

AGENDA FOR THE



CITY OF PINOLE PLANNING COMMISSION SPECIAL MEETING

Monday, March 28, 2016

7:00 P.M.

City Council Chambers, 2131 Pear Street, Pinole, CA 94564

In compliance with the Americans with Disabilities Act of 1990, if you need special assistance to participate in a City meeting or you need a copy of the agenda, or the agenda packet in an appropriate alternative format, please contact the Development Services Department at (510) 724-9014. Notification of at least 48 hours prior to the meeting or time when services are needed will assist the City staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service.

Assistant listening devices are available at this meeting. Ask staff if you desire to use this device.

CONSENT CALENDAR:

All matters listed under the Consent Calendar are considered to be routine and non-controversial. These items will be enacted by one motion and without discussion. If, however, any interested party or Commissioner(s) wishes to discuss a consent item, it will be removed from the Consent Calendar and taken up in order after the last item under New Business.

PROCEDURE FOR CONSIDERING AN AGENDA ITEM:

At the beginning of an item, the Chair will read the description of that item as stated on the Agenda. The City Staff will then give a brief presentation of the proposed project. The Commission may then ask Staff questions about the item.

For those items listed as Public Hearings, the Chair will open the public hearing and ask the applicant if they wish to make a presentation. Those persons in favor of the project will then be given an opportunity to speak followed by those who are opposed to the project. The applicant will then be given an opportunity for rebuttal.

The Public Hearing will then be closed and the Commission may discuss the item amongst themselves and ask questions of Staff. The Commission will then vote to approve, deny, approve in a modified form, or continue the matter to a later date for a decision. The Chair will announce the Commission's decision and advise the audience of the appeal procedure.

Note: No Public Hearings will begin after 11:00 p.m. Items still remaining on the agenda after 11:00 p.m. will be held over to the next meeting.

CITIZEN PARTICIPATION:

Persons wishing to speak on an item listed on the Agenda may do so when the Chair asks for comments in favor of or in opposition to the item under consideration. After all of those persons wishing to speak have done so, the hearing will be closed and the matter will be discussed amongst the Commission prior to rendering a decision.

Prior to speaking on an item, you must fill out one of the speaker cards (available at the back of the Council Chambers) and hand it to the Secretary. If a number of persons wish to speak on an item, the Chair may limit each speaker to a set time period in which to address the Commission.

Any person may appeal an action of the Planning Commission or of the Planning Manager by filing an appeal with the City Clerk, in writing, within ten (10) days of such action. Following a Public Hearing, the City Council may act to confirm, modify or reverse the action of the Planning Commission or Planning Manager. The cost to appeal a decision is \$803.

Note: If you challenge a decision of the Commission regarding a project in court, you may be limited to raising only those issues you or someone else raised at the public hearing or in writing delivered to the City of Pinole at, or prior to, the public hearing.

A. CALL TO ORDER

B. PLEDGE OF ALLEGIANCE AND ROLL CALL

C. CITIZENS TO BE HEARD:

The public may address the Planning Commission on items that are within its jurisdiction and not otherwise listed on the agenda. Planning Commissioners may discuss the matter brought to their attention, but by State law (Ralph M. Brown Act), action must be deferred to a future meeting. Time allowed: five (5) minutes each.

D. CONSENT CALENDAR: None

PUBLIC HEARINGS:

1. Zoning Code Text Amendment 16-02: Housing Element Implementation

Request: A Zoning Code Amendment to change text in Chapters 17.22, 17.20, 17.62 and 17.38 of Title 17 of the Municipal Code modifying the standards for the location of emergency shelters, supportive housing, transitional housing, employee housing, and the provisions for density bonus units within the City of Pinole consistent with State law.

Applicant: City of Pinole
2131 Pear Street
Pinole, CA 94564

Location: Citywide

Project Staff: Winston Rhodes, Planning Manager

F. OLD BUSINESS: None

G. NEW BUSINESS:

H. CITY PLANNER'S/COMMISSIONER'S REPORT:

I. COMMUNICATIONS:

J. **NEXT MEETING:**

Planning Commission Regular Meeting, April 25, 2016 at 7:00PM

K. **ADJOURNMENT**

POSTED: March 23, 2016



Winston Rhodes, AICP
Planning Manager



Memorandum

TO: PLANNING COMMISSION MEMBERS

FROM: WINSTON RHODES, AICP, PLANNING MANAGER

SUBJECT: Zoning Code Text Amendment – General Plan Housing Element Implementation

DATE: March 28, 2016

File: Zoning Code Amendment 16-02
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Applicant:

City of Pinole 2131 Pear St. Pinole, CA 94564

REQUEST

A Zoning Code Amendment (ZCA 16-02) to modify text in Chapters 17.22, 17.20, 17.62 and 17.38 modifying the standards for the location of emergency shelters, supportive housing, transitional housing, employee housing, and the provisions for density bonus units consistent with State law.

BACKGROUND

The General Plan Housing Element was adopted on May 19, 2015 and subsequently certified by the State Department of Housing and Community Development (HCD) later the same month. The Housing Element covers an eight year period from 2015 through 2023 and includes information about how the City has planned for a Regional Housing Needs Allocation (RHNA) of 297 units. The Element focuses on the City's ability to provide quality, safe, and affordable housing; as well as aims to achieve a balance between maintaining the existing character of Pinole and providing housing for all economic segments of the community and those with special needs.

As part of the Housing Element, the City included implementation actions to modify the Zoning Ordinance provisions for a variety of affordable and special needs housing types, including emergency shelters, transitional housing, supportive housing, and employee housing. These actions were needed within the Housing Element to ensure that the City meets current State requirements. The Housing Element actions are summarized below.

- **Action 4.4.9 Housing for the Homeless.** The City amended the Zoning Ordinance to provide emergency shelters and transitional housing for the homeless; however, additional revisions to the Zoning Ordinance are required to be consistent with State law.
 - The Zoning Ordinance needs to address the provision of supportive and transitional housing as a residential use to be subjected to requirements for similar uses in the same zones.
 - The City needs to remove the emergency shelter distance requirements (other than from another shelter). State law (SB2) allows the emergency shelter ordinance to set distance requirement only from another shelter. The City's ordinance currently includes distance requirements from a public park and a school, transit route, etc. Within 12 months of adopting the 2015-2023 Housing Element, the City has planned to amend the Zoning Ordinance to address the provisions for transitional housing, supportive housing, and emergency shelters consistent with SB 2.
- **Action 4.4.10 Employee Housing.** Currently the Zoning Ordinance does not address the provision of employee housing. The City will amend the Zoning Ordinance within one year of the Housing Element adoption to identify employee housing meeting Health and Safety Code definitions will be considered as a residential use and to be permitted in the same manner as similar uses in the same zones.

Additionally State residential density bonus law was changed in 2014 and needs to be reflected in the City's Zoning Ordinance. All amendments to the Zoning Ordinance require review by the Planning Commission. On February 8, 2016 these Zoning Ordinance amendments were discussed with the Housing Element Subcommittee of the Planning Commission. The Subcommittee was comfortable with the proposed changes. The Planning Commission held a workshop on the proposed text amendments on September 14, 2016. No objections were raised to the contemplated Zoning Ordinance changes.

ANALYSIS

General Plan Consistency and Zoning Code Amendments

The Housing Element includes Goal H.4 which calls for the maintaining the current social diversity that exists in Pinole by providing a mix of housing types and prices to meet identified housing needs. This goal is supported by Policy H 4.4 which calls for maintaining appropriate land use regulations and other development tools to encourage development of affordable housing opportunities throughout the City.

Emergency Shelters

California Government Code Section 65583 requires local jurisdictions to identify at least one zone where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit. The identified zone or zones must include sufficient capacity to accommodate at least one year-round emergency shelter. Furthermore, development standards for emergency shelters are limited to the following under State law:

- The maximum number of beds or persons permitted to be served nightly by the facility.
- Off-street parking based upon demonstrated need, provided that the standards do not require more parking for emergency shelters than for other residential or commercial uses within the same zone.
- The size and location of exterior and interior onsite waiting and client intake areas.
- The provision of on-site management.
- The proximity to other emergency shelters provided that emergency shelters are not required to be more than 300 feet apart.
- The length of stay.
- Lighting.
- Security during hours that the emergency shelter is in operation.

While the City's Municipal Code permits emergency shelters in its Office Industrial Mixed Use (OIMU) zone, the City's development standards for this housing type are more restrictive than what is allowed under State law. Specifically, the City has established a distance requirement between emergency shelters and parks, schools, and outdoor recreation facilities. Pinole's Municipal Code also requires emergency shelters to be developed within one-half mile of a transit corridor or existing bus route.

The proposed amendments to Pinole's Municipal Code modify the City's development standards for emergency shelters to comply with State law. However, because the amendment removes distance requirements from sensitive uses (parks and schools); the recommendation is to further amend the Municipal Code to remove emergency shelters as a conditionally permitted use in the R-2, R-3, R-4, RMU, and CMU zones. The removal of this housing type as a conditionally permitted use in the above mentioned zones is consistent with current State law regarding emergency shelters.

Transitional and Supportive Housing

Government Code Section 65583 requires transitional and supportive housing to be considered a residential use of property, and subject only to those restrictions that apply to other residential dwellings of the same type in the same zone. State law also specifically defines what constitutes transitional and supportive housing. The City has previously permitted transitional housing in a manner similar to emergency shelters. There are currently no provisions for supportive housing in the Pinole Municipal Code. The proposed amendments to Pinole's Municipal Code modify the City's provisions for transitional and supportive housing to specifically address these housing types and comply with State law.

Employee Housing

California Health and Safety Code Section 17021.5, also known as the Employee Housing Act, requires local jurisdictions to treat employee housing providing accommodations for six or fewer employees as a single-family structure. For the purpose of all local ordinances, employee housing is not to be included within the definition of a boarding house, rooming house, hotel, dormitory, or other similar term that implies that the employee housing is a business run for profit or differs in any other way from a family dwelling. No conditional use permit, zoning variance, or other discretionary zoning clearance can be required of employee housing that serves six or fewer employees that is not required of a family dwelling of the same type in the same zone.

The City's Municipal Code does not include any provisions specifically for employee housing. The proposed amendments to Pinole's Municipal Code add employee housing provisions to comply with State law.

Residential Density Bonuses

In September 2014, AB 2222 was signed into law and amended the State's Density Bonus requirements to eliminate density bonuses and other incentives previously available unless the developer agrees to replace pre-existing affordable units on a one-for-one basis. AB 2222 also increases the required affordability period from 30 years to 55 years for all density bonus units. Furthermore, if the units that qualified an applicant for a density bonus are affordable ownership units, as opposed to rental units, they must be subject to an equity sharing model rather than a resale restriction. Under prior density bonus law, only moderate income affordable ownership units were subject to the equity sharing model. Pinole's current density bonus ordinance does not include the extended affordability period or equity sharing model for ownership units. The proposed amendments to Pinole's Municipal Code modify the City's density bonus provisions to comply with State law. These amendments also include new language to ensure the continued availability of affordable ownership units resulting from a density bonus request and include new language about monitoring requirements of affordable rental units.

California Environmental Quality Act (CEQA) compliance. The ordinance amendments are not subject to CEQA under the general rule in CEQA Guidelines section 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The text amendments modify regulations to implement the General Plan Housing Element and meet State legal requirements without resulting in physical changes to the environment; thus, it can be seen with certainty that there is no possibility that the amendments will have a significant effect on the environment.

STAFF RECOMMENDATION

That the Planning Commission approve Resolution 16-03 recommending that the City Council amend Chapters 17.22, 17.20, 17.62, and 17.38 of Title 17 of the Municipal Code to modify provisions for Emergency Shelters, Transitional Housing, Supportive Housing, Employee Housing and Density Bonuses or incentives for the creation of affordable housing consistent with State law.

ATTACHMENTS

- A. Draft Resolution 16-03

DRAFT
PLANNING COMMISSION RESOLUTION NO. 16-03
WITH EXHIBIT A: ZONING CODE AMENDMENTS

A RESOLUTION OF THE CITY OF PINOLE PLANNING COMMISSION RECOMMENDING THAT THE CITY COUNCIL APPROVE A ZONING CODE AMENDMENT MODIFYING CHAPTERS 17.22, 17.20, 17.62, and 17.38 OF TITLE 17 OF THE MUNICIPAL CODE TO MODIFY PROVISIONS FOR EMERGENCY SHELTERS, TRANSITIONAL HOUSING, SUPPORTIVE HOUSING, EMPLOYEE HOUSING AND DENSITY BONUS CONSISTENT WITH STATE LAW (ZCA 16-02)

WHEREAS, The City adopted an updated Housing Element to its General Plan on May 19, 2015; and

WHEREAS, the General Plan Housing Element Goal H.4 calls for maintaining the current social diversity that exists within Pinole by providing a mix of housing types and prices that meet housing needs; and

WHEREAS, General Plan Housing Element Policy 4.4 calls for maintaining appropriate land use regulations and other development tools to encourage development of affordable housing opportunities throughout the City; and

WHEREAS, the Housing Element anticipated certain amendments to the City's Zoning Code to address the provision of emergency shelters, transitional housing, supportive housing, and employee housing consistent with State law, and

WHEREAS, there have been changes in State density bonus law necessitating changes to the Zoning Code to be consistent with State law, and

WHEREAS, each City is required to update its Zoning Ordinance to conform to the General Plan within a reasonable time (Government Code section 65860(c)), and

WHEREAS, the Planning Commission held a public workshop to discuss the contemplated Zoning Code Amendment on March 14, 2016; and

WHEREAS, the Planning Commission held a duly noticed public hearing related to the proposed Zoning Code amendment on March 28, 2016; and

WHEREAS, after close of the public hearing, the Planning Commission considered all public comments received both before and during the public hearing, the presentation by city staff, the staff report, and all other pertinent documents regarding the proposed zoning code amendment; and

WHEREAS, In compliance with the California Environmental Quality Act (CEQA) and State CEQA guidelines, the City has determined that the zoning text amendments qualify for CEQA exemption because the activity will not result in direct or reasonably foreseeable indirect physical change in the environment (Section 15060(c) (2)) and the activity is not a considered a project under CEQA and therefore qualifies for the general rule exemption under Section 15061(b) (3) of the CEQA Guidelines, and

NOW THEREFORE, BE IT RESOLVED, that the above recitals are true and correct and made a part of this resolution.

BE IT FURTHER RESOLVED, that the Planning Commission of the City of Pinole hereby recommends that the City Council adopt an ordinance amending Chapters 17.20, 17.22, 17.62 and 17.38 of the Pinole Municipal Code to modify provisions for emergency shelters, transitional housing, supportive housing, employee housing, and density bonus, consistent with State Law as described in Exhibit A, attached to this resolution and incorporated by reference, and finds as follows:

1. The proposed amendments are exempt from CEQA because they will not result in a direct or reasonably foreseeable indirect physical change in the environment based on the general rule set forth in CEQA Guidelines Section 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The text amendments describe where and under what circumstances emergency shelters are allowed includes definitions to describe and clarify transitional, supportive, and employee housing, make changes to density bonus provisions to reflect and ensure consistency with State law within the City; thus, it can be seen with certainty that there is no possibility that the amendments will have a significant effect on the environment.

2. This Zoning Code Amendment is consistent with and supports the Pinole General Plan by helping to provide a mix of housing types and affordability levels.

PASSED AND ADOPTED by the Planning Commission of the City of Pinole on this 28th day of January, 2016, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Dave Kurrent, Chair, 2016-2017

ATTEST:

Winston Rhodes, AICP, Planning Manager

Exhibit A

Planning Commission Resolution No.16-03

Title 17 Excerpt

Added text shown in underscore and deleted text shown in ~~strikethrough~~

The following terms and definitions in Section 17.22.020 B., Chapter 17.22, Article 2, Title 17 of the Pinole Municipal Code are hereby amended to read as follows:

CHAPTER 17.22 EXCERPT

EMERGENCY SHELTER. ~~A facility for the temporary shelter and feeding of indigents and disaster victims and operated by a public or nonprofit agency.~~ Housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person, as defined by § 50801(e) of the California Health and Safety Code. No individual or household may be denied emergency shelter because of an inability to pay.

TRANSITIONAL HOUSING. ~~Consistent with Health and Safety Code Section 50675.2, transitional housing is defined as buildings configured as rental housing developments, but operated under program requirements that call for the termination of assistance and recirculation of the assisted unit to another eligible program recipient at some predetermined future point in time, which shall be no less than six (6) months.~~ Buildings configured as rental housing developments, but operated under program requirements that require the termination of assistance and recirculation of the assisted unit to another eligible program recipient at some predetermined future point in time that shall be no less than six months from the beginning of the assistance. Consistent with Section 65583(a)5 of the Government Code, transitional housing will be permitted, conditionally permitted or prohibited in the same manner as other residential dwellings of the same type in the same zone under this code and applicable state law.

The following terms and definitions are hereby added to Section 17.22.020 B., Chapter 17.22, Article 2, Title 17 of the Pinole Municipal Code:

SUPPORTIVE HOUSING. Housing with no limit on length of stay, that is occupied by the target population, and that is linked to onsite or offsite service that assists the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community. Consistent with Section 65583(a)5 of the Government Code, supportive housing will be permitted, conditionally permitted or prohibited in the same manner as other residential dwellings of the same type in the same zone under this code and applicable state law.

TARGET POPULATION. As defined in Section 65582(g) of the Government Code, target population is defined as persons with low incomes who have one or more disabilities, including mental illness, HIV or AIDS, substance abuse, or other chronic health condition, or individual eligible for services provided pursuant to the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code) and may include, among other populations, adults, emancipate minors, families with children, elderly persons, young adults aging out of the foster care system, individuals existing from institutional settings, veterans, and homeless people.

EMPLOYEE HOUSING. As described in Section 17021.5 of the Health and Safety Code, employee housing means housing providing accommodations for six or fewer employees. Employee housing shall not be included within the definition of a boarding house, rooming house, hotel, dormitory, or other similar term that implies that the employee housing is a business run for profit or differs in any other way from a family dwelling. Housing meeting these conditions shall be deemed a single-family structure and no conditional use permit, zoning variance, or other zoning clearance shall be required of employee housing that is not required of a family dwelling of the same type in the same zone.

TABLE 17.20.030-1, Section 17.20.020, Chapter 17.20, Article 2, Title 17 of the Pinole Municipal Code is hereby amended to read as follows:

CHAPTER 17.20 EXCERPT

Land Use/ Zoning District	LDR	R-1	R-2	R-3	R-4	R	RC	RMU	CMU	OPMU	OIMU	OS	PR	PQI	SPBCA
Emergency Shelter ⁽²⁾	N	N	C N	C N	C N	N	N	C N	C N	N	P	N	N	N	N
<u>Supportive Housing</u> (located in housing of a type permitted in the zone)	P	P	P	P	P	P	P	P	P	P	P	N	N	N	N
Transitional Housing ⁽²⁾ (located in housing of a type permitted in the zone)	N P	P	C P	C P	P	N P	N P	C P	C P	N P	N P	N	N	N	N

Notes: (2) See additional regulations for Emergency Shelters and Transitional Housing in Chapter 17.62

Chapter 17.62 of Article 4, Title 17 of the Pinole Municipal Code is hereby amended to read as follows:

CHAPTER 17.62

EMERGENCY SHELTERS

17.62.010 PURPOSE

The purpose of this chapter is to establish regulations governing the erection, operation, and occupancy of emergency shelters to allow for the adequate requirement of emergency housing services for vulnerable members of the community while protecting and upholding the general public health, safety, and welfare.

17.62.020 PERMIT REQUIREMENTS AND EXCEPTIONS

A. Permit Requirements. Emergency shelters are conditionally allowed or allowed by right as established in Article II. (Zoning Districts, Allowed Uses, and Development Standards). In addition to satisfying the requirements listed below, emergency shelters shall comply with all federal and California licensing requirements and all applicable Uniform Building and Fire Codes, including maximum occupancy restrictions.

B. Exceptions to Permit Requirements.

1. Emergency Shelters may exceed the maximum thirty (30)-bed limitation through a conditional use permit subject to approval by the designated approving authority, in accordance with Government Code Section 65589.5(d).

17.62.030 DEVELOPMENT REQUIREMENTS.

A. Location and Separation. Emergency shelters of more than ten (10) persons shall be situated more than three hundred (300) feet from any other similar program.

B. Physical Characteristics.

1. The maximum number of beds for emergency shelters shall be thirty (30) unless a conditional use permit is applied for and approved. The maximum number of beds does not apply in situations of city- or statewide designated disasters or catastrophic conditions.

2. Smoke detectors, approved by the Fire Department, must be provided in all sleeping and food preparation areas for emergency shelters.

3. The size of an emergency shelter shall be in character with the surrounding neighborhood.

4. The emergency shelter shall have an interior, onsite waiting and client intake area that is a minimum of two-hundred (200) square feet. The emergency shelter shall include a landscaped exterior waiting area that is a minimum of one hundred (100) square feet, so that clients waiting for services are not required to use the public sidewalk for queuing.

5. The emergency shelter shall have on-site parking provided at the rate of:

- a. One (1) space per three (3) beds plus;
- b. One (1) space per employee;
- c. Off-street parking may only be required based on demonstrated need, provided that the same requirements applied are those for residential or commercial uses within the same zone.

6. The emergency shelter shall have exterior lighting consistent with Chapter 17.46 (Lighting).

17.62.040 OPERATIONAL REQUIREMENTS

~~A. If a transitional facility is proposed for location in an area either zoned or developed as a residential area, all intake and screening shall be conducted off site.~~

~~B. If a program includes a drug or alcohol abuse counseling component, appropriate state and/or federal licensing shall be required.~~

~~C. The program shall provide accommodations appropriate for a minimum stay of twenty-eight (28) days and a maximum of one hundred and eighty (180) days per client /family.~~

~~D. The program shall identify a transportation system that will provide its clients with a reasonable level of mobility including, but not limited to, access to social services, housing, and employment opportunities.~~

EA. Emergency shelters shall provide on-site management and support staff at all times during shelter use.

FB. Emergency shelters must have on-site security during the hours that the emergency shelter is in operation.

Chapter 17.38, Article 3, Title 17 of the Pinole Municipal Code is hereby amended to read as follows:

CHAPTER 17.38 EXCERPT

17.38.020 ELIGIBILITY FOR DENSITY BONUS AND INCENTIVES AND CONCESSIONS.

The city shall grant one (1) density bonus, with concessions or incentives, as specified in Section 17.38.040 (number and types of density bonuses and incentives and concessions allowed), when the applicant for the residential development seeks and agrees to construct a residential development, excluding any units permitted by the density bonus awarded pursuant to this chapter, that will contain at least one (1) of the following:

A. Ten percent (10%) of the total units of a housing development for lower income households;

B. Five percent (5%) of the total units of a housing development for very low income households;

C. A senior citizen housing development or age-restricted mobile home park;
or

D. Ten percent (10%) of the total dwelling units in a common interest development as defined in California Civil Code Section 1351 for persons and families of moderate income, provided that all units in the development are offered to the public for purchase. The above units qualifying a development for a density bonus shall be referred to as "target units." The applicant shall specify which of the above paragraphs the basis for the density bonus is. The percentage of total units proposed to qualify the development for a density bonus shall not be rounded up. Example: for a two hundred (200)-unit project that proposes twenty-one (21) lower income units (or 10.5%), the allowed density bonus would be based on ten percent (10%) lower income units, not eleven (11%).

17.38.030 GENERAL REQUIREMENTS

The following general requirements apply to the application and determination of all incentives and bonuses:

A. Rounding. All density calculations resulting in fractional units shall be rounded up to the next whole number.

B. Relation to General Plan, Zoning. The granting of a density bonus, or a concession or incentive, shall not be interpreted, in and of itself, to require a general plan amendment, zoning change, or other discretionary approval.

C. Density Bonus Excluded in Calculation. The density bonus shall not be included when calculating the total number of housing units that qualifies the housing development for a density bonus.

D. Parking. Upon request by the applicant, the city shall not require that a housing development meeting the requirements of Section 17.38.020 (Eligibility for Density Bonus and Incentives and Concessions) provide a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds the following:

1. Zero (studio) to one (1) bedroom: one (1) on-site parking space per unit;
2. Two (2) to three (3) bedrooms: two (2) on-site parking spaces per unit;
3. Four (4) or more bedrooms: two and one-half (2 1/2) parking spaces per unit;
4. If the total of parking spaces required for a housing development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subsection, a development may provide "on-site parking" through tandem parking or uncovered parking, but not through on-street parking.

E. Waived or Reduced Development Standards.

1. The city shall not apply any development standard that would have the effect of physically precluding the construction of a housing development meeting the requirements of Section 17.38.020 (Eligibility for Density Bonus and Incentives and Concessions) at the densities or with the incentives or concessions permitted by this chapter.

2. An applicant may submit to the city a proposal for the waiver or reduction of development standards, when standards would have the effect of physically precluding the proposed development, and may request a meeting with the city. Nothing in this section, however, shall be interpreted to require the city to waive or reduce development standards if:

- a. The waiver or reduction would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5 of the California Government Code, upon health and safety or the physical environment and for which the city determines there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact; or
- b. This would have an adverse impact on any real property that is listed in the California Register of Historical Resources.
- c. The waiver or reduction would be contrary to state or federal law.

3. A proposed waiver or reduction of development standards shall neither reduce nor increase the number of allowable incentives or concessions under Section 17.38.040.

F. Multiple Zoning Districts. If the site of a development proposal is located in two (2) or more zoning districts, the number of dwelling units permitted in the

development is the sum of the dwelling units permitted in each of the zoning districts based on the site acreage within each zoning district. The permitted number of dwelling units may be distributed within the development without regard to the zone boundaries.

G. Affordable Housing Requirements. For projects subject to Chapter 17.32 (Affordable Housing Requirements) of this title, the affordable housing units required by that chapter may be counted toward the affordable units required to qualify for a density bonus per Section 17.38.020.

H. Nothing in this chapter shall be construed to enlarge or diminish the authority of the city to require a developer to donate land as a condition of development.

I. Agreement Required.

1. Prior to the award of a density bonus and any related incentives or concessions, the applicant shall enter into an agreement with the city to ensure the continued affordability of all target units.

2. For all target units, the agreement shall specify the household-income classification, number, location, size and construction scheduling and shall require target units in a project and phases of a project to be constructed concurrently with the construction of non-target units. The agreement shall include such other provisions as necessary to establish compliance with the requirements of this chapter.

J. Reports. The applicant shall submit financial or other reports along with the application for the project to establish compliance with this chapter. The city may retain a consultant to review any financial report (pro forma). The cost of the consultant shall be borne by the applicant except if the applicant is a non-profit organization, the cost of the consultant may be paid by the city upon prior approval of the City Council.

K. CEQA Review. Any residential development that qualifies for a density bonus shall not be exempt from compliance with the California Environmental Quality Act.

17.38.040 NUMBER AND TYPES OF DENSITY BONUSES AND INCENTIVES AND CONCESSIONS ALLOWED

A. Density Bonus. A housing development that satisfies the eligibility requirements in Section 17.38.020 of this chapter shall be entitled to the following density bonus:

1. For developments providing ten percent (10%) lower income target units, the city shall provide a twenty percent (20%) increase above the otherwise maximum allowable residential density as of the date of application, plus a one-and-a-half percent (1 1/2%) supplemental increase over that base

for every one percent (1%) increase in low income target units above ten percent (10%). The maximum density bonus allowed including supplemental increases is thirty-five percent (35%).

2. For developments providing five percent (5%) very low income target units, the city shall provide a twenty percent (20%) increase above the otherwise maximum allowable residential density as of the date of application, plus a two and a half percent (2 1/2%) supplemental increase over that base for every one percent (1%) increase in very low income target units above five percent (5%). The maximum density bonus allowed including supplemental increases is thirty-five percent (35%).

3. For senior citizen housing developments, a flat twenty percent (20%) of the number of senior units.

4. For common interest developments providing ten percent (10%) moderate income target units, the city shall provide a five percent (5%) increase above the otherwise maximum allowable residential density as of the date of application, plus a one percent (1%) increase in moderate income units above ten percent (10%). The maximum density bonus allowed including supplemental increases is thirty-five percent (35%).

B. Number of Incentives or Concessions. In addition to the density bonus described in this section, an applicant may request specific incentives or concessions. The applicant shall receive the following number of incentives or concessions.

1. One (1) incentive or concession for projects that include at least ten percent (10%) of the total units for lower income households, at least five percent (5%) for very low income households, or at least ten percent (10%) for persons and families of moderate income in a common interest development.

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

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

4. The city shall grant the concession or incentive requested by the applicant unless it makes a written finding of either of the following:

a. The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of

the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

b. The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

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

C. Available Incentives and Concessions.

1. A reduction in the site development standards or a modification of this title requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 Section (commencing with 18901) of Division 13 of the Health and Safety Code, including but not limited to a reduction in setback and square footage requirements and in the ratio of vehicle parking spaces that would otherwise be required and that results in identifiable, financially sufficient, and actual cost reductions.

2. Approval of mixed-use zoning in conjunction with the housing development if the non-residential land uses will reduce the cost of the housing development and the non-residential land uses are compatible with the housing development and existing or planned development in the area in which the housing development will be located.

3. Other regulatory incentives or concessions proposed by the applicant or the city that result in identifiable, financially sufficient, and actual cost reductions.

4. Priority processing of a housing development that qualifies for a density bonus based on income restricted units.

D. Additional Density Bonus and Incentives and Concessions for Donation of Land to the city.

1. When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to the city and agrees to include a minimum of ten percent (10%) of the total units before the density bonus for very low income households, the applicant shall be entitled to a fifteen percent (15%) increase above the otherwise maximum allowable residential density, plus a one percent (1%) supplemental increase for each additional percentage of very low income units to a maximum density bonus of thirty-five percent (35%) for the entire development.

2. The density bonus provided in this subsection shall be in addition to any other density bonus provided by this chapter up to a maximum combined density bonus of thirty- five percent (35%).

3. The applicant shall be eligible for the increased density bonus described in this subsection if all of the following conditions are met:

a. The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application;

b. The developable acreage and zoning designation of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than ten percent (10%) of the number of residential units of the proposed development;

c. The transferred land is at least one (1) acre in size or of sufficient size to permit development of at least forty (40) units, has the appropriate general plan designation, is appropriately zoned with appropriate development standards for development at the density described in paragraph (3) of subdivision (c) of Section 65583.2 of the Government Code, and is or will be served by adequate public facilities and infrastructure.

d. The transferred land shall have all of the entitlements and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, not later than the date of approval of the final subdivision map, parcel map, or residential development application, except that the city may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 of Government Code if the design is not reviewed by the city prior to the time of transfer;

e. The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with the requirements of this chapter which shall be recorded on the property at the time of the transfer;

f. The land is transferred to the city or to a housing developer approved by the city;

g. The transferred land shall be within the boundary of the proposed development or, if the city agrees, within 1/4 mile of the boundary of the proposed development; and

h. A proposed source of funding for the very low income units shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.

4. Nothing in this subsection shall be construed to enlarge or diminish the authority of the city to require a developer to donate land as a condition of development.

E. Additional density bonus or incentives and concessions for development of child care facility.

1. Housing developments meeting the requirements of Section 17.38.020 (Eligibility for Density Bonus and Incentives and Concessions) and including a child care facility that will be located on the premises of, as part of, or adjacent to the housing development shall receive either of the following:

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

b. An additional incentive or concession that contributes significantly to the economic feasibility of the construction of the child care facility.

2. The city shall require the following as conditions of approving the housing development.

a. The child care facility shall 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 Subdivision (c) of Section 65915 of the Government Code; and

b. Of the children who attend the child care facility, the children of very low income households, lower income households, or persons or families of moderate income shall equal a percentage that is equal to or greater than the percentage of target units that are required pursuant to Section 17.38.020 (Eligibility for Density Bonus and Incentives and Concessions).

3. Notwithstanding any other requirements of this section, the city shall not be required to provide a density bonus or incentive or concession for a child care facility if it makes a written finding, based upon substantial evidence, that the community has adequate child care facilities.

F. Condominium Conversion Incentives for Low Income Housing Development.

1. An applicant for approval to convert apartments to a condominium project may submit to the city a preliminary proposal pursuant to this subsection prior to the submittal of any formal requests for subdivision map approvals. The city shall, within ninety (90) days of receipt of a written proposal, notify the applicant in writing of the manner in which it will comply with this subsection.

2. When an applicant for approval to convert apartments to a condominium project agrees to the following, the city shall grant either a

density bonus of twenty-five percent (25%) over the number of apartments, to be provided within the existing structure or structures proposed for conversion, or provide other incentives of equivalent financial value.

a. Provide at least thirty-three percent (33%) of the total units of the proposed condominium project to persons and families of low or moderate income, or provide at least fifteen percent (15%) of the total units of the proposed condominium project to lower income households; and

b. Agree to pay for the reasonably necessary administrative costs incurred by the city.

3. For purposes of this division, "other incentives of equivalent financial value" shall not be construed to require the city to provide cash transfer payments or other monetary compensation but may include the reduction or waiver of requirements which the city might otherwise apply as conditions of conversion approval.

4. The City may place such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value as the City finds appropriate, including but not limited to, conditions which assure continued affordability of units to subsequent purchasers who are persons and families of low and moderate income or lower income households.

45. Nothing in this subsection shall be construed to require the city to approve a proposal to convert apartments to condominiums.

5.6. An applicant shall be ineligible for a density bonus or other incentives under this subsection if the apartments proposed for conversion constitute a housing development for which a density bonus or other incentive was previously provided Government Code Section 65915.

7. An applicant shall be ineligible for a density bonus or any other incentives or concessions under this Section if the condominium project is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through the City's valid exercise of its police power; or occupied by lower or very low income households, unless the proposed condominium project replaces those units, as defined in Government Code Section 65915(c)(3)(B), and either of the following applies:

a. The proposed condominium project, inclusive of the units replaced pursuant to Government Code Section 65915(c)(3)(B),

contains affordable units at the percentages set forth in Subsection (a) above.

b. Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.

17.38.050 LOCATION OF DENSITY BONUS UNITS

The location of density bonus units within the housing development may be at the discretion of the developer. However, the target units shall be dispersed throughout the housing development and when feasible shall contain, on average, the same number of bedrooms as the non-target units in the development, and shall be compatible with the design or use of the remaining units in terms of appearance, materials, and quality finish.

17.38.060 CONTINUED AVAILABILITY.

A. If a housing development provides low or very low income target rental units to qualify for a density bonus, the target units must remain restricted to lower or very low income households for a minimum of ~~thirty~~ fifty-five (3055) years from the date of issuance of the certificate of occupancy by the Building Official, or longer if required by the project financing.

B. In the case of an all for-sale units that qualified the applicant for the award of the density bonus, the initial occupant must be persons and families of very low, low, or moderate income households, as required. The applicant shall enter into and the City shall enforce an equity sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following requirements shall apply to the equity sharing agreement: ~~common interest housing development providing moderate income target units to qualify for a density bonus, the initial occupant of the target unit must be a person or family of moderate income.~~

1. Upon resale, the seller of the target units shall retain the value of any improvements, the down payment, and the seller's proportionate share of appreciation, and the city shall recapture any initial subsidy and its proportionate share of appreciation which shall then be used within ~~three~~ five (35) years for any of the purposes described in subdivision (e) of Section 33334.2 of the California Health and Safety Code that promote homeownership.

2. The city's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate income household, plus the amount of any down payment assistance or mortgage assistance. If upon resale the market value is lower than the initial

market value, then the value at the time of the resale shall be used as the initial market value.

3. The city's "proportionate share" shall be equal to the ratio of the local government's initial subsidy to ~~percentage by which the initial sale price to the moderate income household was less than~~ the fair market value of the home at the time of the initial sale.

~~C. Where there is a direct financial contribution to a housing development pursuant to Government Code Section 65915, the city shall assure continued availability for low and moderate income units for thirty (30) years.~~

C. Sales price for for-sale affordable very low, low, and moderate income units shall be set at affordable housing cost. Rents for affordable low and very low income rental units shall be set at an affordable rent.

D. Unless otherwise governed by other funding sources, first priority for the affordable units will be given to individuals who reside, work, go to school, or have family in the City of Pinole.

E. The developer shall submit a project financial report (pro forma) demonstrating that the requested incentives or concessions are required to provide for affordable rents or affordable housing costs, as applicable. The City may retain a consultant to review the financial report. The cost of the consultant shall be borne by the developer with the following exception:

1. If the applicant is a nonprofit organization, the cost of the consultant may be paid by the City upon prior approval of the City Council.

F. All affordable units shall be occupied by the household type specified in the written agreement required under Section 10-2.2108(c). The developer's obligation to maintain these units as affordable housing shall be evidenced by the master regulatory agreement which shall be recorded as deed restriction running with the land.

G. Prior to the rental or sale of any affordable unit, the City or its designee, shall verify the eligibility of the prospective tenant or buyer.

H. The City may establish fees associated with the setting up and monitoring of affordable units.

I. For rental affordable very low and low income units:

1. The owner shall obtain and maintain on file certifications by each household. Certification shall be obtained immediately prior to initial occupancy by each household and annually thereafter, in the form provided by the City or its designee. The owner shall obtain updated forms for each household on request by the City, but in no event less frequently than once a year. The owner shall maintain complete, accurate and current records pertaining to the housing development, and will permit any duly authorized representative of the City to inspect the records pertaining to the affordable units and occupants of these units.

2. The owner shall submit an annual report to the City, on a form provided by the City. The report shall include for each affordable unit the rent, income, and family size of the household occupying the unit.

3. The owner shall provide to the City any additional information required by the City to insure the long-term affordability of the affordable units by eligible households.

17.38.070 REQUIREMENT TO REPLACE AFFORDABLE HOUSING TO QUALIFY FOR DENSITY BONUS, INCENTIVE, OR CONCESSION.

A. An applicant shall be ineligible for a density bonus or any other incentives or concessions under this Article if the housing development is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through the City's valid exercise of its police power; or occupied by lower or very low income households, unless the proposed housing development replaces those units, and either of the following applies:

1. The proposed housing development, inclusive of the units replaced pursuant to this paragraph, contains affordable units at the percentages set forth in Section 10-2.2104.

2. Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.

B. For the purposes of this Section, "replace" shall mean either of the following:

1. If any dwelling units described in Subsection (a) above are occupied on the date that the application is submitted to the City, the proposed housing development shall provide at least the same number of units of equivalent size, or type, or both, to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy. For unoccupied dwelling

units described in Subsection (a) above in a development with occupied units, the proposed housing development shall provide units of equivalent size or type, or both, to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category in the same proportion of affordability as the occupied units. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to Subsection (b)(2) below.

2. If all dwelling units described in Subsection (a) above have been vacated or demolished within the five-year period preceding the application, the proposed housing development shall provide at least the same number of units of equivalent size or type, or both, as existed at the highpoint of those units in the five-year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known. If the incomes of the persons and families in occupancy at the highpoint is not known, then one-half of the required units shall be made available at affordable rent or affordable housing cost to, and occupied by, very low income persons and families and one-half of the required units shall be made available for rent at affordable housing costs to, and occupied by, low-income persons and families. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to Section 10-2.2108(b).

17.38.070080 PROCESS FOR APPROVAL OR DENIAL.

A. Process for Approval. The density bonus and incentive(s) and concession(s) request shall be considered in conjunction with any necessary development entitlements for the project. The designated approving authority for density bonuses, incentives, and concessions shall be the City Council. In approving the density bonus and any related incentives or concessions, the city and applicant shall enter into a density bonus agreement.

B. Approval of Density Bonus Required. The city shall grant the density bonus requested by the applicant provided it is consistent with the requirements of this chapter and state law.

C. Approval of Incentives or Concessions Required Unless Findings Made. The city shall grant the incentive(s) and concession(s) requested by the applicant

unless the city makes a written finding, based upon substantial evidence, of any of the following:

1. The incentive or concession is not required in order to provide for affordable housing costs or affordable rent for the target units.
2. The incentive or concession would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5 of the California Government Code, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which the city determines 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.
3. The concession or incentive would be contrary to state or federal law.

17.38.08090 ADMINISTRATIVE FEE.

The city shall charge applicants an administrative fee to cover the city's cost to review all materials submitted in accordance with this chapter and for ongoing enforcement of this chapter. The amount of the administrative fee shall be established by City Council resolution and updated as required. Fees will be charged for staff time and materials associated with:

- A. Review and approval of applications for the proposed development;
- B. Project marketing and lease-up; and
- C. Long-term compliance of the applicant and successors-in-interest to the applicant, with respect to the affordable housing units.

