

ORDINANCE NO. __

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE APPROVING CODE AMENDMENT NO. A-028-2020, A ZONING TEXT AMENDMENT OF TITLE 9 OF THE GARDEN GROVE MUNICIPAL CODE AMENDING THE DENSITY BONUS AND OTHER INCENTIVES FOR AFFORDABLE HOUSING IN THE RESIDENTIAL AND MIXED-USE ZONES.

City Attorney Summary

This Ordinance approves zoning text amendments to Title 9 of the Garden Grove Municipal Code (Land Use Code) pertaining to density bonuses and other incentives for affordable housing in the residential and mixed-use zones to conform to the latest amendments to the State's Density Bonus Law.

THE CITY COUNCIL OF THE CITY OF GARDEN GROVE FINDS AND DETERMINES AS FOLLOWS:

WHEREAS, Government Code Section 65915 requires that local governments adopt procedures for processing a density bonus application.

WHEREAS, the City's Zoning Code already allows for density bonuses and development concessions, but it requires amendments to conform to the latest revisions to the State's Density Bonus Law.

WHEREAS, the Legislature amended Government Code Section 65915 in 2019 to clarify certain provisions of Density Bonus Law, and the City wishes to update the Zoning Code to ensure consistency with State law and clarify how to implement the density bonus program.

WHEREAS, the Planning Commission of the City of Garden Grove held duly noticed public hearing on July 16, 2020 and considered all oral and written testimony presented regarding Code Amendment No. A-028-2020 and the notice of exemption pursuant to CEQA Guidelines Section 15061(b)(3) where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment). More specifically, Amendment No. A-028-2020 merely incorporates State law, allowing applicants to seek a density bonus pursuant to Government Code Section 65915; and

WHEREAS, on July 16, 2020, following the public hearing, the Planning Commission (i) adopted Resolution No. 5996-20 recommending that the City Council find the adoption of Code Amendment No. A-028-2020 exempt from CEQA and approve Municipal Code Amendment No. A-028-2020; and

WHEREAS, a duly noticed public hearing was held by the City Council on August 25, 2020, and all interested persons were given an opportunity to be heard; and

WHEREAS, the City Council found Amendment No. A-028-2020 exempt pursuant to the California Environmental Quality Act, California Public Resources Section 21000 et seq. ("CEQA") and CEQA's implementing guidelines, California Code of Regulations, Title 14, Sections 15000 et seq.; and

WHEREAS, the City Council gave due and careful consideration to the matter; and

WHEREAS, the City Council hereby makes the following findings regarding Amendment No. A-028-2020:

A. The Municipal Code Amendment is internally consistent with the goals, policies, and elements of the General Plan. The proposed text amendments will bring the City's Land Use Code into conformance with recent changes to State law pertaining to density bonuses and other incentives for affordable housing. The intent of the changes to the State law is to continue to facilitate the production of affordable housing to address the State's housing shortage, particularly housing affordable to lower income households. Goal LU-2 and Policy LU-2.2 of the General Plan Land Use element encourage a diverse mix of housing types in the City. In addition, the goal of the General Plan Housing Element is to encourage the development of affordable housing to meet the City's regional housing needs as well as to provide housing that encourages people of all economic levels to live in Garden Grove. Policy 2.1 seeks to preserve and expand the City's supply of affordable rental and ownership housing for lower-income households. Policy 2.3 seeks to provide density bonuses and other financial and regulatory incentives to facilitate the development of affordable housing. Policy 4.2 seeks to provide avenues for the development of housing for extremely low-income and special needs persons. Density bonuses and other incentives will assist in incentivizing the production of more affordable housing opportunities in the City to help the City meet its regional housing needs.

B. The Municipal Code Amendment will promote the public health, safety and welfare. The proposed text amendments will bring the City's Land Use Code into conformance with changes to state law relating to density bonuses and other incentives for affordable housing. The proposed text amendments are intended to be consistent with current State law, and will facilitate the production of affordable housing to meet the state's and City's housing goals.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GARDEN GROVE DOES ORDAIN AS FOLLOWS:

SECTION 1 The City Council finds that the above recitals are true and correct.

SECTION 2. The proposed amendment is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3) (It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment). More specifically, Amendment No. A-028-2020 merely incorporates State law, allowing applicants to seek a density bonus pursuant to Government Code Section 65915.

SECTION 3. Municipal Code Amendment No. A-028-2020 is hereby approved pursuant to the findings set forth herein and the facts and reasons stated in Planning Commission Resolution No. 5996-20, a copy of which is on file in the Office of the City Clerk, and which is incorporated herein by reference with the same force and effect as if set forth in full.

SECTION 4. Subsection 9.08.030.060 (Density Bonuses and Other Incentives for Affordable Housing) of Section 9.08.030 (Special Uses) of Chapter 9.08 (Single-Family Residential Development Standards) of Title 9 (Land Use) of the Garden Grove Municipal Code is hereby repealed.

SECTION 5. Subsection 9.08.040.240 (Density Bonuses and Other Incentives for Affordable Housing) is hereby added to Section 9.08.040 (Single-Family Residential Development Standards) of Chapter 9.08 (Single-Family Residential Development Standards) of Title 9 (Land Use) of the Garden Grove Municipal Code to read as follows:

9.08.040.240 Density Bonus and Other Incentives for Affordable Housing

- A. Application. In addition to any other review required for a proposed housing development, applications for a density bonus shall be filed with the planning division. The application shall be filed concurrently with an application for the required land use action pursuant to Chapter 9.32 of this Code.
- B. Processing. City staff shall process the application for a density bonus in the same manner as, and concurrently with, the application for the development plan review or approval that is required by this Code.
- C. Documentation. The applicant shall submit reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, waivers or reductions of development standards, and parking ratios.
- D. Replacement Housing Requirement. Pursuant to subdivision (c)(3) of Government Code Section 65915, the applicant will be ineligible for a density bonus or other incentives unless the applicant complies with the replacement housing requirements therein, ***including*** in the following circumstances:
 - 1. The housing development is proposed on any parcel(s) on which rental dwelling units are subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; or
 - 2. The housing development is proposed on any parcel(s) on which rental dwelling units that were subject to a recorded covenant, ordinance, or law that restricted rents to levels affordable to persons and families of

lower or very low income have been vacated or demolished in the five-year period preceding the application; or

3. The housing development is proposed on any parcel(s) on which the dwelling units are occupied by lower or very low-income households;
or

4. The housing development is proposed on any parcel(s) on which the dwelling units that were occupied by lower or very low-income households have been vacated or demolished in the five-year period preceding the application.

- E. **Density Bonus Awarded.** For a housing development qualifying pursuant to the requirements of Government Code Section 65915, the City shall grant a density bonus in an amount specified by Government Code Section 65915. Except as otherwise required by Government Code Section 65915, the density bonus units shall not be included when calculating the total number of housing units that qualifies the housing development for a density bonus. Except as otherwise required by Government Code Section 65915, the amount of the density bonus shall not exceed 35 percent.
- F. **Calculation.** For the purpose of calculating the density bonus, the "maximum allowable residential density" shall be the maximum allowable gross residential density established under the applicable development standards for the parcel(s), subject to subdivision (o) of Government code Section 65915.
- G. **Incentives/Concessions.** The City shall grant the applicant the number of incentives and concessions required by Government Code Section 65915. The City shall grant the specific concession(s) or incentive(s) requested by the applicant, unless it makes any of the relevant written findings stated in Government Code Section 65915(d). Senior citizen housing developments that qualify for a density bonus shall not receive any incentives or concessions, unless Government Code Section 65915 is amended to specifically require that local agencies grant incentives or concessions for senior citizen housing developments.
- H. **Physical constraints.** Except as restricted by Government Code Section 65915, the applicant for a density bonus may submit a proposal for the waiver or reduction of development standards that have the effect of physically precluding the construction of a housing development incorporating the density bonus and any incentives or concessions granted to the applicant. A request for a waiver or reduction of development standards shall be accompanied by documentation demonstrating that the waiver or reduction is physically necessary to construct the housing development with the additional density allowed pursuant to the density bonus and incorporating any incentives or concessions required to be granted. The City shall approve a waiver or reduction of a development standard, unless it finds that:

1. The application of the development standard does not have the effect of physically precluding the construction of a housing development at the density allowed by the density bonus and with the incentives or concessions granted to the applicant;
 2. The waiver or reduction of the development standard would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact;
 3. The waiver or reduction of the development standard would have an adverse impact on any real property that is listed in the California Register of Historical Resources; or
 4. The waiver or reduction of the development standard would be contrary to state or federal law.
- I. Parking. The applicant may request, and the City shall grant, a reduction in parking requirements in accordance with Government Code Section 65915(p), as that section may be amended from time to time.
- J. Density Bonus Agreement. The applicant shall enter into an agreement with the City in the form approved by the City Attorney to ensure the continued affordability of all affordable units or the continued reservation of such units for qualifying senior citizens and the requirements of this subdivision J and subdivisions K and L of this section. Prior to receiving a building permit for any project that receives a density bonus or any incentive, concession, waiver, or reduction of development standards pursuant to this section, such agreement shall be recorded as a covenant against the property. The agreement shall remain a senior, non-subordinate covenant and as an encumbrance running with the land for the full term thereof. In no event shall the agreement be made junior or subordinate to any deed of trust or other documents providing financing for the construction or operation of the project, or any other lien or encumbrance whatsoever for the entire term of the required covenants.
- K. Construction and Integration of Affordable Units.
1. Construction of Affordable Units. For any development project that is granted a density bonus or other benefit pursuant to this section, the affordable units that qualify the project as eligible for a density bonus, must be constructed concurrently with or prior to the construction of any market rate units.
 2. Integration of Affordable Units. In addition, the affordable units must be integrated with the market rate units so that there is a mix of affordable and market rate units, if any, in each building of the

development project. The affordable units may be "floating" units that are not permanently designated, provided that at no time shall a majority of the affordable units be congregated to a specific section of the project.

L. Marketing and Management.

1. Marketing Program. Prior to the issuance of a certificate of occupancy for the project, the applicant shall prepare and obtain City's approval of a marketing program for the leasing or sale of the housing units. The leasing or sale of the housing units shall thereafter be marketed in accordance with the marketing program. Developer shall provide City with periodic reports with respect to the leasing or sale of the housing units.
2. Management Plan. Prior to the issuance of the certificate of occupancy for a rental project, the applicant shall submit for the approval of the City a management plan which sets forth in detail the applicant's property management duties, a tenant selection process in compliance with the required affordability restrictions, a security system and crime prevention program, the procedures for the collection of rent, the procedures for eviction of tenants, the rules and regulations of the property and manner of enforcement, a standard lease form, an operating budget, the identity of the professional property management company to be contracted with to provide property management services at the property, and other matters relevant to the management of the property.
3. Provisions regarding Section 8 Vouchers. The applicant shall accept as tenants on the same basis as all other prospective tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing program under Section 8 of the United States Housing Act of 1937, or its successor; provided, The applicant shall not rent one of the affordable units to a tenant household holding a Section 8 certificate unless none of the Housing Units not restricted to occupancy by the affordability covenants are available. If the only available housing unit is an affordable unit, the applicant shall no longer designate the housing unit rented to a tenant household holding a Section 8 certificate as an affordable unit, shall designate the next-available housing unit as an affordable unit, and shall make available, restrict occupancy to, and rent such newly designated affordable unit to a qualified tenant at the applicable affordable rent pursuant to the affordability covenants, such that at all times reasonably possible all of the required affordable units shall not be occupied by tenants holding Section 8 certificates. Furthermore, in the event the applicant rents an affordable unit to a household holding a federal certificate, the rental agreement

(or lease agreement, as applicable) between the applicant, as landlord, and the tenant shall expressly provide that monthly rent charged shall be the affordable rent required for the affordable unit (not fair market rent) and that the rent collected directly from such tenant holding a federal certificate shall be not more than 30% of the tenant's actual gross income pursuant to the applicable federal certificate program regulations; i.e., the rent charged to such tenant under the rental agreement shall be the affordable rent chargeable under the affordability covenant and not fair market rent for the area, as would otherwise be permitted under the applicable federal certificate program. If and to the extent these restrictions conflict with the provisions of Section 8 of the United States Housing Act of 1937 or any rules or regulations promulgated thereunder, the provisions of Section 8 of the United States Housing Act of 1937 and all implementing rules and regulations thereto shall control. The applicant shall not apply selection criteria to Section 8 certificate holders which are more burdensome than criteria applied to any other prospective tenants.

M. Density Bonus Law.

1. Compliance. The applicant shall comply with all requirements stated in Government Code Section 65915. The requirements of Government Code Section 65915, and any amendments thereto, shall prevail over any conflicting provision of this Code.
2. Excluded development. An applicant shall not receive a density bonus or any other incentive or concession if the housing development would be excluded under Government Code Section 65915.
3. Interpretation. The provisions of this subdivision shall be interpreted to implement and be consistent with the requirements of Government Code Section 65915. Any changes to Government Code Section 65915 shall be deemed to supersede and govern over any conflicting provisions contained herein.

SECTION 6. Subsubsection 9.12.030.070 (Density Bonuses and Other Incentives for Affordable Housing) of Section 9.12.030 (Special Uses) of Chapter 9.12 (Multifamily Residential Development Standards) of Title 9 (Land Use) of the Garden Grove Municipal Code is hereby repealed.

SECTION 7. Subsubsection 9.12.040.280 (Density Bonuses and Other Incentives for Affordable Housing) is hereby added to Section 9.12.040 (Multi-Family Residential Development Standards) of Chapter 9.12 (Multifamily Residential Development Standards) of Title 9 (Land Use) of the Garden Grove Municipal Code to read as follows:

9.12.040.280 Density Bonus and Other Incentives for Affordable Housing

- A. Application. In addition to any other review required for a proposed housing development, applications for a density bonus shall be filed with the planning division. The application shall be filed concurrently with an application for the required land use action pursuant to Chapter 9.32 of this Code.
- B. Processing. City staff shall process the application for a density bonus in the same manner as, and concurrently with, the application for the development plan review or approval that is required by this Code.
- C. Documentation. The applicant shall submit reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, waivers or reductions of development standards, and parking ratios.
- D. Replacement Housing Requirement. Pursuant to subdivision (c)(3) of Government Code Section 65915, the applicant will be ineligible for a density bonus or other incentives unless the applicant complies with the replacement housing requirements therein in the following circumstances:
1. The housing development is proposed on any parcel(s) on which rental dwelling units are subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; or
 2. The housing development is proposed on any parcel(s) on which rental dwelling units that were subject to a recorded covenant, ordinance, or law that restricted rents to levels affordable to persons and families of lower or very low income have been vacated or demolished in the five-year period preceding the application; or
 3. The housing development is proposed on any parcel(s) on which the dwelling units are occupied by lower or very low-income households.
- E. Density Bonus Awarded. For a housing development qualifying pursuant to the requirements of Government Code Section 65915, the City shall grant a density bonus in an amount specified by Government Code Section 65915. Except as otherwise required by Government Code Section 65915, the density bonus units shall not be included when calculating the total number of housing units that qualifies the housing development for a density bonus. Except as otherwise required by Government Code Section 65915, the amount of the density bonus shall not exceed 35 percent.
- F. Calculation. For the purpose of calculating the density bonus, the "maximum allowable residential density" shall be the maximum allowable gross residential density established under the applicable development

standards for the parcel(s), subject to subdivision (o) of Government code Section 65915.

- G. Incentives/Concessions. The City shall grant the applicant the number of incentives and concessions required by Government Code Section 65915. The City shall grant the specific concession(s) or incentive(s) requested by the applicant, unless it makes any of the relevant written findings stated in Government Code Section 65915(d). Senior citizen housing developments that qualify for a density bonus shall not receive any incentives or concessions, unless Government Code Section 65915 is amended to specifically require that local agencies grant incentives or concessions for senior citizen housing developments.
- H. Physical constraints. Except as restricted by Government Code Section 65915, the applicant for a density bonus may submit a proposal for the waiver or reduction of development standards that have the effect of physically precluding the construction of a housing development incorporating the density bonus and any incentives or concessions granted to the applicant. A request for a waiver or reduction of development standards shall be accompanied by documentation demonstrating that the waiver or reduction is physically necessary to construct the housing development with the additional density allowed pursuant to the density bonus and incorporating any incentives or concessions required to be granted. The City shall approve a waiver or reduction of a development standard, unless it finds that:
1. The application of the development standard does not have the effect of physically precluding the construction of a housing development at the density allowed by the density bonus and with the incentives or concessions granted to the applicant;
 2. The waiver or reduction of the development standard would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact;
 3. The waiver or reduction of the development standard would have an adverse impact on any real property that is listed in the California Register of Historical Resources; or
 4. The waiver or reduction of the development standard would be contrary to state or federal law.
- I. Parking. The applicant may request, and the City shall grant, a reduction in parking requirements in accordance with Government Code Section 65915(p), as that section may be amended from time to time.

- J. Density Bonus Agreement. The applicant shall enter into an agreement with the City in the form approved by the City Attorney to ensure the continued affordability of all affordable units or the continued reservation of such units for qualifying senior citizens and the requirements of this subdivision J and subdivisions K and L of this section. Prior to receiving a building permit for any project that receives a density bonus or any incentive, concession, waiver, or reduction of development standards pursuant to this section, such agreement shall be recorded as a covenant against the property. The agreement shall remain a senior, non-subordinate covenant and as an encumbrance running with the land for the full term thereof. In no event shall the agreement be made junior or subordinate to any deed of trust or other documents providing financing for the construction or operation of the project, or any other lien or encumbrance whatsoever for the entire term of the required covenants.
- K. Construction and Integration of Affordable Units.
1. Construction of Affordable Units. For any development project that is granted a density bonus or other benefit pursuant to this section, the affordable units that qualify the project as eligible for a density bonus, must be constructed concurrently with or prior to the construction of any market rate units.
 2. Integration of Affordable Units. In addition, the affordable units must be integrated with the market rate units so that there is a mix of affordable and market rate units, if any, in each building of the development project. The affordable units may be "floating" units that are not permanently designated, provided that at no time shall a majority of the affordable units be congregated to a specific section of the project.
- L. Marketing and Management.
1. Marketing Program. Prior to the issuance of a certificate of occupancy for the project, the applicant shall prepare and obtain City's approval of a marketing program for the leasing or sale of the housing units. The leasing or sale of the housing units shall thereafter be marketed in accordance with the marketing program. Developer shall provide City with periodic reports with respect to the leasing or sale of the housing units.
 2. Management Plan. Prior to the issuance of the certificate of occupancy for a rental project, the applicant shall submit for the approval of the City a management plan which sets forth in detail the applicant's property management duties, a tenant selection process in compliance with the required affordability restrictions, a security system and crime prevention program, the procedures for the collection of rent, the procedures for eviction of tenants, the rules and regulations of the property and manner of

enforcement, a standard lease form, an operating budget, the identity of the professional property management company to be contracted with to provide property management services at the property, and other matters relevant to the management of the property.

3. Provisions regarding Section 8 Vouchers. The applicant shall accept as tenants on the same basis as all other prospective tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing program under Section 8 of the United States Housing Act of 1937, or its successor; provided, The applicant shall not rent one of the affordable units to a tenant household holding a Section 8 certificate unless none of the Housing Units not restricted to occupancy by the affordability covenants are available. If the only available housing unit is an affordable unit, the applicant shall no longer designate the housing unit rented to a tenant household holding a Section 8 certificate as an affordable unit, shall designate the next-available housing unit as an affordable unit, and shall make available, restrict occupancy to, and rent such newly designated affordable unit to a qualified tenant at the applicable affordable rent pursuant to the affordability covenants, such that at all times reasonably possible all of the required affordable units shall not be occupied by tenants holding Section 8 certificates. Furthermore, in the event the applicant rents an affordable unit to a household holding a federal certificate, the rental agreement (or lease agreement, as applicable) between the applicant, as landlord, and the tenant shall expressly provide that monthly rent charged shall be the affordable rent required for the affordable unit (not fair market rent) and that the rent collected directly from such tenant holding a federal certificate shall be not more than 30% of the tenant's actual gross income pursuant to the applicable federal certificate program regulations; i.e., the rent charged to such tenant under the rental agreement shall be the affordable rent chargeable under the affordability covenant and not fair market rent for the area, as would otherwise be permitted under the applicable federal certificate program. If and to the extent these restrictions conflict with the provisions of Section 8 of the United States Housing Act of 1937 or any rules or regulations promulgated thereunder, the provisions of Section 8 of the United States Housing Act of 1937 and all implementing rules and regulations thereto shall control. The applicant shall not apply selection criteria to Section 8 certificate holders which are more burdensome than criteria applied to any other prospective tenants.

M. Density Bonus Law.

1. Compliance. The applicant shall comply with all requirements stated in Government Code Section 65915. The requirements of Government Code Section 65915, and any amendments thereto, shall prevail over any conflicting provision of this Code.
2. Excluded development. An applicant shall not receive a density bonus or any other incentive or concession if the housing development would be excluded under Government Code Section 65915.
3. Interpretation. The provisions of this subdivision shall be interpreted to implement and be consistent with the requirements of Government Code Section 65915. Any changes to Government Code Section 65915 shall be deemed to supersede and govern over any conflicting provisions contained herein.

SECTION 8. Subsubsection 9.18.100.050 (Density Bonuses and Other Incentives for Affordable Housing) is hereby added to Section 9.18.100 (Development and Design Standards Applicable to All Mixed Use Zones) of Chapter 9.18 (Mixed Use Regulations and Development Standards) of Title 9 (Land Use) of the Garden Grove Municipal Code to read as follows:

9.18.100.050 Density Bonus and Other Incentives for Affordable Housing

- A. Application. In addition to any other review required for a proposed housing development, applications for a density bonus shall be filed with the planning division. The application shall be filed concurrently with an application for the required land use action pursuant to Chapter 9.32 of this Code.
- B. Processing. City staff shall process the application for a density bonus in the same manner as, and concurrently with, the application for the development plan review or approval that is required by this Code.
- C. Documentation. The applicant shall submit reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, waivers or reductions of development standards, and parking ratios.
- D. Replacement Housing Requirement. Pursuant to subdivision (c)(3) of Government Code Section 65915, the applicant will be ineligible for a density bonus or other incentives unless the applicant complies with the replacement housing requirements therein in the following circumstances:
 1. The housing development is proposed on any parcel(s) on which rental dwelling units are subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; or

2. The housing development is proposed on any parcel(s) on which rental dwelling units that were subject to a recorded covenant, ordinance, or law that restricted rents to levels affordable to persons and families of lower or very low income have been vacated or demolished in the five-year period preceding the application; or
 3. The housing development is proposed on any parcel(s) on which the dwelling units are occupied by lower or very low-income households.
- E. Density Bonus Awarded. For a housing development qualifying pursuant to the requirements of Government Code Section 65915, the City shall grant a density bonus in an amount specified by Government Code Section 65915. Except as otherwise required by Government Code Section 65915, the density bonus units shall not be included when calculating the total number of housing units that qualifies the housing development for a density bonus. Except as otherwise required by Government Code Section 65915, the amount of the density bonus shall not exceed 35 percent.
- F. Calculation. For the purpose of calculating the density bonus, the "maximum allowable residential density" shall be the maximum allowable gross residential density established under the applicable development standards for the parcel(s), subject to subdivision (o) of Government code Section 65915.
- G. Incentives/Concessions. The City shall grant the applicant the number of incentives and concessions required by Government Code Section 65915. The City shall grant the specific concession(s) or incentive(s) requested by the applicant, unless it makes any of the relevant written findings stated in Government Code Section 65915(d). Senior citizen housing developments that qualify for a density bonus shall not receive any incentives or concessions, unless Government Code Section 65915 is amended to specifically require that local agencies grant incentives or concessions for senior citizen housing developments.
- H. Physical constraints. Except as restricted by Government Code Section 65915, the applicant for a density bonus may submit a proposal for the waiver or reduction of development standards that have the effect of physically precluding the construction of a housing development incorporating the density bonus and any incentives or concessions granted to the applicant. A request for a waiver or reduction of development standards shall be accompanied by documentation demonstrating that the waiver or reduction is physically necessary to construct the housing development with the additional density allowed pursuant to the density bonus and incorporating any incentives or concessions required to be granted. The City shall approve a waiver or reduction of a development standard, unless it finds that:
1. The application of the development standard does not have the effect of physically precluding the construction of a housing development at

the density allowed by the density bonus and with the incentives or concessions granted to the applicant;

2. The waiver or reduction of the development standard would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact;
 3. The waiver or reduction of the development standard would have an adverse impact on any real property that is listed in the California Register of Historical Resources; or
 4. The waiver or reduction of the development standard would be contrary to state or federal law.
- I. Parking. The applicant may request, and the City shall grant, a reduction in parking requirements in accordance with Government Code Section 65915(p), as that section may be amended from time to time.
- J. Density Bonus Agreement. The applicant shall enter into an agreement with the City in the form approved by the City Attorney to ensure the continued affordability of all affordable units or the continued reservation of such units for qualifying senior citizens and the requirements of this subdivision J and subdivisions K and L of this section. Prior to receiving a building permit for any project that receives a density bonus or any incentive, concession, waiver, or reduction of development standards pursuant to this section, such agreement shall be recorded as a covenant against the property. The agreement shall remain a senior, non-subordinate covenant and as an encumbrance running with the land for the full term thereof. In no event shall the agreement be made junior or subordinate to any deed of trust or other documents providing financing for the construction or operation of the project, or any other lien or encumbrance whatsoever for the entire term of the required covenants.
- K. Construction and Integration of Affordable Units.
1. Construction of Affordable Units. For any development project that is granted a density bonus or other benefit pursuant to this section, the affordable units that qualify the project as eligible for a density bonus, must be constructed concurrently with or prior to the construction of any market rate units.
 2. Integration of Affordable Units. In addition, the affordable units must be integrated with the market rate units so that there is a mix of affordable and market rate units, if any, in each building of the development project. The affordable units may be "floating" units that are not permanently designated, provided that at no time shall a

majority of the affordable units be congregated to a specific section of the project.

L. Marketing and Management.

1. Marketing Program. Prior to the issuance of a certificate of occupancy for the project, the applicant shall prepare and obtain City's approval of a marketing program for the leasing or sale of the housing units. The leasing or sale of the housing units shall thereafter be marketed in accordance with the marketing program. Developer shall provide City with periodic reports with respect to the leasing or sale of the housing units.
2. Management Plan. Prior to the issuance of the certificate of occupancy for a rental project, the applicant shall submit for the approval of the City a management plan which sets forth in detail the applicant's property management duties, a tenant selection process in compliance with the required affordability restrictions, a security system and crime prevention program, the procedures for the collection of rent, the procedures for eviction of tenants, the rules and regulations of the property and manner of enforcement, a standard lease form, an operating budget, the identity of the professional property management company to be contracted with to provide property management services at the property, and other matters relevant to the management of the property.
3. Provisions regarding Section 8 Vouchers. The applicant shall accept as tenants on the same basis as all other prospective tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing program under Section 8 of the United States Housing Act of 1937, or its successor; provided, The applicant shall not rent one of the affordable units to a tenant household holding a Section 8 certificate unless none of the Housing Units not restricted to occupancy by the affordability covenants are available. If the only available housing unit is an affordable unit, the applicant shall no longer designate the housing unit rented to a tenant household holding a Section 8 certificate as an affordable unit, shall designate the next-available housing unit as an affordable unit, and shall make available, restrict occupancy to, and rent such newly designated affordable unit to a qualified tenant at the applicable affordable rent pursuant to the affordability covenants, such that at all times reasonably possible all of the required affordable units shall not be occupied by tenants holding Section 8 certificates. Furthermore, in the event the applicant rents an affordable unit to a household holding a federal certificate, the rental agreement (or lease agreement, as applicable) between the applicant, as landlord, and the tenant shall expressly provide that monthly rent

charged shall be the affordable rent required for the affordable unit (not fair market rent) and that the rent collected directly from such tenant holding a federal certificate shall be not more than 30% of the tenant's actual gross income pursuant to the applicable federal certificate program regulations; i.e., the rent charged to such tenant under the rental agreement shall be the affordable rent chargeable under the affordability covenant and not fair market rent for the area, as would otherwise be permitted under the applicable federal certificate program. If and to the extent these restrictions conflict with the provisions of Section 8 of the United States Housing Act of 1937 or any rules or regulations promulgated thereunder, the provisions of Section 8 of the United States Housing Act of 1937 and all implementing rules and regulations thereto shall control. The applicant shall not apply selection criteria to Section 8 certificate holders which are more burdensome than criteria applied to any other prospective tenants.

M. Density Bonus Law.

1. Compliance. The applicant shall comply with all requirements stated in Government Code Section 65915. The requirements of Government Code Section 65915, and any amendments thereto, shall prevail over any conflicting provision of this Code.
2. Excluded development. An applicant shall not receive a density bonus or any other incentive or concession if the housing development would be excluded under Government Code Section 65915.
3. Interpretation. The provisions of this subdivision shall be interpreted to implement and be consistent with the requirements of Government Code Section 65915. Any changes to Government Code Section 65915 shall be deemed to supersede and govern over any conflicting provisions contained herein.

SECTION 9: If any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, words or portions thereof be declared invalid or unconstitutional.

SECTION 10: The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary

thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after adoption.