructed beyond 15 percent of the residential development project, the project developer shall be given a credit for purposes of off-setting the affordable housing fee otherwise required, in an amount established by separate city council resolution and which credit amount shall be set forth in the city's fees and charges appendix.

D. In the event the lower-income housing constructed by the developer of a commercial, office or industrial development project creates an offset of the affordable housing fee greater than the total fee required by the development project, the developer may apply the difference to other sites then owned by the developer. This transfer shall be so noted in the regulatory agreement accompanying the project.

(Ord. 1488 § 1, 1990; Ord. 2192 § 2, 2019)

§ 17.40.070. Annual adjustment of the fee.

The affordable housing fee shall annually be revised effective January 1st of each year, commencing on January 1, 1992, by the percentage increase or decrease in the Engineering News Record Consumer Construction ~~Price~~ Cost Index for the San Francisco ~~San Francisco/Oakland region~~ Bay Area.

(Ord. 1488 § 1, 1990; Ord. 2192 § 2, 2019)

§ 17.40.080. Establishment of affordable housing fund.

A. All fees generated pursuant to this chapter shall be deposited into the affordable housing fund, and any property interest or other value contributed, including interest earned by the fund, shall be segregated and used exclusively for the purposes provided for herein.

B. The city manager shall make a written annual report to the city council regarding the administration of the affordable housing fund~~, and shall present such annual report at a regular meeting of the city council~~.

~~C. Pursuant to Government Code Section 66000, et seq., the city shall make findings once each fiscal year with respect to any portion of the fees remaining unexpended or uncommitted in its account five or more years after the deposit of the fees to identify the purpose to which the fee is to be put and to demonstrate a reasonable relationship between the fee and the purpose for which it was charged. The findings required by this section need only be made for moneys in the possession of the city and need not be made with respect to letters of credit, bonds or other instruments taken to secure payment of the fee at a future date.~~

D. ~~Any refunds shall be made pursuant to Government Code Section 66001.~~

(Ord. 1488 § 1, 1990; Ord. 2192 § 2, 2019)

§ 17.40.090. Use of affordable housing fund.

A. Any ~~moneys~~ monies generated by this chapter shall be used in accordance with and in support of activities to administer and implement the city's adopted housing element and other policies and programs specifically related to affordable housing as may be approved or authorized by the city council. Activities may include, but are not limited to, land acquisition, construction, rehabilitation, subsidization, and counseling or assistance to other governmental entities, private organizations, or individuals to expand housing opportunities to lower-income households.

B. ~~Moneys~~ Monies in the affordable housing fund may be disbursed, hypothecated, collateralized, or otherwise employed for the purposes set forth herein. These purposes include, but are not limited to, assistance to housing development corporations, equity participation loans, grants, development loan funds, participation leases, loans to develop affordable housing or other public/private partnership arrangements. The affordable housing fund may be used for the benefit of both rental or owner-occupied housing.

C. When the city uses affordable housing fund moneys to construct or assist in the construction of lower-income units, the city may establish the rules which will apply to occupancy of said units. It is the intention of this chapter and the general plan that such units be made available on a priority basis to Pleasanton residents and workers.

D. The city council may use affordable housing fund ~~moneys~~ monies for moderate-income housing as determined necessary and desirable to meet general plan goals and policies.

(Ord. 1488 § 1, 1990; Ord. 2192 § 2, 2019)

§ 17.40.100. Time of payment.

Affordable housing fees shall be paid at the time of issuance of a building permit for the residential unit and/or for the commercial, office or industrial development project giving rise to the fee, unless otherwise determined by the city.

(Ord. 1488 § 1, 1990; Ord. 2192 § 2, 2019)

Chapter 17.44
INCLUSIONARY ZONING

Article I
General Provisions

§ 17.44.010. Title.

This chapter shall be called the "Inclusionary Zoning Ordinance of the City of Pleasanton." (Ord. 1818 § 1, 2000)

§ 17.44.020. Purpose.

The purpose of this chapter is to enhance the public welfare, to ~~and~~ assure that market-rate ~~further~~ housing development mitigates its impacts on the demand for affordable housing, and to attain ~~attains~~ the city's affordable housing goals by increasing the production of residential units affordable to households of very low, low, and moderate income, and by providing funds for the development of very low, low, and moderate income ownership and/or rental housing and for housing-related programs that benefit very-low, low, and moderate income households. ~~In order to assure that the remaining developable land is utilized in a manner consistent with the city's housing policies and needs, 15 percent of the total number of units of all new multiple-family residential projects containing 15 or more units, constructed within the city as it now exists and as may be altered by annexation, shall be affordable to very low and low income households. For all new single-family residential projects of 15 units or more, at least 20 percent of the project's dwelling units shall be affordable to very low, low, and/or moderate-income households. These requirements shall apply to both ownership and rental projects.~~
(Ord. 1818 § 1, 2000)

§ 17.44.030. Definitions.

For the purposes of this chapter, certain words and phrases shall be interpreted as set forth in this section unless it is apparent from the context that a different meaning is intended.

"Affordable Housing Fee." A fee paid to the city by an applicant for a project in the city, in lieu of providing the inclusionary units required by this chapter.

"Affordable housing proposal." A proposal submitted by the project owner as part of the city development application (e.g., design review, planned unit development, etc.) stating the method by which the requirements of this chapter are proposed to be met.

"Affordable rent." A monthly rent (including utilities as determined by a schedule prepared by the city) which does not exceed one-twelfth of 30 percent of the maximum annual income for a household of the applicable income level.

"Affordable sales price." A sales price that ~~which~~ results in ~~a~~ monthly housing costs, ~~mortgage payment (including principal and interest)~~ which may include taxes, insurance, homeowners association dues (if any), and utility costs as determined by the city, which does not exceed one-twelfth of 35 percent of the maximum annual income for a household of the applicable income level.

"Amenities, Interior." Interior features which are not essential to the health and safety of the resident, but provide visual or aesthetic appeal, or are provided as conveniences rather than as necessities. Interior amenities may include, but are not limited to, fireplaces, garbage disposals, dishwashers, cabinet and storage space and bathrooms in excess of one. Amenities shall in no way include items required by city building codes or other ordinances that are necessary to ensure the safety of the building and its residents.

"Amenities, Shared." Facilities and amenities within the project that are available for the shared and/or general use of residents of the project, including but not limited to shared recreation and other facilities (e.g. gym or pool, clubhouse, meeting room, co-working space, laundry, barbeque area, etc.).

~~.~~"Applicant." Any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks city permits and approvals for a project.

"Area Median Income (AMI)." Median income for Alameda County, adjusted for household size, as published pursuant to California Code of Regulations, Title 25, Section 6932 and California Health and Safety Code section 50093 as may be amended.

"City." The city of Pleasanton or its designee or any entity with which the city contracts to administer this chapter.

"Commercial, office, and industrial project." For the purposes of this chapter, any new nonresidential (commercial, office, or industrial) development or redevelopment greater than 10 gross acres or 250,000 square feet of gross building area, whichever is less.

"Dwelling unit." A dwelling designed for occupancy by one household.

"HUD." The United States department of housing and urban development or its successor.

"Household." One person living alone; or two or more persons sharing residency whose income is considered for housing payments.

"Household, low income." A household whose annual income is more than 50 percent but does not exceed 80 percent of the AMI ~~annual median income for Alameda County, based upon the annual income figures provided by the U.S. department of housing and urban development (HUD)~~, as defined by this chapter. ~~adjusted for household size.~~

"Household, moderate income." A household whose annual income is more than 80 percent but does not~~note~~ exceed 120 percent of the AMI~~annual median income for Alameda County, based upon the annual income figures provided by HUD~~, as defined by this chapter.

"Household, very low income." A household whose annual income does not exceed 50 percent of the AMI ~~annual median income for Alameda County, based upon the annual income figures provided by HUD,~~ as defined by this chapter.

"Inclusionary unit." A dwelling unit as required by this chapter which is rented or sold at affordable rents and/or affordable sales prices (as defined by this chapter) to very low, low, or moderate income households.

"Inclusionary unit credits." Credits approved by the city council in the event a project exceeds the total number of inclusionary units required in this chapter. ~~Inclusionary unit credits may be used by the project owner to meet the affordable housing requirements of another project subject to approval by the city council.~~

"Income." The gross annual household income as defined by HUD.

"Life of the inclusionary unit." The term during which the affordability provisions for inclusionary units shall remain applicable. The affordability provisions for inclusionary units shall apply in perpetuity from the date of occupancy, which shall be the date the city of Pleasanton performs final inspection for the building permit.

~~"Lower income housing fee." A fee paid to the city by an applicant for a project in the city, in lieu of providing the inclusionary units required by this chapter.~~

"Market-rate units." means new living units in residential projects which are not rented or sold at affordable rents or affordable sales prices, as defined in this chapter.

~~"Median income for Alameda County." The median gross annual income in Alameda County as determined by HUD, adjusted for household size.~~

"Off-site inclusionary units." Inclusionary units constructed within the city of Pleasanton on a site other than the site where the applicant intends to construct market rate units.

"Ownership units." Inclusionary units developed as part of a residential development which the applicant intends will be sold, or which are customarily offered for individual sale.

"Project." A residential housing development at one location or site including all dwelling units for which permits have been applied for or approved.

"Project owner." Any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which holds fee title to the land on which the project is located.

"Property owner." The owner of an inclusionary unit, excepting a "project owner."

"Recapture mechanisms." Legal programs and restrictions by which subsidies provided to inclusionary units will be controlled and repaid to the city and/or other entity upon resale, to ensure the ongoing preservation of affordability of inclusionary units or to ensure funds for inclusionary units remain within the city's affordable housing program.

"Rental units." Inclusionary units which the applicant intends will be rented or leased, or which are customarily offered for lease or rent.

"Residential project, rental." A residential project or portion thereof, that creates one or more units that cannot be sold individually, except that construction of any accessory dwelling unit shall not be considered a rental project.

"Residential project, for sale." A residential project, or portion thereof, that includes the creation of one or more residential living units that may be sold individually, including a condominium, stock cooperative, community apartment, or attached or detached single-family home. A for-sale project also includes a residential condominium conversion project and the creation of residential living units that may be sold individually, but are initially rented rather than sold.

"Resale restrictions." Legal restrictions which restrict the price of inclusionary units to ensure that they remain affordable to very low, low, and moderate income households on resale.

~~"Residential project, multiple-family." A residential project consisting of condominiums, apartments, and similar dwellings attached in groups of four or more units per structure and including multiple units located on a single parcel of land under common ownership.~~

~~"Residential project, single-family." A residential project consisting of detached and attached single-family homes, including paired single-family, duets, duplexes, townhomes, and similar unit types where each unit is located on a separate parcel of land.~~

"Unit type." Various dwelling units within a project which are distinguished by number of bedrooms and/or the type of construction (e.g., detached single-family, duets, townhomes, condominiums, apartments).
(Ord. 1818 § 1, 2000)

Article II
Zoning Requirements

§ 17.44.040. General requirements/applicability.

A. Applicability. The Inclusionary Housing Requirements of this chapter shall apply to all new residential for-sale and rental projects, including mixed residential and non-residential projects, consisting of ten (10) or more residential units or parcels. The project unit count used to determine applicability of this chapter shall be exclusive of any Accessory Dwelling Units or Junior Accessory Dwelling Units.

~~A. Residential Development. For all new multiple-family residential projects of 15 units or more, at least 15 percent of the project's dwelling units shall be affordable to very low, and/ or low-income households. For all new single-family residential projects of 15 units or more, at least 20 percent of the project's dwelling units shall be affordable to very low, low, and/or moderate-income households. These dwelling units shall be referred to as "Inclusionary Units". Special consideration will be given to projects in which a significant percentage of the inclusionary units are for very low and low income households. The specific mix of units within the three affordability categories shall be subject to approval by the city.~~

~~The inclusionary units shall be reserved for rent or purchase by eligible very low, low, and moderate income households, as applicable. Projects subject to these requirements include, but are not limited to, single-family detached dwellings, townhomes, apartments, condominiums, or cooperatives provided through new construction projects, and/or through conversion of rentals to ownership units.~~

The percentage of inclusionary units required for a particular project shall be determined ~~only once on a given project,~~ at the time of tentative map approval, or, for projects not processing a map, prior to issuance of building permit. If the project~~subdivision~~ design changes, which results in a change in the number of inclusionary units~~unit types~~ required, the number of inclusionary units required shall be recalculated to coincide with the final approved project. In applying and calculating the number of inclusionary units required based on the specified percentage~~15 percent requirement~~, any decimal fraction less than or equal to 0.50 may be disregarded, and any decimal fraction greater than 0.50 shall be construed as one unit.

B. Residential For-Sale Projects. For all new for-sale residential project, and where the project would include 10 residential units or more, at least fifteen (15) percent of the project's dwelling units shall be affordable to very-low, low- or moderate-income households as specified. These units shall be referred to as "Inclusionary Units." The Inclusionary Units shall be reserved for purchase by eligible households, in the following proportions. The applicant shall not be prohibited from deepening the level of affordability in the project:

- 100 percent of the inclusionary units at a sales price affordable to a household whose income is no more than 120% of the Area Median Income.

C. Residential Rental Projects. For all new residential rental projects, including where the rental units are part of a mixed-use projects, and where the project would include 10 residential units or more, at least 15 percent of the project's dwelling units shall be affordable to very-low [and/] or low-income households as specified. These units shall be referred to as "Inclusionary Units." The Inclusionary Units shall be reserved for rent to eligible households within each income category as specified, in the following proportions. The applicant is not precluded from deepening the level of affordability in the project:

- 100 percent of the units at a sales price affordable to a household whose income is no more than 60% of the Area Median Income

Alternative Option:

- 50 percent of the inclusionary units at a sales price affordable to a household whose income is no more than 50% of the Area Median Income.]
- 50 percent of the inclusionary units at a sales price affordable to a household whose income is no more than 60% of the Area Median Income]

D. Commercial, Office, and Industrial (COI) Development. COI projects shall be subject to the affordable housing ~~In lieu of paying the lower income~~ fee as set forth in Chapter 17.40. In lieu of paying the affordable housing fee COI developments as defined in this chapter ~~city Ordinance No. 1488, COI development~~ may provide rental or for-sale affordable housing consistent with this chapter, and with the requirements of Section 17.40.060. A COI development proposing to provide affordable housing in lieu of paying the fee shall ~~. As a result, new COI developments are strongly encouraged to~~ submit an affordable housing proposal as set forth in Section 17.44.090 of this chapter. Upon submittal of the affordable housing proposal, city staff will meet with the developer to discuss the potential for providing incentives to encourage on-site construction of affordable housing units and alternatives to constructing affordable units as set forth in this chapter. In the event a developer requests incentives or alternatives as a means of providing affordable housing in connection with a COI development, the affordable housing proposal will be reviewed as set forth in Section 17.44.090 of this chapter. ~~COI development not pursuing the inclusion of affordable housing shall be subject to the lower income fees as set forth in city ordinance 1488.~~

E. Residential projects with fewer than ten (10) Dwelling units shall be subject to the affordable housing fee as set forth in Chapter 17.40.

(Ord. 1818 § 1, 2000)

§ 17.44.050. Inclusionary unit provisions and specifications.

A. For those projects with both market-rate and inclusionary units, the inclusionary units shall be dispersed throughout the project so as not to concentrate inclusionary units in a specific geographic area (including a floor) of the project, except as provided in this section. The inclusionary units shall be located in comparable locations to the market-rate units, and shall be located on each floor, and throughout the site such that a) a proportionate number of inclusionary units are located on each floor of a multi-story apartment or condominium building, and that within such buildings no more than 20 percent of units are located adjacent to one another; b) no more than 20 percent of the units are located adjacent to one another in a single-family detached project and c) in developments containing more than one multi-unit structure, including groups of attached townhomes, condominiums or apartments, no more than 50 percent of the proposed inclusionary units are consolidated into one structure.

1. For a project where the market rate units are proposed to be detached single-family homes, it is permitted for the inclusionary units to be paired single-family, duets, duplexes, or townhomes. In such case, the townhomes, duets, or duplexes shall be dispersed throughout the project.
2. For a project where the market rate units are proposed to be attached or detached single-family homes, duets, or duplexes (or a combination thereof), it is permitted for the inclusionary units to be ownership condominiums or rental apartments, with such units also dispersed throughout the project. This provision shall not apply to affordable units that are financed with low-income tax credits.
3. Clustering of inclusionary units in a manner other than that specified in this section may be allowed subject to City Council approval, as specified in Section 17.44.080, Alternative Means of Compliance.

B. Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) shall not be permitted to satisfy the requirements of this Inclusionary Zoning Ordinance. This provision shall not be construed to discourage, prohibit or disallow the provision of

ADUs and JADUs as a component of a market-rate residential project, in addition to any required inclusionary units.

C. Inclusionary units shall be equivalent in exterior appearance and overall quality of construction to market-rate units in the housing development.

~~A. Inclusionary units shall be dispersed throughout the project unless otherwise approved by the city.~~

~~B. Inclusionary units shall be constructed with identical exterior materials and an exterior architectural design that is consistent with the market rate units in the project.~~

D. Inclusionary units may be of smaller size than the market-rate units in the project, subject to the following limitations:

1. For for-sale units, the living area of each inclusionary units may be up to 50 percent smaller than the size of the average market rate unit in the project.
2. For rental units, the living area of each inclusionary unit shall be as follows: (1) a studio shall be at least 450 square feet; (2) a one-bedroom unit shall be at least 600 square feet; (3) a two-bedroom unit shall be at least 750 square feet; (4) a three bedroom unit shall be at least 1,100 square feet; and (5) for units with more than three bedrooms an additional 200 square feet for each additional bedroom.

E. Inclusionary units . In ~~addition, inclusionary units~~ may have fewer interior amenities than the market rate units in the project, except that inclusionary units shall have air-conditioning, enclosed garages, and laundry facilities to the extent the market-rate units have those amenities. Interior finishes and amenities must be equivalent to those provided in the base model market-rate units.

F. The residents of the inclusionary units shall have the same access to shared common areas, open space, parking, storage and other amenities as the market-rate residents when located in the same building or on the same site.

G. Bedroom Mix:

~~H.~~ The project shall comply with the following ~~. However, the city may require that the inclusionary units meet certain minimum~~ standards with respect to the bedroom mix of ~~. These standards shall be set forth in~~ the affordable/inclusionary units: ~~housing agreement for the project.~~

i. For for-sale projects, the average number of bedrooms per unit for all affordable units in the project shall equal the average number of bedrooms for all other units in the project, up to a limit of three bedrooms per unit;

ii. For rental projects, a minimum of 10 percent of the total affordable units shall be three-bedroom units; a minimum of 40 percent of the total affordable units shall be two-bedroom units; and the remaining affordable units shall be studio or one-bedroom units except that no more than 10% of units may be studios. Age-restricted projects shall not be required to provide three-bedroom units, and may instead provide additional studio, one- or two-bedroom units in lieu of the required three-bedroom units. This provision shall not apply to affordable units that are financed with low-income tax credits. The director of community development may approve deviations from the specified bedroom mix for projects with 10 or fewer inclusionary units, except that at least 50 percent of units shall have at least two bedrooms if the market rate project also provides units of that size.

I. Inclusionary units shall remain affordable in perpetuity from the date of occupancy, which shall be the date the city of Pleasanton performs final inspection for the building permit, through recordation of an affordable housing agreement as described in Section 17.44.060 of this chapter.

~~J.~~ All inclusionary units in a project shall be constructed concurrently with~~within~~ or prior to the construction of the project's market rate units, unless an alternative schedule for construction is approved by the city council. “Concurrently” means that all inclusionary units shall be built prior to the full build-out of market rate units in the same residential development project. In phased developments, inclusionary units shall be constructed and occupied in proportion to the number of market rate units constructed and occupied in each phase. ~~.~~

1. A building permit may not be issued for any market rate unit unless a proportional number of building permits has been issued for inclusionary units; and
2. A certificate of occupancy or final inspection may not be issued for market rate units unless a proportional number of certificates of occupancy or final inspections have been issued for inclusionary units.

K. For purposes of calculating the affordable rent or affordable sales price of an inclusionary unit, the following household size assumptions shall be used for each applicable dwelling unit type:

Unit Size	**HUD Income Category by Household Size**
Studio unit	1 person
1 bedroom unit	2 persons
2 bedroom unit	3 persons
3 bedroom unit	4 persons
4 or more bedroom unit	5 or more persons

L. The city's adopted preference and priority system shall be used for determining eligibility among prospective beneficiaries for affordable housing units created through this inclusionary zoning ordinance.

(Ord. 1818 § 1, 2000)

§ 17.44.060. Affordable housing agreement.

An affordable housing agreement shall be entered into by the city and the project owner. The agreement shall record the method and terms by which a project owner shall comply with the requirements of this chapter. The approval and/or recordation of this agreement shall take place prior to final map approval or, where a map is not being processed, prior to the issuance of building permits for such lots or units.

The affordable housing agreement shall state the methodology for determining a unit's initial and ongoing rent or sales and resale price(s), any resale restrictions, occupancy requirements, eligibility requirements, city incentives including second mortgages, recapture mechanisms, the administrative process for monitoring unit management to assure ongoing affordability and other matters related to the development and retention of the inclusionary units.

In addition to the above, the affordable housing agreement shall set forth any waiver of the affordable ~~lower income~~ housing fee. For projects which meet the affordability threshold with very low and/or low-income units, all units in the project shall be eligible for a waiver of the affordable~~lower income~~ housing fee. For ~~single-family~~ ownership residential projects which meet the affordability threshold with moderate income units, ~~or multiple-family residential projects which do not meet the affordability threshold~~, only the inclusionary units shall be eligible for a waiver of the affordable ~~lower income~~ housing fee except as otherwise approved by the city council.

To assure affordability in accordance with the terms of this chapter and over the life of the unit (i.e. in perpetuity)~~,~~ the affordable housing agreement shall be recorded with the property deed or other method approved by the city attorney. ~~In the event an inclusionary unit is affordable by design the affordable housing agreement shall stipulate the method for assuring that the units retain their affordability as the housing market changes.~~

The community development director may waive the requirement for an affordable housing agreement ~~for projects approved prior to the effective hereof and/or~~ for projects that have their affordable housing requirements included in a development agreement or other city document. ~~(Ord. 1818 § 1, 2000; Ord. 2000 § 1, 2009)~~

If a project is permitted to pay the affordable housing fee to meet the requirements of this Chapter, pursuant to Sections 17.44.040.D, 17.44.040.E, or Section 17.44.080, an affordable housing agreement shall not be required. In the case of approval pursuant to Section 17.44.080, such provision shall be reflected in a resolution for approval adopted by city council.
(Ord. 1818 § 1, 2000; Ord. 2000 § 1, 2009)

§ 17.44.070. Incentives to encourage on-site construction of inclusionary units.

The city shall consider making available to the applicant incentives to increase the feasibility of residential projects to provide inclusionary units. Incentives or financial assistance will be offered only to the extent resources for this purpose are available and approved for such use by the city council or city manager, as defined below, and to the extent that the project, with the use of incentives or financial assistance, assists in achieving the city's housing goals. However, nothing in this chapter establishes, directly or through implication, a right of an applicant to receive any assistance or incentive from the city.

Any incentives provided by the city shall be set out in the affordable housing agreement pursuant to Section 17.44.060 of this chapter. The granting of the additional incentives shall require demonstration of exceptional circumstances that necessitate assistance from the city, as well as documentation of how such incentives increase the feasibility of providing affordable housing.

The following incentives may be approved for applicants who construct inclusionary units on-site:

A. Fee Waiver or Deferral. The city council, by resolution, may waive or defer payment of city development impact fees and/or building permit fees applicable to the inclusionary units or the project of which they are a part. Fee waivers shall meet the criteria included in the city's adopted policy for evaluating waivers of city fees for affordable housing projects. The affordable housing agreement shall include the terms of the fee waiver.

B. Design Modifications. The granting of design modifications relative to the inclusionary requirement shall require the approval of the city council and shall meet all applicable zoning requirements of the city of Pleasanton. Modifications to typical design standards may include the following:

Reduced setbacks;

Reduction in infrastructure

requirements; Reduced open space

requirements; Reduced landscaping

requirements; Reduced interior or

exterior amenities;

Reduction in parking

requirements; Height restriction

waivers.

C. Second Mortgages. The city may utilize available affordable ~~lower income~~ housing funds for the purpose of providing second mortgages to prospective unit owners or to subsidize the cost of a unit to establish an affordable rent or an affordable sales price. Terms of the second mortgage or subsidy shall be stated in the affordable housing agreement. The utilization of these incentives shall not be the sole source of providing the inclusionary units and they are intended to augment the developer's proposal.

~~D. Priority Processing. After receiving its discretionary approvals, a project that provides inclusionary units may be entitled to priority processing of building and engineering approvals subject to the approval of the city manager. A project eligible for priority processing shall be assigned to city engineering and/or building staff and processed in advance of all nonpriority items.~~

(Ord. 1818 § 1, 2000)

§ 17.44.080. Alternative Means of Compliance ~~Alternatives to constructing inclusionary units on-site.~~

In general, and where specified by this chapter, projects shall be required to construct inclusionary units on-site and~~The primary emphasis of this inclusionary zoning ordinance is to achieve the inclusion of affordable housing units to be constructed~~ in conjunction with market rate units within the same project in all new residential projects. However, pursuant to state law and in the interests of avoiding undue impediments to housing production, the city acknowledges that it may be beneficial to provide alternative means of compliance with this chapter. ~~not always be practical to require that every project satisfy its affordable housing requirement through~~

A. Provisions Applicable to All Alternatives

1. Approval of any alternative proposal is subject to city council review and approval, based on the criteria and findings set forth in subsections B through H as applicable.
2. The applicant shall bear the burden of providing substantial evidence to support the findings set forth in this section, and to support the feasibility of any proposed alternative. The applicant shall set forth the factual and legal basis for any request under this section.
3. Any request under this section shall be submitted to the director of community development together with an economic analysis, if required, or other supporting documentation.
4. The city council may approve or conditionally approve any alternative set forth in this section if it makes all of the following findings and any additional findings required for the selected alternative:
   a. It is not feasible or desirable to accommodate the inclusionary units on site, or to otherwise construct the units in strict accordance with the requirements of this chapter, due to specific site conditions or constraints, project location, or other unique characteristics of the project or project site.
   b. The number of affordable units provided by the alternative equals or exceeds that provided by the on-site units or by the payment of the Affordable Housing Fee, as applicable to the project;
   c. The level of affordability provided by the alternative is the same or lower (i.e. has "deeper" affordability) as provided by on-site units or the payment of fees, as applicable;
   d. The alternative is consistent with the general plan and housing element, and the provisions of this chapter.

B. Alternative Proposals

If the provision of on-site affordable units under Section 17.44.040.B. or C. is financially or otherwise infeasible, an applicant for a residential project may request, in order of priority: 1) alternative on-site unit type, size, configuration or clustering of units in a manner other than that specified in subsection 17.44.050, as provided in Subsection C; 2) provide off-site units as provided in subsection D, below; 3) dedicate land for affordable housing as provided in subsection E, below; 4) pay the affordable housing fee as set forth in Chapter 17.40 and in Subsection F, below. The applicant must demonstrate, through provision of substantial evidence as described in Section A, above, that each of the higher priority options is infeasible before the city will consider a lower-priority option.

1. Notwithstanding Section 17.44.080 A.4., the city council may accept fees in lieu of the alternatives in Subsection B., above, provided it makes a finding that special circumstances justify payment of fees over provision of units.

C. Alternative unit type, size, configuration or clustering of units.
   1. An applicant may propose alternatives for the on-site units that deviate from the strict standards of this chapter with respect to unit size, bedroom mix, clustering, unit type, and interior amenities of the affordable units.
   2. Proposed units shall comply with requirements of the Building Code and Fire Code, and in no circumstance shall otherwise required amenities be waived that are necessary to ensure the health, safety and welfare of the building and its residents.
   3. Alternative on-site locations or clustering of affordable units shall provide equivalent access to shared amenities within the project, unless the affordable units would have suitable alternative shared amenities available for the exclusive use of the residents of the affordable units.

D. Off-Site Projects. Upon approval by the city council, ~~Inclusionary~~ inclusionary units required pursuant to this chapter may be permitted to be constructed at a location within the city other than the project site. Any off-site inclusionary units must meet the following criteria:
   ~~1. The off-site inclusionary units must be determined to be consistent with the city's goal of creating, preserving, maintaining, and protecting housing for very low, low, and moderate income households.~~
   1. The off-site inclusionary units must not result in a significant concentration of inclusionary units in any one particular neighborhood or tend to cause residential segregation.
   2. The off-site location is suitable for the proposed affordable housing, and the off-site inclusionary units shall conform to the requirements of all applicable city ordinances and standards, and the provisions of this chapter.
   2. The occupancy and rents of the off-site inclusionary units shall be governed by the terms of a deed restriction, and if applicable, a declaration of covenants, conditions and restrictions similar to that used for the on-site inclusionary units.
   3. The affordable housing agreement shall stipulate the terms by which~~of~~ the off-site inclusionary units will be built. Construction of the off-site affordable units shall occur concurrently with construction of the market-rate units in the residential project, unless otherwise approved by the city council. If the construction does not take place at the same time as construction of the market-rate units~~project development~~, the agreement shall require the units to be ~~produced~~ constructed within a specified time frame, but in no event longer than ~~five~~two years after the first building permit is issued for the market-rate project. A cash deposit,~~ or~~ bond or other financial security may be required by the city, refundable upon construction, as assurance that the units will be built.
   5. Off-site construction of affordable units does not qualify the residential project for a density bonus or other regulatory incentives allowed by Government Code Section 65915 unless the off-site development includes the dedication of land conforming to the provisions of Section 65915(g). No off-site alternative may be approved by the city

if a density bonus or other regulatory incentive is requested for the site on which the affordable housing is to be built. Any off-site alternative must comply with the density, intensity and other development standards that are permitted under the zone for the site.

E. Land Dedication. Upon approval by the city council ~~An~~, an applicant may dedicate land to the city or a qualified~~local~~ nonprofit housing developer in place of actual construction of inclusionary units upon approval of the city council. The intent of allowing a land dedication option is to provide the city or a local nonprofit housing developer the free land needed to make an inclusionary unit development feasible, thus furthering the intent of this chapter. The following criteria shall be met for any dedication of land:

1. The dedicated land must be appropriately zoned, buildable, free of toxic substances,~~ and~~ contaminated soils, or geologic or other physical constraints that make it unsuitable for residential development.
2. The developable area of the site is~~and~~ large enough to accommodate the number of inclusionary units required for the project. The city's acceptance of land dedication shall require that the lots be fully improved, with infrastructure, adjacent utilities, grading, and fees paid.
3. The land is appraised by the City at a value equal to or greater than the in-lieu-fee in place at time of the market-rate project application, multiplied by the number of required inclusionary units that would be satisfied by construction of units on the land to be dedicated. If the appraised value is less than the in-lieu fee, the developer shall be subject to payment of the difference as a cash contribution to the Affordable Housing Fund.

F. Affordable Housing Fee. In lieu of providing inclusionary units in a project, the city council may approve payment of the city's affordable housing fee, as set forth in Chapter 17.40 of this title. Such alternative shall only be approved if the city council determines that:

1. The proposal would be consistent with and further the purpose of this chapter, as set forth in Section 17.44.020.
2. Greater benefit would accrue to the City's with respect to furthering affordable housing and the ability to provide housing affordable to all segments of the community through payment of the fee, versus requiring construction of the units on-site.
3. Projects requesting a density bonus, incentive or concession, waiver, or parking ratio under Government Code Section 65915 or Chapter 17.38 of the Pleasanton Municipal Code shall not be permitted to pay in-lieu fees as an alternative to satisfying the affordable housing requirements of this Chapter. Payment of fees in lieu of providing affordable units under Chapter 17.44 of the Code does not qualify a housing development for a density bonus.

~~G. Credit Transfers. In the event a project exceeds the total number of inclusionary units required in this chapter, the project owner may request inclusionary unit credits which may be used to meet the affordable housing requirements of another project. Inclusionary unit credits are issued to and become the possession of the project owner and may not be transferred to another project owner without approval by the city council. The number of~~

~~inclusionary unit credits awarded for any project is subject to approval by the city council.~~

H. Other Alternate Methods of Compliance. Applicants may propose other creative concepts for meeting the requirements of this chapter, in order to bring down the cost of providing inclusionary units, whether on- or off-site. The city council may approve such alternate methods of compliance with this chapter if the applicant demonstrates that such alternate method meets the purpose of this chapter (as set forth in Section 17.44.020 of this chapter).

~~I. Lower Income Housing Fee Option. In lieu of providing inclusionary units in a project, an applicant may pay the city's lower income housing fee as set forth in Chapter 17.40 of this title.~~

(Ord. 1818 § 1, 2000)

Article III
Miscellaneous

§ 17.44.090. Administration.

An applicant of a project subject to this chapter shall submit an affordable housing proposal stating the method by which it will meet the requirements of this chapter. The affordable housing proposal shall be submitted as part of the applicant's city development application (e.g., design review, planned unit development, etc.) to the planning division in a form approved by the city manager. ~~The community development director may waive the requirement for submittal of an affordable housing proposal for projects approved prior to the effective date hereof and/or for projects that have undergone considerable public review during which affordable housing issues were addressed.~~

A. Review and approval of the affordable housing proposal shall occur as follows: A proposal that is fully compliant with the requirements of this chapter, and does not include any request for alternative compliance, shall be subject to review and approval by the body responsible for review and approval of the related residential development application. Where zoning administrator or planning commission are the approving body, such action shall be subject to appeal in accordance with the provisions of Chapter 18.144.

B. Any affordable housing proposal that includes an alternative compliance method, or that deviates from the standards set forth in this chapter, shall be subject to city council review and approval. In such cases t~~T~~he affordable housing proposal shall be reviewed by the city's planning~~housing~~ commission at a properly noticed meeting open to the public. The planning~~housing~~ commission shall make recommendations to the city council either accepting, rejecting or modifying the developer's proposal and/or the utilization of any incentives as outlined in this chapter. The planning~~housing~~ commission may also make recommendations to the city council ~~planning commission~~ regarding the proposal~~project~~ as necessary to assure conformance with this chapter.

C. The approving body, as applicable,~~Acceptance of the applicant's affordable housing proposal is subject to approval by the city council, which~~ may direct the city manager to execute an affordable housing agreement in a form approved by the city attorney. The city manager or his or her designee shall be responsible for monitoring the sale, occupancy and resale of inclusionary units.

D. Amendment. Minor modifications to an approved affordable housing agreement may be granted by the director of community development, if the modifications substantially comply with the original affordable housing agreement. Other modifications to the affordable housing agreement shall be processed in the same manner as the original affordable housing proposal.

(Ord. 1818 § 1, 2000; Ord. 2000 § 1, 2009)

§ 17.44.100. Conflict of interest.

The following individuals are ineligible to purchase or rent an inclusionary unit: (a) city employees and officials (and their immediate family members) who have policymaking authority or influence regarding city housing programs; (b) the project applicant and its officers and employees (and their immediate family members); and (c) the project owner and its officers and employees (and their immediate family members).
(Ord. 1818 § 1, 2000)

§ 17.44.110. Enforcement.

The city manager is designated as the enforcing authority. The city manager may suspend or revoke any building permit or approval upon finding a violation of any provision of this chapter. The provisions of this chapter shall apply to all agents, successors and assigns of an applicant. No building permit or final inspection shall be issued, nor any development approval be granted which does not meet the requirements of this chapter. In the event that it is determined that rents in excess of those allowed by operation of this chapter have been charged to a tenant residing in an inclusionary unit, the city may take appropriate legal action to recover, and the project owner shall be obligated to pay to the tenant, or to the city in the event the tenant cannot be located, any excess rents charged.
(Ord. 1818 § 1, 2000)

§ 17.44.120. Appeals.

Any person aggrieved by any action or determination of the city manager under this chapter, may appeal such action or determination to the city council in the manner provided in Chapter 18.144 of this code.
(Ord. 1818 § 1, 2000)

TITLE 18
ZONING

CHAPTER 18.38 HOZ HOUSING OPPORTUNITY ZONE DISTRICT

Article I
General Provisions

§ 18.38.010. Title.

This chapter shall be called the "Housing Opportunity Zone (HOZ) District" ordinance of the city of Pleasanton.
(Ord. 2272, 12/19/2023)

§ 18.38.020. Purpose.

The purpose of this chapter is to enhance the public welfare and ensure further housing development attains the city's housing goals, including affordable housing, by increasing the production of residential units for all income levels. To ensure the remaining developable land is utilized in a manner consistent with the city's housing policies and needs, this HOZ district is created to allow new or expanded affordable housing development opportunities to all applicable parcels as specified in the city's Housing Element of the General Plan. These new or expanded opportunities shall apply to both ownership and rental projects.
(Ord. 2272, 12/19/2023)

~~**§ 18.38.030. Definitions.**~~

~~For the purposes of this chapter, certain words and phrases shall be interpreted as set forth in this section unless it is apparent from the context that a different meaning is intended.~~

~~"Affordable housing fee" means the fee set forth in Chapter 17.40 paid to the city by an applicant for a project in lieu of providing the inclusionary units required by this chapter.~~

~~"Affordable housing proposal" means a proposal submitted by the project owner as part of the city development application (e.g., housing site compliance review, design review, planned unit development, etc.) stating the method by which the requirements of this chapter are proposed to be met. This information may be provided as part of an affordable housing agreement as provided in Section 18.38.050.~~

~~"Applicant" means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks city permits and approvals for a project.~~

~~"City" means the city of Pleasanton or its designee or any entity with which the city contracts to administer this chapter.~~

~~"HUD" means the United States Department of Housing and Urban Development or its successor.~~

~~"Household" means one person living alone, or two or more persons sharing residency whose income is considered for housing payments.~~

~~"Inclusionary unit" means a dwelling unit as required by this chapter which is rented or sold at affordable rents and/or affordable sales prices (as defined by this chapter) to very low-, low-, or moderate-income households.~~

~~"Income" means the gross annual household income as defined by HUD.~~

~~Income Levels.~~

1. ~~"Household, low income" means a household whose annual income is more than 50% but does not exceed 80% of the area median income (AMI) for San Francisco-Oakland- Fremont Metropolitan Statistical Area, based upon the annual income figures provided by HUD, as adjusted for household size.~~
2. ~~"Household, moderate income" means a household whose annual income is more than 80% but does not exceed 120% of the area median income (AMI) for San Francisco-Oakland-Fremont Metropolitan Statistical Area, based upon the annual income figures provided by HUD, as adjusted for household size.~~
3. ~~"Household, very low income" means a household whose annual income does not exceed 50% of the area median income (AMI) for San Francisco-Oakland-Fremont Metropolitan Statistical Area, based upon the annual income figures provided by HUD, as adjusted for household size.~~

~~"Life of the inclusionary unit" means the term during which the affordability provisions for inclusionary units shall remain applicable. The affordability provisions for inclusionary units shall apply in perpetuity from the date of occupancy, which shall be the date the city performs final inspection for the building permit.~~

~~"Living area" means the gross area of all floors of a residential structure excluding: basement or cellar areas used for storage only; space used for off-street parking (i.e., garages) or loading, steps, patios, decks, terraces, porches, and exterior balconies, if not enclosed on more than three sides.~~

~~"Median income for San Francisco-Oakland-Fremont Metropolitan Statistical Area" means the median gross annual income in San Francisco-Oakland-Fremont Metropolitan Statistical Area as determined by HUD, adjusted for household size.~~

~~"Ownership units" means inclusionary units developed as part of a residential development which the applicant intends to be sold, or which are customarily offered for individual sale.~~

~~"Project" means a residential housing development at one location or site including all dwelling units for which permits have been applied for or approved.~~

~~"Project owner" means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which holds fee title to the land on which the project is located.~~

~~"Property owner" means the owner of an inclusionary unit, excepting a "project owner."~~

~~"Rental units" means inclusionary units which the applicant intends to be rented or leased, or which are customarily offered for lease or rent.~~

~~"Resale restrictions" means legal restrictions which restrict the price of inclusionary units to ensure that they remain affordable to very low-, low-, and moderate-income households on resale.~~

~~"Residential project, multiple-family" means a residential project consisting of condominiums, apartments, and similar dwellings attached in groups of four or more units per structure and including multiple units located on a single parcel of land under common ownership.~~

~~"Residential project, single family" means a residential project consisting of detached and attached single-family homes, including paired single-family, duets, duplexes, townhomes, and similar unit types where each unit is located on a separate parcel of land.~~

~~"Unit type" means various dwelling units within a project which are distinguished by number of bedrooms and/or the type of construction (e.g., detached single-family, duets, townhomes, condominiums).~~
~~(Ord. 2272, 12/19/2023)~~

Article II
Requirements

§ 18.38.~~040~~030. General applicability and development standards.

A. General Applicability.

1. Parcels shall be identified in the city's Housing Element as a housing opportunity site, meaning sites designated in the Housing Element to be zoned to allow residential development or mixed-use (i.e., mixed residential and nonresidential use, whether in

the same building or on the same site) and designated in the General Plan Land Use Map as Housing Element Overlay.

2. Parcels identified in the Housing Element as accommodating the city's share of the lower income Regional Housing Needs Allocation, including the following housing opportunity sites, identified with reference to the 2023-2031 6th Cycle Housing Element, as follows: Site 2 - Stoneridge Shopping Center; Site 5 - Laborer's Council; Site 6 - Signature Center; Site 7 - Hacienda Terrace; Site 9 - Metro 580; Site 12 - Pimlico Area (North Side); Site 20 - Boulder Street; Site 21a (Kiewit High Density); Site 23 - Sunol Boulevard; Site 29 - Oracle; and the Dublin/Pleasanton BART Station parking lot. These sites shall:
   a. Permit owner-occupied and/or rental single-family and/or multi-family uses by right pursuant to California Government Code Section 65583.2(h) and (i) for projects with affordable housing proposals in which 20% or more of the units are affordable to lower-income households.
   b. Be allowed 100% residential uses regardless of any other applicable zoning district's permitted and conditionally permitted uses for the site; and
   c. Have all residential uses either: (i) occupy at least 50% of the floor area for a new construction mixed-use project; or (ii) occupy at least 50% of the new floor area proposed on a housing opportunity site with pre-existing commercial/office floor area to be preserved as part of the project. In no case shall the provisions of this district preclude a commercial/office project with no residential uses, assuming those uses are allowed by the base zoning, to be proposed on a housing opportunity site.

B. Development Standards.
   1. Nonresidential uses, including modification and expansion of existing uses, shall be permitted and conditionally permitted as specified in the underlying zoning district, the city's Objective Design Standards (ODS) and/or applicable provisions of this title thereto.
   2. Residential uses shall be allowed consistent with the densities set forth on a site-specific basis in the Housing Element and the city's Objective Design Standards, ~~and~~ the applicable development standards as specified in the city's Objective Design Standards and/or applicable provisions of this title, and the requirements of Chapter 17.44 (Inclusionary Zoning) and other applicable provisions of Title 17, ~~thereto~~.

(Ord. 2272, 12/19/2023)

~~**§ 18.38.045. Inclusionary unit provisions and specifications.**~~

~~A. Required Inclusionary Units.~~
   ~~1. For all new multiple-family residential projects of 15 units or more, at least 15% of the project's dwelling units shall be affordable as provided in this chapter.~~
   ~~2. For all new single-family residential projects of 15 units or more, at least 20% of the project's dwelling units shall be affordable as provided in this chapter.~~
   ~~3. For all new mixed-use projects with 15 residential units or more, at least 15% of the project's dwelling units shall be affordable as provided in this chapter.~~

4. ~~Any commercial, office or industrial development will be subject to the affordable housing fee set forth in Chapter 17.40 or may provide inclusionary housing as provided in Section 17.44.040.B.~~
5. ~~The percentage of inclusionary units required for a particular project shall be determined only once on a given project, at the time of tentative map approval, or, for projects not processing a map, prior to issuance of building permit. If the subdivision design changes, which results in a change in the number of unit types required, the number of inclusionary units required shall be recalculated to coincide with the final approved project. In applying and calculating the 15% requirement, any decimal fraction less than or equal to 0.50 may be disregarded, and any decimal fraction greater than 0.50 shall be construed as one unit.~~

B. ~~Rental Units. For rental units, the following affordability mix shall be met among the required inclusionary units:~~
1. ~~A minimum of 25% of inclusionary units shall have rents set at no more than 30% of 50% area median income (AMI) for households with incomes up to 50% AMI (very low-income units).~~
2. ~~A minimum of 25% of inclusionary units shall have rent set at no more than 30% of 60% AMI for households with incomes of 51% to 60% AMI (low-income units).~~
3. ~~No more than 50% of inclusionary units shall have rent set at no more than 30% of 80% AMI for households with incomes of 61% to 80% AMI (low-income units).~~

C. ~~Ownership Units. For affordable ownership units, initial sales prices shall be set at the following limits to result in a monthly mortgage payment (principal and interest) which does not exceed one-twelfth of 35% of the stated AMI, for household size per subsection F, below:~~
1. ~~One bedroom units to be restricted at 100% AMI.~~
2. ~~Two bedroom condominium units to be restricted at 100% AMI.~~
3. ~~Two bedroom townhome units/single-family units AND three bedroom and larger units to be restricted at 120% AMI.~~

D. ~~Bedroom Mix. For each project, a minimum of 10% of the total inclusionary units will be three-bedroom units; a minimum of 45% of the total inclusionary units will be two-bedroom units; and the remaining inclusionary units will be studio or one-bedroom units except that no more than 10% of the units may be studios. This requirement shall not apply to age-restricted senior housing or single-family projects.~~

E. ~~Minimum Size. Inclusionary units may be of smaller size than the market rate units in the project, subject to the following limitations: the living area of ownership units may be up to 50% smaller than the size of the average market rate unit in the project; for rental units the living area of each unit shall be as follows: (1) a studio shall be at least 700 square feet; (2) a one-bedroom unit shall be at least 850 square feet; (3) a two-bedroom unit shall be at least 1,000 square feet; (4) a three bedroom unit shall be at least 1,250 square feet; and (5) for units with more than three bedrooms an additional 250 square feet for each additional bedroom.~~

F. ~~Household Size. For the purposes of calculating affordable rental or affordable sales price of an inclusionary units, the following household size assumptions shall be used for each applicable dwelling unit types:~~

~~**Unit Size**~~	~~**HUD Household Size**~~
~~Studio units~~	~~1 person~~
~~1 bedroom unit~~	~~2 persons~~
~~2 bedroom unit~~	~~3 persons~~
~~3 bedroom unit~~	~~4 persons~~
~~4 or more bedroom unit~~	~~5 or more persons~~

~~G. Materials. Inclusionary units shall be constructed with identical exterior materials and an exterior architectural design that is consistent with the market rate units in the project.~~

~~H. Construction Timing. All inclusionary units in a project shall be constructed concurrently with or prior to the construction of the project's market rate units.~~

~~I. Accessory Units. Accessory dwelling units and junior accessory dwelling units shall not count towards meeting inclusionary requirements.~~

~~J. Projects with Different Unit Types. For those projects with both market rate units and inclusionary units:~~

- ~~1. Inclusionary units shall be dispersed throughout the project so as not to concentrate inclusionary units in a specific geographic area (including a floor) of the project.~~
  - ~~a. For a project where the market rate units are proposed to be detached single-family homes, it is permitted for the inclusionary units be paired single-family, duets, duplexes, or townhomes. In such case, the townhomes can be concentrated in one or more areas of the project. The residents of both the market rate and the inclusionary units must be provided equivalent project amenities.~~
  - ~~b. For a project where the market rate units are proposed to be attached or detached single-family homes, duets, or duplexes, it is permitted for the inclusionary units to be ownership condominiums or rental apartments. In such case, and where the number of inclusionary unis exceed 15 units, the condominiums or apartments can be concentrated in an area of the project. The residents of both the market rate and the inclusionary units must be provided equivalent project amenities.~~

~~K. Requirements. The affordability requirements are as set forth in this chapter and the applicable Objective Design Standards (ODS); and for sites for which there are no ODS, then the requirements in Chapter 17.44. In the event of any conflict, the more restrictive provisions that provide more inclusionary units and deeper affordability shall apply.~~

~~L. Perpetuity. Inclusionary units shall remain affordable in perpetuity through the recordation of an affordable housing agreement described in Section 18.38.050 of this chapter.~~

~~M. Eligibility. The city's adopted preference and priority system shall be used for determining eligibility among prospective beneficiaries for affordable housing units created by this chapter, unless superseded by federal or state law.~~

~~(Ord. 2272, 12/19/2023)~~

~~§ 18.38.050. Affordable housing agreement.~~

~~All projects subject to this chapter shall enter into an affordable housing agreement. The agreement shall record the method and terms by which a project owner shall comply with the requirements of this chapter or by alternatives as generally provided in California Government Code Section 65850(g) acceptable in the determination of the city based on analysis of~~

~~equivalent financial value; which analysis may be required by the city to be done by a third party at the owner's expense. The approval and/or recordation of this agreement shall take place prior to final map approval or, where a map is not being processed, prior to the issuance of building permits for such lots or units.~~

~~The affordable housing agreement shall state the methodology for determining a unit's initial and ongoing rent or sales and resale price(s), any resale restrictions, occupancy requirements, eligibility requirements, city incentives including second mortgages, recapture mechanisms, the administrative process for monitoring unit management to ensure ongoing affordability and other matters related to the development and retention of the inclusionary units.~~

~~In addition to the above, the affordable housing agreement shall set forth any waiver of the affordable housing fee. For projects which meet the affordability threshold with very low- and/or low-income units, all units in the project shall be eligible for a waiver of the affordable housing fee. For single-family residential projects which meet the affordability threshold with moderate income units, or multiple-family residential projects which do not meet the affordability threshold, only the inclusionary units shall be eligible for a waiver of the affordable housing fee.~~

~~To ensure affordability of the unit in perpetuity, the affordable housing agreement shall be recorded with the property deed or other method approved by the city attorney.~~
~~(Ord. 2272, 12/19/2023)~~

~~Article III~~
~~Miscellaneous~~

~~§ 18.38.060. Administration.~~

~~Approval of residential projects within the district shall be as specified in this title, which may include, but is not limited to, a housing site compliance review pursuant to Chapter 18.22, subdivision map, etc. An applicant of a project subject to this chapter shall submit an affordable housing proposal stating the method by which it will meet the requirements of this chapter. The affordable housing proposal shall be submitted as part of the applicant's city development application to the planning division in a form approved by the director of community development or designee.~~

~~The affordable housing proposal shall be reviewed by the city's commission with purview over affordable housing agreements at a properly noticed meeting open to the public. The commission shall make recommendations to the city council either accepting, rejecting or modifying the developer's proposal and the utilization of any incentives described in Section 17.44.070 and Housing Element Policy 2.6. The commission may also make recommendations to the city council regarding the project as necessary to ensure conformance with this chapter.~~

~~Acceptance of the applicant's affordable housing proposal is subject to approval by the city council, which may direct the city manager to execute an affordable housing agreement in a form approved by the city attorney. The city manager or his or her designee shall be responsible for monitoring the sale, occupancy and resale of inclusionary units.~~
~~(Ord. 2272, 12/19/2023)~~

~~**§ 18.38.070. Enforcement.**~~

~~A. In the event of conflict between this chapter and Chapter 17.40 or 17.44, or other adopted city requirement, the more specific provision shall prevail.~~

~~B. The city manager is designated as the enforcing authority. The city manager may suspend or revoke any building permit or approval upon finding a violation of any provision of this chapter. The provisions of this chapter shall apply to all agents, successors and assigns of an applicant. No building permit or final inspection shall be issued, nor any development approval be granted which does not meet the requirements of this chapter.~~

~~(Ord. 2272, 12/19/2023)~~

§ 18.38.~~080~~040. Appeals.

Any person aggrieved by any action or determination of the city manager under this chapter, may appeal such action or determination to the city council in the manner provided in Chapter 18.144 of this code.
(Ord. 2272, 12/19/2023)

OBJECTIVE DESIGN STANDARDS

CITY OF PLEASANTON

Objective Design Standards for Housing Sites

Adopted January 26, 2023, Revised May 2, 2023, and ________, 2024

COMMUNITY DEVELOPMENT DEPARTMENT

PART 2
DEVELOPMENT STANDARDS

The following regulations establish quantitative standards in order to realize the desired building, open space, and street character contained in the Design Standards.

In addition to the Design Standards described below; all multifamily residential development shall satisfy other **standards** in this document relating to:

- The provision of pedestrian and bicycle connections (both private and public)
- Group Usable Open Space (Development Standards)
- Landscaped Paseos (A.6)
- Open Space, Landscaping and Lighting (A8, A9, and A10)

And shall also incorporate residential amenities such as play/activity areas, pools, water features, fitness facilities, and community rooms.

Density: Each site has been identified for a range of density expressed in units per acre (see Table 2.1 Housing Sites, for details). These densities are in addition to the on-site retail or service uses that the City may approve as part of a mixed-use project, if such additional development was anticipated in the 2012 Housing Element and Climate Action Plan General Plan Amendment and Rezonings Supplemental EIR, or the 2023-2031 (6th Cycle) Housing Element Update Program EIR, or as approved through any subsequent tiered environmental review.

> Note: *The City interprets the minimum residential density to be an average minimum density to be met over the entirety of the project site (i.e., different portions of the site may have densities that are either higher or lower, but the minimum density is met cumulatively across the entire site).*

Permitted and Conditionally Permitted Uses: In addition to residential uses at the densities assigned in Table 2.1, mixed-use development (commercial uses in conjunction with residential uses) is allowed as follows on sites where such additional development was anticipated in the 2012 Housing Element and Climate Action Plan General Plan Amendment and Rezonings Supplemental EIR, or the 2023-2031 (6th Cycle) Housing Element Update Program EIR, or as approved through any subsequent tiered environmental review.

- Appendix C lists permitted and conditionally permitted uses for designated 5th Cycle (Carryover Sites)
- 6th Cycle Housing Element Sites 18 (Valley Plaza) and Site 2 (Stoneridge Shopping Center), permitted and conditionally permitted uses shall be allowed as specified by their underlying zoning, within mixed use projects on these sites. Vertical mixed use (mixed uses within

the same building) or horizontal mixed use (mixed uses within different buildings on the same site) is allowed.

Affordability: All development shall comply with the City's Inclusionary Zoning Ordinance (IZO), Chapter 17.44 of the Pleasanton Municipal Code.~~.~~ ~~through Affordable Housing Agreements entered into between the City and each developer; the agreements will be recorded and will run with the land. Inclusionary units shall be deed-restricted to be affordable in perpetuity. Accessory Dwelling Units or Junior Accessory Dwelling Units shall not be permitted to count towards meeting the IZO's minimum inclusionary requirements.~~

~~For rental units, the following affordability mix shall be met, reflecting the rent maximums that may be set among any required inclusionary units:~~

- ~~A minimum of 25 percent of inclusionary units shall have rents set at no more than 30% of 50% Area Median Income (AMI) for households with incomes up to 50% AMI (Very Low-Income Units)~~
- ~~A minimum of 25 percent of inclusionary units shall have rent set at no more than 30% of 60% AMI for households with incomes of 51% to 60% AMI (Low-Income Units)~~
- ~~No more than 50 percent of inclusionary units shall have rent set at no more than 30% of 80% AMI for households with incomes of 61% to 80% AMI (Low-Income units)~~

~~Actual rents charged shall follow the published schedule of maximum monthly rents, by size and type of units, as provided and updated annually by the City. Qualifying incomes shall be set at the same levels as those described above (i.e., a qualifying household for a 50% AMI rent-restricted unit shall have a maximum annual income of no more than 50% AMI), with such income limits based on the schedule of income limits based on household size published annually by the City and consistent with the U.S. Department of Housing and Urban Development (HUD) annual adjustment in the AMI for the San Francisco-Oakland-Fremont Metropolitan Statistical Area.~~

~~In instances where a project proposes to make use of State or Federal programs (e.g., State Housing Density Bonus Law, Low-Income Tax Credits, etc.) then the most restrictive requirements of any applicable income and rent limits established by such programs shall prevail; and for purposes of Density Bonus Law, for low-income households earning 61-80% AMI, the City shall allow, at the applicant's request, rents to be set at 30% of actual income of such qualifying low-income households.~~

~~For ownership units, prices shall be set at the following limits to result in a monthly mortgage payment (principal and interest) which does not exceed one-twelfth of 35% of the stated AMI, per Municipal Code Section 17.44.050.F:~~

- ~~1 bedroom units to be restricted at 100% AMI~~
- ~~2 bedroom condominium units to be restricted at 100% AMI~~
- ~~2 bedroom townhome units/single-family units AND 3 bedroom and larger units to be restricted at 120% AMI[1]~~

~~**Section 8 Rental Assistance Vouchers:** Through the affordable housing agreements entered into between the City and each developer, the developments will generally be required to accept HUD Section 8 Rental Vouchers as a means of assisting qualified applicants.~~

~~**Bedroom Mix of Affordable Units:** For each project, a minimum of 10% of the total affordable units will be three-bedroom units; a minimum of 45% of the total affordable units will be two-bedroom units; and the remaining affordable units will be studio or one-bedroom units except that no more than 10% of units may be studios. This requirement shall not apply to age-restricted senior housing or single-family projects.~~

~~[1] Household sizes for units shall be calculated based upon two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, as generally set forth in Cal. Health and Safety Code section 50052.5(h).~~

THE CITY OF PLEASANTON

Planning Commission Agenda Report

September 11, 2024
Item 5

SUBJECT:	**P24-0334**
APPLICANT/ PROPERTY OWNER:	City of Pleasanton
PURPOSE:	Review, consider, and provide a recommendation for amendments to Chapters 17.38, 18.08, 18.88, and 18.106 of the Pleasanton Municipal Code regarding density bonus, major transit stop, and separate conveyance of accessory dwelling units as identified in State law
LOCATION:	Citywide
GENERAL PLAN/ SPECIFIC PLAN/ ZONING:	Various

EXHIBITS:

A. Draft resolution with proposed amendments to the Pleasanton Municipal Code
B. Maps showing both BART stations and ACE station
C. Text of Assembly Bill 1033

STAFF RECOMMENDATION

Staff recommends that the Planning Commission discuss the draft amendments to the Pleasanton Municipal Code (PMC), discuss the topic of separate conveyance of accessory dwelling units (ADUs), and adopt a resolution recommending approval of Case P24-0334 to the City Council with the proposed amendments shown in Exhibit A.

EXECUTIVE SUMMARY

In September 2023, the City Council reaffirmed its adoption of the City's 6th Cycle (2023-2031) Housing Element. Accordingly, the City is initiating amendments to its municipal code to implement goals, policies, and programs of the Housing Element to align with State law specifically related to the State Density Bonus, to provide clarification to the definition of "major transit stop," and to initiate discussion among the Commission on separate conveyance of accessory dwelling units as identified in Assembly Bill 1033 (AB1033).

BACKGROUND

State Density Bonus

In order to align with updates to the State Density Bonus Law (Government Code §65915 et seq.), Program 2.7 of the adopted Housing Element indicates the City will amend the affordable housing density bonus provisions of the Pleasanton Municipal Code (PMC), in addition to Policy 11 of the General Plan Land Use Element. The amendments proposed as part of Exhibit A to this agenda report are to the PMC; staff proposes to modify the General Plan in conjunction with other amendments to the Land Use Element to allow for comprehensive review and discussion.

The City established its Density Bonus Ordinance in 2013 as an implementation action of the 4th Cycle Housing Element adopted in 2012. Since that time, State law regarding density bonuses has been modified significantly and the City's Density Bonus Ordinance, codified in PMC Chapter 17.38, is inconsistent with the current provisions of State law. Therefore, the proposed amendments as identified in Exhibit A propose to delete the majority of the existing text within Chapter 17.38 and replace it with updated text that is consistent with State law.

Major Transit Stop

Various sections of State law use the term, "major transit stop" to identify a public transit stop from where certain standards, most often minimum parking standards, may not be required. While this term itself is defined in the Public Resources Code of State law, the proposed amendments to the PMC are to: (1) provide more clarity on the point(s) from which the radius is measured; and (2) address parcels that may be partially in the radius (e.g., once a half-mile radius around the major transit stop is drawn, how to treat a parcel that may be only partially located in the radius).

Separate Conveyance of Accessory Dwelling Units

The City's Accessory Dwelling Unit (ADU) ordinance is codified in PMC Chapter 18.106 and was most recently updated to reflect changes to State law in April 2024[1]. At the request of a Commissioner, staff is bringing forward the topic of separate conveyance for discussion and consideration by the Planning Commission. Currently, the PMC does not allow the separate sale of an ADU and the primary residence. That is, the ADU cannot be sold or held under a different legal ownership than the primary residence and the lot containing the ADU also may not be subdivided. AB1033 (Exhibit C to this report) provides that a local agency may, by ordinance, allow the separate sale or conveyance of an ADU.

SUMMARY OF STATE LAW AND PROPOSED PMC AMENDMENTS

State Density Bonus Law

State Density Bonus Law (SBDL) is intended to incentivize the production of dwelling units that are affordable to moderate- and lower-income households, seniors, students, foster youth, formerly homeless persons, or disabled veterans within new housing developments of at least five units, including mixed-use developments, new subdivisions, or common interest developments. The SDBL is a tool for developers to obtain greater density for projects that provide affordable dwelling units and is intended to reduce project costs and financing sources using economies of scale (i.e., a greater

[1] The City Council adopted Omnibus changes to the PMC at its April 16, 2024, meeting (Ordinance 2277).

number of units on a parcel reduced the cost to develop each unit, creating greater feasibility to provide affordable units). Incentives and waivers are used to accommodate modifications to a local jurisdiction's development requirements as a means of reducing costs and to physically accommodate a residential project, to improve its feasibility.

Developers have the option to invoke or request use of the SDBL. A project that qualifies for a density bonus may receive the following:

- Density Bonus: An increase above the maximum allowed density permitted in the General Plan Land Use Element. The amount of the bonus is set on a sliding scale based on the percentage of affordable units at each income level. For example, a project that proposes 20 units and dedicates five percent of those units (i.e., one unit) as affordable to very low-income households would be eligible for a bonus of 20 percent, or four additional units, totaling 24 units allowed. The affordable unit requirement applies to the "base project," or the project that would be allowed under the provisions of the zoning ordinance without the density bonus;
- Incentives/Concessions: Modifications to regulatory or development standards that result in actual and identifiable cost reductions to provide for affordable housing costs or rents;
- Waivers: Modifications to development standards that would physically prevent the construction of a housing development at the density permitted with a density bonus and any concessions; and
- Parking Ratios: Defined parking ratios in the State law that apply to the residential use within a qualifying project, which are lower than current PMC ratios.

The SDBL requires local governments to adopt an ordinance to specify how it will implement the SDBL. In other words, the statute only requires the local ordinance describe the local government's procedures to request and process a density bonus request from an applicant. The specific requirements and prescriptive parameters (e.g., number of bonus units) set forth under State law apply to any project within the jurisdiction and supersede more restrictive local regulations. Additionally, a jurisdiction that does not adopt a local density bonus ordinance is not relieved from complying with the SDBL requirements.

Following adoption of the City's Density Bonus Ordinance in 2013, the State has made significant changes to SDBL in support of incentivizing affordable housing and increasing housing production. To be consistent with these changes, and to implement 6th Cycle Housing Element Program 2.7, Exhibit A to this agenda report provides revised text to the Chapter 17.38 of the PMC.

Major Transit Stop

State law in various sections refers to the term, "major transit stop," typically to provide alternative (most often reduced) requirements for development standards (e.g., parking, density maximum, maximum permitted height). For example:

- Senate Bill 35: Government Code §65913.4 et seq provides that a jurisdiction is not allowed to impose parking standards for a proposed multifamily development submitted for streamlined review under SB35 if it is located within one-half mile of public transit.
- Assembly Bill 2097: Government Code §65863.2 et seq prohibits a jurisdiction from imposing or enforcing parking requirements on a residential, commercial, or other development project if it is located within one-half mile of public transit.
- Senate Bill 9: Government Code §65852.21 et seq provides that housing developments proposed in accordance with SB9 are not required to provide any parking if located within a half-mile walking distance of a high-quality transit corridor or a major transit stop or within one block of car share (whereas one parking space per dwelling unit could otherwise be required).
- Density Bonus: Government Code §65915 et seq provides that a project applicant may request the City to not require on-site parking that exceeds certain ratios in State law, irrespective of parking minimums in the municipal code. Additionally, if the project contains a certain number of affordable units and is located within one-half mile of a major transit stop, the City cannot require more than 0.5 parking spaces per unit. If the project is 100 percent affordable and located within one-half mile of a major transit stop, no parking spaces may be required at all. With respect to 100 percent affordable projects located within one-half mile of a major transit stop under the SDBL: (1) there is no maximum density; and (2) a height increase of up to three stories or 33 feet must be granted upon request as a regulatory concession.
- Accessory Dwelling Units: Government Code §66321 et seq provides that accessory dwelling units (ADUs) may be as tall as 18 feet[2] if located within one-half mile walking distance of a major transit stop or high-quality transit corridor as defined in the Public Resources Code, whereas other ADUs are limited to 16 feet in height. When an ADU is located within one-half mile walking distance of public transit, no parking requirements may be imposed.
- Historic Properties: Health and Safety Code §18962 et seq provides that a development project designated as a historical resource (i.e., a structure or property officially designated on a local register of historical resources, the California Register of Historical Resources, or the National Register of Historic Places) that is being converted or adapted to a residential use and located within one-half mile of a major transit stop as defined in the Public Resources Code is not required to provide a greater number of parking spaces than that which existed on the project site at the time the project application was submitted.

As seen in the examples from State law above, parking standards are often reduced for projects within a one-half mile of a major transit stop. Regional policy guidance from MTC-ABAG also specifies standards for certain projects within one-half mile from major transit locations that must be met to qualify for certain regional grant funding.

[2] An additional two feet may be allowed to accommodate a roof pitch that would align with the roof pitch of the primary dwelling.

Separate Conveyance of Accessory Dwelling Units
State law makes it voluntary for the City to adopt an ordinance allowing the separate conveyance of ADUs such that the primary residential unit and the ADU can have separate ownership, i.e., the ADU may be sold as a condominium. At the request of a Commissioner, this topic is being brought forward for consideration and discussion by the Commission as a whole. If the Commission directs the text amendments, staff would bring back at a future meeting draft text amendments for this topic.

ANALYSIS AND DISCUSSION: CONSIDERATIONS FOR PLEASANTON

The proposed text amendments attached to this report are to update the City's Density Bonus Ordinance and to establish parameters for how to measure from a transit stop.

State Density Bonus Law
As noted in this report, State law regarding density bonus has been updated substantially since the City originally adopted its ordinance subsequent to the 4th Cycle Housing Element. Due to the most recent updates to State law, and as a result of many cities updating their respective municipal codes, ABAG-MTC provided a model ordinance to Bay Area cities to assist in meeting Density Bonus requirements in local ordinances. The draft modifications in Exhibit A are based on the model ordinance and seek to supersede the entirety of the existing language in PMC Chapter 17.38. Since most of the law related to Density Bonus is prescribed by State law– meaning, the City does not have latitude or flexibility in how it implements the ordinance, the amendments seek to simply refer to State law and provide parameters only for elements where jurisdiction-specific latitude is allowed, such as submittal requirements. Further, staff proposes update to sections that would benefit from reference to current State law (e.g., definition of "child care facility" is proposed to mirror the State Health and Safety Code).

Major Transit Stop
The proposed amendments related to major transit stops are intended to provide clarity on how the measurement should be taken (i.e., from a single point or a radius around the subject parcel). Recent guidance from ABAG-MTC for implementation of a regional policy indicates, the measurement for the radius should be taken from a single point at the center of the subject station. Exhibit B to this report provide maps of the half-mile radius around the two BART stations and the ACE train station. Aside from this more recent direction from ABAG-MTC, when the City has implemented various sections of State law that refer to a certain distance from a transit stop, it has also measured from a single point. Therefore, the proposed text amendments codify the City's current practice, which is consistent with guidance from ABAG-MTC for purposes of regional transit-oriented projects. The amendments further propose that if a project site is only partially within the radius measurement, a project is considered to be within the radius if: (1) all parcels comprising the project have at least 75% of their area within the radius; and (2) if residential units are proposed, at least 90 percent of the residential units or 100 units, whichever is less, comprising the project are within the radius. Therefore, parcels that are partially within the radius may be relieved from parking requirements only if they meet the above criteria.

Separate Conveyance of ADUs

AB1033 allows the City to adopt an ordinance for the separate conveyance of ADUs. As noted, the City's current ADU ordinance prohibits the primary unit and an ADU to be under separate ownership. This approach was in line with requiring owner-occupancy in either the primary unit or the ADU. Recent amendments to State law prohibit the City from requiring owner-occupancy on a property with an ADU; that is, the owner is allowed to rent out both the primary residence and the ADU. While owner-occupancy is unilaterally prohibited, the City has the option to implement AB1033 and allow for the separate sale of the two units, i.e., the principal unit and the ADU.

In addition to requirements related to objective design standards in the Subdivision Map Act and conformance with the Davis-Stirling Common Interest Development Act, which is related to the formation of a Homeowners Association (HOA) for maintenance of common areas such as driveways or shared landscaping, the homeowner must notify providers of utilities (e.g., water, sewer, gas, electricity) of the condominium conveyance.

The City reviews requests for condominium subdivisions via a parcel map, typically acted upon by the Zoning Administrator. If the Planning Commission were to recommend the City allow for the separate conveyance of ADUs, a similar process to the current one for parcel maps would likely be recommended by staff.

Considerations for the Planning Commission related to separate conveyance of ADUs include whether or not this flexibility would result in a greater number of ADUs in the City and if the separate conveyance would function to encourage a larger number of homeowners to construct an ADU since a homeowner would benefit from the monetary gain by sale of the unit.

State law acknowledges, however, that establishing an HOA between the principal unit and the ADU within a community which already has an HOA may not be ideal for implementation of the CC&Rs or administration of dues by the HOA. Accordingly, State law requires the property owner to obtain written permission from the HOA before forming the owners' association for the principal unit and ADU prior to recordation of a condominium plan.

Based on these concerns, and given the likely marginal benefit, limited applicability, and added administration on behalf of existing HOAs to allow separate conveyance of the principal unit and ADU, staff recommends the City consider deferring the consideration of an ordinance to allow separate conveyance until other jurisdictions similar to Pleasanton (i.e., with a large number of planned developments and active HOAs) adopt an ordinance, or until such time the City experiences a higher degree of interest or number of requests to allow separate conveyance.

PUBLIC NOTICE

Notification of this code amendment has been published in The Valley Times as an upcoming agenda item for the September 11, 2024, Planning Commission meeting. At the time this report was prepared, staff has not received comments regarding the proposed code amendments.

ENVIRONMENTAL ASSESSMENT

The Planning Commission recommends that the City Council find that the amendments to the Pleasanton Municipal Code are within the scope of the 2023-2031 (6th Cycle) Housing Element Update Environmental Impact Report (State Clearinghouse No. 2022040091) certified by the City Council on January 26, 2023 by Reso No. 23-1357. The proposed amendments do not result in new significant effects beyond those analyzed in the Final EIR. The Planning Commission further recommends that the proposed amendments are exempt from CEQA review pursuant to: CEQA Guidelines Section 15268 in that the amendments are necessary to conform to and implement the ministerial approval processes mandated by State law (e.g. Government Code Section 65915; Public Resources Code Section 21155); CEQA Guidelines Section15061(b)(3) in that there is no possibility the activity will have a significant effect on the environment.

SUMMARY/CONCLUSION

The proposed text amendments to the PMC are intended to implement the Housing Element, particularly related to the Density Bonus and major transit stop. As noted in this agenda report, the Planning Commission may discuss and decide to recommend text amendments that would allow the separate conveyance of ADUs.

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Ellen Clark, Director of Community Development
Kim Cilley, Assistant City Attorney

EXHIBIT A

RESOLUTION NO. PC-2024-16

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PLEASANTON RECOMMENDING THE CITY COUNCIL APPROVE AMENDMENTS TO CHAPTERS 17.38 AND 18.08, AND 18.88 OF THE PLEASANTON MUNICIPAL CODE REGARDING DENSITY BONUS AND MAJOR TRANSIT STOP AS IDENTIFIED IN STATE LAW, AS FILED UNDER CASE P24-0334.

WHEREAS, the City's Housing Element, which was found in compliance with housing element law on August 25, 2023, by the California Department of Housing and Community Development and subsequently re-adopted by City Council on September 19, 2023, provides that the City will amend the affordable housing density bonus provisions to align with State Density Bonus Law, as stated in Program 2.7;

WHEREAS, Sections 65915 et seq. of the California Government Code, known as State Density Bonus Law, require a city to provide a developer that proposes a housing development within the jurisdictional boundaries of that city containing affordable and other types of housing with a density bonus and other incentives; and

WHEREAS, California Government Code Section 65915(a) requires that all jurisdictions within the state adopt an ordinance that specifies how compliance with State Density Bonus Law will be implemented; and

WHEREAS, since the adoption of the City's density bonus ordinance, the State Legislature has passed, and the Governor has signed into law numerous changes to State Density Bonus Law; and

WHEREAS, the City proposes to codify a method to measurement from a major transit stop for purposes of implementing various sections of State law; and

WHEREAS, on September 11, 2024, the Planning Commission following notification to the public in the prescribed manner, conducted a public hearing, considered the written agenda report, public testimony, related project materials, and staff recommendations, and has reviewed the proposed amendments to the Pleasanton Municipal Code, has found that the proposed amendments are consistent with goals and policies of the City's General Plan.

NOW, THEREFORE BE IT RESOLVED by the Planning Commission of the City of Pleasanton, based on the entire record of proceedings, including the oral and written staff reports and all public comment and testimony:

Section 1: The Planning Commission recommends that the City Council find that the amendments to the Pleasanton Municipal Code are within the scope of the 2023-2031 (6th Cycle) Housing Element Update Environmental Impact Report (State Clearinghouse No. 2022040091) certified by the City Council on January 26, 2023 by Reso No. 23-1357. The proposed amendments do not result in new significant effects beyond those analyzed in the Final EIR. The Planning Commission further recommends that the proposed amendments are exempt from CEQA review pursuant to: CEQA Guidelines Section 15268 in that the amendments are necessary to conform to and implement the ministerial approval processes mandated by State law (e.g., Government Code Section 65915; Public Resources Code Section 21155); CEQA Guidelines Section 15061(b)(3) in that there is no possibility the activity will have a significant effect on the environment.

Section 2: The Planning Commission hereby recommends to the City Council approval of Case P24-0334, Amendments to Chapters 17.38 and 18.08, and 18.88 of the Pleasanton Municipal Code, as shown in Exhibit A to this resolution.

Section 3: This resolution shall become effective immediately upon its adoption.

PASSED, APPROVED AND ADOPTED by the Planning Commission of the City of Pleasanton at a regular meeting held on September 11, 2024 by the following vote:

AYES: Commissioners
NOES: Commissioners
ABSTAIN: Commissioners
ABSENT: Commissioners

ATTEST:

Melinda Denis	Matt Gaidos
Secretary, Planning Commission	Chair

APPROVED AS TO FORM:

Kimberly Cilley
Assistant City Attorney

EXHIBIT A

TITLE 17
PLANNING AND RELATED MATTERS

Chapter 17.38
AFFORDABLE HOUSING DENSITY BONUS

Sections

17.38.010 Purpose.

In accordance with Government Code Sections 65915, et seq., this chapter specifies how compliance with state density bonus law will be implemented. Specifically, the purpose of this chapter is to provide density bonuses, incentives, concessions, and waivers of development standards for the production of housing for very low-, low-, and moderate-income households, senior households, provision of daycare facilities, student housing, and donations of land, and for other housing types as provided by state law. In enacting this chapter, it is also the intent of the city to implement the goals, objectives, and policies of the city's housing element of the general plan.

17.38.020 Definitions.

The definitions found in state density bonus law shall apply to the terms contained in this chapter. "Incentives" include "concessions" as defined in state density bonus law.

The following terms are defined for purpose of this chapter:

A. "Affordable units" means the proposed housing units available for rent or sale to households pursuant to the state density bonus law, as set forth in Government Code section 65915 subdivision (b), as may be amended.

B. "Base units" means the total number of units in a housing development, not including units added through a density bonus pursuant to this chapter.

C. "Child care facility" means a child day care facility that provides nonmedical care to children under 18 years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. Child day care facility includes day care centers, employer-sponsored child care centers, and family day care homes.

D. "Concession" shall have the same meaning as the term "concession or incentive" pursuant to the state density bonus law, as defined in Government Code section 65915 subdivision (k), as may be amended.

E. "Density bonus" means a density increase over the otherwise maximum allowable residential density for a housing development as of the date the application is deemed complete, as prescribed by Government Code section 65915, as may be amended, or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density.

F. "Housing development" shall have the same meaning as the term "housing development" pursuant to the state density bonus law, as defined in Government Code section 65915 subdivision (i), as may be amended.

G. "Identifiable and actual cost reduction to provide for affordable housing cost" means a reasonably quantifiable cost reduction that would be achieved for a housing development through a concession.

H. "Reasonable documentation to establish eligibility for a concession" means a credible written explanation or other documentation demonstrating to the reasonable satisfaction of the Planning Director or designee that a concession will achieve an identifiable and actual cost reduction to provide for affordable housing cost.

I. "Senior citizen housing development" means a residential development developed, substantially rehabilitated, or substantially renovated for, senior citizens that has at least 35 dwelling units, as defined in the Civil Code Section 51.3, or a mobile home park that limits residency based on age requirements for housing for older persons pursuant to Civil Code Sections 798.76 or 799.5.

J. "State density bonus law" means Government Code Section 65915, et seq, as the same may be renumbered or amended.

17.38.030 Application Requirements.

A. An applicant for a "housing development" as defined in state density bonus law shall be eligible for a density bonus and other regulatory benefits that are provided by state density bonus law when the applicant seeks and agrees to provide housing as specified in Government Code Section 65915(b), (c), (f), (g), (h) and (v), or in Government Code Section 65915.5, or successor provisions. The density bonus calculations shall be made in accordance with state density bonus law.

B. The granting of a density bonus, incentive, or concession, pursuant to this chapter, shall not be interpreted, in and of itself, to require a general plan amendment, development code amendment, zone change, other discretionary approval, or the waiver of a city ordinance or provisions of a city ordinance unrelated to development standards.

C. All requests for density bonuses, incentives, parking reductions, and waivers for a housing development shall be filed with and on a form provided by the Director of Community Development, or their designee, concurrently with the filing of the planning application for the first discretionary or ministerial permit required for the housing development, whichever permit is earliest. The applicant shall be informed whether the application is complete consistent with Government Code Section 65943.

D. The application shall include the required fee and the following minimum information:

1. For a requested density bonus.

    a. A project summary table demonstrating the basis under the state density bonus law on which the applicant is requesting a density bonus, including the maximum allowable density permitted by the zoning and general plan designations excluding any density bonus; base units; proposed number of affordable units by income level; proposed bonus percentage; total number of dwelling units; residential gross floor area and total gross floor area proposed; density per acre; proposed number of parking spaces; and unit and bedroom counts and unit types for the purpose of calculating parking requirements;

    b. A preliminary site plan, drawn to scale, showing the number and location of all proposed units;

    c. A legal description of the site;

    d. A boundary survey;

    e. An identification of the maximum density bonus to which the housing development is entitled on the basis requested;

    f. An identification of any concession(s) sought and reasonable documentation consisting of a detailed written statement to establish eligibility for the concession(s);

    g. An identification of any waiver(s) sought and a detailed written explanation of why the development standard from which any waiver is sought would have the effect of physically precluding the construction of the housing development at the density and with any concession(s) or parking ratio reduction sought.

h. If the housing development is proposed on any property that includes a parcel or parcels with existing dwelling units or dwelling units that have been vacated or demolished in the five-year period preceding the application, an explanation of how the project meets the state density bonus law's replacement housing requirements, if applicable, set forth in Government Code section 65915 subdivision (c)(3), as may be amended.

i. If the density bonus or concession requested is based all or in part on the inclusion of a child-care facility, a written summary addressing the eligibility requirements pursuant to state density bonus law, as set forth in Government Code section 65915 subdivision (h), as may be amended, have been met.

j. If the density bonus or concession is based all or in part on the inclusion of affordable units as part of a condominium conversion, written summary addressing the eligibility requirements pursuant to state density bonus law, set forth in Government Code section 65915.5, as may be amended, have been met.

k. If the density bonus is requested for a land donation, the location of the land to be dedicated, proof of site control and reasonable documentation that each of the requirements pursuant to state density bonus law, set forth in Government Code section 65915 subdivision (g), as may be amended, can be met.

l. A marketing plan for the affordable housing units, as well as an explanation of the methods to be used to verify tenant and/or buyer incomes and to maintain affordability of the affordable housing units. For a housing development with 15 dwelling units or more, the density bonus housing plan shall specify a financing mechanism for ongoing administration and monitoring of the affordable housing units.

2. **Requested incentives.** Incentives are those defined by state density bonus law. The number of incentives that may be requested shall be based upon the number the applicant is entitled to pursuant to state density bonus law. The application shall include the following minimum information for each incentive requested, shown on a site plan (if appropriate):

   a. The city usual regulation and the requested regulatory incentive or concession.

   b. Except where mixed-use zoning is proposed as a concession or incentive, reasonable documentation to show that any requested incentive will result in identifiable and actual cost reductions to provide for affordable housing costs or rents.

c. If approval of mixed-use zoning is proposed, reasonable documentation that nonresidential land uses will reduce the costs of the housing development, that the nonresidential land uses are compatible with the housing development and the existing or planned development in the area where the proposed housing development will be located, and that mixed-use zoning will provide for affordable housing costs and rents.

3. **Requested waivers.** For each waiver requested, the applicant shall include, shown on a site plan, and shown for each existing or proposed parcel (if applicable), the city required development standard and the requested development standard.

4. **Parking reductions.** If a housing development is eligible for a density bonus pursuant to state density bonus law, the applicant may request an on-site vehicular parking ratio specified in Government Code Section 65915(p). An applicant may request this parking reduction in addition to the incentives and waivers permitted by paragraphs (2) and (3) of this subsection. The application shall include a table showing parking required by the zoning regulations, parking proposed under state density bonus law, paragraph under Government Code Section 65915(p) (or other statute) under which the project qualifies for the parking reduction, and reasonable documentation that the project is eligible for the requested parking reduction.

5. **Density bonus or incentive for a child care facility in a housing development.** The application shall include reasonable documentation that all of the requirements included in Government Code Section 65915(h) can be met.

6. **Density bonus or incentive for a condominium conversion.** The application shall include reasonable documentation that all of the requirements included in Government Code Section 65915.5 can be met.

17.38.040 Application review process.

A. All requests under state density bonus law shall be part of the planning application and shall be applied for, reviewed, and acted upon concurrently with the planning application by the approval body with authority to approve the development, within the timelines prescribed by Government Code Section 65950 et seq. or other statute. Appeals of the planning application in accordance with the requirements of Chapter 18.144 of this code and shall include all requests under state density bonus law if appeals are authorized for the discretionary or ministerial permit applied for.

B. To ensure that an application for a housing development conforms with the provisions of state density bonus law, the staff report presented to the decision-making body shall state whether the application conforms to the following requirements of state density bonus law, as applicable:

1. The housing development provides the housing required by state density bonus law to be eligible for a density bonus and any incentives, parking reduction, or waivers requested,

including housing required to replace units rented or formerly rented to very low- and low-income households as required by Government Code Section 65915(c)(3).

2. If applicable, the housing development provides the housing required by state density bonus law to be eligible for an additional density bonus under Government Code Section 65915(v)(1).

3. If an incentive is requested, reasonable documentation has been presented showing that any requested incentive will result in identifiable and actual cost reductions to provide for affordable housing or costs or rents; except that, if a mixed-use development is requested, the application must instead meet all of the requirements of Government Code Section 65915(k)(2).

4. If a waiver is requested, the development standards for which a waiver is requested would have the effect of physically precluding the construction of the housing development at the densities or with the incentives permitted.

5. The housing development is eligible for any requested parking reductions under Government Code Section 65915(p) or other statute.

6. If the density bonus is based all or in part on donation of land, the requirements of Government Code Section 65915(g) have been met.

7. If the density bonus or incentive is based all or in part on the inclusion of a child care facility or condominium conversion, the requirements included in Government Code Section 65915(h) or 65915.5, as appropriate, have been met.

C. The decision-making body shall grant an incentive requested by the applicant unless it makes a written finding, based upon substantial evidence, of any of the following:

1. The proposed incentive does not result in identifiable and actual cost reductions to provide for affordable housing costs, as defined in Health and Safety Code Section 50052.5; or for affordable rents, as defined in Health and Safety Code Section 50053; or

2. The proposed incentive would be contrary to state or federal law; or

3. The proposed incentive would have a specific, adverse impact upon the public health or safety or on any real property that is listed in the California Register of Historic Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the housing development unaffordable to low- and moderate-income households. For the purpose of this subsection, "specific, adverse impact" means a significant, quantifiable, direct and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application for the housing development was deemed complete as defined in Government Code Section 65589.5.

D. The decision-making body shall grant the waiver of development standards requested by the applicant unless it makes a written finding, based upon substantial evidence, of any of the following:

   1. The proposed waiver would be contrary to state or federal law; or

   2. The proposed waiver would have an adverse impact on any real property listed in the California Register of Historic Resources; or

   3. The proposed waiver would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the housing development unaffordable to low- and moderate-income households. For the purpose of this subsection, "specific, adverse impact" means a significant, quantifiable, direct and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application for the housing development was deemed complete as defined in Government Code Section 65589.5.

E. If a child care center complies with the requirements of Government Code Section 65915(h), the decision-making body may deny a density bonus or incentive that is based on the provision of child care facilities only if it makes a written finding, based on substantial evidence, that the city already has adequate child care facilities.

F. A request for minor modification of an approved density bonus may be granted by the Director of Community Development, or their designee, if the modification substantially complies with the original density bonus housing plan and conditions of approval. Other modifications to the density bonus housing plan shall be processed in the same manner as the original plan.

17.38.050 Affordability requirements.

A. Affordable rental units provided by a housing development to meet state density bonus law requirements shall be subject to an affordable housing agreement recorded against the housing development for at least a 55-year term or as required by PMC 17.44, commencing upon the issuance of certificates of occupancy. The form of the affordable housing agreement shall be approved by the city attorney.

B. For-sale affordable units provided by a housing development to meet state density bonus requirements shall be subject to a recorded affordable housing agreement approved as to form by the city attorney commencing upon the issuance of certificates of occupancy. The affordable housing agreement shall, at a minimum, require that:

   1. Each for-sale affordable unit shall be sold to an income qualified household at an affordable housing cost, as defined in the affordable housing agreement; and

2. Each for-sale affordable unit shall be sold to the initial purchaser subject to a recorded resale restriction agreement approved as to form by the city attorney, which shall:

    a. Have no less than a 45-year term or as required by chapter 17.44 of this title if required by another public financing source or law;

    b. Restrict the resale price of the unit to an affordable housing cost, as defined in the resale restriction agreement; and

    c. Require that if the unit is sold to a subsequent purchaser during the term of the agreement, the purchaser shall purchase the unit subject to a resale restriction agreement approved as to form by the city attorney with a new 45-year term or longer if required by another public financing source or law.

17.38.060 Density bonus calculations.

A. In determining the total number of units to be granted, each component of any density calculation, including base density and bonus density, resulting in fractional units shall be separately rounded up to the next whole number.

B. When calculating the number of affordable units needed to qualify for a given density bonus, any fractions of affordable dwelling units shall be rounded up to the next whole number.

C. Except where a housing development is eligible for an additional bonus pursuant to Government Code Section 65915(v), each housing development is entitled to only one density bonus. If a housing development qualifies for a density bonus under more than one category, the applicant shall identify the category under which the density bonus is requested to be granted.

D. In determining the number of affordable units required to qualify a housing development for a density bonus pursuant to state density bonus law, units added by a density bonus are not included in the calculations. Any on-site units shall satisfy the city's inclusionary housing requirements in Chapter 17.44. Payment of fees in lieu of providing affordable units under Chapter 17.44 does not qualify a housing development for a density bonus.

E. The applicant may elect to accept a lesser percentage of density bonus than the housing development is entitled to, or no density bonus, but no reduction will be permitted in the percentages of affordable units required by state density bonus law. Regardless of the number of affordable units, no housing development shall be entitled to a density bonus greater than what is authorized under state density bonus law.

F. Nothing in this chapter requires the provision of direct financial incentives from the city for the housing development, including, but not limited to, the provision of financial subsidies, publicly owned land, fee waivers, or waiver of dedication requirements. The city, at its sole discretion, may choose to provide such direct financial incentives.

17.38.070 Development standards.

A. Building permits and final inspections or certificates of occupancy shall be issued concurrently for the market rate units and for any affordable units that qualified the project for a density bonus, incentive, waiver, or parking reduction, so that the affordable units comprise the required percentage of total units.

B. All units provided as density bonus units shall comply with the development standards set forth in Section 17.44.050 of this code.

17.38.080 Density bonus for commercial development.

A. The following definitions shall apply to this Section 17.38.080:

1. "Commercial development" means a development project for nonresidential and nonindustrial uses.

2. "Commercial development bonus" means modification of development standards mutually agreed upon by the city and a commercial developer and provided to a commercial development eligible for such a bonus under subparagraph 17.38.080(C). Examples of a commercial development bonus include an increase in floor area ratio, increased building height, or reduced parking.

3. "Partnered housing agreement" means an agreement approved by the city between a commercial developer and a housing developer identifying how the commercial development will provide housing available at an affordable ownership cost or affordable rent consisted with subparagraph (h)(3). A partnered housing agreement may consist of the formation of a partnership, limited liability company, corporation, or other entity recognized by the state in which the commercial development and the housing developer are each partners, members, shareholders, or other participants, or a contract between the commercial developer and the housing developer for the development of both the commercial developer and the housing development.

B. When an applicant proposes to construct a commercial development and has entered into a partnered housing agreement approved by the city, the city shall grant a commercial development bonus mutually agreed upon by the developer and the city. The commercial development bonus shall not include a reduction or waiver in fees imposed on the commercial development to provide for affordable housing.

C. The partnered housing agreement shall include all of the following provisions:

1. The housing development shall be located either: (i) on the site of the commercial development; or (ii) on a site within the city that is within one-half mile of a major transit

stop, as defined in Public Resources Code Section 21155, and is in close proximity to public amenities, including schools and employment centers.

2. At least thirty percent (30%) of the total units in the housing development shall be made available at an affordable ownership cost or affordable rent to low-income households, or at least fifteen percent (15%) of the total units in the housing development shall be made available at an affordable ownership cost or affordable rent to very low-income households.

3. The commercial development must agree either to directly build the affordable housing units, donate a site consistent with the requirements of Government Code Section 65915(g) for the development of the affordable housing units, or make a cash payment to the housing developer for the development of the affordable housing units.

D. An approved partnered housing agreement shall be described in the city Housing Element annual report as required by Government Code Section 65915.7(k).

17.38.090 Interpretation.

If any portion of this chapter conflicts with state density bonus law or other applicable state law, state law shall supersede this chapter. Any ambiguities in this chapter shall be interpreted to be consistent with state density bonus law. Statutory references in this ordinance include successor provisions.

***

~~CHAPTER 17.38~~
~~DENSITY BONUS~~

~~§ 17.38.010. Purpose and intent.~~

~~The purpose of this chapter is to comply with California Government Code Sections 65915 et seq. (State Density Bonus Law), as amended, as well as implement program 9.6 of the housing element (2012) of the city's general plan (2005-2025).~~
~~(Ord. 2082 § 2, 2013)~~

~~§ 17.38.020. Definitions.~~

~~For the purposes of this chapter, certain words and phrases shall be interpreted as set forth in this section.~~

~~"Affordable ownership cost" means monthly housing payments during the first calendar year of household's occupancy, including interest, principal, mortgage insurance, property taxes, homeowners'~~

~~insurance, property maintenance and repairs, a reasonable allowance for utilities and homeowners' association dues, if any, not exceeding the following:~~

~~1. Very low-income units: 50 percent of the area median income, adjusted for assumed household size based on unit size, multiplied by 30 percent and divided by 12.~~

~~2. Low-income units: 70 percent of the area median income, adjusted for assumed household size based on unit size, multiplied by 30 percent and divided by 12.~~

~~3. Moderate income units: 110 percent of the area median income, adjusted for assumed household size based on unit size, multiplied by 35 percent and divided by 12.~~

~~The assumed household size shall be one person in a studio unit, two persons in a one-bedroom unit, three persons in a two-bedroom unit, and one additional person for each additional bedroom.~~

~~"Affordable rent" means monthly housing expenses, including all fees for housing services and a reasonable allowance for utilities, not exceeding the following:~~

~~1. Very low-income units: 50 percent of the area median income, adjusted for assumed household size based on unit size, multiplied by 30 percent and divided by 12.~~

~~2. Low-income units: 60 percent of the area median income, adjusted for assumed household size based on unit size, multiplied by 30 percent and divided by 12.~~

~~The assumed household size shall be one person in a studio unit, two persons in a one-bedroom unit, three persons in a two-bedroom unit, and one additional person for each additional bedroom.~~

~~"Area medium income" means area median income for Alameda County as published and periodically updated by the State Department of Housing and Community Development.~~

~~"Child care facility" means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and school age child care centers.~~

~~"Common interest development" means a community apartment project, condominium project,~~

~~planned development or stock cooperative as defined in California Civil Code Section 1351.~~

~~"Condominium project" means a housing development consisting of condominium units and common areas as defined in California Civil Code Section 1351.~~

~~"Density bonus" means a density increase over the otherwise allowable maximum residential density of a site.~~

~~"Density bonus unit" means those residential units, granted pursuant to the provisions of this chapter, which exceed the otherwise maximum allowable residential density for a development site.~~

~~"Development standard" means any site or construction condition that applies to a residential development pursuant to any ordinance, general plan element, specific plan, or other local condition, law, policy, resolution, or regulation. "Site and construction conditions" means standards that specify the physical development of a site and buildings on the site in a housing development.~~

~~"Housing development" means construction projects consisting of five or more residential units, including single-family and multi-family units, for sale or for rent. For the purposes of this chapter "housing development" also includes a subdivision, planned unit development, or common interest development consisting of five or more residential units or unimproved residential lots, the substantial rehabilitation of an existing multi-family dwelling or conversion of commercial building into residential involving the creation of a net increase of five or more residential units.~~

~~"Incentive or concession" means such regulatory concessions as listed in Section 17.38.050.~~

~~"Low-income household" means households whose income does not exceed the low-income limits applicable to Alameda County, as published and periodically updated by the State Department of Housing and Community Development pursuant to California Health and Safety Code Section 50079.5.~~

~~"Maximum allowable residential density" means the maximum number of residential units permitted by the applicable zoning regulations, land use element of the general plan, specific plan, or maximum density established by the City's Housing Site Development Standards and Design Guidelines for multi-family housing sites.~~

~~"Moderate income household" means households whose income does not exceed the moderate-income limits applicable to Alameda County, as published and periodically updated by the State Department of Housing and Community Development pursuant to California Health and Safety Code Section 50093.~~

~~"Non-restricted unit" means all units within a housing development, excluding the target units.~~

~~"Planned development" means a development (other than a community apartment project, a condominium project, or a stock cooperative) having either or both of the following features:~~

~~1. The common area is owned either by an association or in common by the owners of the separate interests who possess rights to the beneficial use and enjoyment of the common area;~~

~~2. A power exists in the association to enforce an obligation of an owner of a separate interest with respect to the beneficial use and enjoyment of the common area by means of an assessment which may become a lien upon the separate interests.~~

~~"Senior citizen housing development" means a residential development developed, substantially rehabilitated, or substantially renovated for, senior citizens that has at least 35 dwelling units, as defined in the California Civil Code Section 51.3, or a mobile home park that limits residency based on age requirements for housing for older persons pursuant to California Civil Code Sections 798.76 or 799.5.~~

~~"Target unit" means a dwelling unit within a housing development which will be reserved for sale or rental, and is made available at an affordable rent or affordable ownership cost to very low, low or moderate income households, or is a unit in a senior citizen housing development.~~

~~"Very low-income household" means households whose income does not exceed the very low-income limits applicable to Alameda County, as published and periodically updated by the State Department of Housing and Community Development pursuant to California Health and Safety Code Section 50105.~~

~~(Ord. 2082 § 2, 2013)~~

~~§ 17.38.030. Eligibility.~~

~~An applicant proposing a housing development of five or more dwelling units may request and be eligible for one density bonus and one or more incentives or concessions provided the applicant agrees to construct one of the following:~~

~~A. At least 10 percent of the total units of a housing development for low-income households; or~~

~~B. At least five percent of the total units of a housing development for very low-income households; or~~

~~C. A senior citizen housing development; or~~

~~D. At least 10 percent of the total dwelling units in a newly constructed common interest development for sale to moderate income households.~~

~~(Ord. 2082 § 2, 2013)~~

~~§ 17.38.040. Calculation of density bonus.~~

~~A. Each housing development is entitled to one density bonus, which may be selected from one of the four eligibility criteria established in Section 17.38.030. Density bonuses from more than one of these categories may not be combined.~~

~~B. The amount of density bonus to be granted for a housing development which meets the eligibility criteria in Section 17.38.030 shall be calculated as follows, and as summarized in Table 17.38.040:~~

~~1. 10 Percent Low Income Units. Housing developments providing at least 10 percent of the dwelling units for low-income households pursuant to Section 17.38.030(A) shall be entitled to a bonus equal to 20 percent of the maximum allowable density of the site. For each one percent increase above 10 percent of low-income units, the density bonus shall be increased by one and one-half percent up to a maximum of 35 percent.~~

~~2. Five Percent Very Low-Income Units. Housing developments providing at least five percent of the dwelling units for very low-income households pursuant to Section 17.38.030(B) shall be~~

~~entitled to a bonus equal to 20 percent of the maximum allowable density of the site. For each one percent increase above five percent of very low-income units, the density bonus shall be increased by two and one-half percent up to a maximum of 35 percent.~~

~~3. Senior Citizen Housing. Housing developments providing 100 percent of the units as senior citizen housing pursuant to Section 17.38.030(C) shall be entitled to a bonus equal to 20 percent of the maximum allowable density of the site. The senior citizen housing must include a minimum of 35 dwelling units not including bonus units.~~

~~4. 10 Percent Moderate Income Common Interest Development Units. Housing developments providing at least 10 percent of residential common interest development units for moderate income households pursuant to Section 17.38.030(D), shall be entitled to a bonus equal to five percent of the maximum allowable density of the site. For each one percent increase above 10 percent of moderate-income units, the density bonus shall be increased by one percent up to a maximum of 35 percent.~~

~~C. A developer may request a lesser density bonus than the project is entitled but no reduction will be permitted in the number of required target units pursuant to Section 17.38.030.~~

~~D. No housing development may be entitled to a density bonus of more than 35 percent.~~

~~E. The maximum allowable density of the site shall be determined by the applicable zoning regulations, the land use element of the general plan, specific plan, or density established by the City's Housing Site Development Standards and Design Guidelines for multi-family housing sites.~~

~~F. When calculating the required number of target units and the number of permitted density bonus units, any calculations resulting in fractional units shall be rounded to the next larger whole number.~~

~~G. The density bonus units shall not be included when determining the number of target units required to qualify for a density bonus pursuant to Section 17.38.030.~~

~~Table 17.38.040~~
~~Density Bonus Summary~~

~~Target Group~~	~~Minimum % Target Units~~	~~Bonus Granted~~	~~Additional Bonus for Each 1% Increase in Target Units~~	~~% Target Units Required for Maximum 35% Bonus~~
~~Very Low Income~~	~~5%~~	~~20%~~	~~2.5%~~	~~11%~~
~~Low Income~~	~~10%~~	~~20%~~	~~1.5%~~	~~20%~~
~~Moderate Income (Common Interest Development, Condo or PUD only)~~	~~10%~~	~~5%~~	~~1%~~	~~40%~~
~~Senior Citizen Housing Development~~	~~100%~~	~~20%~~	–	–

~~**Notes:**~~

~~The maximum allowable density bonus is 35%.~~

~~A density bonus may only be selected from one target group, except that an additional bonus for land donation may be combined with a target group pursuant to Section 17.38.080.~~

~~An additional square footage bonus may be granted for a child care facility pursuant to Section 17.38.090.~~

~~(Ord. 2082 § 2, 2013)~~

~~**§ 17.38.050. Incentives and concessions.**~~

~~A. Developers eligible for a density bonus as provided in Section 17.38.030(A), (B) or (D), upon specific application, shall be entitled to one or more incentives or concessions as set forth in this section, subject to city review and findings set forth in Section 17.38.120(B).~~

~~B. Calculation of Incentives and Concessions. A developer who is eligible for a density bonus under Section 17.38.030(A), (B) or (D) may request and be eligible for one or more incentives or concessions. When requested by the developer, the city shall grant the incentives or concessions in the amount as follows:~~

~~1. One incentive or concession for projects that include at least 10 percent of the total units for low-income households, at least five percent for very low-income households, or at least 10 percent for persons and families of moderate income in a common interest development.~~

~~2. Two incentives or concessions for projects that include at least 20 percent of the total units for low-income households, at least 10 percent for very low-income households, or at least 20 percent for persons and families of moderate income in a common interest development.~~

~~3. Three incentives or concessions for projects that include at least 30 percent of the total units for low-income households, at least 15 percent for very low-income households, or at least 30 percent for persons and families of moderate income in a common interest development.~~

~~**Table 17.38.050**~~
~~**Incentives/Concessions Summary**~~

~~**Target Group**~~	~~**Target Units**~~		
~~Very Low Income~~	~~5%~~	~~10%~~	~~15%~~
~~Low Income~~	~~10%~~	~~20%~~	~~30%~~
~~Moderate Income (Common Interest Development, Condo or PUD only)~~	~~10%~~	~~20%~~	~~30%~~
~~Maximum Incentive(s)/Concession(s)~~	~~1~~	~~2~~	~~3~~

~~**Notes:**~~

~~An incentive or concession may be requested only if an application is also made for a density bonus.~~

~~Under this chapter, senior citizen housing is not eligible for an incentive or concession as set forth in this section, except for the reduction of off-street parking.~~

~~An additional incentive or concession may be requested for a child care facility pursuant to Section 17.38.090.~~

~~See Section 17.38.100 regarding incentives for condominium conversion projects.~~

~~C. Types of Incentives or Concessions. An incentive or concession shall mean any reduction in site development standards, any modification of zoning or architectural design requirements, or other regulatory exceptions which will result in identifiable, financially sufficient, and actual cost reductions necessary to facilitate the construction of the housing development. Incentives or concessions shall include, but not be limited to, the following:~~

~~1. Incentives or Concessions Not Requiring Financial Report from Developer. Upon written request by the developer, the following incentives and concessions shall be available in the amounts specified in subsection B of this section without any requirement that the applicant demonstrates to the city that the requested incentive or concession results in identifiable, financially sufficient, and actual cost reductions to the project.~~

~~a. A 20 percent reduction in one of the setbacks.~~

~~b. A 10 percent reduction in minimum lot sizes and/or dimensions.~~

~~2. Incentives or Concessions Requiring Financial Report from Developer. The following incentives and concession, when requested by the developer, shall require that the developer provide a financial report (pro forma) that demonstrates how the requested incentive or concession results in identifiable, financially sufficient, and actual cost reductions to the project:~~

~~a. An incentive or concession that exceeds the level of reduction specified for the standards identified in subsection (C)(1) of this section.~~

~~b. Approval of mixed-use zoning in conjunction with the housing development if nonresidential land uses will reduce the cost of the housing development and if the city finds that the proposed nonresidential uses are compatible with the housing development and with existing or planned development in the area where the proposed housing development will be located.~~

~~c. Off-Site Construction of Target Units. Target units required pursuant to this chapter may be permitted to be constructed at a location within the city other than the project site. Any off-site target units must meet the following criteria:~~

~~i. The off-site target units must be determined to be consistent with the city's goal of creating, preserving, maintaining, and protecting housing for very low, low, and moderate income households.~~

~~ii. The off-site target units must not result in a significant concentration of target units in any one particular neighborhood.~~

~~iii. The off-site target units shall conform to the requirements of all applicable city ordinances, standards and plans, and the provisions of this chapter.~~

~~iv. The occupancy and rents, or for-sale costs, of the off-site target units shall be governed by the terms of a deed restriction, and if applicable, a declaration of covenants, conditions and restrictions similar to that used for the on-site target units.~~

~~v. The density bonus housing agreement, as required by Section 17.38.130, shall stipulate the terms of the off-site target units. If the construction does not take place at the same time as the project development, the agreement shall require the units to be produced within a specified time frame, but in no event longer than five years. A cash deposit or bond may be required by the city, refundable upon construction, as assurance that the target units will be built.~~

~~d. Fee Waiver or Deferral. The city council, by resolution, may waive or defer payment of city development impact fees and/or building permit fees applicable to the target units or the project of which they are a part. Fee waivers shall meet the criteria included in the city's adopted policy for evaluating waivers of city fees for affordable housing projects. The density bonus housing agreement, as required by Section 17.38.130, shall include the terms of the fee waiver.~~

~~e. Other regulatory incentives or concessions proposed by the developer or the city which result in identifiable, financially sufficient, and actual cost reductions.~~

~~3. Except as provided in subsection (C)(1) of this section, a developer requesting one or more incentives or concessions must include with the application detailed financial report (pro forma) to demonstrate that such incentive or concession would result in necessary, identifiable, financially sufficient, and actual cost reductions that could not be achieved without the incentive or concession.~~

~~D. No incentive or concession shall result in structures that do not meet the minimum building standards provided in California Health and Safety Code Division 13, Part 2.5 (commencing with Section 18901).~~

~~(Ord. 2082 § 2, 2013)~~

~~§ 17.38.060. Waiver or modification of development standards.~~

~~Developers eligible for a density bonus as provided in Section 17.38.030 may request a waiver or modification of any development standards that will have the effect of precluding the construction of a housing development at the densities or with the concessions or incentives permitted by this section. The developer shall submit a financial report (pro forma) demonstrating that the waiver or modification is necessary to make the housing units economically feasible.~~

~~(Ord. 2082 § 2, 2013)~~

~~§ 17.38.070. Reduction in off-street parking.~~
~~A. Upon the request of a developer eligible for a density bonus, the city shall not require that the off-street parking provided for residential use, inclusive of handicapped and guest parking, exceed the following ratios:~~

~~1. Zero to one bedrooms: one off-street parking space.~~

~~2. Two to three bedrooms: two off-street parking spaces.~~

~~3. Four and more bedrooms: two and one-half off-street parking spaces.~~

~~B. For purposes of this section, if the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number.~~

~~(Ord. 2082 § 2, 2013)~~

~~§ 17.38.080. Land donation.~~
~~A. In addition to any density bonus awarded pursuant to Section 17.38.030, a developer of a housing development that donates qualified land to the city for the construction of dwelling units affordable to very low-income households as provided for in this section, the developer shall be entitled to a 15 percent density bonus. For each one percent increase above the minimum 10 percent land donation, the density bonus shall be increased by one percent. This increase shall be in addition to any increase in density allowed by Section 17.38.040, up to a maximum combined density bonus of 35 percent.~~

~~B. A housing development shall be eligible for a density bonus for donation of qualified land only if the city can find that all of the criteria set forth in California Government Code Section 65915(g) will be met.~~

~~(Ord. 2082 § 2, 2013)~~

~~§ 17.38.090. Child care facilities.~~
~~A. When a developer proposes to construct a housing development that includes target units as specified in Section 17.38.030 and includes a child care facility that will be located on the premises of, as part of, or adjacent to the housing development, the developer may request and the city shall grant either of the following if requested by the developer:~~

~~1. An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.~~

~~2. An additional incentive or concession that contributes significantly to the economic feasibility of the construction of the child care facility, as demonstrated by the developer.~~

~~B. A housing development shall be eligible for the density bonus or incentive or concession described in this section if the city requires as an enforceable condition of approval, memorialized in an agreement recorded against the qualified housing development, that:~~

~~1. The child care facility will remain in operation for a period of time that is as long as or longer than the period of time during which the target units are required to remain affordable pursuant to Section 17.38.110.~~

~~2. Of the children who attend the child care facility, the percentage of children of very low-income households, low-income households, or moderate income households shall be equal to or greater than the percentage of dwelling units that are proposed to be affordable to very low income households, low income households, or moderate income households.~~

~~C. Notwithstanding any requirement of this section, the city shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community already has adequate child care facilities.~~

~~(Ord. 2082 § 2, 2013)~~

~~§ 17.38.100. Condominium conversion.~~

~~A. The city shall grant either a density bonus or other incentives of equivalent financial value if the developer of a conversion of existing rental apartments to condominiums agrees to provide 33 percent of the total units of the proposed condominium project as target units affordable to low or moderate income households, or to provide 15 percent of the total units in the condominium conversion project as target units affordable to lower income households.~~

~~B. For purposes of this section, a "density bonus" means an increase in units of 25 percent over the number of apartments to be provided within the existing structure or structures proposed for conversion.~~

~~C. For purposes of this section, "other incentives of equivalent financial value" may include the reduction or waiver of requirements which the city would apply as conditions of conversion.~~

~~D. No condominium conversion shall be eligible for a density bonus if the apartments proposed for conversion constitute a housing development for which a density bonus or other incentives were previously provided pursuant to this chapter or California Government Code Section 65915, as amended.~~

~~(Ord. 2082 § 2, 2013)~~

~~§ 17.38.110. Affordability and development standards.~~

~~A. All target units shall be constructed concurrently with, or prior to, the construction of the project's non-restricted units.~~

~~B. Target units offered for sale to very low, low, or moderate income households in common interest developments shall be sold at an affordable ownership cost, and subject to an equity sharing agreement as provided in California Government Code Section 65915(c).~~

~~C. Target units shall remain affordable through recordation of a density bonus housing agreement as required by Section 17.38.130.~~

~~D. Target units shall be dispersed throughout the project unless otherwise approved by the city.~~

~~E. Target units shall be built on site, unless off-site construction is approved at the city's discretion pursuant to the criteria in Section 17.38.050(C)(2)(c). The density bonus housing agreement shall stipulate the terms of the off-site target units. If the construction does not take place at the same time as project development, the agreement shall require the units to be produced within a specified time frame, but in no event longer than five years. A cash deposit or bond may be required by the city, refundable upon construction, as assurance that the units will be built.~~

~~F. Target units may be of smaller size than the non-restricted units in the project. In addition, target units may have fewer interior amenities than the non-restricted units in the project. However, the city may require that the target units meet certain minimum standards. These standards shall be set forth in the density bonus housing agreement for the project.~~

~~G. Target units shall be constructed with identical exterior materials and an exterior architectural design that is consistent with the non-restricted units in the project.~~

~~H. The city's adopted preference and priority system shall be used for determining eligibility among prospective beneficiaries for affordable housing units.~~

~~I. For purposes of calculating the affordable rent or affordable sales price of target unit, the following household size assumptions shall be used for each applicable dwelling unit type:~~

Unit Size	**HUD Income Category by Household Size**
Studio unit	1 person
1 bedroom unit	2 persons
2 bedroom unit	3 persons
3 bedroom unit	4 persons
4 or more bedroom unit	5 or more persons

~~(Ord. 2082 § 2, 2013)~~

~~**§ 17.38.120. Application requirements, review and findings.**~~

~~A. Application. An application for a density bonus, incentive or concession, and/or waiver or modification of development standards as provided in this chapter shall be submitted with the first application for approval of a housing development and processed concurrently with all other applications required for the housing development. The application shall be submitted on a form prescribed by the city and shall include at least the following information:~~

~~1. Site plan showing total number and size of units, number and location of target units, and number and location of proposed density bonus units.~~

~~2. Level of affordability of target units and proposal for ensuring affordability in perpetuity.~~

~~3. Description of any requested incentives or concessions, or waivers or modifications of development standards.~~

~~a. For all incentives or concessions that require a financial report (pro forma) pursuant to subsection C of Section 17.38.050, the pro forma shall state financial evidence demonstrating that such incentive or concession would result in necessary, identifiable, financially sufficient, and actual cost reductions that could not be achieved without the incentive or concession.~~

~~b. For waivers and modification of development standards that require submittal of a financial report (pro forma) as provided in Section 17.38.060, the pro forma shall demonstrate that the waiver or modification is necessary to make the housing units economically feasible and that the development standards will have the effect of precluding the construction of a housing development at the densities or with the concessions or incentives permitted by this chapter.~~

~~c. The cost of reviewing any required pro forma data submitted as a part of the application in support of a request for an incentive or concession, or waiver or modification of development standards, including, but not limited to, the cost to the city of hiring a consultant to review said pro forma, shall be borne by the applicant.~~

~~4. If an additional density bonus is requested for land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the criteria included in Section 17.38.080(B) can be met.~~

~~5. If a density bonus or concession is requested for a child care facility, the application shall show the location and square footage of the child care facilities and provide evidence that each of the criteria referenced in Section 17.38.090(B) can be made.~~

~~B. Review and Findings.~~

~~1. An application for a density bonus, incentive or concession, or waiver or modification, pursuant to this chapter shall be considered by and acted upon by the approval body with authority to approve the housing development. Any decision regarding a density bonus, incentive, concession, or~~

~~waiver or modification, may be appealed to the planning commission and from the planning commission to the city council.~~

~~2. In accordance with state law, neither the granting of a concession, incentive, waiver, or modification, nor the granting of a density bonus shall be interpreted, in and of itself, to require a general plan amendment, zoning change, variance, or other discretionary approval.~~

~~3. Before approving an application for a density bonus, incentive or concession, or waiver or modification of a development standard, the approval body shall make the following findings:~~

~~a. If an incentive or concession is requested, that the incentive or concession results in necessary, identifiable, financially sufficient, and actual cost reductions that could not be achieved without the incentive or concession.~~

~~b. If a waiver or modification of a development standard is requested, that the waiver or modification is necessary to make the housing units economically feasible at the densities permitted and with any eligible concessions or incentives.~~

~~c. If the density bonus is based all or in part on donation of land, the project meets the criteria in Section 17.38.080(B).~~

~~d. If the density bonus, incentive, or concession is based all or in part on the inclusion of a child care facility, the project meets the findings included in Section 17.38.090(B).~~

~~4. If a request for an incentive or concession is otherwise consistent with this chapter, the approval body may deny an incentive or concession if it makes a written finding, based upon substantial evidence, of any of the following:~~

~~a. The concession or incentive is not required to provide for affordable rents or affordable ownership costs.~~

~~b. The concession or incentive would have a specific adverse impact upon public health or safety or the physical environment or on any real property that is listed in the California Register of Historical Resources, and 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. For the purpose of this subsection, "specific adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application was deemed complete.~~

~~c. The concession or incentive would be contrary to state or federal law.~~

~~5. If a request for a waiver or modification of a development standard is otherwise consistent with this chapter, the approval body may deny the waiver or modification only if it makes a written finding, based upon substantial evidence, of any of the following:~~

~~a. The waiver or modification would have a specific adverse impact upon health, safety, or the physical environment, and 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. For the purpose of this subsection, "specific adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application was deemed complete.~~

~~b. The waiver or modification would have an adverse impact on any real property that is listed in the California Register of Historical Resources.~~

~~c. The waiver or modification would be contrary to state or federal law.~~

~~6. If a density bonus and an incentive or concession is based on the provision of child care facilities, the approval body may deny the bonus or concession if it finds, based on substantial evidence, that the city already has adequate child care facilities.~~

~~(Ord. 2082 § 2, 2013)~~

~~§ 17.38.130. Density bonus housing agreement.~~

~~A. For all housing projects receiving a density bonus under this chapter a density bonus housing agreement shall be entered into by the city and the project owner. The density bonus housing agreement shall be made a condition of the discretionary planning permits for all housing developments pursuant to this chapter and shall be recorded as a deed restriction on any parcel on which the target units will be constructed.~~

~~B. The approval and/or recordation of this agreement shall take place prior to final map approval or, where a map is not being processed, prior to the issuance of a building permit for any structure in the housing development. The agreement shall run with the land and be binding on all future owners and successors.~~

~~C. The density bonus housing agreement shall include but not be limited to the following:~~

~~1. The total number of units approved for the housing development, the number, location, and level of affordability of target units, and the number of density bonus units.~~

~~2. Standards for determining affordable rent or affordable ownership cost for the target units.~~

~~3. The location, unit size in square feet, and number of bedrooms of target units.~~

~~4. Provisions to ensure affordability in accordance with subsections B and C of Section 17.38.110.~~

~~5. A schedule for completion and occupancy of target units in relation to construction of non-restricted units.~~

~~6. A description of any incentives or concessions, or waivers or modification of development standards being provided by the city.~~

~~7. The terms of any waiver or deferral of city development impact fees and/or building permit fees applicable to the target units or the project of which they are a part.~~

~~8. A description of remedies for breach of the agreement by either party. The city may identify tenants or qualified purchasers as third party beneficiaries under the agreement.~~

~~9. Procedures for qualifying tenants and prospective purchasers of target units.~~

~~10. Other provisions to ensure implementation and compliance with this chapter.~~

~~D. In the case of for-sale housing developments, the density bonus housing agreement shall include the following conditions governing the sale and use of target units during the applicable use restriction period:~~

~~1. Target units shall be owner-occupied by eligible very low, low, or moderate income households, or by qualified residents in the case of senior citizen housing developments.~~

~~2. The purchaser of each target unit shall execute an instrument, approved by the city and to be recorded against the parcel, including such provisions as the city may require to ensure continued compliance with this chapter.~~

~~E. In the case of rental housing developments, the density bonus housing agreement shall provide for the following:~~

~~1. Procedures for establishing affordable rent, filling vacancies, and maintaining target units for eligible tenants;~~

~~2. Provisions requiring verification of household incomes;~~

~~3. Provisions requiring maintenance of records to demonstrate compliance with this subsection.~~

~~F. Density bonus housing agreements for land dedication or child care facilities shall ensure continued compliance with all conditions included in Sections 17.38.080 and 17.38.090 respectively.~~

~~(Ord. 2082 § 2, 2013)~~

~~§ 17.38.140. Conflict of interest.~~

~~The following individuals are ineligible to purchase or rent a target unit: (A) city employees and officials who have policy making authority or influence regarding city housing programs, and their immediate~~

~~family members; (B) the project applicant and its officers and employees and their immediate family members; and (C) the project owner and its officers and employees and their immediate family members.~~

~~(Ord. 2082 § 2, 2013)~~

TITLE 18
ZONING

CHAPTER 18.08 DEFINITIONS

18.08.332 Major transit stop.
"Major transit stop" means a site containing any of the following:

A. An existing public rail or public bus rapid transit station.
B. The intersection of two or more major public bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

A distance or radius from the major transit stop shall be measured from a single point at the center of the stop or station. Where a station/stop includes infrastructure, such as platforms, bus transfer facilities, and/or parking areas, a single centroid shall be used. If a project site is partially within the radius measurement from the single point, a project shall be considered to be within the radius if: (1) all parcels within the project have no more than 25 percent of their area farther than the specified distance from the major transit stop; and (2) if residential units are proposed, not more than 10 percent of the residential units or 100 units, whichever is less, in the project are farther than the specified distance from the major transit stop.

CHAPTER 18.88 OFF-STREET PARKING FACILITIES

18.88.020 Basic Requirements.
G. Unless otherwise allowed by state law, the city shall not impose or enforce any minimum automobile parking requirement on a residential, commercial, or other development project, excluding hotels, motels, bed and breakfast inns, or other transient lodging, if the project is located within one-half mile of a major transit stop, as defined in Chapter 18.08 of this title.

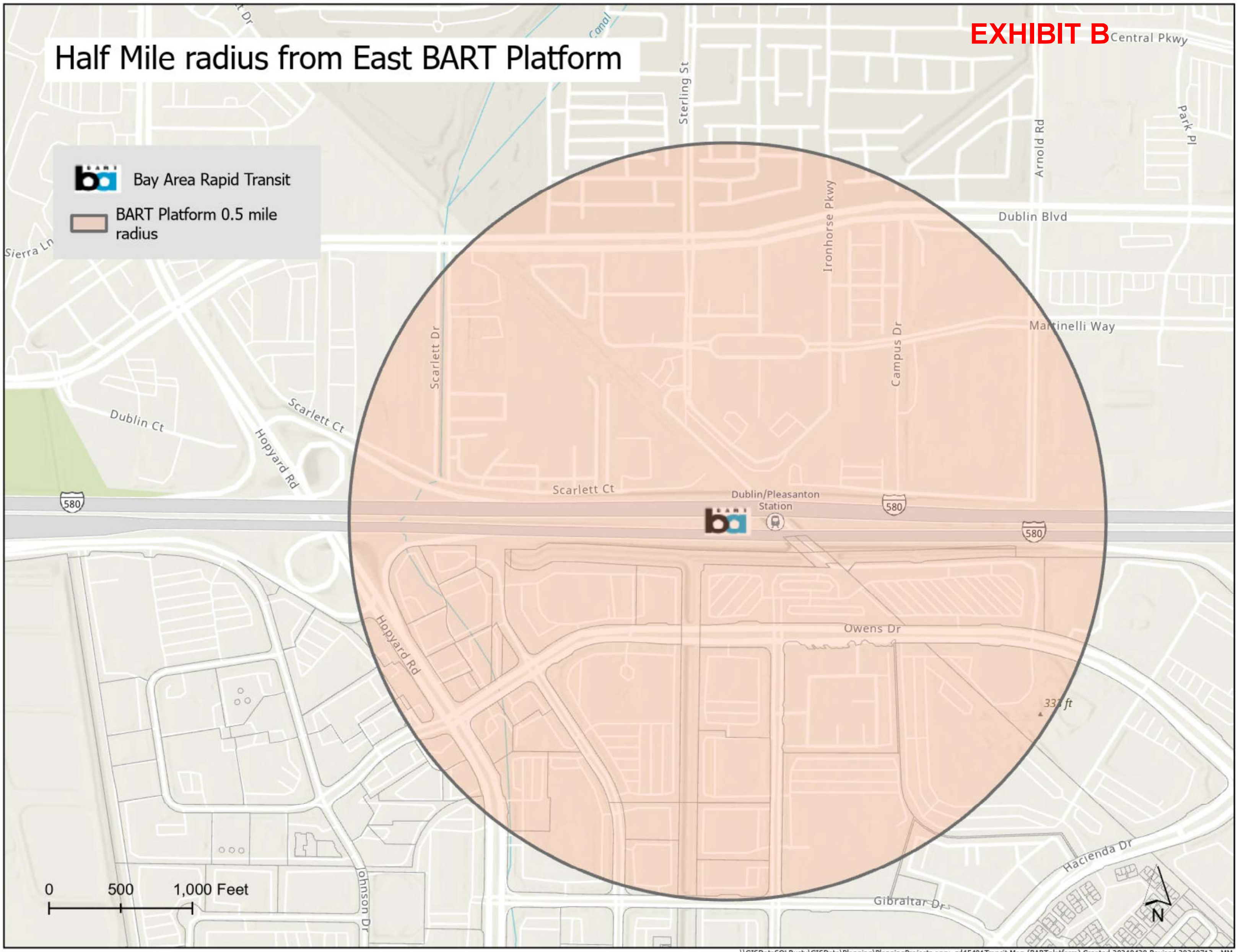

EXHIBIT B
Half Mile radius from East BART Platform
Bay Area Rapid Transit
BART Platform 0.5 mile radius
Central Pkwy
Sterling St
Park Pl
Arnold Rd
Ironhorse Pkwy
Dublin Blvd
Sierra Ln
Martinelli Way
Scarlett Dr
Campus Dr
Scarlett Ct
Dublin Ct
Hopyard Rd
Dublin/Pleasanton Station
580
Owens Dr
331 ft
Hacienda Dr
Gibraltar Dr
Johnson Dr
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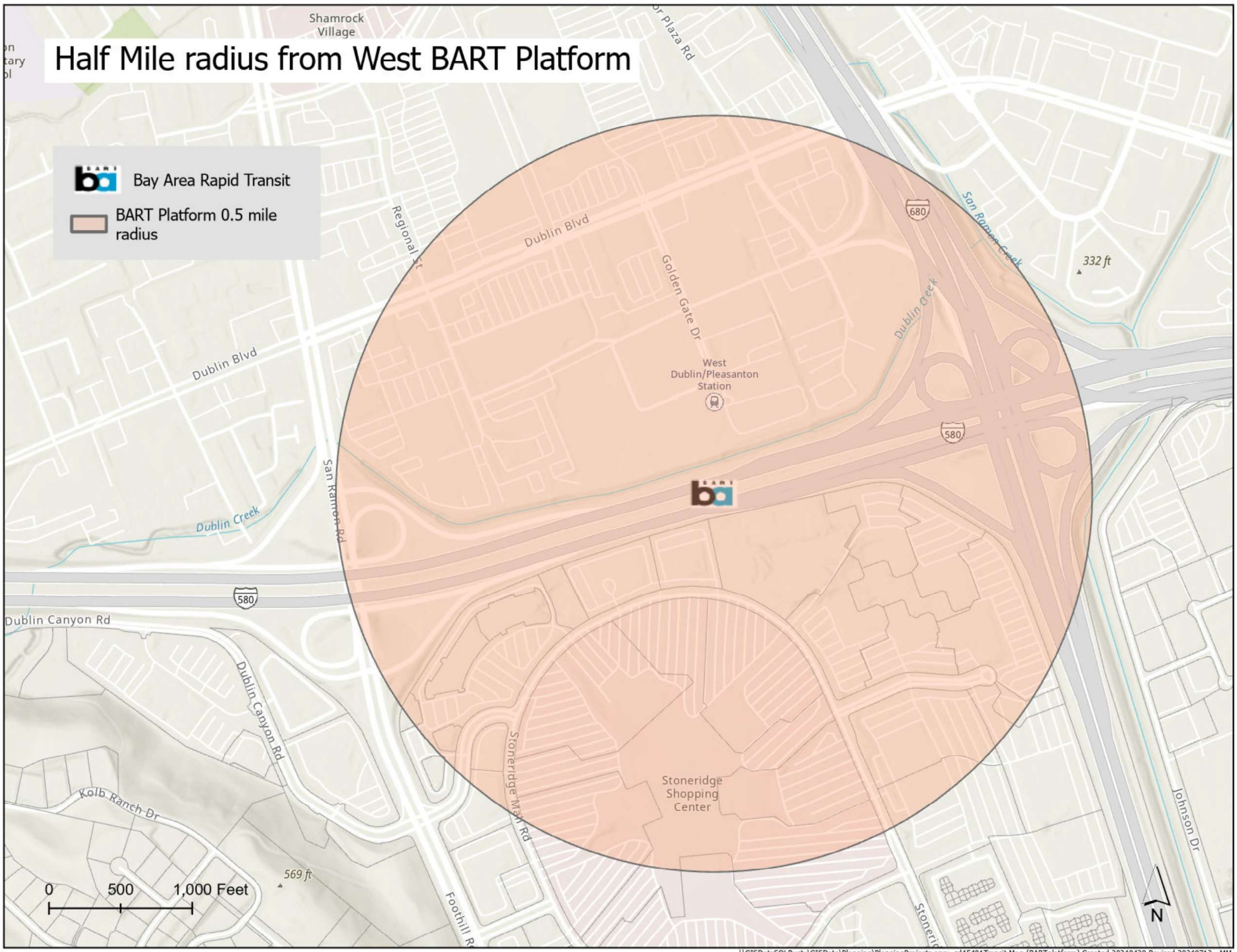

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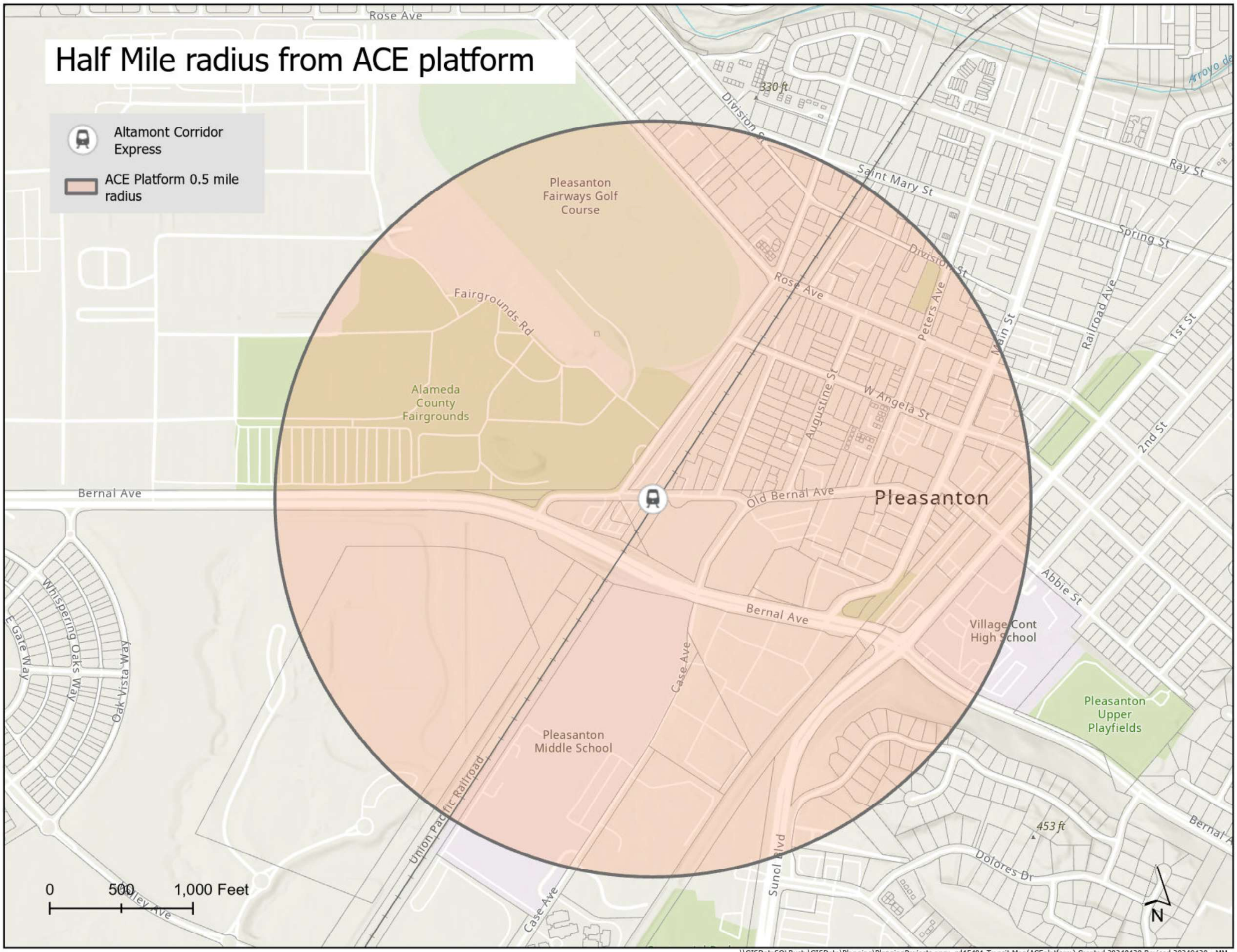

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EXHIBIT C

Assembly Bill No. 1033

CHAPTER 752

An act to amend Sections 65852.2 and 65852.26 of the Government Code, relating to housing.

[Approved by Governor October 11, 2023. Filed with Secretary of State October 11, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1033, Ting. Accessory dwelling units: local ordinances: separate sale or conveyance.

Existing law, the Planning and Zoning Law, authorizes a local agency, by ordinance or ministerial approval, to provide for the creation of accessory dwelling units in areas zoned for residential use, as specified. Existing law requires the ordinance to include specified standards, including prohibiting the accessory dwelling unit from being sold or otherwise conveyed separate from the primary residence, except as provided by a specified law.

Existing law, notwithstanding the prohibition described above, requires a local agency to allow an accessory dwelling unit to be sold or conveyed separately from the primary residence to a qualified buyer if certain conditions are met, including that the property was built or developed by a qualified nonprofit corporation and that the property is held pursuant to a recorded tenancy in common agreement that meets specified requirements.

This bill would, in addition, authorize a local agency to adopt a local ordinance to allow the separate conveyance of the primary dwelling unit and accessory dwelling unit or units as condominiums, as specified, and would make conforming changes.

By imposing new duties on local governments with respect to the approval of accessory dwelling units, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would also make a related statement of legislative findings and declarations.

This bill would incorporate additional changes to Section 65852.2 of the Government Code proposed by AB 976 to be operative only if this bill and AB 976 are enacted and this bill is enacted last.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:
(a) This act's provisions relating to the ability of local governments to limit short-term rentals within their jurisdiction is declaratory of existing law.
(b) This act's provisions relating to the ability of the associations created under the Davis-Stirling Common Interest Development Act (Part 5 (commencing with Section 4000) of Division 4 of the Civil Code) to develop community covenants and regulations that govern separate interests within a common interest development is declaratory of existing law.
SEC. 2. Section 65852.2 of the Government Code is amended to read:
65852.2. (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:
(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.
(B) (i) Impose objective standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historical Resources. These standards shall not include requirements on minimum lot size.
(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.
(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.
(D) Require the accessory dwelling units to comply with all of the following:
(i) Except as provided in Section 65852.26 and paragraph (10) of this subdivision, an accessory dwelling unit may be rented separate from the primary residence, but shall not be sold or otherwise conveyed separate from the primary residence.
(ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.
(iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages,

storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling, including detached garages.

(iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.

(v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.

(viii) Local building code requirements that apply to detached dwellings, except that the construction of an accessory dwelling unit shall not constitute a Group R occupancy change under the local building code, as described in Section 310 of the California Building Code (Title 24 of the California Code of Regulations), unless the building official or enforcement agency of the local agency makes a written finding based on substantial evidence in the record that the construction of the accessory dwelling unit could have a specific, adverse impact on public health and safety. Nothing in this clause shall be interpreted to prevent a local agency from changing the occupancy code of a space that was unhabitable space or was only permitted for nonresidential use and was subsequently converted for residential use pursuant to this section.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.

(III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.

(xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) (A) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall either approve or deny the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create or serve an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family or multifamily dwelling on the lot, the permitting agency may delay approving or denying the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency approves or denies the permit application to create the new single-family or multifamily dwelling, but the application to create or serve the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not approved or denied the completed application within 60 days, the application shall be deemed approved. A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(B) If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to subparagraph (A), the permitting agency shall, within the time period described in subparagraph (A), return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.

(4) The ordinance shall require that a demolition permit for a detached garage that is to be replaced with an accessory dwelling unit be reviewed with the application for the accessory dwelling unit and issued at the same time.

(5) The ordinance shall not require, and the applicant shall not be otherwise required, to provide written notice or post a placard for the demolition of a detached garage that is to be replaced with an accessory dwelling unit, unless the property is located within an architecturally and historically significant historic district.

(6) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial

provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(7) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.

(8) (A) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed, except that, subject to subparagraphs (B) and (C), a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant.

(B) (i) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit before January 1, 2025.

(ii) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit that was permitted between January 1, 2020, and January 1, 2025.

(C) Notwithstanding subparagraphs (A) and (B), a local agency may require that an accessory dwelling unit be used for rentals of terms longer than 30 days.

(9) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(10) In addition to the requirement that a local agency allow the separate sale or conveyance of an accessory dwelling unit pursuant to Section 65852.26, a local agency may also adopt a local ordinance to allow the separate conveyance of the primary dwelling unit and accessory dwelling unit or units as condominiums. Any such ordinance shall include all of the following requirements:

(A) The condominiums shall be created pursuant to the Davis-Stirling Common Interest Development Act (Part 5 (commencing with Section 4000) of Division 4 of the Civil Code).

(B) The condominiums shall be created in conformance with all applicable objective requirements of the Subdivision Map Act (Division 2 (commencing with Section 66410)) and all objective requirements of a local subdivision ordinance.

(C) Before recordation of the condominium plan, a safety inspection of the accessory dwelling unit shall be conducted as evidenced either through a certificate of occupancy from the local agency or a housing quality standards report from a building inspector certified by the United States Department of Housing and Urban Development.

(D) (i) Neither a subdivision map nor a condominium plan shall be recorded with the county recorder in the county where the real property is located without each lienholder's consent. The following shall apply to the consent of a lienholder:

(I) A lienholder may refuse to give consent.

(II) A lienholder may consent provided that any terms and conditions required by the lienholder are satisfied.

(ii) Prior to recordation of the initial or any subsequent modifications to the condominium plan, written evidence of the lienholder's consent shall be provided to the county recorder along with a signed statement from each lienholder that states as follows:

"(Name of lienholder) hereby consents to the recording of this condominium plan in their sole and absolute discretion and the borrower has or will satisfy any additional terms and conditions the lienholder may have."

(iii) The lienholder's consent shall be included on the condominium plan or a separate form attached to the condominium plan that includes the following information:

(I) The lienholder's signature.

(II) The name of the record owner or ground lessee.

(III) The legal description of the real property.

(IV) The identities of all parties with an interest in the real property as reflected in the real property records.

(iv) The lienholder's consent shall be recorded in the office of the county recorder of the county in which the real property is located.

(E) The local agency shall include the following notice to consumers on any accessory dwelling or junior accessory dwelling unit submittal checklist or public information issued describing requirements and permitting for accessory dwelling units, including as standard condition of any accessory dwelling unit building permit or condominium plan approval:

"NOTICE: If you are considering establishing your primary dwelling unit and accessory dwelling unit as a condominium, please ensure that your building permitting agency allows this practice. If you decide to establish your primary dwelling unit and accessory dwelling unit as a condominium, your condominium plan or any future modifications to the condominium plan must be recorded with the County Recorder. Prior to recordation or modification of your subdivision map and condominium plan, any lienholder with a lien on your title must provide a form of written consent either on the condominium plan, or on the lienholder's consent form attached to the condominium plan, with text that clearly states that the lender approves recordation of the condominium plan and that you have satisfied their terms and conditions, if any.

In order to secure lender consent, you may be required to follow additional lender requirements, which may include, but are not limited to, one or more of the following:

(a) Paying off your current lender.

You may pay off your mortgage and any liens through a refinance or a new loan. Be aware that refinancing or using a new loan may result in changes to your interest rate or tax basis. Also, be aware that any subsequent modification to your subdivision map or condominium plan must also be consented to by your lender, which consent may be denied.

(b) Securing your lender's approval of a modification to their loan collateral due to the change of your current property legal description into one or more condominium parcels.

(c) Securing your lender's consent to the details of any construction loan or ground lease.

This may include a copy of the improvement contract entered in good faith with a licensed contractor, evidence that the record owner or ground lessee has the funds to complete the work, and a signed statement made by the record owner or ground lessor that the information in the consent above is true and correct."

(F) If an accessory dwelling unit is established as a condominium, the local government shall require the homeowner to notify providers of utilities, including water, sewer, gas, and electricity, of the condominium creation and separate conveyance.

(G) (i) The owner of a property or a separate interest within an existing planned development that has an existing association, as defined in Section 4080 of the Civil Code, shall not record a condominium plan to create a common interest development under Section 4100 of the Civil Code without the express written authorization by the existing association.

(ii) For purposes of this subparagraph, written authorization by the existing association means approval by the board at a duly noticed board meeting, as defined in Section 4090 of the Civil Code, and if needed pursuant to the existing association's governing documents, membership approval of the existing association.

(H) An accessory dwelling unit shall be sold or otherwise conveyed separate from the primary residence only under the conditions outlined in this paragraph or pursuant to Section 65852.26.

(11) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) (1) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create or serve an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall either approve or deny the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create or serve an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create or serve a new single-family or multifamily dwelling on the lot, the permitting agency may delay approving or denying the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency approves or denies the permit application to create or serve the new single-family or multifamily dwelling, but the application to create or serve the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not approved or denied the completed application within 60 days, the application shall be deemed approved.

(2) If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to paragraph (1), the permitting agency shall, within the time period described in paragraph (1), return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C) Any requirement for a zoning clearance or separate zoning review or any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, front setbacks, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(D) Any height limitation that does not allow at least the following, as applicable:

(i) A height of 16 feet for a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit.

(ii) A height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit that is within one-half of one mile walking distance of a major transit stop or a high-quality transit corridor, as those terms are defined in Section 21155 of the Public Resources Code. A local agency shall also allow an additional two feet in height to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the primary dwelling unit.

(iii) A height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed multifamily, multistory dwelling.

(iv) A height of 25 feet or the height limitation in the local zoning ordinance that applies to the primary dwelling, whichever is lower, for an accessory dwelling unit that is attached to a primary dwelling. This clause shall not require a local agency to allow an accessory dwelling unit to exceed two stories.

(d) Notwithstanding any other law, and whether or not the local agency has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), all of the following shall apply:

(1) The local agency shall not impose any parking standards for an accessory dwelling unit in any of the following instances:

(A) Where the accessory dwelling unit is located within one-half mile walking distance of public transit.

(B) Where the accessory dwelling unit is located within an architecturally and historically significant historic district.

(C) Where the accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(D) When onstreet parking permits are required but not offered to the occupant of the accessory dwelling unit.

(E) When there is a car share vehicle located within one block of the accessory dwelling unit.

(F) When a permit application for an accessory dwelling unit is submitted with a permit application to create a new single-family dwelling or a new multifamily dwelling on the same lot, provided that the accessory dwelling unit or the parcel satisfies any other criteria listed in this paragraph.

(2) The local agency shall not deny an application for a permit to create an accessory dwelling unit due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the accessory dwelling unit.

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation as provided in clause (i), (ii), or (iii) as applicable, of subparagraph (D) of paragraph (2) of subdivision (c).

(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.

(D) (i) Not more than two accessory dwelling units that are located on a lot that has an existing or proposed multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limitation in clause (i), (ii), or (iii), as applicable, of subparagraph (D) of paragraph (2) of subdivision (c) and rear yard and side setbacks of no more than four feet.

(ii) If the existing multifamily dwelling has a rear or side setback of less than four feet, the local agency shall not require any modification of the existing multifamily dwelling as a condition of approving the application to construct an accessory dwelling unit that satisfies the requirements of this subparagraph.

(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence. The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing multifamily dwelling.

(4) A local agency may require owner-occupancy for either the primary dwelling or the accessory dwelling unit on a single-family lot, subject to the requirements of paragraph (8) of subdivision (a).

(5) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

(6) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

(7) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose objective standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

(B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family dwelling, or upon separate conveyance of the accessory dwelling unit pursuant to paragraph (10) of subdivision (a).

(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical

Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section shall supersede a conflicting local ordinance. This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.

(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.

(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:

(i) Amend the ordinance to comply with this section.

(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.

(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.

(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.

(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(j) As used in this section, the following terms mean:

(1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(2) “Accessory structure” means a structure that is accessory and incidental to a dwelling located on the same lot.

(3) “Efficiency unit” has the same meaning as defined in Section 17958.1 of the Health and Safety Code.

(4) “Living area” means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

(5) “Local agency” means a city, county, or city and county, whether general law or chartered.

(6) “Nonconforming zoning condition” means a physical improvement on a property that does not conform to current zoning standards.

(7) “Objective standards” means standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.

(8) “Passageway” means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(9) “Permitting agency” means any entity that is involved in the review of a permit for an accessory dwelling unit or junior accessory dwelling unit and for which there is no substitute, including, but not limited to, applicable planning departments, building departments, utilities, and special districts.

(10) “Proposed dwelling” means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

(11) “Public transit” means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

(12) “Tandem parking” means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.

(*l*) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.

(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2), a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:

(1) The accessory dwelling unit was built before January 1, 2020.

(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

SEC. 2.5. Section 65852.2 of the Government Code is amended to read:

65852.2. (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.

(B) (i) Impose objective standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historical Resources. These standards shall not include requirements on minimum lot size.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) Except as provided in Section 65852.26 and paragraph (10) of this subdivision, an accessory dwelling unit may be rented separate from the primary residence, but shall not be sold or otherwise conveyed separate from the primary residence.

(ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.

(iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling, including detached garages.

(iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.

(v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.

(viii) Local building code requirements that apply to detached dwellings, except that the construction of an accessory dwelling unit shall not constitute a Group R occupancy change under the local building code, as described in Section 310 of the California Building Code (Title 24 of the California Code of Regulations), unless the building official or enforcement agency of the local agency makes a written finding based on substantial evidence in the record that the construction of the accessory dwelling unit could have a specific, adverse impact on public health and safety. Nothing in this clause shall be interpreted to prevent a local agency from changing the occupancy code of a space that was unhabitable space or was only permitted for nonresidential use and was subsequently converted for residential use pursuant to this section.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.

(III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.

(xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) (A) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall either approve or deny the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create or serve an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family or multifamily dwelling on the lot, the permitting agency may delay approving or denying the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency approves or denies the permit application to create the new single-family or multifamily dwelling, but the application to create or serve the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not approved or denied the completed application within 60 days, the application shall be deemed approved. A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(B) If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to subparagraph (A), the permitting agency shall, within the time period described in subparagraph (A), return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.

(4) The ordinance shall require that a demolition permit for a detached garage that is to be replaced with an accessory dwelling unit be reviewed with the application for the accessory dwelling unit and issued at the same time.

(5) The ordinance shall not require, and the applicant shall not be otherwise required, to provide written notice or post a placard for the demolition of a detached garage that is to be replaced with an accessory dwelling unit, unless the property is located within an architecturally and historically significant historic district.

(6) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units,

except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(7) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.

(8) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed, including an owner-occupant requirement, except that a local agency may require that the property may be used for rentals of terms 30 days or longer.

(9) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(10) In addition to the requirement that a local agency allow the separate sale or conveyance of an accessory dwelling unit pursuant to Section 65852.26, a local agency may also adopt a local ordinance to allow the separate conveyance of the primary dwelling unit and accessory dwelling unit or units as condominiums. Any such ordinance shall include all of the following requirements:

(A) The condominiums shall be created pursuant to the Davis-Stirling Common Interest Development Act (Part 5 (commencing with Section 4000) of Division 4 of the Civil Code).

(B) The condominiums shall be created in conformance with all applicable objective requirements of the Subdivision Map Act (Division 2 (commencing with Section 66410)) and all objective requirements of a local subdivision ordinance.

(C) Before recordation of the condominium plan, a safety inspection of the accessory dwelling unit shall be conducted as evidenced either through a certificate of occupancy from the local agency or a housing quality standards report from a building inspector certified by the United States Department of Housing and Urban Development.

(D) (i) Neither a subdivision map nor a condominium plan shall be recorded with the county recorder in the county where the real property is located without each lienholder's consent. The following shall apply to the consent of a lienholder:

(I) A lienholder may refuse to give consent.

(II) A lienholder may consent provided that any terms and conditions required by the lienholder are satisfied.

(ii) Prior to recordation of the initial or any subsequent modifications to the condominium plan, written evidence of the lienholder's consent shall be provided to the county recorder along with a signed statement from each lienholder that states as follows:

"(Name of lienholder) hereby consents to the recording of this condominium plan in their sole and absolute discretion and the borrower has or will satisfy any additional terms and conditions the lienholder may have."

(iii) The lienholder's consent shall be included on the condominium plan or a separate form attached to the condominium plan that includes the following information:

(I) The lienholder's signature.

(II) The name of the record owner or ground lessee.

(III) The legal description of the real property.

(IV) The identities of all parties with an interest in the real property as reflected in the real property records.

(iv) The lienholder's consent shall be recorded in the office of the county recorder of the county in which the real property is located.

(E) The local agency shall include the following notice to consumers on any accessory dwelling or junior accessory dwelling unit submittal checklist or public information issued describing requirements and permitting for accessory dwelling units, including as standard condition of any accessory dwelling unit building permit or condominium plan approval:

"NOTICE: If you are considering establishing your primary dwelling unit and accessory dwelling unit as a condominium, please ensure that your building permitting agency allows this practice. If you decide to establish your primary dwelling unit and accessory dwelling unit as a condominium, your condominium plan or any future modifications to the condominium plan must be recorded with the County Recorder. Prior to recordation or modification of your subdivision map and condominium plan, any lienholder with a lien on your title must provide a form of written consent either on the condominium plan, or on the lienholder's consent form attached to the condominium plan, with text that clearly states that the lender approves recordation of the condominium plan and that you have satisfied their terms and conditions, if any.

In order to secure lender consent, you may be required to follow additional lender requirements, which may include, but are not limited to, one or more of the following:

(a) Paying off your current lender.

You may pay off your mortgage and any liens through a refinance or a new loan. Be aware that refinancing or using a new loan may result in changes to your interest rate or tax basis. Also, be aware that any subsequent modification to your subdivision map or condominium plan must also be consented to by your lender, which consent may be denied.

(b) Securing your lender’s approval of a modification to their loan collateral due to the change of your current property legal description into one or more condominium parcels.

(c) Securing your lender’s consent to the details of any construction loan or ground lease.

This may include a copy of the improvement contract entered in good faith with a licensed contractor, evidence that the record owner or ground lessee has the funds to complete the work, and a signed statement made by the record owner or ground lessor that the information in the consent above is true and correct.”

(F) If an accessory dwelling unit is established as a condominium, the local government shall require the homeowner to notify providers of utilities, including water, sewer, gas, and electricity, of the condominium creation and separate conveyance.

(G) (i) The owner of a property or a separate interest within an existing planned development that has an existing association, as defined in Section 4080 of the Civil Code, shall not record a condominium plan to create a common interest development under Section 4100 of the Civil Code without the express written authorization by the existing association.

(ii) For purposes of this subparagraph, written authorization by the existing association means approval by the board at a duly noticed board meeting, as defined in Section 4090 of the Civil Code, and if needed pursuant to the existing association’s governing documents, membership approval of the existing association.

(H) An accessory dwelling unit shall be sold or otherwise conveyed separate from the primary residence only under the conditions outlined in this paragraph or pursuant to Section 65852.26.

(11) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) (1) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create or serve an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall either approve or deny the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create or serve an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create or serve a new single-family or multifamily dwelling on the lot, the permitting agency may delay approving or denying the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency approves or denies the permit application to create or serve the new single-family or multifamily dwelling, but the application to create or serve the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not approved or denied the completed application within 60 days, the application shall be deemed approved.

(2) If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to paragraph (1), the permitting agency shall, within the time period described in paragraph (1), return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C) Any requirement for a zoning clearance or separate zoning review or any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, front setbacks, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(D) Any height limitation that does not allow at least the following, as applicable:

(i) A height of 16 feet for a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit.

(ii) A height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit that is within one-half of one mile walking distance of a major transit stop or a high-quality transit corridor, as those terms are defined in Section 21155 of the Public Resources Code. A local agency shall also allow an additional two feet in height to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the primary dwelling unit.

(iii) A height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed multifamily, multistory dwelling.

(iv) A height of 25 feet or the height limitation in the local zoning ordinance that applies to the primary dwelling, whichever is lower, for an accessory dwelling unit that is attached to a primary dwelling. This clause shall not require a local agency to allow an accessory dwelling unit to exceed two stories.

(d) Notwithstanding any other law, and whether or not the local agency has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), all of the following shall apply:

(1) The local agency shall not impose any parking standards for an accessory dwelling unit in any of the following instances:

(A) Where the accessory dwelling unit is located within one-half mile walking distance of public transit.

(B) Where the accessory dwelling unit is located within an architecturally and historically significant historic district.

(C) Where the accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(D) When onstreet parking permits are required but not offered to the occupant of the accessory dwelling unit.

(E) When there is a car share vehicle located within one block of the accessory dwelling unit.

(F) When a permit application for an accessory dwelling unit is submitted with a permit application to create a new single-family dwelling or a new multifamily dwelling on the same lot, provided that the accessory dwelling unit or the parcel satisfies any other criteria listed in this paragraph.

(2) The local agency shall not deny an application for a permit to create an accessory dwelling unit due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the accessory dwelling unit.

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation as provided in clause (i), (ii), or (iii) as applicable, of subparagraph (D) of paragraph (2) of subdivision (c).

(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.

(D) (i) Not more than two accessory dwelling units that are located on a lot that has an existing or proposed multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limitation in clause (i), (ii), or (iii), as applicable, of subparagraph (D) of paragraph (2) of subdivision (c) and rear yard and side setbacks of no more than four feet.

(ii) If the existing multifamily dwelling has a rear or side setback of less than four feet, the local agency shall not require any modification of the existing multifamily dwelling as a condition of approving the application to construct an accessory dwelling unit that satisfies the requirements of this subparagraph.

(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence. The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing multifamily dwelling.

(4) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

(5) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

(6) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling

unit that is described in paragraph (1), and may impose objective standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

(B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family dwelling, or upon separate conveyance of the accessory dwelling unit pursuant to paragraph (10) of subdivision (a).

(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section shall supersede a conflicting local ordinance. This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.

(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.

(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:

(i) Amend the ordinance to comply with this section.

(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.

(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.

(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.

(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(j) As used in this section, the following terms mean:

(1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.

(3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.

(4) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

(5) “Local agency” means a city, county, or city and county, whether general law or chartered.

(6) “Nonconforming zoning condition” means a physical improvement on a property that does not conform to current zoning standards.

(7) “Objective standards” means standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.

(8) “Passageway” means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(9) “Permitting agency” means any entity that is involved in the review of a permit for an accessory dwelling unit or junior accessory dwelling unit and for which there is no substitute, including, but not limited to, applicable planning departments, building departments, utilities, and special districts.

(10) “Proposed dwelling” means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

(11) “Public transit” means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

(12) “Tandem parking” means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.

(*l*) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.

(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2), a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:

(1) The accessory dwelling unit was built before January 1, 2020.

(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built,

had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

SEC. 3. Section 65852.26 of the Government Code is amended to read:

65852.26. (a) A local agency shall allow an accessory dwelling unit to be sold or conveyed separately from the primary residence to a qualified buyer if all of the following apply:

(1) The accessory dwelling unit or the primary dwelling was built or developed by a qualified nonprofit corporation.

(2) There is an enforceable restriction on the use of the land pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation that satisfies all of the requirements specified in paragraph (10) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code.

(3) The property is held pursuant to a recorded tenancy in common agreement that includes all of the following:

(A) The agreement allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling that each qualified buyer occupies.

(B) A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the accessory dwelling unit or primary dwelling if the buyer desires to sell or convey the property.

(C) A requirement that the qualified buyer occupy the accessory dwelling unit or primary dwelling as the buyer's principal residence.

(D) Affordability restrictions on the sale and conveyance of the accessory dwelling unit or primary dwelling that ensure the accessory dwelling unit and primary dwelling will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.

(E) If the tenancy in common agreement is recorded after December 31, 2021, it shall also include all of the following:

(i) Delineation of all areas of the property that are for the exclusive use of a cotenant. Each cotenant shall agree not to claim a right of occupancy to an area delineated for the exclusive use of another cotenant, provided that the latter cotenant's obligations to each of the other cotenants have been satisfied.

(ii) Delineation of each cotenant's responsibility for the costs of taxes, insurance, utilities, general maintenance and repair, improvements, and any other costs, obligations, or liabilities associated with the property. This delineation shall only be binding on the parties to the agreement, and shall not supersede or obviate the liability, whether joint and several or otherwise, of the parties for any cost, obligation, or liability associated with the property where such liability is otherwise established by law or by agreement with a third party.

(iii) Procedures for dispute resolution among the parties before resorting to legal action.

(4) A grant deed naming the grantor, grantee, and describing the property interests being transferred shall be recorded in the county in which the property is located. A Preliminary Change of Ownership Report shall be

filed concurrently with this grant deed pursuant to Section 480.3 of the Revenue and Taxation Code.

(5) Notwithstanding subparagraph (A) of paragraph (2) of subdivision (f) of Section 65852.2, if requested by a utility providing service to the primary residence, the accessory dwelling unit has a separate water, sewer, or electrical connection to that utility.

(6) Nothing in this subdivision limits the ability of an accessory dwelling unit to be sold or otherwise conveyed separate from the primary residence as a condominium pursuant to an ordinance adopted under Section 65852.2.

(b) For purposes of this section, the following definitions apply:

(1) "Qualified buyer" means persons and families of low or moderate income, as that term is defined in Section 50093 of the Health and Safety Code.

(2) "Qualified nonprofit corporation" means a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 of the Revenue and Taxation Code for properties intended to be sold to low-income families who participate in a special no-interest loan program.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 65852.2 of the Government Code proposed by both this bill and Assembly Bill 976. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2024, (2) each bill amends Section 65852.2 of the Government Code, and (3) this bill is enacted after Assembly Bill 976, in which case Section 2 of this bill shall not become operative.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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THE CITY OF PLEASANTON©

Planning Commission
Agenda Report

September 11, 2024
Item 6

SUBJECT: Committee, Commission, and Task Force List

Bicycle, Pedestrian, and Trails Committee

Advise the Parks and Recreation Commission and the City's Traffic Engineering Division on bicycle, pedestrian and trail related items. The committee reviews and prioritizes potential projects and provides input on policies related to bikeways and trails.

Meeting Time:	Fourth Monday of every other month at 6:45 p.m.
Meeting Location:	Pleasanton Senior Center, 5353 Sunol Blvd., Pleasanton
Representative:	Commissioner Jain
Alternate:	Chair Pace
Staff Contacts:	Matt Nelson, Traffic Engineer, 931-5671; Matt Gruber, Landscape Architect, 931-5672

Civic Arts Commission

Promote the acquisition, construction and installment of works of public art in Pleasanton. Make recommendations to the City Council regarding the City Civic Arts Program.

Meeting Time:	First Monday of each month at 7 p.m.
Meeting Location:	City Council Chamber, 200 Old Bernal Ave., Pleasanton
Staff Contact:	Lia Bushong, Asst. Director, Library and Recreation, 931-3412

Committee on Energy and the Environment

Works closely with City staff to prepare an Energy and Environmental Priorities Plan focusing on energy and environmental issues and strategies reflecting community opportunities, needs and interests.

Meeting Time:	Fourth Wednesday of every other month at 5:00 p.m.
Meeting Location:	Operations Service Center, 3333 Busch Rd., Pleasanton
Staff Contact:	Megan Campbell, Associate Planner, 931-5610

Economic Vitality Committee

Assess the current and ongoing business climate in the City of Pleasanton and offer suggestions and recommendations to the City Council intended to maintain a strong economic development base in the City.

Meeting Time:	Third Thursday of each month at 7:30 a.m.
Meeting Location:	Remillard Conference Room, 3333 Busch Rd., Pleasanton
Staff Contact:	Lisa Adamos, Economic Development Manager, 931-5039

Heritage Tree Board of Appeals

Make findings of fact upholding, reversing or modifying the director's decision with regard to heritage tree removal permits.

Meeting Time:	As needed
Meeting Location:	City Council Chamber, 200 Old Bernal Ave., Pleasanton
Representatives:	Commissioners Morgan and Wedge
Alternate:	Commissioner Mohan

Human Services Commission

Advise the City Council on the human service needs of the community and methods of fulfilling these needs. Particular emphasis is given by the commission to the human service needs of the socially and economically disadvantaged, the elderly and the youth of the community.

Meeting Time:	First Wednesday of each month at 7 p.m.
Meeting Location:	City Council Chamber, 200 Old Bernal Ave., Pleasanton
Staff Contact:	Jay Ingram, Community Services Manager, 931-5346

Library Commission

Advise the City Council on matters related to the Pleasanton Library and library services in general. Promote the use of library services to the community.

Meeting Time:	First Thursday of each month at 7 p.m.
Meeting Location:	City Council Chamber, 200 Old Bernal Ave., Pleasanton
Staff Contact:	Heidi Murphy, Director of Library and Recreation, 931-3400

Parks and Recreation Commission

Advise the City Council, City Manager, and Parks and Community Services Department on matters related to the development and provision of services pertaining to parks and recreation facilities, programs and services.

Meeting Time:	Second Thursday of each month at 7 p.m.
Meeting Location:	City Council Chamber, 200 Old Bernal Ave., Pleasanton
Staff Contact:	Heidi Murphy, Director of Library and Recreation, 931-3400

Youth Commission

Act as the liaison between Pleasanton's youth community and the City Council; advise the Council on youth-related issues; promote an understanding and appreciation of community affairs among the youth of Pleasanton.

Meeting Time:	Second Wednesday of each month at 7 p.m., September-May
Meeting Location:	Remillard Conference Room, 3333 Busch Rd., Pleasanton
Staff Contact:	Nicole Thomas, Recreation Supervisor, 931-3432

THE CITY OF PLEASANTON

Planning Commission Agenda Report

September 11, 2024
Item 7

SUBJECT: Actions of the City Council

July 16, 2024

Consent Calendar:

Actions of the Zoning Administrator and Planning Commission

Council approved the consent calendar, as recommended

Public Hearing:

Introduce an ordinance approving the application for Planned Unit Development Major Modification to subdivide an approximately 1.4-acre parcel located at 3450 Mohr Avenue into two parcels measuring approximately 44,237 square feet (Lot 1) and approximately 17,123 square feet (Lot 2) and to construct an approximately 2,288-square-foot addition to the existing residence on Lot 1, as filed under Case No. PUD-18-07M

Council approved the hearing item, as recommended

August 20, 2024

Consent Calendar:

Actions of the Zoning Administrator and Planning Commission

Council approved the consent calendar, as recommended

Public Hearing:

Adopt Ordinance No. 2283 approving the application for Planned Unit Development Major Modification to subdivide an approximately 1.4-acre parcel located at 3450 Mohr Avenue into two parcels measuring approximately 44,237 square feet (Lot 1) and approximately 17,123 square feet (Lot 2) and to construct an approximately 2,288-square-foot addition to the existing residence on Lot 1, as filed under Case No. PUD-18-07M

Adopt Ordinance No. 2284 to approve a Planned Unit Development (PUD) development plan (PUD-147) to construct a 111-lot residential subdivision, including an age-qualified community with 92 single-family detached homes, 18 affordable senior courtyard detached and duet homes, one existing single-family residence, and related on-and off-site improvements

Adopt Ordinance No. 2285 approving a pre-annexation and development agreement with Foothill Boulevard Holding Company, LLC, filed under Case No. P24-0378

Adopt a resolution determining the expenditure of Altamont Open Space funds for a consultant contract for a rancher/rural landowners outreach program related to conservation is consistent with the Altamont Landfill Settlement Agreement

Adopt a resolution approving an Assignment and Assumption of Ground Lease, Consent to Transfer of Project, and Grant of Option to Extend Ground Lease Term for Promenade Apartments at 5300 Case Avenue

Approve a Request from The Parkview, an assisted living community, to withdraw 891,002 from its operating reserves to cover operating deficits resulting from unforeseen increased vacancy, increased staffing and maintenance costs, and rising interest expense

> *Council approved the hearing items, as recommended*

September 3, 2024

<u>Consent Calendar:</u>

Actions of the Zoning Administrator

> *Council approved the consent calendar, as recommended*

THE CITY OF PLEASANTON

Planning Commission
Agenda Report

September 11, 2024
Item 8

SUBJECT: Future Planning Calendar

No items to report