

New Series

Approved as to Form.
[Signature]
Assistant City Attorney

AMENDING THE MUNICIPAL CODE BY ADDING SECTION 30-17 (DENSITY BONUS REGULATIONS) TO ARTICLE I (ZONING DISTRICTS AND REGULATIONS) OF CHAPTER XXX (DEVELOPMENT REGULATIONS) TO ALLOW DENSITY BONUS UNITS AND POTENTIAL WAIVERS TO DEVELOPERS THAT VOLUNTARILY PROVIDE FOR AFFORDABLE HOUSING UNITS AS AN ELEMENT OF THEIR RESIDENTIAL DEVELOPMENT PROJECT AND PROVIDING INCENTIVES AND CONCESSIONS FOR RESIDENTIAL DEVELOPMENT PROJECTS IN COMMERCIAL OR MIXED USE ZONES

WHEREAS, in 1979 the State of California adopted legislation that provided incentives to encourage private developers to include "affordable units" in their market-rate residential projects and this legislation has been amended numerous times since its inception, most recently in 2008; and

WHEREAS, with certain exceptions, California Government Code Section 65915 requires that a City provide for a density bonus and other incentives or concessions if a developer, among other things, agrees to construct specified numbers of affordable housing units; and

WHEREAS, the Housing Element of the City of Alameda General Plan, adopted in May 2003, includes an objective calling for the adoption of a density bonus ordinance; and

WHEREAS, the Alameda Planning Board has held public hearings at which public comment was received and considered and has recommended adoption of a density bonus ordinance to the City Council; and

WHEREAS, the City wishes to maintain an economically balanced community with housing available to households of all income levels and this Council seeks to provide incentives for the creation of affordable housing units; and

WHEREAS, the City Council wishes to add density bonus regulations to Article I, Chapter XXX, Development Regulations, of the Alameda Municipal Code, subject to compliance with all standards requirements and appropriate review as provided for in the density bonus regulations; and

WHEREAS, an Initial Study was prepared for this ordinance, which proposed that a Negative Declaration be approved; and

WHEREAS, Public Notice of the proposed Negative Declaration was given as required by Section 21092 of the Public Resources Code, the Negative Declaration was circulated for public review and no comments were received in connection with the Negative Declaration; and

WHEREAS, public hearings were conducted by the Planning Board on March 9th and March 23rd, 2009, and by the City Council on October 20, and November 17, 2009, to consider the Initial Study and the Negative Declaration prepared for this ordinance, and to accept public testimony regarding this proposed environmental determination for the proposed ordinance; and

WHEREAS, based on the information contained in the Initial Study and the Negative Declaration prepared for this ordinance and testimony received as a result of the public notice, the City Council finds no substantial evidence that there would be a significant impact on the environment if the ordinance was approved.

NOW, BE IT RESOLVED, that based on the City's independent judgment, the City Council of the City of Alameda does hereby approve a Negative Declaration for this Ordinance in accordance with the California Environmental Quality Act.

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

Section 1. Ordinance Adoption. Article I of Chapter XXX of the Alameda Municipal Code is hereby amended to add a new Section 30-17, Density Bonus Regulations, to read as follows:

30-17 DENSITY BONUS ORDINANCE

30-17.1 Purpose

The purpose of this Density Bonus Ordinance is to create incentives for the provision of affordable housing, senior housing and the development of child care facilities in Alameda. The California Legislature requires each local government to adopt an ordinance that specifies how the jurisdiction will comply with Section 65915 et seq. of the California Government Code. This ordinance is intended to satisfy the requirements of that code.

30-17.2 Findings

Rising land prices have been a key factor in preventing development of new affordable housing. New housing construction that does not include affordable units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land. This reduces the supply of land for affordable housing and increases the price of remaining residential land.

30-17.3 Definitions

Unless the context plainly requires otherwise, the following words and phrases used in section 30-17 shall have the following meanings. Capitalized terms not defined here in 30-17.3 and used in this section 30-17 shall have the meanings

attributed to them in Government Code sections 65915-65918 as it now exists or may hereafter be amended.

a. Affordable Housing or Affordable Housing Unit shall mean a dwelling unit required to be offered at Affordable Rent or available at Affordable Housing Cost to Very Low, Low, or Moderate Income Households pursuant to this section 30-17.

b. Affordable Housing Agreement means a written agreement between an applicant for a development and the City of Alameda ensuring the continuing affordability of housing pursuant to this section 30-17.

c. Applicant is defined as any person who seeks residential property development permits or approvals from the City of Alameda.

d. Child Care Facility is defined as a child day facility other than a family day care home, including but not limited to infant centers, preschools, extended day care facilities and school-age child care centers, installed, operated and maintained for the nonresidential care of children.

e. Development means all development pursuant to a proposal to construct or place one or more dwelling units on a lot or contiguous lots including, without limitation, a planned unit development, site plan, subdivision, or conversion of a non-residential building to dwelling units.

f. Marketing Plan means a plan that describes how the applicant will inform the public, and those within appropriate income groups, of the availability of Affordable Housing Units in a development for which a density bonus is granted under this section 30-17.

g. Maximum Allowable Residential Density means the density allowed under the zoning ordinance and land use element of the general plan, or if a range of densities is permitted, means the maximum allowable density. Where the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

h. Mixed-Use Development Project means a Development that includes residential as well as commercial, office, or industrial uses.

i. Substantial rehabilitation means rehabilitation, the value of which constitutes 25 percent of the after rehabilitation value of the dwelling, inclusive of the land value.

30-17.4 Density Bonus Application

a. In order to receive concessions and/or incentives, or waivers under this section 30-17, an Applicant must submit to the City a Density Bonus Application which will be treated as part of the Development Application. At any time during the review process, the Planning and Building Director may require from the Applicant additional

information reasonably necessary to clarify and supplement the Application or to determine the Development's consistency with the requirements of this section.

b. The Density Bonus Application shall include the following:

1. A development plan illustrating that the "base" project meets all existing general plan and zoning development standards.
2. A description of the Development, including the total number of proposed Affordable Housing Units, senior housing units, or age restricted mobile home park units; a description of any land the Applicant proposes to donate for low income housing units; and any child care facilities the Applicant proposes to construct as part of the qualifying housing development premises or on an adjacent property;
3. The zoning and General Plan designations and assessor's parcel number(s) of the project site;
4. A vicinity map showing the location of the proposed project.
5. A set of preliminary project plans that include a site plan showing all building and structure footprints or locations, drive aisles and parking layout; floor plans of all structures and buildings; and architectural elevations of all buildings and structures, all drawn to scale.
6. A request for a concession or incentive shall include evidence to justify why it is necessary to provide for affordable housing costs.
7. A request for a waiver shall include evidence to justify why it is necessary to allow construction of the development on the site.
8. The Affordable Housing Unit Plan described in subsection 30-17.15 below.
9. Any other information reasonably requested by the Planning and Building Director to aid in the implementation of this section 30-17.

c. A project with a Density Bonus Application, including a request for concessions, incentives or waivers, shall be reviewed for approval by the Planning Board; provided, however, that if a Development involves another permit or entitlement requiring City Council approval, then the Planning Board may deny the development project or recommend its approval to the City Council.

d. A requested concession, incentive, or waiver shall be approved unless the findings for denial listed in subsection 30.17.9 a., "Requests for Incentives or Concessions," or 30-17.12 a., "Waivers of Development Standards the Physically Preclude Construction," are made in writing.

e. Decisions of the Planning Board may be appealed to or reviewed by the City Council as provided in Section 30-25 of this code, "Appeals or Calls for Review."

30-17.5 Density Bonus Standards

a. Developments subject to this section include projects undertaken in phases, stages, or otherwise developed in distinct sections.

b. If the site of a Development proposal is located in two or more zones, the number of dwelling units permitted in the Development is the sum of the dwelling units permitted in each of the zones. The permitted number of dwelling units may be distributed within the Development without regard to the zone boundaries.

c. Total units or total dwelling units does not include units added by a Density Bonus awarded pursuant to this section.

d. The Applicant shall elect whether the Density Bonus shall be awarded on the basis of the development category they select. The granting of a Density Bonus shall not be interpreted, in and of itself, to require a General Plan amendment, zoning change, or other discretionary approval. All density calculations resulting in fractional units shall be rounded up to the next whole number.

e. For projects subject to section 30-16 of this code, "Inclusionary Housing Requirements for Residential Projects," the inclusionary units required by that section may be counted toward the affordable unit requirements of this section 30-17. To the extent that the provisions of this section and section 30-16 conflict, the more demanding provisions in terms of affordable housing production of section 30-16 shall prevail.

f. An applicant shall agree and the City shall ensure continued affordability of all low- and very-low-income units that qualified an Applicant for the award of the Density Bonus for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

g. An Applicant shall agree and the City shall ensure that the initial occupant of the moderate-income units that are directly related to the receipt of the Density Bonus in a Common Interest Development are persons and families of moderate income and that units are offered at an affordable sales price and housing cost as defined by section 30-17 and Government Code section 65915 as it exists when a complete application for a Development is submitted to the City.

30-17.6 Development and Housing Unit Types

a. The provisions of this section 30-17 apply to the following development categories:

1. New residential development projects of 5 or more dwelling units, regardless of the type of dwelling units proposed. Applicant shall demonstrate that at least 5 residential units can be developed on the project site in compliance with all zoning and development regulations.
2. Where permitted or conditionally permitted by the underlying zoning designation of a site, mixed-use developments that include at least 5 dwelling units.
3. Substantial rehabilitation of one or more multiple-family residential structures containing at least 5 units that results in a net increase in the available residential units.
4. Development that will change the use of an existing building from nonresidential to residential and that will provide at least 5 residential units;
5. Development that includes the conversion of at least 5 residential rental units to ownership housing.

b. Developments projects that may be considered under the above categories include the following housing unit types:

1. Developments where at least 5 percent of the total units are for Very Low Income Households, (see subsection 30-17.7.1)
2. Developments where at least 10 percent of the total units are for Low Income Households (see subsection 30-17.7.2)
3. Developments where at least 10 percent of the total units in a common interest development, as defined in Section 1351 of the Civil Code are for Moderate Income Households (see subsection 30-17.7.3)
4. A Senior Citizen Housing Development or Mobile Home Park that limit residency based on age requirements (see subsection 30-17.7.4)
5. Developments that include the donation of land. (see subsection 30-17.7.5)
6. Developments that include Child Care Facilities. (see subsection 30-17.7.6)
7. Condominium Conversions. (see subsection 30-17.7.7)

c. These provisions shall not apply to projects on sites where the density of dwelling units already exceed the maximum permitted by the General Plan or Municipal Code. Projects on such sites shall not be entitled to a density bonus, concessions, incentives, waivers, or reductions in parking standards.

30-17.7 Specified Housing Unit Type, Criteria, and Standards

The City shall grant a Density Bonus, and incentives or concessions as described in subsection 30-17.10, when an Applicant seeks and agrees to construct a Development that meets the standards and criteria of the following specified housing unit types.

30-17.7.1 Development that Include Very Low Income Households

a. A Very Low Income Household project shall include a minimum of 5 percent of the total dwelling units of a Development or Mixed Use Development for Very Low Income Households as defined in Section 50105 of the Health and Safety Code.

b. For residential developments that include 5 percent of the total dwelling units of a Residential Development for Very Low-Income Households, the Density Bonus shall be calculated as follows:

Percentage Very Low-Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

30-17.7.2 Development that Include Low Income Households

a. A Low Income Household project shall include a minimum of 10 percent of the total dwelling units of a Development or Mixed Use Development for Low Income Households as defined in Section 50079.5 of the Health and Safety Code

b. For residential developments that include 10 percent of the total dwelling units for Low Income Households, the Density Bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
16	29
17	30.5
18	32
19	33.5
20	35

30-17.7.3 Developments that Include Moderate Income Common Interest Developments

a. A Moderate Income Common Interest project shall include a minimum of 10 percent of the total dwelling units in the development for Moderate Income Households as defined in Section 1351 of the Civil Code (typically a condominium or small-lot single-family development) for persons and families of Moderate Income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered for purchase to income-qualified members of the general public.

b. For Residential Developments that include 10 percent of the total dwelling units in a common interest development for persons and families of Moderate Income, the Density Bonus shall be calculated as follows:

Percentage Moderate Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

30-17.7.4 A Senior Citizen Housing Development or Mobile Home Park that Limit Residency Based on Age Requirements

A Senior Citizen Housing Development or a mobile home park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code shall be entitled to a Density Bonus of 20 percent of the number of senior housing units.

30-17.7.5 Developments that Include the Donation of Land

a. When an Applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to the City in accordance with this subsection, the Applicant shall be entitled to a 15 percent increase above the otherwise maximum allowable residential density for the entire Development as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32
28	33
29	34
30	35

b. The Density Bonus for land dedication shall be in addition to any Density Bonus allowed by subsections 30-17.7.1 through 30-17.7.4, up to a maximum combined increased of 35 percent if the Applicant seeks an increase under this subsection 30-17.7.5. Nothing in this subdivision shall be construed to enlarge or diminish the City's authority to require a developer to donate land as a condition of development.

c. An applicant shall be eligible for the increased Density Bonus described in this subsection if all of the following conditions are met:

1. The Applicant donates and transfers the land to the City no later than the date of approval by the City of the final subdivision map, parcel map, or Application of the Development seeking the Density Bonus.
2. The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to Very Low Income households in an amount not less than 10 percent of the number of residential units of the proposed Development seeking the Density Bonus.
3. The transferred land:
 - (i) is at least one acre in size or of sufficient size to permit development of at least 40 units; and
 - (ii) has the appropriate General Plan designation and 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, or as it may be amended from time to time; and
 - (iii) is or will be served by adequate public facilities and infrastructures for the development of very-low-income housing when transferred; and
 - (iv) has appropriate zoning and development standards to make the development of the Affordable Housing Units feasible; and
 - (v) No later than the date of approval of the final subdivision map, parcel map, or of the Development application seeking the Density Bonus, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the Very Low Income housing units on the transferred land, except that the City may subject the proposed Development to subsequent design review to the extent authorized by section 65583.2(i), if the design is not reviewed by the City prior to the transfer.
4. The transferred land and the Affordable Housing Units shall be subject to a deed restriction, which shall be recorded on the property upon dedication, ensuring continued affordability of the units for at least 30 years.
5. The land is transferred to the City or to a housing developer approved by the City.
6. The transferred land is within the proposed Development or, if the City agrees, within one-quarter mile of the boundary of the proposed Development.
7. A proposed source of funding for the development of 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.

30-17.7.6 Developments that Include a Child Care Facility

a. When an Applicant proposes to construct a Development that conforms to the requirements of subsection 30-17.7 and includes a Child Care Facility located on the premises of, as part of, or adjacent to the Development, the City shall grant either of the following:

1. An additional Density Bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.
2. An additional concession or incentive designated by the City that contributes significantly to the economic feasibility of the construction of the Child Care Facility.

b. In order to qualify for a Density Bonus as provided in this subsection 30-17.7.6, the Applicant shall submit for review and approval by the Planning and Building Director a financial report (pro forma) for the proposed Child Care Facility that includes sources of operating revenue to ensure that the center remains open and provides the promised services for the life of the project.

c. The City shall require, as a condition of approving the Development that:

1. The Child Care Facility shall remain in operation as long as or longer than time during which the Affordable Housing Units are required to remain affordable pursuant to this section 30-17.7.6; and
2. Of the children who attend the Child Care Facility, the children of Very Low-Income Households, Low-Income Households, Moderate-Income Households shall equal a percentage that is equal to or greater than the percentage of Dwelling Units that are made affordable to Very Low-Income Households, Low-Income Households, or Moderate-Income Households.

d. Notwithstanding any requirement of this subsection 30-17.7.6, the City need not provide a Density Bonus or concession for a Child Care Facility if it finds, based upon substantial evidence, that Alameda has adequate child care facilities.

30-17.7.7 Condominium Conversion Developments

a. When a Development is the conversion of an existing apartment complex to a condominium complex and the Applicant agrees to make at least 33 percent of the total units of the Development affordable to Moderate Income households for 30 years, or 15 percent of the total units of the proposed Development affordable to Low-Income households for 30 years, and agrees to pay for the administrative costs incurred by the City to process the application and to monitor the continued affordability and habitability of the Affordable Housing Units, the City shall either:

1. Grant a Density Bonus of 25 percent; or

2. Provide other incentives of equivalent financial value as determined by the City.

b. Nothing in this section shall be construed to require the City to approve a proposal to convert apartments to condominiums.

c. An Applicant shall be ineligible for a Density Bonus or other incentives under this subsection 30-17.7.7 if the apartments proposed for conversion are in a Development for which a Density Bonus or other incentives were previously provided under this section 30-17 or section 30-16 of this code.

30-17.8 Design, Distribution and Timing of Development of Affordable Housing Units

a. Affordable Housing Units must be constructed concurrently with market-rate units. Affordable Housing Units shall be integrated into the Development and be comparable in infrastructure (including sewer, water and other utilities), construction quality and exterior design to the market-rate units. The Affordable Housing Units must also comply with the following criteria:

1. Rental Developments: Rental units shall be integrated within and reasonably dispersed throughout the project. All Affordable Housing Units shall reflect the range and numbers of bedrooms provided in the project as a whole, and shall not be distinguished by design, construction or materials.

2. Owner-occupied Developments: Owner-occupied units shall be integrated within the project. Affordable Housing Units may be smaller in size and have different interior finishes and features than market-rate units so long as the interior features are durable, of good quality and consistent with contemporary standards for new housing as determined by the Planning and Building Director. All Affordable Housing Units shall reflect the range and numbers of bedrooms provided in the project as a whole, except that Affordable Housing Units need not provide more than four bedrooms.

b. No building permits will be issued for market-rate units until permits for all Affordable Housing Units have been obtained, unless Affordable Housing Units are to be constructed in phases pursuant to a plan approved by the City.

c. Market-rate units will not be inspected for occupancy until all Affordable Housing Units have been constructed, unless Affordable Housing Units are to be constructed in phases pursuant to a plan approved by the City.

30-17.9 Requests for Incentives or Concessions for Sites with a Commercial or Mixed Use Zoning Designation

a. When an Applicant proposes a Development Project for any specified housing unit type on a site with a Commercial or Mixed Use Zoning Designation, other than a senior citizen housing development or mobile home park pursuant to

subsection 30-17.7.4, the City shall provide the Applicant with incentives or concessions as defined by subsection 30-17.10. The Applicant must submit a Density Bonus Application, as described in subsection 30-17., identifying the specific incentives or concessions that the Applicant requests. The City shall grant the concession or incentive requested by the Applicant unless the City makes any of the following written findings, based upon substantial evidence:

1. The concession or incentive is not required to provide for Affordable Housing Costs as defined in Section 50052.5 of the Health and Safety Code or for Affordable Rents for the targeted units;
2. 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 or designated a City of Alameda Historical Monument or included in the City of Alameda's Historical Building Study List 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;
3. The request is to modify the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code.
4. The request is for direct financial incentives for the Development, including the provision of publicly owned land or the waiver of fees or dedication requirements.
5. The concession or incentive would be contrary to State or federal law.

30-17.10 Incentives or Concessions Defined

For the purposes of this section, concession or incentive means:

a. A reduction in site Development Standards or a modification of zoning code or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 19901) of Division 13 of the Health and Safety Code, resulting in identifiable, financially sufficient, and actual cost reductions. "Concession or incentive" may include but is not limited to any of the following:

1. Reduced minimum lot sizes and/or dimensions
2. Reduced minimum setbacks
3. Reduced on-site open-space requirements

4. Increased maximum lot coverage
5. Increased floor area ratio
6. Reduced parking requirements
7. Modification of the zoning code to permit mixed use development in conjunction with the Development if non-residential uses will reduce the development cost of the residential portion of the Development and if the non-residential uses are compatible with the Development and with existing or planned development in the area as set forth in the Alameda General Plan.

b. Nothing in this section shall be construed to require the provision of direct financial incentives for a Development, including the provision of publicly owned land by the City or other waiver of fees or dedication requirements. Moreover, concessions or incentives shall not include any exceptions, waivers or departures from health and safety standards of building and fire codes or from solid waste and recycling standards established by the State of California and the City of Alameda.

30-17.11 Number of Incentives or Concessions

a. If the conditions of subsection 30-17.7 are met, the following incentives or concessions shall be granted:

1. One incentive or concession for a Development that makes: at least 10 percent of the total units affordable to Low-Income Households; or at least 5 percent of the total units affordable to Very Low-Income Households; or at least 10 percent of the total units affordable to persons and families of Moderate-Income in a common interest development.
2. Two incentives or concessions for a Residential Development that makes: at least 20 percent of the total units affordable to Low-Income Households; or at least 10 percent of the total units affordable to Very Low-Income Households; or at least 20 percent of the total units affordable to persons and families of Moderate-Income in a common interest development.
3. Three incentives or concessions for a Residential Development that makes: at least 30 percent of the total units for Low-Income Households; at least 15 percent for Very Low-Income Households, or at least 30 percent for persons and families of Moderate-Income in a common interest development.

30-17.12 Waivers of Development Standards that Physically Preclude Construction

a. An Applicant may submit a proposal for the waiver of development standards that would have the effect of physically precluding the construction of a Development meeting the criteria of subsection 30-17.7, at the densities or with the

concessions or incentives permitted. The City shall grant the waiver requested by the Applicant unless the City makes any of the following written findings, based upon substantial evidence:

1. The development standard does not physically preclude the construction of the development at the densities or with the concessions or incentives permitted.
2. The requested development standard waiver would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.
3. The requested development standard waiver would have an adverse impact on any real property that is listed in the California Register of Historical Resources or designated a City of Alameda Historical Monument or included in the City of Alameda's Historical Building Study List and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to Low- and Moderate-Income households.
4. The requested development standard waiver would be contrary to state or federal law.

b. Allowance for three or more dwelling units in a building, shall be considered a waiver of the development standards found at Article XXVI of the Alameda City Charter and Alameda Municipal Code Sections 30-50 through 30-53.4, if shown to be necessary to make construction of the project physically feasible.

c. A proposal for the waiver or reduction of development standards pursuant to this subsection shall neither reduce nor increase the number of incentives or concessions to which the Applicant is entitled.

30-17.13 Requests for Reduced Parking Ratio

a. Upon the request of the Applicant, a Development meeting the criteria of subsection 30-17.7, shall be subject to the following on-site parking ratios (inclusive of handicapped and guest parking):

1. Zero to one bedroom: one onsite parking space.
2. Two to three bedrooms: two onsite parking spaces.
3. Four and more bedrooms: two and one-half parking spaces.

b. If the total number of parking spaces required for a Development is other than a whole number, the number shall be rounded up to the next whole number. For

purposes of this subsection, a development may provide “onsite parking” through tandem parking or uncovered parking, but not through on-street parking.

c. This subsection shall apply to a Development that meets the requirements of subsection 30-17.7 but only at the request of the Applicant. An Applicant may request parking incentives or concessions beyond those provided in this subsection.

30-17.14 Compliance

a. The provisions of this section 30-17 shall apply to all agents, successors and assignees of an Applicant proposing a Development governed by this section 30-17. No tentative map, use permit, special development permit or occupancy permit shall be issued for any Development that has been granted a Density Bonus under this section unless that map or permit is exempt from or in compliance with the terms of this section 30-17.

b. The City may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including but not limited to actions to revoke, deny or suspend any permit or development approval.

30-17.15 Affordable Housing Unit Plan

a. An Applicant shall submit an Affordable Housing Unit Plan as part of the Development Application.

b. The Affordable Housing Unit Plan shall include the following:

1. The location, structure (attached, semi-attached, or detached), proposed tenure (sale or rental), and size of proposed market-rate, and Affordable Housing Units and the proposed tenure and size of non-residential uses included in the Development;
2. A floor or site plan depicting the location of the Affordable Housing Units and a floor plan describing the size of the Affordable Housing Units in square feet;
3. The income level to which each Affordable Housing Unit will be made affordable;
4. Drafts of the documents to be used to ensure that the units remain affordable for the required term, such as resale and rental restrictions, deeds of trust, and rights of first refusal;
5. For phased Developments, a phasing plan that provides for the timely development of Affordable Housing Units in proportion to other housing units in each proposed phase of development as required by this section;

6. A marketing plan that describes how the Applicant will inform the public, and those within the appropriate income groups, of the availability of Affordable Housing Units;
7. A financial report (pro forma) to evaluate: i) whether the concessions or incentives sought would result in identifiable, financially sufficient, and actual cost reductions; ii) whether the concessions or incentives sought are necessary to reduce the cost of the housing project sufficiently to make feasible the provision of the Affordable Housing Units; and iii) how any additional concession or incentive would contribute significantly to the economic feasibility of the construction of the Child Care Facility if a Child Care Facility is proposed; and
8. Any other information reasonably requested by the Planning and Building Director to assist evaluation of the Affordable Housing Unit Plan.

30-17.16 Affordable Housing Unit Agreement

a. Each Development for which a Density Bonus and incentive or incentives is granted pursuant to this section 30-17 shall be the subject of an Affordable Housing Unit Agreement the provisions of which will vary depending on how a Development satisfies the provisions of this section 30-17. The Affordable Housing Unit Agreement shall be recorded as a restriction on the parcel or parcels on which the Affordable Housing units will be constructed. The Affordable Housing Unit Agreement shall be approved and recorded before final map approval, or, where a map is not requested, prior to issuance of building permits for market-rate units. The Affordable Housing Unit Agreement shall be binding on all future owners and successors in interest. An Affordable Housing Unit Agreement must include:

1. A description of the Development, including the total number of units, and the number and tenure (sale or rental) of Affordable Housing Units.
2. The size, in square feet, and location of Affordable Housing Units;
3. A description of the income group to be accommodated by the Affordable Housing Units, and the formula for determining the Affordable Rent or sales price and Affordable Housing Cost for each Affordable Housing Unit;
4. The duration of affordability for the Affordable Housing Units;
5. A schedule for completion and occupancy of the Affordable Housing Units;
6. Provisions and/or documents for resale restrictions, deeds of trust, rights of first refusal or rental restrictions or other appropriate means to maintain the affordability of the Affordable Housing Units;

7. A Marketing Plan approved by the City for sale or rental of the Affordable Housing Units, which shall use an equitable method to select renters or purchasers of the Affordable Housing Units;
8. Provisions for subletting units consistently with affordability restrictions;
9. Procedures for qualifying tenants and prospective purchasers of Affordable Housing Units.
10. Provisions for monitoring the ongoing affordability and habitability of Affordable Housing Units; and
11. A description of the concession(s) or incentive(s) provided by the City.

30-17.17 Affordable Housing Unit Agreements for Ownership Units

a. In addition to the requirements of subsection 30-17.16, an Affordable Housing Unit Agreement for an ownership Development must provide the following conditions governing the sale and use of Affordable Housing Units during the use restriction period:

1. Affordable Housing Units shall be sold to Very Low Income households, Low Income households or Moderate Income households in a common interest development, at an affordable sales price and Affordable Housing Cost as defined by this section 30-17 and Government Code section 65915 as it exists when a complete Application for the Development is submitted to the City.

2. The Affordable Housing Units shall be owner-occupied by Very Low or Low Income households or by Moderate Income households within common interest developments.

3. With the exception of Moderate Income housing units, the resale price of any affordable unit shall not exceed the purchase price paid by the owner of that unit with the following exceptions:

- (i) Customary closing costs and costs of sale,
- (ii) Cost of real estate commissions paid by the seller if a licensed real estate salesperson is employed, and
- (iii) Consideration for permanent capital improvements installed by the seller.

4. Upon resale of Moderate Income housing units, the seller of the unit shall retain the value of any improvements installed by the seller, his or her down payment, and the seller's proportionate share of appreciation. The City shall recapture any initial subsidy and its proportionate share of appreciation, which shall then be used within five years for the purposes of increasing, improving, and preserving the City's supply

of Low and Moderate Income housing available at affordable housing cost. The City's proportionate share of appreciation is the ratio of the initial subsidy to the fair market value of the home at the time of initial sale. The initial subsidy is the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, including 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 thereafter.

5. The purchaser of each Affordable Housing Unit shall execute an instrument or agreement approved by the City restricting the sale of the Affordable Housing Unit in accordance with this subsection 30-17.17 during the use restriction period. Such instrument or agreement shall be recorded against the parcel containing the Affordable Housing Unit and shall contain such provisions as the City may require ensuring continued compliance with this subsection 30-17.17 and with Government Code section 65915. With respect to Moderate-Income Affordable Housing Units, the instrument or agreement shall provide for equity-sharing as set forth in Government Code Section 65915 and paragraph d. of this subsection 30-17.17.

6. Any additional obligations relevant to the compliance with this subsection 30-17.17.

30-17.18 Affordable Housing Unit Agreements for Rental Units.

a. In addition to the requirements of subsection 30-17.17, an Affordable Housing Unit Agreement for a rental Development must provide the following conditions governing the use of Affordable Housing Units during the use restriction period:

1. Specific property management procedures for qualifying and documenting tenant income eligibility, establishing Affordable Rent and maintaining Affordable Housing Units for qualified tenants;
2. Provisions requiring property owners to maintain books and records to demonstrate compliance with this section 30-17.
3. Provisions requiring the Property Owner to submit an annual report to the City which includes the name(s), address, and income of each household occupying Affordable Housing Units, and which identifies the bedroom size and monthly rent or cost of each Affordable Housing Unit. The information included in this report shall be maintained in confidence by the City and used only to enforce the requirements of this section 30-17.
4. Provisions describing the amount and time for payment of Administrative Fees to the City for the on-going monitoring of the Development's compliance with this section 30-17 as provided in subsection 30-17.19 below.
5. Any additional obligations relevant to the compliance with this section 30-17.

30-17.19 Administrative Fee

The City shall charge an Administrative Fee to Applicants to cover the City's cost to review all materials submitted in accordance with this section 30-17 and for on-going enforcement of this section. The amount of the Administrative Fee shall be established from time to time by City Council resolution. Fees will be charged for, inter alia, staff time, consultant costs, legal fees, and materials associated with: review and approval of applications for the Development; project marketing and lease-up; long-term compliance of the Applicant, and successors-in-interest to the Applicant, with respect to the maintenance of the Affordable Housing Units as such.

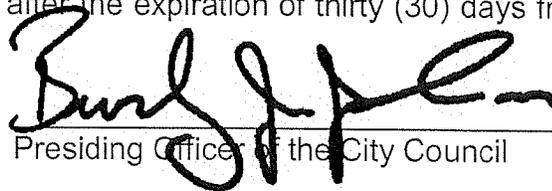
30-17.20 Violation of Affordable Housing Cost

a. If the Planning and Building Director determines that rents in excess of those allowed by this section 30-17 have been charged to a tenant residing in a rental Affordable Housing Unit, the City may take the appropriate legal action to recover, and the rental unit owner shall be obligated to pay to the tenant (or to the City in the event the tenant cannot be located), any excess rent paid.

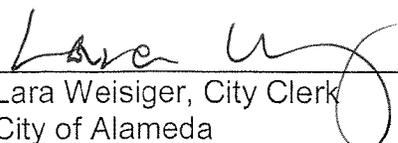
b. If the Planning and Building Director determines that a sales price in excess of that allowed by this section 30-17 has been charged for an ownership Affordable Residential Unit, the City may take the appropriate legal action to recover, and the Affordable Residential Unit seller shall be obligated to pay to the purchaser (or to the City in the event the purchaser cannot be located), any excess sales costs.

Section 2. Severability Clause. It is the declared intent of the City Council of Alameda that if any section, subsection, sentence, clause, phrase, or provision of this ordinance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not render invalid or unconstitutional the remaining provision of this ordinance and to that end the provisions of this ordinance are hereby declared to be severable.

Section 3. This ordinance and the rules, regulations, provisions, requirements, orders, and matters established and adopted hereby shall take effect and be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.


Presiding Officer of the City Council

Attest:


Lara Weisiger, City Clerk
City of Alameda

* * * * *

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the 1st day of December, 2009 by the following vote to wit:

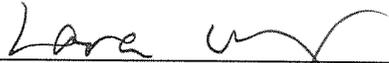
AYES: Councilmembers deHaan, Gilmore, Matarrese, Tam,
and Mayor Johnson – 5.

NOES: None.

ABSENT: None.

ABSTENTIONS: None.

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 2nd day of December, 2009.



Lara Weisiger, City Clerk
City of Alameda